

Delhi District Court

Mact Case No. 713/2017 vs Sh. Anil Kumar on 17 January, 2019

IN THE COURT OF SH. RAJ KUMAR

PRESIDING OFFICER:MOTOR ACCIDENT CLAIMS TRIBUNAL :
(WEST-01):DELHI

MACT Case No. 713/2017

Shri Shriya @ Sher Bahadur

S/o Sh. Lal Bahadur

R/o H. No. 80, T-Huts,

Behind Shivanand School,

East Punjabi Bagh,

Delhi-110026

.....Petitioner

Vs

1. Sh. Anil Kumar
S/o Sh. Pheroo Singh
R/o H. No. 69, Risal Garden, Nangloi,
New Delhi-110041
Present Address:-
C-160, Chanchal Park,
Satyam Vihar, Delhi-110041
2. Sh. Vijay Kumar
S/o Sh. Ishwar Chand Kaushik,
R/o B-573, Chanchal Park, Satyam Vihar,
Delhi-110041
3. M/s IFFCO-Tokio General Insurance Co. Ltd.
I-107A, First Floor, Kirti Nagar, New Delhi-110015.
Policy No. 87212015,
Valid from 03.07.2016 to 02.07.2017

.....Respondents

Date of Institution : 11.10.2017
Date of reserving order/judgment : 05.12.2018
Date of pronouncement : 17.01.2019

A W A R D:

COMPLIANCE OF THE PROVISIONS OF THE MODIFIED CLAIMS TRIBUNAL AGREED PROCEDURE

1. Date of the accident 10.07.2016
2. Date of intimation of the accident by the 28.08.2017 Investigation Officer to the Claims Tribunal.
(Clause 2) MACT Case No. 713/2017 Page 1/26

3. Date of Intimation of the accident by the Investigating Officer to the Insurance Company. (Clause 2)

4. Date of filing of Report under Section 09.10.2017 173 Cr. P.C. before the Metropolitan Magistrate. (Clause 10)

5. Date of filing of Detailed Accident 11.10.2017 Information Report (DAR) by the Investigating Officer before Claims Tribunal. (Clause 10)

6. Date of service of DAR on the 11.10.2017 Insurance Company. (Clause 11)

7. Date of service of DAR on the claimant 11.10.2017

(s). (Clause 11)

8. Whether DAR was complete in all Yes respects? (Clause 16)

9. If not, whether deficiencies in the DAR ---

removed later on?

10. Whether the police has verified the Yes documents filed with DAR? (Clause 4)

11. Whether there was any delay or Accident took place on deficiency on the part of the 10.07.2016 and the DAR Investigating Officer ? If so, whether has been filed on any action/ direction warranted? 11.10.2017

12. Date of appointment of the Designated 01.12.2017 Officer by the Insurance Company.

(Clause 20)

13. Name, address and contact number of Sh. A. K. Chadha, Vice the Designated Officer of the Insurance President Company. (Clause 20)

14. Whether the Designated Officer of the Written statement was Insurance Company submitted his filed by the insurance report within 30 days of the DAR? company on 06.12.2017 (Clause 22)

15. Whether the Insurance Company No admitted the liability? If so, whether the Designated Officer of the Insurance Company fairly computed the compensation in accordance with law.

(Clause 23)

16. Whether there was any delay or No

deficiency on the part of the Designated Officer of the Insurance Company? If MACT Case No. 713/2017 Page 2/26 so, whether any action/direction warranted?

17. Date of response of the claimant (s) to Not mentioned the offer of the Insurance Company.

(Clause 24)

18. Date of the award

17.01.2019

19. Whether the award was passed with

Yes

the consent of the parties? (Clause 22)

20. Whether the claimant (s) were directed Yes to open savings bank account (s) near their place of residence? (Clause 18)

21. Date of order by which claimant (s) 13.11.2018 were directed to open savings bank account (s) near his place of residence and produce PAN Card and Adhaar Card and the direction to the bank not issue any cheque book/debit card to the claimant(s) and make an endorsement to this effect on the passbook(s).

(Clause 18)

22. Date on which the claimant(s) produced The petitioner has filed on the passbook of their savings bank record the photocopies of account near the place of their his Aadhar Card and PAN residence along with the endorsement, Card on 05.12.2018 PAN Card and Adhaar Card? (Clause

18)

23. Permanent Residential Address of the R/o H. No. 80, T Huts, Claimant(s) (Clause 27) Behind Shivanand School, East Punjabi Bagh, Delhi-110026

24. Details of savings bank account(s) of Yet to be produced the claimant(s) and the address of the bank with IFSC Code. (Clause 27)

25. Whether the claimant(s) savings bank Yet to be produced account (s) in near his place of residence? (Clause 27)

26. Whether the claimant (s) were Yes examined at the time of passing of the award to ascertain his/their financial condition? (Clause 27)

1. Vide this Judgment-cum-Award, I shall decide the petition under Section 166 and 140 of Motor Vehicle Act 1988 as MACT Case No. 713/2017 Page 3/26 amended up to date (hereinafter referred as the 'Act') filed by petitioner Sh. Shriya @ Sher Bahadur for grant of compensation for the injuries suffered by him in the road vehicular accident.

2. Brief facts of the case of the petitioner are that on 10.07.2016 at about 11:00 PM, the injured/petitioner after dropping the passengers was proceeding towards his house situated at East Punjabi Bagh, Delhi by pulling his cycle rickshaw. It has been further stated that when the injured reached at Main Ring Road, Near Punjabi Bagh Flyover, Opp. Janmashtami Park, Punjabi Bagh,

New Delhi, then, all of a sudden, a scooter bearing No. DL-4S-DG- 3404 which was being driven by the respondent No.1 in a rash and negligent manner, came at a very high speed and hit the cycle rickshaw of the injured with a great force. It has been further stated that due to the forceful impact, the left leg of the injured was badly crushed under the said offending scooter. It has been further stated that as a result of the aforesaid accident, the injured sustained crush injury i.e. compound fractures in his both bones on the left leg and also sustained abrasions, wounds and other grievous injuries on all parts of his body.

3. It has been further stated that after causing the aforesaid accident, the respondent No.1 was trying to flee away from the spot but the injured caught hold him with the help of public persons and handed over to the police on the spot. It has been further stated that the respondent No.1 himself alongwith police had taken the injured to Acharyashree Bhikshu Govt. Hospital, Moti Nagar, Delhi where the MLC bearing no. 14213/16 was prepared by the concerned doctors. It has been further stated that at that time, the respondent No.1 had assured the injured that he will bear all the treatment expenses and because of the said assurances, the injured did not lodge any complaint against the respondent No.1. It has been further stated that because of the critical condition of the injured, after conducting preliminary treatment and putting plaster MACT Case No. 713/2017 Page 4/26 on his left leg, he was referred to some other higher hospital for further treatment. It has been further stated that thereafter, on the same day, the injured was taken to Dr. Ram Manohar Lohia Hospital, New Delhi. It has been further stated that during the course of his treatment, several tests and X-rays were conducted, external fixator was applied in his left leg which remained fixed for a long time. It has been further stated that the injured was discharged from the said hospital on 22.07.2016.

4. It has been further stated that thereafter due to infection in external fixator pin site, the injured petitioner was admitted on 08.03.2017 in Dr. Ram Manohar Lohia Hospital, New Delhi. It has been further stated that during the course of his treatment, the external fixator was removed on 14.03.2017 and a complete set of implants (ILIZAROV RING) was also inserted in his left leg on the same day. It has been further stated that conjugated drainage also done after conducting the operation on 01.04.2017. It has been further stated that the injured was discharged on 25.04.2017 from the said hospital with the advice to get further regular treatment in Ortho OPD.

5. It has been further stated that thereafter, due to non- union and infection in his left leg, the injured was again admitted on 24.06.2017 in Dr. Ram Manohar Lohia Hospital, New Delhi. It has been further stated that he was further operated on 14.07.2017 and his left leg below knee was amputated. It has been further stated that the injured was again operated on 27.07.2017 and amputation stump closure was done. It has been further stated that thereafter, stump cast remained continued and continued dressing was also done. It has been further stated that the injured was discharged on 15.08.2017 from the said hospital.

6. It has been further stated that thereafter, the injured was treated in the Ortho OPD in the said hospital where during the course of his treatment, external pin was removed on 04.09.2017, MACT Case No. 713/2017 Page 5/26 stump care and wound dressing was done on the same.

name of Sh. Vijay Kaushik which was valid from 03.07.2016 to 02.07.2017. It has been further stated that there was a delay of one year in lodging the FIR which could not be explained by the injured. It has been further stated that the accident in question took place due to the sole negligence of the injured himself. It has been further stated that in the MLC of the injured, his age has been mentioned as 30 years but as per his Aadhar Card, his age was 44 years and as such, there is an anomaly. It has been prayed that the present claim petition be dismissed.

14. From the pleadings of the parties, the following issues were framed by this Tribunal on 13.03.2018:-

1. Whether the injured Shriya @ Sher Bahadur suffered injuries in the accident that took place on 10.07.2016 at about 11:00 PM due to rash and negligent driving of Scooter bearing Regn. No. DL-4S-DG-

3404 by the respondent no.1 Sh. Anil Kumar, being owned by the respondent no.2 Sh. Vijay Kaushik and insured with the MACT Case No. 713/2017 Page 7/26 respondent no.3? OPP.

2. Whether the petitioner is entitled to compensation, if so, for what amount and from whom? OPP.

3. Relief.

15. In order to establish his claim, the petitioner has examined himself as PW-1 and in his evidence by way of affidavit, he has reiterated and reaffirmed the stand as taken by him in the present claim petition. He has filed on record his affidavit as Ex. PW1/A; copy of his Aadhar Card as Ex. PW1/1(OSR); photocopy of discharge summary as Mark X; original OPD Cards and test reports as Ex. PW1/3 (colly running into 8 sheets); discharge summary dated 25.04.2017 of RML Hospital as Ex. PW1/4; discharge summary dated 15.08.2017 of RML Hospital as Ex. PW1/5; OPD Card of RML Hospital as Ex. PW1/6; complaint dated 19.05.2017 as Ex. PW1/7; copy of complaint u/s 200 Cr. PC as Mark Y; copy of his PAN Card as Ex. PW1/9(OSR) and DAR as Ex. PW1/10.

16. In the cross-examination done by Ld. Counsel for the insurance company, PW-1 has admitted it to be correct that he has no document to show that he was earning Rs.12,000/- per month. PW-1 has also admitted it to be correct that he has no document to show that he incurred Rs.80,000/- approximately on his treatment, diet etc. PW-1 has admitted it to be correct that he is not an income tax payee. PW-1 has admitted it to be correct that IO Amit Kumar recorded his statement on 11.07.2016 in which he stated that he does not want to lodge any FIR as the respondent no.1 assured him to make the payment of treatment and medical expenses. By way of volunteer, PW1 states that when the respondent no.1 refused to pay the amount of treatment and then, he approached the police station for lodging of the FIR.

17. PW-1 has admitted it to be correct that he has not filed any complaint from 11.07.2016 to 16.08.2017 to the police regarding the registration of FIR. PW-1 has admitted it to be correct MACT Case No. 713/2017 Page 8/26 that he has not filed any order regarding his application u/s 156(3) Cr. PC. By way of volunteer, PW-1 states that the FIR was lodged after order of Ld. MM on his

application u/s 156(3) Cr. PC.

18. PW-1 has further stated that the alleged offending vehicle was coming from front side. By way of volunteer, PW-1 states that the driver of the offending vehicle was coming on wrong side. PW-1 has further stated that he had seen the alleged offending vehicle before the accident. PW-1 has further stated that he made all possible efforts to save the accident but the driver of the alleged offending vehicle came at a very high speed and hit his rickshaw.

19. PW-1 has further stated that the registration number of the alleged offending vehicle is 3404. PW-1 has further stated that he is illiterate. PW-1 has further stated that his left leg was amputated after one year after the accident.

20. The petitioner has further examined Dr. Naresh Chandra from Guru Govind Singh Government Hospital as PW-2 and this witness has proved on record the disability certificate of the petitioner which has been exhibited as Ex. PW2/1. PW-2 has further stated that the injured has suffered 70% permanent physical disability in relation to his left lower limb.

21. In the cross examination done by Id. Counsel for the insurance company, PW-2 has admitted it to be correct that he has not treated the patient/injured. PW-2 has further stated that the permanent disability was assessed as per Government approved guidelines. PW2 has admitted it to be correct that he has not brought the guidelines for assessing the permanent disability.

22. The insurance company has also examined its Legal Executive Ms. Sunidhi Mittal as R3W1 and this witness has filed on record her affidavit as Ex. R3W1/A. In his affidavit, R3W1 has stated that there is a delay of one year in lodging the FIR. She has further stated that the injured was negligent and that is why, the MACT Case No. 713/2017 Page 9/26 accident in question was caused.

23. This witness has not been cross-examined.

24. I have gone through the testimony of the witnesses; entire material available on record. I have also given my thoughtful consideration to the arguments addressed by Ld. counsels for the parties. The petitioner has also been examined under the MCTAP and I have considered the statement of the petitioner under MCTAP as well.

My findings on various issues are as under :-

25. The present petition has been filed by the petitioner u/s 166 & 140 M. V. Act and the onus is upon the petitioner to prove the rash and negligent act of the respondent No.1.

26. The petitioner has examined himself as PW-1 who has well explained the mode and manner of accident. He has reaffirmed and reiterated the averments made in his petition.

27. PW-1 has been cross examined at length but during the entire cross examination of PW-1, nothing has come out so as to discredit his testimony on the aspect that the accident in question was

caused on account of the rash and negligent driving of the respondent no.1 while driving the offending vehicle.

28. The respondents No.1 & 2 have failed to appear in the witness box and in the considered opinion of this Court, they have utterly failed to prove on record that the accident in question took place by due to the sole negligence of the injured himself.

29. Ld. Counsel for the insurance company has vehemently argued that there is a delay of one year in lodging the FIR and the delay has not been explained.

30. It is true that in the case in hand, the date of accident is 11.07.2016 and the FIR is dated 16.08.2017 but it has to be seen that the injured/petitioner remained admitted in the hospitals for a MACT Case No. 713/2017 Page 10/26 quite long time. For the first time, the injured was admitted in Ram Manohar Lohia Hospital on 11.07.2016 and he was discharged on 22.07.2016. For the second time, he was again admitted in RML Hospital on 08.03.2017 and he was discharged on 25.04.2017. For the third time, the injured was again admitted in the said hospital on 24.06.2017 and discharged on 15.08.2017. The aforesaid three discharge summaries in the form of Mark X, Ex. PW1/4 and Ex. PW1/5 are there on record. The aforesaid three discharge summaries clearly reflect that on a number of occasions, the injured was operated and he kept on suffering from infections and ultimately his left leg below knee was amputated on 14.07.2017.

31. The long duration of treatment of the injured, the nature of injuries suffered by him, the continuous infections suffered by the injured and ultimately, the amputation of the left leg below knee speak volumes about the fact that the injured had to undergo a lot of trauma and suffering.

32. To add salt to the injury, as per the case of the petitioner, IO failed to lodge the FIR. The injured has placed on record the copy of the complaint dated 19.05.2017 in the form of Ex.PW1/7 which was lodged by the injured with SHO PS Punjabi Bagh complaining therein that the FIR was not lodged. The injured has placed on record the complaint u/s 200 Cr. PC in the form of Mark Y.

33. It is true that the orders passed by the Ld. MM have not been placed on record but the case of the injured is that only after passing of the orders by the Ld. MM, the FIR was lodged.

34. The FIR which is dated 16.08.2017 itself show that the same was lodged after a long long delay. But to my mind, the delay in the present case has been well explained and no fault can be found with the injured for the delay which has been caused in lodging the FIR. The injured has categorically stated that initially, he was assured that the respondent would take care of his treatment MACT Case No. 713/2017 Page 11/26 but he failed to do so. As such, to my mind, there is no substance in the submissions of the Ld. Counsel for the insurance company to the effect that the delay of one year has not been explained in lodging the FIR.

35. In the present case, the FIR No.403/2017 dated 16.08.2017; P.S. Punjabi Bagh u/s 279/338 IPC was registered against the respondent No.1.

36. In *Bimla Devi & Ors vs. Himachal Road Transport Corporation & ors* (2009) 13 SC 530, in *Kaushnumma Begum and others v/s New India Assurance Company Limited*, 2001 ACJ 421 SC, in *National Insurance Co. Ltd. vs. Pushpa Rana* cited as 2009 ACJ 287, it has been held that the negligence has to be decided on the touchstone of preponderance of probabilities and a holistic view is to be taken. It has been further held that the proceedings under the Motor Vehicle Act are not akin to the proceedings in a Civil Suit and hence, strict rules of evidence are not applicable.

37. In the light of the abovesaid discussion, to my mind, the petitioner has been able to prove issue No.1 in his favour and accordingly, the issue No.1 is decided in favour of the petitioner and against the respondents.

38. Nature of injuries and reimbursement of medical bills The petitioner has filed on record the copy of discharge summary of Dr. RML Hospital as Mark A; the original OPD Cards and test report as Ex. PW1/3; discharge summary dated 25.04.2017 of Dr. RML Hospital as Ex. PW1/4; discharge summary dated 15.08.2017 of Dr. RML Hospital as Ex. PW1/5 and original OPD Card as Ex. PW1/6. The petitioner has also relied upon the DAR which includes the MLC of the injured.

Perusal of MLC of the injured reveals that the injured was taken to Acharyashree Bhikshu Govt. Hospital, Moti Nagar Delhi on 11.07.2016 at 12:48 am. Further perusal of MLC of the MACT Case No. 713/2017 Page 12/26 injured reveals that the injured sustained grievous injuries in the accident in question.

Perusal of Mark X also reveals that after discharge from Acharyashree Bhikshu Govt. Hospital, the injured was admitted in Dr. RML Hospital on 11.07.2016 and discharged on 22.07.2016. Thereafter, the injured was treated as an OPD patient which reflects from the original OPD Cards and test report Ex. PW1/3.

Further perusal of discharge summary dated 25.04.2017 Ex. PW1/4 reveals that thereafter, the injured was again admitted in the said hospital on 08.03.2017 and the injured was discharged from the said hospital on 25.04.2017.

Thereafter, the injured was also admitted in the said hospital on 24.06.2017 and discharged on 15.08.2017 which also reflects from the Ex. PW1/6.

The petitioner has also filed on record the OPD card in the form of Ex. PW1/6 which shows that the injured was lastly treated as an OPD patient in Dr. RML Hospital on 04.09.2017.

The petitioner has not filed on record any medical bills. Accordingly, the petitioner is not entitled for any amount for reimbursement of the medical bills under this head.

39. Compensation towards future treatment In the recent judgment dated 06.03.2018 passed in Civil Appeal No. 2217/2018, arising out of SLP (C) No. 7739 of 2017 titled as *Jagdish vs. Mohan & Ors.*, the Ld. MACT Court had granted a compensation of Rs.1281228/- to the petitioner Sh. Jagdish who was 24 years of age and who met with an accident which took place on 24.11.2011. He suffered

90% disability in both his hands. In appeal, the Hon'ble High Court of Delhi enhanced the compensation by Rs.219000/-. In further appeal to the Hon'ble Supreme Court, the Hon'ble Supreme Court granted the total compensation of Rs.2538308/- along with the interest. The MACT Case No. 713/2017 Page 13/26 Hon'ble Supreme Court of India granted an amount of Rs. 3 lacs towards future medical expenses to the injured and held that the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being.

Keeping in view the entirety of the facts and circumstances in the present matter, keeping in view the disability certificate of the petitioner and keeping in view the ratio of the abovestated authority of the Hon'ble Supreme Court of India, I hereby award an amount of Rs. 50,000/- (Rupees Fifty Thousand Only) to the petitioner on account of future treatment.

40. Pain & sufferings It is settled law that a particular amount can not be fixed on pain and sufferings for all cases as it varies from case to case. Judicial notice can be taken of the fact that since the petitioner had got injuries as above, he might have suffered acute pain and sufferings owing to the said injuries.

It has to be seen that the Hon'ble High Court of Delhi in the orders dated 10.04.2017 passed in MAC Appeal No. 359/2009 titled as Oriental Insurance Co. Ltd. vs. Manjeet Singh & ors and MAC Appeal no. 407/2011 titled as Manjeet Singh vs. oriental Insurance Co. Ltd. has granted the compensation for pain and suffering at Rs. 1,00,000 after enhancing the same from Rs. 50,000/- awarded by the Tribunal and the compensation for loss of amenities of life was also enhanced to Rs.1,00,000/- from Rs.50,000/- awarded by the Tribunal.

In the abovestated authority titled as Jagdish vs. Mohan & Ors., the Hon'ble Supreme Court of India has granted a sum of Rs.2 lacs on account of pain, suffering and loss of amenities.

Considering the nature of injuries, duration of the treatment of the petitioner in the hospital and the disability suffered by the petitioner as mentioned in the disability certificate as elicited MACT Case No. 713/2017 Page 14/26 above and the ratio of the authorities cited herein above, I hereby grant compensation of Rs. 1,00,000/- towards pain and sufferings.

41. Compensation for conveyance & special diet Though there is no cogent evidence on record for the money spent by the petitioner on special diet, yet considering the nature of injuries suffered by the petitioner and duration of his treatment in the hospitals, I am of the opinion that petitioner must have spent some sum under this head. Hence, I hereby grant compensation of Rs. 20,000/- for expenses incurred on special diet and Rs.20,000/- towards conveyance.

42. Compensation towards attendant charges Though, there is no cogent evidence on record for the money spent by the petitioner for attendant, yet considering the nature of injuries suffered by the petitioner and the duration of the treatment of the petitioner in the hospital, I am of the opinion that petitioner must have spent some sum under this head. Hence, I hereby grant compensation of Rs. 20,000/- towards attendant charges.

43. Compensation towards loss of income during treatment period The petitioner has filed on record the copy of his Aadhar Card in the form of Ex. PW1/1(OSR), in the said document, year of birth of the petitioner has been mentioned as 1972. The petitioner has also filed on record the copy of his PAN Card as Ex. PW1/9 (OSR), in the said document, the date of birth of the injured has been mentioned as 10.10.1972. The accident took place on 10.07.2016. Accordingly, the petitioner was about 44 years of age on the date of accident.

In the claim petition, the petitioner has claimed that at MACT Case No. 713/2017 Page 15/26 the time of accident, the petitioner was pulling a cycle rickshaw and earning Rs.12,000/- per month. But nothing has been placed on record by the petitioner to show that he was earning Rs.12,000/- per month. PW-1 has admitted in his cross examination that he has no document to show that he was earning Rs.12,000/- per month.

As such, the income of the injured can very well be assessed on the basis of the chart available in the Minimum Wages Act of an Unskilled person. The date of accident is 10.07.2016 on which the minimum wages for an Unskilled person for the relevant period were Rs.9568/- per month.

Considering the facts and circumstances as well as nature of injuries and treatment period of the petitioner, the court is of the opinion that petitioner could not have worked for about 14 months. Accordingly, I hereby grant compensation for a sum of Rs. 1,67,440/- (Rs.11,960/-x14) towards loss of income during treatment period. (The monthly income of the petitioner has to be taken as Rs. 11,960/- after adding the future prospects in accordance with latest judgment titled as National Insurance Company Limited vs. Pranay Sethi & ors decided on 31.10.2017. The exact calculation has been given in the later part of this award under para no.44).

44. Compensation on account of disability This Tribunal has received the disability certificate of the petitioner from Guru Govind Singh Govt. Hospital. In the disability certificate, it has been specifically mentioned that the petitioner has suffered 70% permanent physical disability in relation to his left lower limb.

As per the disability certificate Ex. PW2/1, the injured has suffered from left sided below knee amputation through upper 1/3 of leg.

Ld. Counsel for the insurance company has relied upon MACT Case No. 713/2017 Page 16/26 an authority titled as Arvind Pathak vs. Parshant Kumar & ors. cited as MAC. App. No.107/2007 decided on 21.04.2016 by the Hon'ble Mr. Justice R. K. Gauba.

Ld. Counsel for the insurance company has also relied upon an authority titled as Neerupam Mohan Mathur vs. New India Assurance Co. cited as Civil Appeal no. 4814/2013 arising out of SLP (C) No. 6282 of 2011 decided on 01.07.2013 by the Hon'ble Supreme Court of India.

It has to be seen that in the authority titled as V. Mekala vs. M. Malathi and another cited as 2014 ACJ 1441 decided on 25.4.2014, Hon'ble Supreme Court of India has taken the disability of the injured as 70% in accordance of the opinion of the doctors who had ascertained the disability as

70%. The doctor had opined that the injured was not able to sit cross-legged comfortably on the floor and the right leg movement of the injured was also affected adversely.

It has to be further seen that in MAC App. No. 1150/2014 & CM No.20819/2014 in the case titled Oriental Insurance Co. Ltd. vs. Ashok Sen Gupta & Ors. cited decided on 24.12.2014 by the Hon'ble High Court of Delhi, the injured was suffering from 19% permanent disability in relation to his right upper limb. The Tribunal assessed the functional disability at 50%. The Hon'ble High Court of Delhi took into account the nature of disability which was akin to stiffness of the right upper limb of the injured and assessed the functional disability at 40%.

It has to be further seen that in MAC Appeal No. 1/2013 in case titled as IFFCO Tokio General Insurance vs. Arjun & Ors decided on 04.01.2018 by the Hon'ble High Court of Delhi, as per the disability certificate Ex. PW3/A, the disability was 50% but the same was taken as 25% functional by the Tribunal. The Hon'ble High Court of Delhi in the appeal which was decided on 04.01.2018, took the functional disability to the extent of 50%.

MACT Case No. 713/2017 Page 17/26 It is true that functional disability has to be assessed separately in comparison to the physical disability, keeping in view the avocation/job/nature of work of the injured and the nature of the injuries suffered by the injured.

In the one of the authorities titled as Arvind Pathak Vs. Parshant Kumar & ors., it has been mentioned that there was amputation of right upper limb below elbow but in the case in hand, there is amputation of left leg below knee.

The other authority titled as Neerupam Mohan Mathur vs. New India Assurance Co. Ltd. pertains to a case where there was amputation of the arm above elbow. As such, the disability suffered by the injured in the present case is not the same as was the disability in both the cases relied upon by the Ld. Counsel for the injured.

The petitioner in the claim petition has stated that the petitioner was working as a rickshaw puller and earning Rs.15,000/- per month. The petitioner has been examined under MCTAP by this court on 05.12.2018 and in his statement recorded on 05.12.2018 under MCTAP, the petitioner has stated that prior to the accident, he was a rickshaw puller and earning Rs.15,000/- per month but after the accident he has not been able to do any work.

As such, keeping in view the avocation of the injured, the ratio of the abovesaid authorities and the fact that after the accident, the petitioner has not been able to earn anything, to my mind, the functional disability of the petitioner has to be taken as 70% which has been mentioned in the disability certificate.

The Hon'ble Apex Court of the land in the latest judgment which has arisen out of SLP (Civil) No. 25590 of 2014 titled as National Insurance Company Limited vs. Pranay Sethi & ors decided on 31.10.2017 has held as under:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santos Devi should have MACT Case No. 713/2017 Page 18/26 been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sara Verna, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

The Hon'ble High Court of Delhi in MAC Appeal No. 798/2011 titled as Bajaj Allianz General Insurance company Ltd. vs. Pooja & ors decided on 02.11.2017 has held that even in the cases where the income of the deceased is calculated on the basis of the minimum wages, the benefit of future prospects is to be given in accordance with the abovesaid guidelines issued by the Hon'ble Supreme Court of India in the abovestated authority as per the rule applicable to self employed or privately

employed persons.

Going by the ratio of the abovestated two authorities, the multiplier has to be selected as per the age of the injured which is 44 years in the case in hand, accordingly, the multiplier of 14 as per MACT Case No. 713/2017 Page 19/26 Sarla Verma vs. DTC 2009 ACJ 1298 SC shall be applicable.

An addition of 25% on account of the future prospects has to be given as the age of the injured was 44 years. Accordingly, the monthly income of the injured has to be calculated as Rs.11,960/- (Rs.9568/- + Rs.2392/- which is 25% of Rs.9568/-).

In these circumstances, the total loss of earning capacity comes out to Rs.14,06,496/- (Rs. 11,960/- x 12 x 14 x 70/100).

45. Compensation towards loss of amenities of life.

Considering the facts and circumstances of the present facts; the nature of injuries suffered by the petitioner as elicited above, I hereby grant compensation of Rs. 25,000/- on account of loss of amenities of life.

In the circumstances of the case, I award him the compensation as tabulated hereunder:-

S No.	Heads of Compensation	Amount
1.	Reimbursement of medical expenses	NIL
2.	Compensation on account of future treatment	Rs.50,000/-
3.	Pain and Suffering	Rs.1,00,000/-
4.	Conveyance & special diet	Rs.20,000/- and Rs.20,000/- (special diet)
5.	Attendant charges	Rs.20,000/-
5.	Loss of Income during treatment period	Rs. 1,67,440/-
6.	Compensation on account of disability	Rs. 14,06,496/-
7.	Loss of amenities of life	Rs.25,000/-
	Total	Rs. 18,08,936/-

R E L I E F :-

46. I hereby pass an award of Rs.18,08,936/- (Rupees MACT Case No. 713/2017 Page 20/26 Eighteen Lakhs Eight Thousand Nine Hundred and Thirty Six Only) as compensation with interest at the rate of 9% per annum from the date of filing the DAR/claim petition i.e. w.e.f. 11.10.2017 in favour of the petitioner and against the respondents.

47. The amount of interim award, if any, shall however be deducted from the above amount, if the

same has already been paid to the Petitioner.

HEARD ON THE FINANCIAL STATUS OF THE CLAIMANT BEFORE PASSING OF THE AWARD AS PER THE PROVISIONS OF THE 'MODIFIED CLAIM TRIBUNAL AGREED PROCEDURE' (MCTAP).

48. The petitioner has also been examined under MCTAP on 05.12.2018 and his statement has also been considered by this Tribunal.

MODE OF DISBURSEMENT OF THE AWARD AMOUNT TO THE CLAIMANTS AS PER THE PROVISIONS OF THE 'MODIFIED CLAIM TRIBUNAL AGREED PROCEDURE' (MCTAP).

49. The respondent No.1 being the driver of the offending, the respondent No.2 being the owner of the offending vehicle and the respondent No.3 being the insurer are jointly and severally liable to pay the award amount.

50. This Tribunal is in receipt of the letter dated 08.11.2017 from Delhi State Legal Services Authority, which is annexed with the latest MCTAP as approved by the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi in Para no. 28 of new MCTAP has held as under:-

"Para no. 28 The Claims Tribunal shall, depending upon the financial status and financial need of the claimant (s), release such amount as may be considered necessary and direct the remaining amount to be kept in fixed deposits in phased manner (for example, if a sum of Rs.5,50,000/- has been awarded to the claimant, Rs.50,000/- may be released immediately and the remaining amount of Rs. 5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/-

MACT Case No. 713/2017 Page 21/26 each for a periods of six months, one year, one and half years, two years and so on till five years or one year, two years, three years and so on till ten years). The Claims Tribunal may also consider imposing following Fresh suit received by way of assignment conditions with respect to the fixed deposits:-

(i) The interest on the fixed deposits be paid monthly to the Claimant(s).

(ii) The monthly interest be credited automatically in the saving account of the claimant (s).

(iii) Original fixed deposit receipts be retained by the bank in safe custody. However, a passbook of the FDRs be given to the claimant (s) along with the photocopy of the FDR. At the time of maturity, the fixed deposit amount shall be automatically credited in the savings bank account of the Claimant(s).

(iv) No cheque book be issued to the claimant (s) without permission of the Court. However, a photo identity card be issued to the claimant (s) and the withdrawal be permitted upon production of the

identity card.

(v) No loan, advance or withdrawal be allowed on the fixed deposits without permission of the Court.

(vi) The Bank shall not permit any joint name (s) to be added in the savings bank account or fixed deposit accounts of the victim.

(vii) Half yearly statement of account be filed by the Bank in the Tribunal".

Keeping in view the entirety of the facts and circumstances involved in the present case and the abovesaid guidelines laid down by the Hon'ble High Court of Delhi, the respondent no.3/insurance company is directed to deposit the amount of Rs.18,08,936/- (Rupees Eighteen Lakhs Eight Thousand Nine Hundred and Thirty Six Only) as stated herein above with SBI, Tis Hazari Courts, Delhi, out of which the amount of Rs. 2,08,936/- (Rupees Two Lakhs Eight Thousand Nine Hundred and Thirty Six Only) shall be released to the petitioner keeping in view the submissions of the Ld. Counsel for the petitioner and that of the respondents as well and in the entirety of MACT Case No. 713/2017 Page 22/26 the facts.

The rest of the amount of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) shall be kept in 32 equal FDR's for an amount of Rs. 50,000/- each for a period of six month, one year, one and a half years, two years, two and a half years, three years and so on with cumulative interest in favour of the petitioner.

The abovesaid conditions as laid down in MCTAP shall be adhered to by SBI, Tis Hazari Courts, Delhi in respect to the FDR's.

APPORTIONMENT OF LIABILITY

51. Since, the offending vehicle was admittedly insured with the respondent No.3, the respondent No.3/Insurance company is hereby directed to deposit the award amount in favour of the petitioner with SBI, Tis Hazari Courts, Delhi within a period of 30 days from the date of passing of this award together with the interest as stated herein above under the intimation to this court and under intimation to the petitioner as well. In case of any delay, it shall be liable to pay interest at the rate of 12% per annum for the period of delay.

File be consigned to Record Room.

A separate file be prepared for compliance report by the Nazir and put up the same on 28.02.2019.

A copy of this award be given to the insurance company as well as to the petitioner free of cost.

A copy of this award be sent to the concerned Ld. Metropolitan Magistrate as well as DSLSA as per the provisions of the MODIFIED CLAIM TRIBUNAL AGREED PROCEDURE (MCTAP). Digitally

signed RAJ by RAJ KUMAR Date:

Announced in the open court

KUMAR

2019.01.22

16:13:52 +0530

On 17th of January, 2019

(RAJ KUMAR)

P.O.MACT (WEST-01)

Delhi (17.01.2019)

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FORM-IVB

SUMMARY OF THE COMPUTATION OF AWARD AMOUNT IN INJURY CASE

1. Date of accident : 10.07.2016
2. Name of the injured : Sh. Shriya @ Sher Bahadur
3. Age of the injured : 44 years
4. Occupation of the injured : Rickshaw Puller
5. Income of the injured : Rs.9568/- as per Minimum Wages Act
6. Nature of injury : Grievous
7. Medical treatment taken : w.e.f. 10.07.2016 to till date
8. Period of Hospitalization : w.e.f. 11.07.2016 to 22.07.2016, 08.03.2017 to 25.04.2017 and w.e.f. 24.06.2017 to 15.08.2017
9. Whether any permanent disability ?

If yes, give details : Disability certificate containing 70% permanent disability in relation to his left lower limb.
10. Computation of Compensation S. No. Heads Awarded by the Tribunal
11. Pecuniary Loss (I) Expenditure on treatment NIL

(ii) Expenditure on Rs.20,000/-

conveyance

(iii) Expenditure on special diet Rs.20,000/-

(iv) Cost of nursing/attendant Rs.20,000/-

(v) Loss of earning capacity Rs. 14,06,496/-

(vi)	Loss of Income	Rs. 1,67,440/-
(vii)	Any other loss which may require any special	Rs. 50,000/- (Future Treatment)

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treatment or aid to the injured for the rest of his life

12. Non-Pecuniary Loss:

(i)	Compensation for mental and physical shock	NIL
(ii)	Pain and suffering	Rs.1,00,000/-
(iii)	Loss of amenities of life	Rs.25,000/-
(iv)	Disfiguration	NIL
(v)	Loss of marriage prospects	NIL
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	

13. Disability resulting in loss of earning capacity: (I) Percentage of disability In the present case the petitioner has assessed and nature of suffered 70% permanent disability. disability as permanent or temporary Functional disability of the petitioner to the extent of 70% has been taken into account keeping in view the disability certificate of the petitioner.

(ii) Loss of amenities or loss N.A.

of expectation of life span on account of disability

(iii) Percentage of loss of Functional disability of the petitioner to the earning capacity in relation extent of 70% has been taken into account to disability keeping in view the disability certificate of the petitioner.

(iv) Loss of future income - Rs.14,06,496/-

(Income x% Earning (Rs. 11,960/-x12 x14 x 70/100) Capacity x Multiplier)

14. TOTAL COMPENSATION Rs. 18,08,936/-

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15. INTEREST AWARDED

9% per annum

16. Interest amount up to the Rs.2,06,218.68(1 years 3 months and 6 date of award days)

17. Total amount including Rs. 20,15,154.68 interest

18. Award amount released Rs. 2,08,936/-

19. Award amount kept in Rs.16,00,000/-

FDRs

20. Mode of disbursement of Mentioned in the award the award amount to the claimant (s). (Clause 29)

21. Next date for compliance 28.02.2019 of the award. (Clause 31) (RAJ KUMAR) P.O. MACT (WEST-01) Delhi/17.01.2019 Digitally signed by RAJ RAJ KUMAR KUMAR Date:

2019.01.22 16:14:05 +0530 MACT Case No. 713/2017 Page 26/26 MACT Case No. 713/2017 17.01.2019 Present: None Award has been passed separately.

File be consigned to Record Room.

A separate file be prepared for compliance report by the Nazir and put up the same on 28.02.2019.

A copy of this award be sent to the concerned Ld. Metropolitan Magistrate as well as DSLSA as per the provisions of the MODIFIED CLAIM TRIBUNAL AGREED PROCEDURE (MCTAP).

(RAJ KUMAR)
P.O. MACT (WEST-01)
Delhi/17.01.2019

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