



2026:DHC:1968



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

% *Reserved on : 14<sup>th</sup> January 2026*  
*Pronouncement on: 10<sup>th</sup> March 2026*  
*Uploaded on : 11<sup>th</sup> March 2026*

+ **MAC.APP. 1102/2017 & CM APPL. 45667/2017**

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Ms. Shruti Jain, Advocate.

versus

RAJ KUMAR & ORS .....Respondents

Through: Mr. Pankaj Gupta, Advocate with  
Ms. Moumita Mondal for R-1.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J**

1. This appeal has been filed by the Insurance Company challenging the impugned award dated 8<sup>th</sup> September 2017 passed by the Motor Accident Claims Tribunal, Karkardooma Courts, Delhi (*'MACT'*) in DAR No. D-94/15 (New No.1074/2016).

2. The Insurance Company challenges the MACT's award on the following grounds:

- (i) That it was not established that the accident was caused due to rash and negligent driving of the offending vehicle by



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*Mukesh Kumar/* respondent no.2, and the MACT failed to conduct a proper enquiry.

- (ii) That the onus was on claimant/respondent nos.1 to show that the accident was caused due to rash and negligent driving of the offending vehicle.
- (iii) That since two vehicles were involved in the collision, 50% of contributory negligence ought to have been determined.
- (iv) That the determination of income of respondent no.1/claimant was on the basis of minimum wages of a matriculate, in the absence of proof of occupation and income, and therefore, claimant was not entitled to *loss of future income*.
- (v) That the functional disability was assessed at 60%, despite failure of respondent no.1/claimant to establish that he had suffered any loss due to the physical disability.
- (vi) That the MACT failed to seek doctor's opinion on the Disability Certificate to assess the functional disability, and should have taken the functional disability at 30% in relation to the whole body.
- (vii) That the MACT wrongly awarded loss of income for one year during the period of treatment, despite there being no evidence in this regard.
- (viii) That there was error in awarding *Rs.75,000/-* under the head of *disfigurement*, as the same was exorbitant.



### **Incident**

3. On 18<sup>th</sup> October 2014, at about 5:15 P.M., one *Raj Kumar*/injured was carrying three passengers in his e-rickshaw and near Guru Tej Bahadur Hospital, Delhi, when a Mahindra Xylo car bearing registration No.UP-14DT-3066 came from the wrong side and hit the e-rickshaw. *Raj Kumar* along with other passengers sustained injuries. FIR No.653/2014 was registered at P.S. GTB Enclave and subsequently chargesheet was filed. DAR was filed, which was treated as a petition by the MACT.

### **Impugned Award**

4. The MACT held that the testimony of *Raj Kumar* was unrebutted, as the driver had not come forward to contest the claim petition. Reliance was placed on the site plan and the Mechanical Inspection Report (*MIR*), which corroborated the testimony of **PW1**. Since, the testimony was also consistent with the FIR, no question of false implication arose, and *Issue no. 1* was decided in favour of the claimant with regard to the causation of injuries due to the accident.

5. *Raj Kumar*/injured sustained injuries *i.e. Grade III B fracture of both bones of the leg and left segmental bone leg (closed) with bluters left leg with fracture medial maleoli* and other associated injuries. The testimony of **PW-1**, supported by medical records **Ex. PW-1/1**, medical bills **Ex. PW-1/2**, and Disability Certificate **Ex. PW-1/3**.

6. **PW-2/Dr. Mohit Arora**, member of the Disability Board, GTB Hospital, who signed the Disability Certificate annexed as **Ex. PW-1/3**, testified that claimant has suffered 61% permanent disability in relation



to both lower limbs, which was directly attributable to the injuries sustained in the accident.

7. Considering that the claimant was a driver by profession, and that the permanent disability affected both lower limbs, the MACT held that the functional disability should be taken as 60%, as it substantially impaired his earning capacity.

8. As regards benchmark income, since there was no documentary proof but there was an education certificate as a matriculate, the income was assessed on the basis of minimum wages of a matriculate, i.e., Rs.10,478/- per month. Considering that claimant was 29 years of age, multiplier of 17 was applied and the *loss of future income* was computed at Rs.12,82,507/-. Further, compensation of Rs.75,000/- was granted towards disfigurement. The detailed tabulation of the compensation provided by MACT is as under:

S. No.	Particulars	Amount (Rs.)
1	Compensation towards pain and sufferings	Rs.70,000/-
2	Compensation towards medical bills	Rs.35,960/-
3	Loss of earning capacity due to disability	Rs.12,82,507/-
4	Loss of earning for a period of 12 months	Rs.1,25,736/-
5	Attendant charges for 6 months	Rs.21,000/-
6	Special diet and conveyance	Rs.25,000/-
7	Compensation towards loss of amenities and enjoyment	Rs.75,000/-
8	Compensation towards disfigurement	Rs.75,000/-



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	<b>TOTAL</b>	<b>Rs.17,10,203/-</b>
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### **Analysis**

9. As regards the issue of negligence, the Court has examined the impugned award along with the testimony of **PW-1**, evidence and the documents on record.

10. **PW1** stated in its testimony that on 18<sup>th</sup> October 2014, he along with passengers was going towards Jhilmil Metro Station on e-rickshaw, a Xylo car driven by the driver at high speed, without taking precautions, violated the traffic rules and without blowing any horn came from the wrong side after changing its driving lane and hit the e-rickshaw with great force. As a result, his e-rickshaw was dragged for a distance of 4 to 5 meters, and he suffered the previous injuries.

11. In his cross-examination, he confirmed there were three passengers in the e-rickshaw and he did not have a license since it was not issued at that time because no such notification had been issued. However, he had a driving licence for LMV(NT) and there was a separate endorsement on the driving licence to drive a three-wheeler. He denied the suggestion that he suddenly came in front of Xylo car.

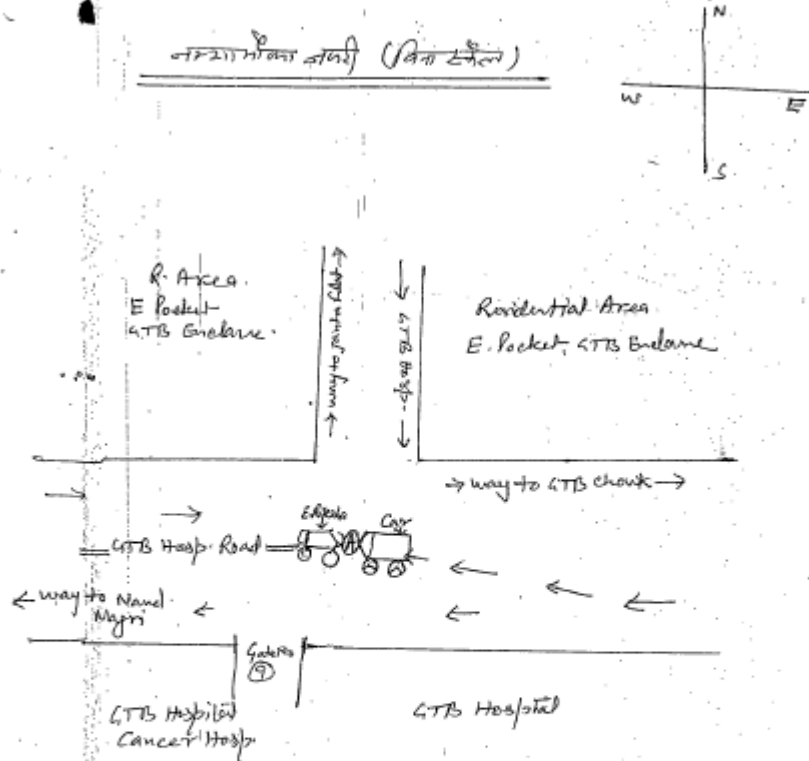
12. Court has also considered the site plan, which is extracted as under:



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Case FIR No. 6573/14 dated 18/11/14 u/s 379/337 of P.S. GTB Enclave  
Delhi.



Note - 1. Mark A is marked at Gate No. 9 of GTB Hoop Road on the right side of the road. The Xylo Car No. UP-14-DT-3066 and E-Rickshaw of the accident occurred at this mark.

*[Signature]*

*[Signature]*  
 He Ravinder Kumar  
 No. 130/AE  
 P.S. GTB Enclave  
 Delhi  
 18/11/14

13. It is fairly clear from the site plan that the Xylo car, which was driving on the wrong side of the road while changing lane, collided with the e-rickshaw which was going on the right side of the road. The MIR also indicates that it was a frontal collision. Thus, the question of negligence stands well established. Additionally, FIR was registered,



consistent with the testimony of **PW1**, and subsequently chargesheet was filed against the driver of the offending vehicle. Therefore, there is no reason to accept the plea of appellant/ Insurance Company in this regard.

14. On the aspect of contributory negligence, the principle consistently applied by the Supreme Court is that such a defense must be specifically pleaded and supported by some material indicating that the claimant's own act or omission had a proximate role in the accident. In **Jiju Kuruvilla v. Kunjamma Mohan**, (2013) 9 SCC 166, in a similar case of head on collision the Supreme held that apportionment of liability arises only when there exists tangible material to infer contributory negligence, and mere conjectures cannot dilute the tortfeasor's responsibility. Relevant paragraph is extracted as under:

*“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.*

...



*21. In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.*

(emphasis added)

15. Further, reliance can also be placed on the judgment of ***Prabhavathi & Ors. v The Managing Director, Bangalore Metropolitan, Transport Corporation***, 2025 INSC 293, wherein it was held that in absence of evidence on record, it cannot be assumed that the accident occurred due to rash and negligent driving of both vehicles. The relevant paragraph is extracted as under:

*“11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvila v. Kun- jujamma Mohan, where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in Kumari Kiran v. Sajjan Singh and Ors. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed.”*

(emphasis supplied)

16. The evidence on record, namely the testimony of **PW-1**, the FIR, the site plan, and the chargesheet, clearly establishes that the accident occurred due to the rash and negligent driving of respondent no.



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2/*Mukesh Kumar*. There is no evidence on record to suggest that the injured was negligent while driving. Based on the aforesaid judgments, even in cases of frontal collision, the Court cannot determine contributory negligence on the basis of presumption without supporting evidence.

17. Further, the driver and the owner of the offending vehicle were not produced as witnesses and, therefore, there is no evidence on which the issue of contributory negligence could, if at all, be raised by the Insurance Company. Therefore, the plea of contributory negligence has to be rejected.

18. The *second issue* raised is regards the adoption of minimum wages of a matriculate. Considering that no proof of income was placed on record, the minimum wages of a matriculate were adopted. The educational document exhibited as **Ex.PW1/4** shows that the claimant passed the Secondary School Examination in August 2004. Therefore, there was sufficient proof to adopt the minimum wages for a matriculate.

19. Considering that *future prospects* were not granted by the MACT, in order to align the compensation with the principles laid down in *National Insurance Co Ltd v Pranay Sethi*, (2017) 16 SCC 680, the injured being 29 years of age at the time of the accident, *future prospects* at 40% are to be added. Further, considering the age of the injured, there is no error in applying the multiplier of 17.

20. As far as the permanent disability is concerned, the testimony of **PW-2/Dr. Mohit Arora** has to be considered. He has stated that, as per



the Disability Certificate, 61% permanent disability was certified in relation to both lower limbs. He further stated that the disability was permanent in nature and not progressive.

21. The MACT's assessment that considering the vocation of injured as a driver, his working ability would be fully affected and, therefore, the functional disability was taken as 60%. The only issue which requires consideration here is that **PW1**, in his testimony, stated that he was driving e-rickshaw only one month prior to the date of the accident and he was a driver by profession prior to the accident.

22. Reliance in this regard can be placed on the judgment of **Raj Kumar v. Ajay Kumar** (2011) 1 SCC 343, wherein 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)

23. 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)

24. Further, in the judgment of **Raj Kumar** (*supra*), an illustration of a driver was given who had suffered amputation of a hand and whose permanent physical disability was assessed at 60%. Considering his vocation as a driver and the fact that he would not be able to continue driving and that his chances of securing any alternative employment would be bleak, the functional disability was assessed at 75%. In the present case, although the injured has not suffered any amputation, he has sustained permanent physical disability of 61% in relation to both lower limbs. Considering the vocation of the injured as a driver, it is evident that his employment would be completely affected. A disability of more than 50% in both lower limbs would make it impossible for him to drive any vehicle and, therefore, his livelihood would certainly be



affected. Consequently, the MACT was not at all amiss in assessing the functional disability at 60%.

25. The award of Rs.75,000/- towards *disfigurement* has been challenged by the Insurance Company. However, there is no reason to accept the said contention in view of the facts and circumstances of the case and the nature of the injuries sustained by the claimant. The record shows that the claimant remained out of work for at least one year, was admitted to the hospital on three occasions, and had suffered fractures and needed to be attended to during recovery, for which attendant charges have been awarded. All these factors are consistent with the principles governing the grant of just and reasonable compensation under the Motor Vehicles Act, which is a beneficial piece of legislation.

26. The Supreme Court, in a catena of judgments, has emphasized the principles of just and reasonable compensation. Reliance can be placed on the judgment of *Sarla Verma v. DTC*, (2009) 6 SCC 121, wherein the Supreme Court underscored that “*just compensation*” must be fair, equitable and consistent, and cannot vary arbitrarily merely because different tribunals perceive different amounts as just. It emphasised that compensation must be objectively assessed, guided by uniform principles to avoid unpredictability and disparity. Relevant paragraphs are extracted as under:

*“16. Compensation awarded does not become “just compensation” merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs 45,000 leaving his surviving wife and*



*child), one Tribunal awards Rs 10,00,000 another awards Rs 5,00,000, and yet another awards Rs 1,00,000, all believing that the amount is just, it cannot be said that what is awarded in the first case and the last case is just compensation. “Just compensation” is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.*

*17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In *Susamma Thomas* [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], this Court stated: (SCC p. 185, para 16)*

*“16. ... The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation.”*

(emphasis added)

27. The revised computation is as under:



S. no	Heads of Compensation	Awarded by tribunal	Awarded by the Court
<b>Pecuniary Loss</b>			
1.	Expenditure on treatment (A)	Rs. 35,960/-	Rs. 35,960/-
2.	Expenditure of conveyance and special diet (B)	Rs. 25,000/-	Rs. 25,000/-
3.	Attendant charges (C)	Rs. 21,000/-	Rs. 21,000/-
4.	Monthly income of injured (D)	Rs. 10,478/-	Rs. 10,478/-
5.	Future prospects @40% (E)	Nil	Rs. 4,191/-
6.	Loss of income (D x 12= F)	Rs. 1,25,736/-	Rs. 1,25,736/-
7.	Functional disability (G)	60%	60%
8.	Multiplier (H)	17	17
9.	Loss of future income [(D+E) 12 x G x H]= I	Rs. 12,82,507/-	Rs.17,95,486/-
<b>Non-pecuniary loss</b>			
10.	Pain and suffering (J)	Rs. 70,000/-	Rs. 70,000/-
11.	Compensation towards loss of amenities and enjoyment (K)	Rs. 75,000/-	Rs. 75,000/-
12.	Compensation towards disfigurement (L)	Rs. 75,000/-	Rs. 75,000/-
13.	Total (A+B+C+F+I+J+K+L= M)	Rs. 17,10,203/-	Rs. 22,23,182/-
14.	Interest	9%	9%

### **Directions**

28. *Vide* order dated 29<sup>th</sup> January 2018, this Court had directed the deposit of entire awarded amount with up to date interest with the tribunal and further directed release of 40% of the awarded to the claimant/ injured as per the terms of the directions in the impugned award.



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29. Enhanced compensation along with 9% interest per annum from the date of filing the petition will be deposited before the MACT within in a period of four weeks.
30. It is directed that a lump sum amount of *Rs.2,00,000/-* shall be released to the claimant within a period of two weeks thereafter. The remaining amount shall continue to be kept in the Fixed Deposit Receipts (*FDRs*) and would be released to the claimant as per the Scheme of the impugned award.
31. The appeal is, therefore, disposed of in above terms. Pending applications, if any, are rendered infructuous.
32. Statutory deposit, if any, be refunded to the appellant.
33. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**MARCH 10, 2026/ak/zb**