IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.06.2025

\+ **MAC.APP. 229/2023**

MANOJ SAW .....Appellant

versus

RAMNEEK SABARWAL & ANR. .....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Akshay Kumar, Adv.

For the Respondents : Ms. Niyati, Adv. for R-2 (through VC).

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. By way of the present appeal, the appellant challenges the award dated 16.12.2020 (hereafter '**impugned award**'), passed by the learned Presiding Officer, Motor Accident Claims Tribunal (hereafter '**Tribunal**'), Saket Courts, New Delhi, in MACT No. 863/2018, essentially on three grounds:

i) The learned Tribunal erred in calculating the functional disability of the claimant/ appellant at 17% when it should have been taken as much as the permanent disability assessed, that is, 33%;

ii) The learned Tribunal erred in deducting 25% towards contributory negligence on part of the appellant;

iii) For the purpose of loss of future income, the learned Tribunal erred in not granting future prospects at 25%.

2. The facts leading to the present appeal are that the claimant had suffered multiple grievous injuries in the road accident which took place on 30.04.2018, when the appellant was crossing the road. The Medical Board assessed the injuries of the appellant at 33% permanent physical disability in relation to his right leg.

3. The learned Tribunal awarded a total compensation of Rs. 5,21,091/- under different heads, along with interest at the rate of 9%, from the date of filing the Detail Accident Report, that is , 07.09.2018 till realization of the said amount.

4. The three grounds taken by the appellant in the present appeal are dealt with as under:

Functional Disability

5. In regard to the assessment of functional disability, the learned counsel for the appellant submits that the appellant was working as a Helper in a furniture showroom namely– Home Saaz Live N Style, situated at 10, Firoz Gandhi Road, Lajpat Nagar-III, New Delhi, and the nature of his work involved carrying, lifting and shifting furniture for the purpose of loading/ unloading the same in transport vehicles. He states that due to the injuries suffered by him, the appellant is unable to perform his duties in the manner prior to the accident.

6. The learned Tribunal noted that the appellant had suffered 33%

permanent disability in relation to his right lower limb and claimed to be working as a helper in the furniture showroom at Lajpat Nagar at the time of the accident, however, no document/ evidence pertaining to his employment was filed by him to prove the nature of his work.

7. It is pertinent to note that in the absence of clear evidence to indicate the impact of permanent disability on the earning capacity of the victim, Courts and Tribunals generally assess the functional disability of the victim to be approximately half of the permanent disability suffered by the victim. For this reason, the Hon'ble Apex Court in the case of ***Raj Kumar v. Ajay Kumar*** **: (2011) 1 SCC 343** while noting that there existed no clear evidence to indicate the impact of permanent disability suffered by the victim on his functionality and earning capacity, however, considering that the same would impede his smooth functioning, had assessed the functional disability of the body as 25% where the victim suffered a permanently disability of 45% with respect to the left lower limb.

8. Consequently, this Court in a catena of decisions including a recent decision in the case of ***Rajender Singh v. Bajaj Allianz General Insurance Co. Ltd.*** **: 2024 SCC OnLine Del 8839** while noting that the victim had failed to lead evidence to show the impact of permanent disability on his earning capacity, however considering the nature of injuries and the general impact of the disability on the functioning of the victim, had upheld the assessment of 33% functional disability where the victim had suffered permanent disability of 66%.

9. The nature of work before the accident is a relevant factor in determining the functional disability, however in the absence of any documentary evidence proving his employment, the assessment of 17% functional disability arrived at by the learned Tribunal, is reasonable. In the opinion of this Court, the said ground does not merit any consideration.

Contributory Negligence

10. In regard to the second ground, it is contended by the learned counsel for the appellant that although the appellant during cross-examination, stated that the red-light was far away and there was no zebra crossing at the place of accident, he also mentioned that there was a "*white patti*" on the road, and there were more people crossing the road with him. He submits that while deciding the issue of negligence, the learned Tribunal was pleased to hold that Respondent No. 1 (driver and owner of the offending vehicle) had been negligent in causing the accident and had not entered the witness box to rebut this aspect, therefore the attribution of 25% contributory negligence to the appellant is erroneous.

11. The learned Tribunal while relying on the site plan as well as the evidence of the appellant/ PW1 during cross-examination wherein he has stated that there was no zebra crossing at the place of the accident and the red-light was far away, held that there was negligence on part of the appellant while crossing the road.

12. A full bench of the Hon'ble Apex Court in ***Meera Devi v. H.P. RTC* : (2014) 4 SCC 511**, discussed the scope of attribution of

contributory negligence on the victim. It was held as under:

> *10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.*

13. The Division bench of the Hon'ble High Court of Madras in the case of ***Pallavan Transport Corporation Ltd. v. Dhanalakshmi and Anr.* : 2003 SCC OnLine Mad 677**, while dismissing the argument of the Corporation that there was contributory negligence on part of the victim, held as under:

> *"9. The next question is as to whether there is substance in the claim of the Corporation that the victim had also contributed because he crossed the road not in the pedestrian crossing line but at a place of his own choice.*
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> *PW-2, in his evidence, has stated that in the Road, no space has been set apart, indicating the place where the pedestrians have to cross**. Even otherwise, it cannot be said that simply because the victim crossed the road at a place other than the pedestrian crossing, it should be taken that he had contributed for the accident. It cannot be said that whenever a person crosses the road at a place other than the pedestrian crossing, he is guilty of contributory negligence.**"*
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> (emphasis supplied)

14. It is pertinent to note that the Police after investigation, has already filed the chargesheet under Section 279/337 of the Indian Penal Code, 1860, against Respondent No. 1, which is suggestive of negligence on his part. After the filing of the chargesheet, the Detail Accident Report was filed, which shows that the accident took place at

point ‘A’, which is in extreme left side of the road. Furthermore, no evidence was led by the respondents in this regard. A co-ordinate bench of this Court in ***Gaytri Devi v. New India Assurance Co. Ltd.* : 2024 SCC OnLine Del 8922** while recalling the attribution of 50% contributory negligence on part of the victim, directed the compensation amount to be calculated without deducting the same. It was held as under:

> *12. First and foremost, the Chargesheet along with the documents which is collectively Ex.PW1/6, had been filed against the Driver, Mithlesh Kumar Paswan. There is no evidence led by the Driver, who was the other material witness to controvert the manner of accident.* ***The Chargesheet so filed stated that there was negligence on the part of the driver of the offending vehicle.***
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> ***13. The moot question is whether 50% contributory negligence can be attributed to deceased Shri Ramji Vishwakarma?***
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> *14****. The Site Plan shows that the accident occurred on the extreme left side of the road at Point ‘D’ and not in the middle of the road, as has been observed by the learned Claim Tribunal. Secondly, even if there was no Zebra Crossing, there can be no presumption of negligence on the part of the pedestrian. The driver of the offending vehicle had the corresponding right to exercise due care and caution to ensure that he does not hit any person who may be crossing the road even if there is no Zebra Crossing. The driver of the vehicle has to recognise the first right of the pedestrian and to avoid any person who may be crossing the road.***
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> ***15. The learned Claim Tribunal, therefore, fell in error in concluding that because there was no Zebra Crossing where the pedestrian was crossing the road, the negligence has to be attributed to deceased Shri Ramji Vishwakarma, especially when the point of accident is not in the middle of the road, but on the extreme left side of the road.***
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> (emphasis supplied)

15. A co-ordinate bench of this Court in ***Mahesh Prasad v. National Ins Co. Ltd.* : 2023 SCC OnLine Del 5759** reduced the percentage of contributory negligence attributed against the victim, who was crossing the road at a place not meant for pedestrian crossing. It was observed as under:

> ***"8. From the reading of the above, it is apparent that the deceased was crossing the road in the full flow of traffic at the time of the accident. There was neither a zebra crossing nor any traffic light to regulate the traffic at that time. This was not a place to cross the road, especially in the early hours of the morning when the traffic is a little more than usual.*** *In such circumstances, even in absence of a defence being laid by the owner and driver of the offending vehicle, in my view, no fault can be found in the decision of learned Tribunal attributing contributory negligence to the deceased.*
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> *9.* ***At the same time, in the absence of a defence from the owner and driver of the offending vehicle, attribution of 25% of contributory negligence to the deceased appears to be highly excessive. The witness has stated that though, not legal, the place where the deceased was crossing the road, was used for the said purpose by others as well. In my opinion, therefore, contributory negligence of 10% should be attributed to the deceased.*** *The Award shall stand modified to this extent."*
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> (emphasis supplied)

16. As noted above, the site plan indicates that the accident took place on the extreme left side of the road. Negligence on part of Respondent No.1 is undisputed, especially in view of the chargesheet that has been filed. Merely because the victim sought to cross the road from a place other than a zebra-crossing, the same cannot be stated to be contributory negligence on part of the victim.

17. In view of the totality of facts and the law as discussed above, in the opinion of this Court, the attribution of 25% contributory

negligence on the appellant, solely on the ground that there was no zebra-crossing or red-light is on the higher side. The same is reduced to 10% in view of the aforesaid discussion.

Loss of Future Prospects

18. Lastly, the appellant has challenged the impugned award in regard to the future loss of income granted by the learned Tribunal, contending that future prospects should have been granted at 25%, based on the settled principles in ***National Insurance Co. Ltd. v. Pranay Sethi*** **: (2017) 16 SCC**.

19. The learned Tribunal while granting loss of future income, noted that the appellant had suffered 33% permanent disability in relation to his right leg and since no document pertaining to his employment and income was filed by the appellant, the functional disability was assessed at 17% and his income was taken as per the minimum wages applicable in Delhi, that is, Rs.13,350/- which was multiplied by 12. The age of the appellant was taken as 40 years 4 months based on the documents placed by him and therefore the multiplier of 14 was applied.

20. It well settled that in cases of permanent disability caused by motor accidents, the claimant is not only entitled to future loss of income but also loss of future prospects. In light of the decision in ***Pranay Sethi*** (supra) 25% addition of future prospects should be granted as compensation to the appellant.

21. The learned counsel for Respondent No. 2 does not dispute that the loss of future prospects should have been compensated.

22. Accordingly, the loss of future income due to disability is hereby re-assessed and quantified along with 25% for loss of future prospects.

23. The compensation amount awarded by the learned Tribunal is enhanced in the aforesaid terms. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the compensation of the appellant along with 25% for loss of future prospects and also without the 25% deduction on account of contributory negligence.

24. The finding of the learned Tribunal on all other issues are affirmed and shall remain undisturbed.

25. The learned Tribunal shall undertake the re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 03.07.2025.

26. The compensation amount so determined, on remand, shall be disbursed in favour of the appellant as per the manner provided in the impugned award.

27. Accordingly, the present appeal is allowed/ disposed of in the aforesaid terms.

28. Pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

JUNE 9, 2025