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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 19th February 2026***+ **MAC.APP. 67/2016 & CM APPL. 45673/2016**

HARI NIWAS SHARMAAppellant

Through: Ms. Ananya Verma, Ms. Diksha
Verma, Advocates.

versus

RAJU & ORS (THE ORIENTAL INSURANCE COMPANY
LIMITED)RespondentsThrough: Mr. J.P.N. Shahi, Advocate for
Insurance Company (through VC).**CORAM:**
HON'BLE MR. JUSTICE ANISH DAYAL**JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed assailing the impugned award dated 24th December 2014 passed by the Motor Accident Claims Tribunal ('**MACT**'), Rohini Courts, Delhi in MACT Case No.116/2010, granting a sum of Rs.2,47,775/- along with interest @ 9% per annum in favour of appellant/injured.

2. Accident occurred on 15th March 2010 at about 01:15 P.M. near Police Colony, Narela, Delhi when appellant was riding his motorcycle bearing registration no. DL-8SF-9741 and was hit by the offending

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vehicle/truck bearing registration no. HR-69A-2516 driven by respondent no.1 in a rash and negligent manner. *Hari Niwas Sharma*, the injured, sustained grievous injuries, namely, fracture of right shaft femur, which is permanent in nature, apart from grievous injury on right knee and abrasions all over the body.

3. The Disability Certificate dated 5th May 2011 certifies 42% permanent physical impairment in relation to the right lower limb. The appellant was 38 years of age on the date of the accident and was running a shop of LIP gas stove, repairing, sale-purchase of gas stove, mini cylinder and parts of gas stove. He was also working as a reporter for *Asal News Net* and, prior to the accident, earned Rs.25,000/- per month.

4. Based on this benchmark income taken by the MACT, loss of income was awarded only at Rs. 52,000/- on the basis that he was unable to work for a period of three months.

5. *Ms. Ananya Verma* and *Ms. Diksha Verma*, counsel appearing on behalf of appellant, submit that this is an incorrect calculation by the MACT since the amount of Rs. 52,000/- cannot be justified on any basis, even for a period of three months.

6. Further, having taken benchmark income of Rs.25,000/-, *loss of future income* was also not assessed, despite 42% permanent disability in relation to right lower limb.



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7. It is noted that appellant remained hospitalized w.e.f. 16th March 2010 to 03rd April 2010 and thereafter he remained an outdoor patient at the hospital in Narela.

8. *Mr. J.P.N. Shahi*, Advocate, appears on behalf of Insurance Company, submits that considering the vocation of appellant, he is not totally disabled from carrying on his work of running a shop.

9. Reliance can be placed on the judgment of Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, wherein it was held that the Tribunal 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



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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.



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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)

10. 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 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



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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.”

11. Keeping in mind the principles enunciated by the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (*supra*), the assessment of *loss of future income* ought to have been made by the MACT based on the disability incurred by appellant/ injured. Considering that he was running a shop and that his work as a reporter for *Asal News Net* was only collateral, it cannot be said that injured is incapable of continuing the work of running the shop despite his disability. Accordingly, the functional disability is assessed at 35% with respect to the whole body.

12. The revised computation is as under:

S. no	Heads of Compensation	Awarded by Tribunal	Awarded by the Court
	Pecuniary Loss		
1.	Expenditure on treatment (A)	Rs.5,775/-	Rs.5,775/-

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2.	Expenditure on special diet and conveyance (B)	Rs. 25,000/-	Rs. 25,000/-
3.	Income of injured per month (C)	Rs. 25,000/-	Rs. 25,000/-
4.	Future prospects @ 40% (D)	Nil	Rs. 10,000/-
5.	Loss of income (C) x 3=(E)	Rs. 52,000/-	Rs. 75,000/-
6.	Functional disability (F)	Nil	35%
7.	Multiplier (G)	Nil	15
8.	Loss of future income [(C+D) x 12 x F x G]= H	Nil	Rs. 22,05,000/-
	Non-pecuniary loss		
9.	Pain and suffering (I)	Rs. 45,000/-	Rs. 45,000/-
10.	Loss of Amenities of Life (J)	Rs. 1,20,000/-	Rs. 1,20,000/-
11.	Total (A+B+E+H+I+J=K)	Rs. 2,47,775/-	Rs. 24,75,775/-
12.	Interest	9%	9%

13. Enhanced compensation alongwith 9% interest per annum from the date of filing the petition will be deposited before the MACT within a period of four weeks.

14. It is directed that a lump sum amount of Rs. 5,00,000/- 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 interest accruing on the said FDRs shall be credited to the designated Savings Bank Account of the claimant. The amount of FDRs on maturity

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would be released to the Savings Bank Account of claimant upon due verification.

15. Statutory deposit, if any, be refunded to the appellant.
16. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

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