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

% ***Date of decision: 30th April 2026.***

+ **MAC.APP. 1118/2013**

DINESH .....Appellant

Through: Mr. Shekhar Aggarwal, Advocate (*through VC*)

versus

RAJUDDIN & ORS .....Respondents

Through: Mr. Pankaj Seth, Advocate with Ms. Shruti Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGEMENT

ANISH DAYAL, J: (ORAL)

1. This appeal has been filed seeking enhancement of compensation awarded *vide* judgment dated 31st August 2013, passed by Motor Accidents Claims Tribunal ('***MACT***'), North District, Rohini Courts, Delhi in MACT No. 95/2009, whereby compensation of *Rs. 3,70,000/-* along with interest @ *7.5%* per annum from the date of filing petition till realization was awarded by MACT.

2. The brief facts of the case are that the accident occurred on 10th May 2007 at about 10:50 PM while petitioner was driving RTV and going towards village Nahari, when the offending tractor bearing registration no. HR-10J-5802 driven at high speed came in zig-zag manner and hit against the RTV, resulting in grievous injuries all over his body. FIR No. 246/2007 was registered under Sections 279/337 of the Indian Penal Code, 1860 at PS Narela. As a result of the

accident claimant/ injured suffered permanent disability of *30%* in relation right eye.

3. *Mr. Sekhar Aggarwal*, counsel for appellant/claimant, states that the injured claimant is a commercial driver and has lost vision in his right eye due to the accident and physical disability has been certified at *30%* in relation to right eye. The functional disability has been assessed by the Tribunal at *15%* despite the contention that the accident has rendered claimant disabled from driving any commercial vehicle.

4. In ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, the Supreme Court 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 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)

5. 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 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)

6. The Supreme Court also has considered a special situation in ***Raj Kumar***

v. Ajay Kumar (*supra*) where the occupation of a person is commercial driver, it was held that the disability have to be considered on much more realistic basis considering the vocation of a driver Driving a commercial vehicle necessarily requires unimpaired and effective vision. Even a partial visual impairment materially affects the capacity of a driver to safely and effectively perform such duties. In the present case, the claimant has suffered *30%* visual impairment. Having regard to the nature of his avocation as a commercial driver, this Court is of the considered view that the said impairment would substantially impede his ability to continue his vocation in the manner he was discharging prior to the accident. Applying the principles laid down in ***Raj Kumar v. Ajay Kumar*** (*supra*) the functional disability of the claimant is accordingly assessed at *30%,* considering the direct impact of the visual impairment on his earning capacity and ability to pursue his profession as a commercial driver.

7. The compensation is re-computed as under:

S. no	**Heads of Compensation**	**Awarded by tribunal**	**Awarded by the Court**
	Pecuniary Loss		
1.	Medical Expenses (A)	Rs. 20,000/-	Rs. 20,000/-
2.	Loss of Income during treatment period (B) (*6 months*)	Rs. 25,000/-	Rs. 25,000/-
3.	Special diet conveyance charges (C)	Rs. 20,000/-	Rs. 20,000/-
4.	Income of injured per month (D)	Rs. 3,894/-	Rs. 3,894/-
5.	Future prospects @ 30% (E)	Rs. 1,168/-	Rs. 1,168/-
6.	Functional disability (F)	15%	30%
7.	Multiplier (G)	17	17
8.	Loss of future income [(D+E) x 12 x F x G] = H	Rs. 154,897/-	Rs. 3,09,795/-
	Non-pecuniary loss		
9.	Pain and suffering (I)	Rs. 1,00,000/-	Rs. 1,00,000/-

10.	Loss of Amenities of Life (J)	Rs. 50,000/-	Rs. 50,000/-
11.	Total (A+B+C+H+I+J=K)	Rs. 3,70,000/-	Rs. 5,24,795/-
12.	Interest	7.5%	7.5%

8. For the aforesaid reasons, compensation has been enhanced by *Rs. 1,54,795/-* ["***enhanced amount***"].

9. It is therefore directed that enhanced amount along with *7.5%* interest per annum from the date of filing the petition shall be deposited before MACT within a period of four weeks. The enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (***FDRs***) of *Rs. 10,000/-* each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

10. Accordingly, the appeal is disposed of in above terms. Pending applications, if any, are rendered infructuous.

11. A copy of this judgment be sent to concerned bank for necessary compliance.

12. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 30, 2026/RK/zb