



\$~23 & 24

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

% *Decided on: 12.12.2025*

+ MAC.APP. 41/2021 & CM APPLs. 2499/2021, 41320/2022

THE ORIENTAL INSURANCE CO.LTDAppellant

versus

NAVEEN AND ORSRespondents

+ MAC.APP. 34/2022

NAVEENAppellant

versus

AVINASH VERMA & ORS.Respondents

Appearances:

Mr. Yuvraj Sharma, Advocate for Mr. Pankaj Seth, Advocate for Oriental Insurance Co. Ltd.

Mr. Varun Sarin, Advocate for appellant in item No. 24 and for R-1 in item No. 23.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. These are cross-appeals filed by the claimant, Mr. Naveen Kumar, and Oriental Insurance Company Limited ["Insurance Company"], arising from an award dated 25.08.2020 passed by the Motor Accident Claims Tribunal ["Tribunal"] in MACT No. 797/2018, whereby a sum of Rs. 4,47,844/-, alongwith interest at the rate of 9% per annum, was granted in favour of the claimant.



A. FACTS

2. The facts of the accident, as narrated in the award, are that on 12.03.2018, the claimant was waiting for a bus, when he was struck by a water tanker bearing registration No. DL-1LP-4567 [“offending vehicle”]. He sustained grievous injuries as a result of the accident, for which he was hospitalised at Jai Prakash Narayan Apex Trauma Centre, All India Institute of Medical Sciences, New Delhi [“AIIMS”]. The claimant was then 55 years of age.

3. The accident resulted in criminal proceedings against the driver of the offending vehicle. FIR No. 82/2018, dated 12.03.2018, under Sections 279 and 338 of the Indian Penal Code, 1860, was registered against the driver at P.S. Lajpat Nagar, New Delhi. After investigation, a chargesheet was also filed in the criminal proceedings.

B. IMPUGNED AWARD

4. Upon submission of the Detailed Accident Report before the Tribunal, the Tribunal considered the case of the injured victim for compensation, in which the driver, owner, and insurer of the offending vehicle, were arrayed as respondents. The Tribunal returned a finding of negligence against the driver of the offending vehicle, and awarded compensation to the claimant under the following heads:

| Sr. No | Heads | Amount |
|---------------|---------------------------------|---------------|
| 1. | Expenditure on treatment | Rs.11,828/- |
| 2. | Expenditure on conveyance | Rs.20,000/- |
| 3. | Expenditure on special diet | Rs.20,000/- |
| 4. | Attendant charges | Rs.20,000/- |
| 5. | Loss of income during treatment | Rs.45,600/- |
| 6. | Mental and physical shock | Rs.50,000/- |



| | | |
|--------------|---------------------------|----------------------|
| 7. | Pain and suffering | Rs.50,000/- |
| 8. | Loss of amenities of life | Rs.50,000/- |
| 9. | Disfiguration | Rs.50,000/- |
| 10. | Loss of future income | Rs.1,30,416/- |
| Total | | Rs.4,47,844/- |

C. SUBMISSIONS

5. I have heard Mr. Yuvraj Sharma, learned counsel for the Insurance Company, and Mr. Varun Sarin, learned counsel for the claimant.

6. Mr. Sharma challenges the award on the following two grounds:

- a. That the Tribunal erred in deciding the issue of negligence in favour of the claimant, as he did not examine any independent eyewitness to prove the same, and failed to give detailed findings in this regard.
- b. That the Tribunal granted excessive compensation under non-pecuniary heads.

7. On the other hand, Mr. Sarin submits that the compensation ought to be enhanced on the following grounds:

- a. That the Tribunal erred in awarding compensation to the claimant on the basis of minimum wages of an unskilled worker, instead of his actual income of Rs. 24,000/- as a salaried employee at Vision Control Products Private Limited, New Delhi. Mr. Sarin further submits that, in any event, the Tribunal erred in applying the minimum wages prevalent in Haryana, instead of those applicable in Delhi.
- b. That the Tribunal inadequately assessed the functional disability at 13%, contrary to the law laid down in *Raj Kumar v. Ajay Kumar*



and Anr¹.

- c. That the Tribunal omitted to grant enhancement of income on account of future prospects, as required by the judgment of the Constitution Bench in *National Insurance Company Limited v. Pranay Sethi and Ors*².
 - d. That the Tribunal awarded non-pecuniary damages only to the extent of Rs.50,000/- each for pain and suffering, mental and physical shock, disfigurement, and loss of amenities, which are wholly inadequate.
 - e. That the Tribunal awarded insufficient compensation under the heads of expenditure for conveyance, special diet, and gratuitous attendant services, fixed at Rs.20,000/- each.
8. Each of the above aspects is dealt with below.

D. RE: FINDING OF NEGLIGENCE

9. As far as the finding of negligence is concerned, Mr. Sharma submits that the claimant did not examine any independent eyewitness to substantiate the same, and that the Tribunal also failed to provide detailed findings in this regard.
10. The only evidence with regard to the accident was led by the claimant, who examined himself as PW-1. In his affidavit of evidence, he stated as follows:

*“2. That on dated 12/03/2018 at about 03:15 P.M. the Petitioner was standing and waiting for Bus due to some office work at start point of Lajpat Nagar Flyover, opposite PGDAV Collage, Ring Road, from Aashram to Moolchand, New Delhi with due care and precaution to go Chankyapur, New Delhi. **At the same time suddenly a vehicle bearing***

¹ (2011) 1 SCC 343 [hereinafter, “*Raj Kumar*”].

² (2017) 16 SCC 680 [hereinafter, “*Pranay Sethi*”].



registration No. DL1LP-4567 (Water Tanker, Tata Goods Career) which was being driven in reverse direction with rash and negligent manner and at a very high speed coming and hit the deponent/ Petitioner with great force.

xxxx

xxxx

xxxx

xxxx

5. That the Respondent No.1, the driver of offending vehicle, who was driving the offending vehicle at the time of accident in high speed, rashly and negligently manner.”³

The claimant was cross-examined by learned counsel for the owner of the offending vehicle, during which he stated as follows:

“XXXXX by Sh. Charanjeet, Counsel for Respondent No.2.

There was a scheduled bus stop at the place, where, I was standing and met with the accident. I was taken to hospital by the police. I did not make the 100 no. call. **It is wrong to suggest that I was standing on middle of the flyover and trying to cross the road by running with my friend while talking with each other.** It is wrong to suggest that no police official came at the spot till I was shifted to hospital. It is wrong to suggest that I am deposing falsely.”⁴

11. The observations and conclusions of the Tribunal on this issue are extracted hereinbelow:

“17. Negligence in a compensation case before Claims Tribunal is to be proved by preponderance of probability and the test is not as strict as in a criminal case.

18. In this case, **injured person while appearing into witness box as PW1 made statement and narrated the mode and manner of the accident.** He deposed that accident occurred due to rash and negligent driving of driver of offending vehicle. In *Cholamandlam Insurance Company Ltd. vs. Kamlesh* 2009 (3) AD-Delhi 310, it was held that if driver of offending vehicle does not enter the witness box, an adverse inference can be drawn against him. In the present case also, driver did not enter into the witness box to controvert the claim of injured or even to explain circumstances of accident.

19. **Police after investigation had filed charge-sheet against respondent no.1 which is also suggestive of negligence of respondent No.1 in causing the accident.** The IO has filed Detailed Accident Report before this Tribunal. In *National Insurance Co. Vs. Pushpa Rana* 2009 ACJ 287 Delhi, it was laid down that completion of

³ Emphasis supplied.

⁴ Emphasis supplied.



investigation and filing of chargesheet u/s 279/304A IPC are sufficient proof of negligence of the driver of the offending vehicle.

20. *It is well settled that the proceedings before the Claims Tribunal are in the nature of inquiry and the finding of rash and negligent driving by driver of the offending vehicle is to be returned only at the touch stone of preponderance of probabilities. The factors noted above are sufficient to conclude that preponderance of probability is made out showing negligence of respondent No. 1 in causing the accident.”⁵*

12. Neither the Insurance Company nor the driver of the offending vehicle led any evidence before the Tribunal in this regard. The only evidence with regard to the accident was thus led by the claimant, whose testimony remained unshaken during cross-examination by learned counsel for the Insurance Company.

13. It is well-settled that the filing of a chargesheet by the police, in the absence of any compelling evidence to the contrary, is sufficient to establish negligence on the part of the driver in claim proceedings before the Tribunal. Furthermore, the testimony of an independent eyewitness may not be available in every case. Reference, in this connection, may be made to the recent decision of the Supreme Court in *Meera Bai v. ICICI Lombard General Insurance Company Limited*⁶, where it was held as follows:

“4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.”⁷

14. In the present case, there was no material whatsoever before the

⁵ Emphasis supplied.

⁶ 2025 SCC OnLine SC 992.

⁷ Emphasis supplied.



Tribunal, to dislodge the probative value of the chargesheet. I am, therefore, of the view that the Tribunal's reasoning on this issue does not warrant interference in appeal.

E. QUANTUM OF INCOME

15. With regard to quantum of income, the Tribunal proceeded on the basis that the claimant's assertion of being employed as an Office Assistant in Vision Control Products Private Limited, Delhi, earning Rs.24,000/- per month, remained unproven. Consequently, the Tribunal assessed his monthly income on the basis of the minimum wages applicable to an unskilled worker in Haryana, which at the relevant time was Rs.7,600/- per month.

16. In the affidavit of evidence filed by the claimant, he stated as follows:

“8. I say that I was working in a private company namely ‘Vision Control Products Pvt. Ltd.’, 101-A, Shiv Kutir, First Floor, Hari Nagar, Ashram, New Delhi-110014 as Office Asst. since 2014 on monthly salary of Rs. 24,000/- at the time of accident. Due to injuries received in the aforementioned accident, till the date I am under the medical treatment and unable to work.”⁸

17. The claimant was cross-examined by learned counsel for the Insurance Company, during which he stated as follows:

“I have not filed my salary slip to show the details of the salary. Apart from my bank passbook, I have not filed any other proof to show that I was getting salary. I have not filed any leave certificate. It is correct that I have all the medical bills with respect to my medical treatment. It is correct that I took treatment in Government hospital, which was almost free with minimal expenses. I do not file any income tax return. It is wrong to suggest that the bills do not correspond to the medical prescriptions and are forged and fabricated.”⁹

⁸ Emphasis supplied.

⁹ Emphasis supplied.



18. The first point to be considered in light of the foregoing evidence, is whether the Tribunal erred in disregarding the evidence of the claimant's salary of Rs.24,000/- per month. There was no evidence led by any of the employer's representatives. In the course of the claimant's cross-examination, he also admitted that, apart from his bank passbook [Part of Ex. PW-1/6], he had not produced any documentary evidence to show that he was receiving the quantum of salary claimed by him. Even the passbook reflects different sums, ranging from Rs.6,351/- to Rs.10,351/-, credited from "*Vision Control*", "*Vision*", "*Vision Control Pro*", and "*Vision Control Products Private Limited*", which does not demonstrate a regular or fixed monthly income, more so to the extent claimed. Consequently, the assertion in the affidavit that the claimant earned Rs.24,000/- per month is not borne out by the evidence on record.

19. While it is settled law that the Tribunal's objective is to arrive at a just and reasonable compensation, guided by the preponderance of probabilities and not strictly bound by the rules of evidence and pleadings, even these relaxed standards have not been met in the present case. I am, therefore, of the view that the Tribunal's finding on this aspect does not warrant interference in appeal. The Tribunal correctly awarded compensation based on the minimum wages applicable to an unskilled worker.

20. However, a secondary point requires to be addressed, which is whether the applicable minimum wages were correctly taken as prevalent in the State of Haryana, as opposed to those applicable in Delhi.

21. The claimant, in his affidavit of evidence extracted above, stated



that he was employed in Delhi at the time of the accident. He further relied upon his identity card [Ex. PW-1/5] and appointment letter dated 01.02.2016 [Part of Ex. PW-1/6], which show that his employer had its registered and head office in Delhi. His evidence in this regard remained unchallenged, as he was not cross-examined on this point. As discussed hereinabove, his passbook also reflects various payments from his employer. While the passbook alone does not establish the quantum of his salary, it is sufficient to demonstrate proof of his employment, having regard to the standard of proof applicable to motor accident claims.

22. Although the claimant did not examine any other witness with regard to his employment, the evidence produced before the Tribunal, in my view, is sufficient to show that he was employed in Delhi at the time of the accident.

23. In these circumstances, the minimum wages applicable in Delhi for an unskilled worker at the relevant time, ought to have been taken into account while computing compensation on account of loss of income during the treatment, as well as loss of future income. Learned counsel for both parties state that the applicable minimum wages in Delhi were Rs.13,584/- per month.

F. ASSESSMENT OF FUNCTIONAL DISABILITY

24. In terms of the judgment of the Supreme Court in *Raj Kumar*, the assessment of functional disability requires an analysis of both the nature and extent of the disability suffered by injured victims, as well as its likely impact on their future income, having regard to the avocation pursued by them.

25. Although no medical evidence was led before the Tribunal



regarding the claimant's disability, the disability certificate dated 04.11.2019 issued by Pandit Madan Mohan Malaviya Hospital, certifies that the claimant suffered a permanent disability of 26% in relation to his pelvis and both lower limbs. However, the said certificate is silent as to whether the disability is progressive or non-progressive, and whether there is any likelihood of improvement over time.

26. As far as the claimant's avocation is concerned, the claimant's evidence reveals that he was working as an Office Assistant in a private company. As stated above, I have accepted the evidence with regard to the claimant's employment with the said organisation. The Tribunal, after taking note of the principles laid down in *Raj Kumar*, observed that, although the claimant had failed to prove his income or avocation, the nature and extent of the injuries suffered by him were such that his future earning capacity was likely to be affected. The Tribunal thereafter assessed the income as per minimum wages of an unskilled worker, and applied the functional disability at 13% of the whole body.

27. The evidence of disability, affecting both legs and the pelvic region, in my view, requires some enhancement of the assessment of loss of earning capacity. The task of the Court, as set out in *Raj Kumar*, is to assess disability of the whole body, and correlate it with the vocation of the victim. Where both limbs are affected, the disability of the whole body would also be more than 13%, as assessed by the Tribunal. Such disability would impair the claimant's ability to perform the duties ordinarily associated with clerical or office work, even if the work was not primarily physical in nature.

28. In these circumstances, on the evidence available, I am of the view



that the loss of future earning capacity due to disability, ought to be enhanced to 25%.

G. ADDITION OF FUTURE PROSPECTS

29. The Tribunal erred in failing to grant any enhancement towards future prospects. Having regard to the decision in *Pranay Sethi*, this approach is erroneous.

30. For a person between the ages of 50 to 60 years, who does not have a permanent job, *Pranay Sethi*¹⁰ stipulates an enhancement of 10% towards future prospects. The said provision would be applicable to the claimant's case as well.

H. ASSESSMENT OF COMPENSATION FOR LOSS OF FUTURE INCOME

31. The Tribunal assessed compensation for loss of future income at Rs.1,30,416/-. Applying the aforesaid modifications, the compensation on this ground, as awarded to the claimant, is re-computed as follows:

| Heads | Amount |
|---|---|
| Monthly income (on the basis of minimum wages in Delhi) | Rs.13,584/- |
| Annual income [13,584 x 12] | Rs.1,63,008/- |
| Addition of future prospects [10% of 1,63,008] | Rs.16,300.8/- |
| Annual income after addition of future prospects [1,63,008 + 16,300.8] | Rs.1,79,308.8/- |
| Loss of future earnings after accounting for functional disability [1,79,308.8 x 25%] | Rs.44,827.2/- |
| Loss of future income after applying the applicable multiplier [44,827.2 x 11] | Rs.4,93,099.2/- (Rounded off to Rs.4,93,099/-) |

¹⁰ Paragraph 59.4.



I. LOSS OF INCOME

32. Considering the nature of the injuries and the medical documents on record, the Tribunal awarded compensation for loss of wages for a period of six months.

33. Accordingly, the compensation awarded towards loss of income during the period of treatment is enhanced from Rs.45,600/- to Rs.81,504/-, calculated at Rs.13,584/- per month, being the minimum wages applicable to an unskilled worker in Delhi, for a period of six months, as awarded by the Tribunal.

J. NON-PECUNIARY DAMAGES

34. As noted above, the Tribunal has awarded non-pecuniary damages of Rs.50,000/- each for pain and suffering, mental and physical shock, disfigurement, and loss of amenities.

35. The assessments for pain and suffering, and loss of amenities, appear, in my view, to be inadequate, having regard to the nature and extent of injuries suffered by the claimant, as well as the duration of treatment. The evidence before the Tribunal [Ex. PW-1/3 and PW-1/4] revealed that the claimant remained hospitalised at AIIMS from 12.03.2018 to 16.03.2018, and again from 21.03.2018 to 17.04.2018, and continued to receive treatment until September 2018. The medical records indicate that the claimant underwent a limited laparostomy, required prolonged bed rest for pelvic fractures, and was catheterised on account of damage to the nerve supply of the bladder. Furthermore, during his second admission, he developed sepsis for which he was admitted to the Intensive Care Unit.

36. I am, therefore, of the view that an award of Rs.75,000/- each for



pain and suffering, and loss of amenities, would be appropriate in the facts of this case. The compensation on account of mental and physical shock, and disfigurement granted by the Tribunal at Rs. 50,000/- each is, however, maintained.

K. GRATUITOUS SERVICES, SPECIAL DIET AND CONVEYANCE

37. The Tribunal awarded a sum of Rs.20,000/- each, under these heads.

38. Having regard to the nature of the injuries sustained by the claimant; his period of hospitalisation from 12.03.2018 to 17.04.2018; and the subsequent course of treatment extending over several months, including surgery and periodical OPD consultations, it is evident that the claimant required multiple visits to the hospital and assistance in the performance of his day-to-day activities during the period of rehabilitation.

39. Considering the duration of treatment, the nature of injuries, and the claimant's restricted functional capacity during recovery, the compensation towards gratuitous services and conveyance is enhanced to Rs.40,000/- each. The compensation on account of expenditure towards special diet granted by the Tribunal at Rs.20,000/- is, however, maintained.

L. CONCLUSION

40. As a result of the above discussion, the compensation awarded to the claimant under the following heads stands enhanced:

| Heads | Awarded by the Tribunal | Awarded by this Court | Difference |
|----------------|--------------------------------|------------------------------|-------------------|
| Loss of future | Rs.1,30,416/- | Rs.4,93,099/- | (+) Rs.3,62,683/- |



| | | | |
|---------------------------------|-----------------------|-----------------------|---------------------------|
| income | | | |
| Loss of income during treatment | Rs.45,600/- | Rs.81,504/- | (+) Rs.35,904/- |
| Pain and suffering | Rs.50,000/- | Rs.75,000/- | (+) Rs.25,000/- |
| Loss of amenities | Rs.50,000/- | Rs.75,000/- | (+) Rs.25,000/- |
| Gratuitous services | Rs.20,000/- | Rs.40,000/-. | (+) Rs.20,000/- |
| Conveyance | Rs.20,000/- | Rs.40,000/-. | (+) Rs.20,000/- |
| Total | Rs. 3,16,016/- | Rs. 8,04,603/- | (+) Rs. 4,88,587/- |

41. In sum, the award of the Tribunal is enhanced by Rs.4,88,587/-. The Insurance Company is directed to deposit the same, alongwith up-to-date interest at the rate of 9% per annum, as awarded by the Tribunal, within eight weeks from today.

42. I am informed that the Insurance Company has already deposited the amount awarded by the Tribunal, by the impugned award. By order dated 25.01.2021, the Court had also directed release of 50% of the awarded amount in favour of the claimant, with the balance remaining deposited with the Tribunal.

43. The directions of the Tribunal with regard to disbursement of the awarded amount provided for release of a lump-sum amount to the claimant, with the balance of Rs.4,00,000/- to be kept in 20 monthly fixed deposits of Rs.20,000/- each. The said period has now lapsed. There is, therefore, no impediment to release of the remaining amount lying with the Tribunal to the claimant. The balance amount lying in deposit, and the amount to be deposited in terms of this judgment, be released to the claimant forthwith.

44. The appeals, alongwith pending applications, are accordingly



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disposed of.

45. The statutory deposit be refunded to the Insurance Company, subject to compliance with paragraph 41 above.

DECEMBER 12, 2025

'Bhupi/KA'

PRATEEK JALAN, J