



2026:DHC:2520



\$~17 & 18

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 18<sup>th</sup> March 2026.**

+ **MAC.APP. 618/2018**

THE ORIENTAL INSURNACE CO LTD .....Appellant

Through: Mr. Abhishek Gola, Mr. Anshul Mehral, Advocates.

versus

MANISH MADAN @ MUNISH MADAN & ORS .....Respondents

Through: Ms. Vaishalee Mehra, Advocate.  
Mr. Kapil Jain, Advocate for R-3.

+ **MAC.APP. 956/2018**

MANISH MADAN @ MUNISH MADAN .....Appellant

Through: Ms. Vaishalee Mehra, Advocate

versus

THE ORIENTAL INSURANCE CO LTD & ORS .....Respondents

Through: Mr. Abhishek Gola, Mr. Anshul Mehral, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J: (ORAL)**

1. These cross-appeals have been filed by the Insurance Company and claimant assailing the impugned award dated 02<sup>nd</sup> June 2018, passed by the Motor Accidents Claims Tribunal, Rohini Court [**'MACT'**] in **MAC**.



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*Petition No. 334/2007*, whereby compensation of Rs. 22,78,100/- along with 9% per annum was awarded.

2. **MAC APP. 618/2018** has been filed by the Insurance Company, seeking reduction of the compensation awarded, and **MAC.APP. 956/2018** has been filed by claimant seeking an enhancement thereof.

### **Compensation awarded**

3. The accident occurred on 06<sup>th</sup> April 2007, when the offending truck bearing registration no. *HR-46-9482* [*‘offending vehicle’*], driven rashly and negligently, collided with claimant’s vehicle, resulting in *above-elbow amputation* of his *right upper limb* and permanent disability. MACT held that accident occurred due to the rash and negligent driving of the driver of the offending vehicle and fastened liability upon respondents, with the Insurance Company being directed to satisfy the award with right of recovery from the owner, on account of permit violation.

4. While assessing compensation, MACT took claimant’s age as about 32 years, his occupation as an *‘electrical contractor’*, and his income on the basis of Income Tax Returns at Rs.10,346/- per month, and assessed functional disability at 70% despite disability certificate stating 85% in relation to the *right upper limb*. Applying multiplier of ‘16’ and granting 40% addition towards *future prospects*, MACT computed *loss of earning capacity* at Rs.19,46,649/-, along with other pecuniary and non-pecuniary damages including *pain and suffering, loss of amenities, special diet, conveyance, attendant charges, and loss of income during treatment period*.

5. Accordingly, MACT awarded a total compensation of Rs.22,78,100/- along with interest at 9% per annum from the date of filing of the petition



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till realization, directing Insurance Company to deposit the awarded amount within the stipulated period, with liberty to recover the same from the owner of the offending vehicle in accordance with law.

### **Analysis**

6. *Mr. Abhishek Gola*, counsel for Insurance Company, assails the award on three counts; **first**, that the functional disability was assessed at 70% despite permanent disability being certified at 85%, which was disproportionate considering that there was only disfigurement and amputation of *right upper limb* and vocation of claimant was that of a contractor for household electrical work and did not involve his own physical involvement; **second**, that since it was a head-on collision, contributory negligence ought to have been fastened upon claimant who was driving an *Esteem Car* on 06<sup>th</sup> April 2007 [*date of the accident*] and collided with the offending vehicle; **thirdly**, that the interest granted at 9% is also disproportionate.

7. For the purpose of assessment of functional disability, the principles enunciated in *Raj Kumar* and *Ajay Kumar*, (2011) 1 SCC 343 by the Supreme Court shall be adhered to. In *Raj Kumar v. Ajay Kumar* (*supra*), the Supreme Court held that MACT must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide.



Relevant paragraphs are extracted as under:

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567] )

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

- (i) whether the disablement is permanent or temporary;
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if



the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

*13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”*

(emphasis added)

In **Raj Kumar v. Ajay Kumar** (*supra*), the Court summarized the principles, which are extracted as under:

*“19. We may now summarise the principles discussed above:*

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be*



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*assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).*

*(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*

*(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”*

(emphasis added)

8. The Apex Court has laid down the principles of assessment, which involve three steps; **firstly**, as to what activities the claimant could carry on despite permanent disability, **secondly**, claimant's vocation or profession and nature of work, and **thirdly**, whether injured/claimant is totally disabled from carrying on activities and/or can still carry out some functions.

9. From the testimony of the claimant *Manish Madan* [PW-1], he states that he undertaking contracts for electrification and wiring of houses on a large scale. His visiting card has been appended as **Exhibit PW-1/4**. The visiting card shows that he was running an entity by the name of “*JR Electricals, Engineers and Contractors* from *Vikas Puri*”.

10. Though this does show that he was the proprietor of an agency and,



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therefore, could carry on the work of a *contractor*, considering his *right hand* was amputated above elbow, it would have seriously impeded him from doing numerous activities involved in the work that he was contracting.

11. Being a *contractor* naturally does not mean that one only has office related responsibilities but involves engagement with workers and clients. Considering that this would involve a host of activities requiring functionality of claimant, in the opinion of this Court, the assessment by the MACT cannot be said to be amiss.

12. On the issue relating to contributory negligence, *Mr. Abhishek Gola*, relies on the site map, which shows that the accident occurred in the middle of the road. However, there is absolutely no other evidence led by the Insurance Company or on behalf of the driver and owner before MACT which would establish any element of contributory negligence on part of the claimant who was the driver of the *Esteem car*.

13. There is nothing on record to suggest that the claimant was driving his car negligently in the middle of the road, purposefully or without due care and, thereby invited head-on collision by the truck in front of him. Having not availed of the opportunity to lead evidence, the plea of contributory negligence cannot be sustained.

14. As regards the issue of interest at 9%, the Court takes note of the fact that many compensation awards of similar periods have been granted interest at 9% and the same have been upheld up to the Supreme Court.

15. As far as non-pecuniary damages are concerned, *Ms. Vaishalee Mehra*, counsel for the claimant, states that *non-pecuniary damages*



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awarded are abysmally inadequate, particularly with *pain and suffering* being awarded at Rs. 1,00,000/-, *loss of amenities of life* at Rs. 1,00,000/- and no amount being awarded towards *disfigurement*. The loss towards *pain and suffering and trauma*, as per **Raj Kumar v. Ajay Kumar** (*supra*), would include *disfigurement* as well and, therefore, same is enhanced to Rs. 3,00,000/-, and the *loss of amenities* is also enhanced to Rs. 3,00,000/- considering the circumstances.

16. Ms. Vaishalee Mehra, counsel for the claimant, further states that MACT has also failed to grant any compensation under the head of *loss of earning inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life*; as per **Raj Kumar v. Ajay Kumar** (*supra*) [particularly in paragraph 5, 6 and 15], compensation to this head cannot be awarded under a separate head as these elements are already subsumed within the recognised heads of *pain and suffering* and *loss of amenities of life*.

17. As regards the submission made by the counsel for claimant that deduction of income tax at 10% ought not to have been made from the assessed income, the said contention is well-founded. MACT assessed claimant's annual income at Rs.1,24,152/- on the basis of the Income Tax Return for the Assessment Year 2006–2007 [Exhibit PW3/1 (colly)], which reflected a taxable income of Rs.99,862/- i.e. below the taxable limit applicable at the relevant time. It is settled law in terms of **Sarla Verma v. DTC** (2009) 6 SCC 121 [particularly in paragraphs no. 20 & 24] and reiterated in **National Insurance Co. Ltd. v. Pranay Sethi** (2017) 16 SCC 680 [particularly in paragraphs no.44, 59.3 and 59.4] that deduction



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towards income tax is warranted only where the income falls within the taxable range. Since the claimant's income was below the taxable limit, no deduction on this account was liable to be made. Further, the monthly income taken by MACT at Rs.10,346/- was correctly derived from the annual income reflected in the Income Tax Returns and warrants no interference.

18. Accordingly, the compensation would stand recomputed as under:

| SR. NO.                   | HEADS                                                                                                     | AWARDED BY THE TRIBUNAL         | AWARDED BY THIS COURT            |
|---------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|
| <b>PECUNIARY LOSS</b>     |                                                                                                           |                                 |                                  |
| 1.                        | Expenditure on treatment (A)                                                                              | Nil                             | Nil                              |
| 2.                        | Expenditure on conveyance (B)                                                                             | Rs.25,000 /-                    | Rs.50,000/-                      |
| 3.                        | Expenditure on special diet (C)                                                                           | Rs. 25,000/-                    | Rs.50,000/-                      |
| 4.                        | Cost of nursing / attendant (D)                                                                           | Rs.40,000 /-                    | Rs.40,000 /-                     |
| 5.                        | Loss of earning capacity (E)                                                                              | Rs.19,46,649 /-                 | Rs.19,46,649 /-                  |
| 6.                        | Loss of income (F)                                                                                        | Rs.41,384 /-<br>[Rs.10,346 x 4] | Rs.41,384 /-<br>[Rs.10,346 x 4]  |
| 7.                        | Any other loss which may require any special treatment or aid to the injured for the rest of his life (G) | Nil                             | Nil                              |
| 8.                        | Future Medical Expenses                                                                                   | Nil                             | Nil                              |
| <b>NON PECUNIARY LOSS</b> |                                                                                                           |                                 |                                  |
| 9.                        | Compensation for mental and physical shock (H)                                                            | Nil                             | Nil                              |
| 10.                       | Pain and suffering (I)                                                                                    | Rs.1,00,000 /-                  | Rs.3,00,000 /-                   |
| 11.                       | Loss of amenities of life (J)                                                                             | Rs.1,00,000 /-                  | Rs.3,00,000 /-                   |
| 12.                       | Disfiguration (K)                                                                                         | Nil                             | Included with pain and suffering |
| 13.                       | Loss of marriage prospects (L)                                                                            | Nil                             | Nil                              |



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|                                                         |                                                                                                                                          |                                                             |                                                         |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------|
| 14.                                                     | Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc. (M) | Nil                                                         | Nil                                                     |
| <b>DISABILITY RESULTING IN LOSS OF EARNING CAPACITY</b> |                                                                                                                                          |                                                             |                                                         |
| 15.                                                     | Percentage of disability assessed and nature of disability as permanent or temporary                                                     | 85%                                                         | 85%                                                     |
| 16.                                                     | Loss of amenities or loss of expectation of life span on account of disability                                                           | Included                                                    | Included                                                |
| 17.                                                     | Percentage of loss of earning capacity in relation to disability                                                                         | 70%                                                         | 70%                                                     |
| 18.                                                     | Loss of future income (Income X% Earning capacity x Multiplier)                                                                          | Rs.19,46,649 /-<br>[Rs.10,346 +40% x<br>12 x 16 x 0.70]     | Rs.19,46,649 /-<br>[Rs.10,346 +40% x<br>12 x 16 x 0.70] |
| <b>TOTAL COMPENSATION</b>                               |                                                                                                                                          | <b>Rs.22,78,100/-</b><br>[Rounded off to<br>Rs.22,78,033/-] | <b>Rs.27,28,033/-</b>                                   |
| <b>INTEREST AWARDED</b>                                 |                                                                                                                                          | <b>9%</b>                                                   | <b>9%</b>                                               |

19. For the aforesaid reasons, the award of the MACT is enhanced by Rs.4,49,933/-.

20. Enhanced compensation along with 9% interest per annum from the date of filing the petition shall be deposited before MACT within a period of four weeks.

21. It is directed that a lump sum amount of Rs. 1,50,000/- shall be released to the claimant within a period of two weeks thereafter. The remaining amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (**FDRs**) of Rs. 25,000/- each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. The



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interest accruing on the said FDRs shall be credited to the designated Savings Bank Account of the claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

22. Counsel for owner of the offending vehicle argues against right of recovery; however, these points have neither been assailed in any appeal nor any plea which has been filed. Accordingly, the same cannot be considered on an oral submission.

23. *Ms. Mehra*, counsel for the claimant, states that they were proceeded *ex parte* by order dated 17<sup>th</sup> August 2017, which was subsequently assailed before MACT, and, therefore, the said challenge was also dismissed.

24. This Court *vide* order dated 10<sup>th</sup> July 2018 in **MAC APP. 618/2018** directed Insurance Company to deposit the entire originally awarded compensation before the MACT. Subsequently *vide* order dated 21<sup>st</sup> February 2019 in *CM APPL 8473/2019* [**MAC APP 618/2018**], the Court directed release of 50% of amount in favour of claimant.

25. Accordingly, the originally awarded compensation shall be disbursed as per the directions passed by the MACT in the impugned award.

26. Accordingly, the appeals are disposed of.

27. Pending applications if any, shall rendered as infructuous.

28. Statutory Deposit (if any) shall be refunded to Insurance Company.

29. Judgement be uploaded on the website of this Court.

**ANISH DAYAL**  
**(JUDGE)**

**MARCH 18, 2026/RK/tk**