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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 23rd March 2026*+ MAC.APP. 271/2021& CM APPL.34953/2021

MAGMA HDI GENERAL INSURANCE CO LTD.....Appellant

Through: Mr. Ved Vyas Tripathi, Advocate

versus

NARESH PANDIT & ORS.Respondents

Through: Mr. Shrey Chathly, Advocate.

CORAM:**HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed by the Insurance Company seeking reduction of compensation awarded *vide* judgment dated 20th January 2020, passed by the Motor Accident Claim Tribunal, West, Tis Hazari Courts, Delhi [**“MACT”**] in *MACP No.76735/2016*, whereby compensation of Rs.40,14,000/- along with interest @ 9% per annum was awarded.

2. Accident occurred on the intervening night of 2nd/3rd July 2014, when *Naresh Pandit*/injured [*respondent no.1 herein*], aged about 25 years, was working as a truck driver and, while repairing a punctured tyre of his truck near *G.T Road, in front of Annapurna Apartment, Sahibabad, Uttar Pradesh*, a truck bearing no. *JH 02P 8075* [**“offending vehicle”**], driven by respondent no.3 and owned by respondent no.2, hit the stationary vehicle from behind causing grievous injuries and leading to *above-knee amputation of left leg*



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and *fracture to the shaft of right femur*. Upon filing claim petition, MACT relied on the testimony of the injured/respondent no.1 [PW-3] and eyewitness/employer [PW-4], and the absence of rebuttal evidence, held the driver to be negligent.

3. MACT awarded compensation to the respondent no.1/injured on account of grievous injuries resulting in above-knee amputation of the left leg and fracture of the right femur, treating the functional disability as 100% in relation to the whole body. The compensation was computed under various pecuniary and non-pecuniary heads as follows: *Rs. 3,41,334/- towards medical expenses; Rs. 50,000/- towards conveyance; Rs. 35,000/- towards special diet; Rs. 50,000/- towards attendant charges; Rs. 31,37,100/- towards loss of future earning capacity on account of permanent disability; Rs. 2,00,000/- towards pain, suffering and trauma; and Rs. 2,00,000/- towards loss of amenities of life and disfigurement*. Accordingly, the total compensation was assessed at *Rs.40,13,434/-*, rounded off to *Rs.40,14,000/-*, along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

Analysis

4. The functional disability was taken as 100%, considering that injured was a truck driver and his permanent disability was certified at 81% with regard to both his limbs, as per disability certificate [Exhibit PW1/1]. MACT, in the impugned award, categorically held that injured was a driver by profession and that his driving license was not challenged. Endorsing this view, this Court while admitting the appeal on 05th October, 2021 noted as under:



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“7. So far as the contention of the learned counsel for the appellant is concerned with regard to taking the functional disability at 100%, I am of the view that the award *prima facie* does not suffer from said infirmity for the reasons that injured was a truck driver and he sustained 81% disability with regard to both his limbs and had also suffered amputation above the knee of the left leg. Clearly the claimant would not be in a position to drive a vehicle because of injury sustained in the accident.”

5. The Court also, on the same day directed release of the 100% of the amount under the head of a *loss of future income* and directed as under:

“11. The tribunal shall release 100% of the amount awarded under the heads; (1) ‘Expenses relating to treatment, hospitalisation and medicines’, (2) ‘Conveyance’, (3) ‘Food (Special Diet)’ (4) ‘Attendant Charges’ and (5) ‘Pain, Suffering & Trauma’ and further the amount awarded under the head of ‘Loss of future earning on account of permanent disability’ as per the scheme of disbursal.”

6. In any event, considering that the vocation of respondent no.1/injured [truck driver] would be seriously affected by the said disability, this Court is not inclined to accept this plea of appellant/Insurance Company and reduce the functional disability.

7. Second issue, raised by Mr. Ved Vyas Tripathi, counsel for Insurance Company, relates to the grant of non-pecuniary compensation under the head of *loss of amenities* and *disfigurement* at Rs.2,00,000/-. He places reliance on the decision of the Supreme Court in **Parminder Singh v. New India Assurance Co. Ltd.** (2019) 7 SCC 217, which, while quoting in *paragraph 5.5* extracts from **Raj Kumar v. Ajay Kumar** (2011) 1 SCC 343, noted that the need to award compensation separately under the head of *loss of*



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amenities or loss of expectation of life may disappear and, as a result, only a total or nominal amount may have to be awarded under the loss of amenities or loss of expectation of life.

8. However, this argument made by *Mr. Tripathi*, counsel for Insurance Company, may not be tenable, considering that the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (*supra*) made the said observation in the context of duplication of compensation and not for diluting the award of nominal amounts towards the non-pecuniary damages. Relevant paragraphs of ***Raj Kumar v. Ajay Kumar*** (*supra*) are extracted as under:

“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.

.....

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear



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and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

(emphasis added)

9. Even in ***Parminder Singh v. New India Assurance Co. Ltd.*** (*supra*), the Supreme Court awarded Rs.10,00,000/- as a lump sum amount towards *future medical expenses and attendant charges*, looking at the condition of claimant. For ease of reference, relevant paragraph is extracted as under:

“5.12. Given the debilitated state of the appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependent, he would require the help of an attendant throughout his life. In view of these uncontroverted facts, we deem it fit and appropriate to award a lump sum amount of Rs 10,00,000 to the appellant towards medical expenses and attendant charges.”

(emphasis added)

10. On this ground also, this Court does not find anything amiss in compensation granted by MACT under the head of *loss of amenities and disfigurements* in the sum of Rs.2,00,000/-, particularly considering the *above knee amputation of the left leg, fracture of the shaft of right femur*, and the age of respondent no.1 being 25 years on the date of the accident.

11. *Third issue*, which has been raised by Mr. Tripathi, counsel for Insurance Company, relates to the award by the MACT towards *future medical expenses*, essentially towards the cost of the *prosthetic* and its



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maintenance. This was based on the testimony of *Ms. Nupur Bhardwaj, Prosthetist & Orthotist of Ottobock Healthcare India Private Limited [PW-2]*, who provided certain quotations for the above-knee prosthetic. Same was Rs.5,76,580/- with 10% increase every year and 5% GST.

12. *Mr. Tripathi*, counsel for Insurance Company, relies upon the decision in ***HDFC Ergo General Insurance Co. Ltd. v. Mukesh Kumar*** (2022) 14 SCC 470, where reliance has been placed on earlier decision in ***Nagappa v. Gurudayal Singh***, (2003) 2 SCC 274 and ***Sapna v. United India Insurance Co. Ltd.***, (2008) 7 SCC 613, to contend that *future medical expenses* cannot be granted as a matter of continuing mandamus and the determination of such amounts must be made at one go.

13. The Court is also of the opinion that the compensation towards use of prosthetics, or any other *future medical expenses*, cannot be granted by way of an open-ended direction, but will have to be determined by some reasonable estimation at the stage of passing the award with such qualifications as may be necessary.

14. In the present case, the prosthetic has, till date has not been used by respondent no.1/injured, as stated by *Mr. Shrey Chathly*, counsel for claimant. Claimant is approximately about 37 years of age and, taking into account the discussion in ***Mohd Sabeer Alias Shabir Hussain v Regional Manager, UPSRTC***, 2022 SCC OnLine SC 1701, estimating that he would require a prosthetic and would continue to use it for approximately 35 years, with the approximate estimated life of prosthetic being about seven years, he would require at least five prosthetics.

15. Cost of prosthetic is considered as per the quotation, extracted as under:



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17th Nov.2016

Naresh Pandit
S/O Baso Pandit
S-2,10-B
Sawaran Park village
Mundka, West Delhi-110041.

Registered Office

Otto Bock
HealthCare India Pvt. Ltd.

20th Floor, Express Towers,
Nariman Point,
Mumbai 400021, India

+91 (22) 2274 5500

information@indiaottobock.com
www.ottobock.in

CIN - U33115MH1997PTC110954

Dear Mr Pandit,

Thank you for your enquiry to Otto Bock for Above-knee Prosthesis for yourself. We are confident that we can provide a highly satisfying solution and a quality service for your requirement.

Prescription

As per the Assessment done at our Clinic appropriate prescription has been provided to you in the fitment proposal. We hope it will help you to go back to a near normal and productive lifestyle.

Fitment Procedure

The fitment procedure generally takes two to three weeks depending upon the individual's ability. You will need to visit our clinic for measurements, fitment, trials and training during this period.

Payment

It's our policy to accept 50% advance payment at the time of confirmation & balance become payable at the time of delivery by Cash/DD.

Warranty

All Otto Bock structural components have 2 years of warranty. The socket may need to be changed in case of considerable volume fluctuations in the residual limbs. Overall, he may have to think of Rs.25000-30000/- as annual maintenance. (Not Necessarily).

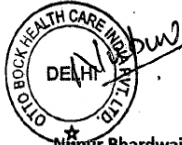
Life of Prosthesis

The average life of an artificial limb is 4-5 years after which its components need to be changed depending upon the usage.

For any further queries please contact me directly at -9310703094.

Regards,

For Otto Bock HealthCare India Pvt. Ltd.



Nupur Bhardwaj
Associate Rehabilitation Services
Otto Bock Healthcare India Pvt. Ltd.

Ex PW-2/2

[Signature]
P. O. Martin
30.10.17



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ottobock.**Fitment Proposal****Otto Bock HealthCare India Pvt. Ltd.**

Corp. Office:

Behind FairLawn Housing Society, Sion-Trombay Road, Chembur, Mumbai 400071, India

T +91 22 2520 1268 F +91 22 2520 1267 E information@indiaottobock.com www.ottobock.in

Client Name: Naresh Pandit

Fitment Proposal No.: DEL/QUO/NU/16-025

Address: S/O Baso Pandit, S-2 10-B, Sawaran Park, Village
Mundka, West Delhi-110041

Fitment Proposal Date: 21/12/16

Contact Number: 9910358522

Email ID:

Quantity	Description	Unit Price(INR)	Total Price(INR)
1	Otto Bock Modular Trans Femoral Prosthesis with	576,580.00	576,580.00
inc.	1E56 Axion Foot		
inc.	3R80 Rotatory Hydraulic Knee Joint		
inc.	Suction Socket		
inc.	Easy Fit		
inc.	Foam Cover		
inc.	Cosmetic Stocking		
inc.	TES Belt		
Total			576,580.00

Payment Modes :

- Cheque/DD payable to "Otto Bock HealthCare India Pvt. Ltd."
- Direct cash payment or direct cash deposit in HDFC Bank C/A No. 16612320000052
- Master/Visa credit or debit card
- Internet Bank transfer to: HDFC Bank, South Patel Nagar Branch, C/A No.16612320000052, RTGS/IFSC Code: HDFC0001661(Only valid for transfers within India).

Important Information:

Validity: This Proforma Invoice is valid for 30 days from the date of issue.

Payment terms: 50% advance, balance payment should be realized before delivery.

Warranty: As specified in the covering letter.

Note: Prices are subject to change if different components are used due to a change in prescription.

Sales Tax Exempt Notification No. GNFD No. STA-1295/CR/98/Taxation-01 dated 09.10.2095

VAT TIN No. 2770004229 V w.e.f. 01.04.2006

CST TIN No. 2770004229 C w.e.f. 01.04.2006

Subject to Mumbai Jurisdiction

Branch Office:

19 South Patel Nagar, Near Patel Nagar Metro Station, Opposite Pillar No.194, New Delhi 110 008, India

T +91 11 4732 3800 F +91 11 4732 3803 E delhi@indiaottobock.com

Thank you for your enquiry. We look forward to providing a service to you.

For Otto Bock HealthCare,



Authorised Signatory

16. In *Mohd Sabeer Alias Shabir Hussain v Regional Manager, UP State Road Transport Corporation* (*supra*), the Supreme Court assumed that a person would ordinarily live till he is 70-years-old if not more, and



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accordingly, awarded compensation keeping into account the estimated life of prosthetic usage. Relevant paragraph is extracted as under:

“23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the prosthetic limbs alone, the appellant is to be awarded compensation of Rs 7,80,000 and for maintenance of the same he is to be awarded an additional Rs 5,00,000.”

(emphasis added)

17. Taking a broad assessment of these costs towards the prosthetic limbs and their maintenance over the lifetime of the claimant, estimating Rs.6,50,000/- towards *prosthetic* and Rs.50,000/- towards maintenance, bringing the total of Rs.7,00,000/- for each prosthetic, compensation for 5 prosthetics is assessed at Rs. 35,00,000/-. Considering that this amount is being calculated as of the present date, question of interest on Rs.35,00,000/- would not arise.

18. Therefore, total amount of Rs.40,14,000/- (awarded by MACT) along with Rs. 35,00,000/- (additional compensation for prosthetic and its maintenance is awarded). Revised computation is as under:

S.NO	HEADS	AWARDED BY TRIBUNAL	AWARDED BY COURT
1.	Reimbursement of medical expenses (A)	Rs. 3,41,334/-	Rs. 3,41,334/-



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2.	Conveyance (B)	Rs. 50,000/-	Rs. 50,000/-
3.	Special diet (C)	Rs.35,000/-	Rs.35,000/-
4.	Attendant charges (D)	Rs. 50,000/-	Rs. 50,000/-
5.	Income of injured (E)	Rs.10,374/-	Rs.10,374/-
6.	Add Future Prospects (F)	40%	40%
7.	Multiplier (G)	18	18
8.	Functional Disability (H)	100%	100%
9.	Loss of earning capacity including future due to disability $[(E \times 12) + F] \times G \times H = (I)$	Rs. 31,37,100/-	Rs. 31,37,100/-
10.	Pain, suffering and trauma (J)	Rs. 2,00,000/-	Rs. 2,00,000/-
11.	Loss of amenities of life and disfigurement (K)	Rs. 2,00,000/-	Rs. 2,00,000/-
12.	Conveyance & special diet (present and future) (L)	Nil	Nil
13.	Compensation for mental and physical shock (M)	Nil	Nil
14.	Loss of expectation of life (N)	Nil	Nil
15.	Artificial limb/prosthetic and maintenance (O)	Nil	Rs. 35,00,000/-
Total compensation (A+B+C+D+I+J+K+O)		Rs. 40,14,000/- (Round off Rs. 40,13,434/-)	Rs. 75,14,000/- (Round off Rs. 75,13,434/-)
Interest awarded		9% per annum	9% per annum (No interest on Rs. 35,00,000/- awarded towards prosthetic limb)
Enhanced amount		Rs. 35,00,000/-	

19. This Court *vide* order dated 05th October 2021, directed Insurance Company to deposit the entire awarded amount of compensation along with interest before MACT within four weeks, and further directed release of 100% of amount awarded under the heads of expenses relating to *treatment, hospitalisation and medicines, conveyance, food (special diet), attendant charges, pain, suffering and trauma, and loss of future earning on account*



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of permanent disability be released to the claimant as per the scheme of disbursement. The balance amount be also disbursed as per the scheme directed by MACT.

20. The additional amount of Rs.35,00,000/- shall be deposited by the Insurance Company before MACT within six weeks and shall be retained in a fixed deposit. An amount of upto Rs. 7,00,000/- be disbursed by MACT each time a prosthetic limb is procured by claimant/injured. Such disbursement on actuals and only upon production of original invoice and documents issued by authorised seller/dealer and after due verification of the same by MACT. In the event, the injured/claimant does not claim the said amount or fails to produce proof regarding procurement of the prosthetic limb, the unclaimed amount shall be returned to the Insurance Company.

21. Accordingly, the appeal is disposed of in the above terms.
22. Pending applications, if any, are rendered as infructuous.
23. Statutory deposit, if any, shall be refunded to the appellant.
24. Copy of this judgment shall be sent to concerned MACT.
25. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MARCH 23, 2026/ab/tk