



2026:DHC:2690



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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 30<sup>th</sup> March 2026*+ **MAC.APP. 218/2026 & CM APPL. 19693-19694/2026**INDUSIND GENERAL INSURANCE COMPANY LIMITED  
(FORMERLY RELIANCE GENERAL INSURANCE CO LTD)

.....Appellant

Through: Ms. Suman Bagga and Ms. Mouli  
Sharma, Advs.

versus

ROSHAN KUMAR SAHU &amp; ORS.

.....Respondents

Through:

**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed against the impugned award dated 16<sup>th</sup> January 2026 passed by Motor Accidents Claims Tribunal [*MACT*], Central, Tis Hazari Courts in MACT No.799/2024.
2. The accident in question occurred on 20<sup>th</sup> August 2024 at about 3:30 p.m. when respondent no.1/claimant was driving a motorcycle bearing registration no. DL-8SDF-1990. When he reached *main Pusta Road, near Milan Vihar, Jagat Pur Mor, Sant Nagar, Burari*, a Swift car bearing registration no. DL-1CAC-2049 (hereinafter, '*offending vehicle*'), driven in front of him, suddenly opened the car door without checking for oncoming traffic or without any warning. Due to this, respondent no.1/claimant's motorcycle collided with the door of offending vehicle, resulting in multiple



injuries. According to his medical records he suffered, ‘*head injury, both lower limbs fractured, knee and chest.*

3. MACT took into account testimony of *PW-1*, respondent no.1/claimant and medical records, including, the Medico-Legal Certificate (*MLC*) No. 1862/2024. Respondent no.1/Claimant was admitted at *Sushruta Trauma Centre, Civil Lines* from 20<sup>th</sup> August 2024 to 14<sup>th</sup> September 2024.

4. MACT arrived at the conclusion that the accident had occurred due to negligence of the offending vehicle driven by the driver.

5. *Ms. Suman Bagga*, counsel for appellant/Insurance Company challenges the finding on liability contending that some contributory negligence ought to have been fastened on respondent no.1/claimant himself, considering, that he was driving too close to the offending vehicle.

6. MACT has assessed this issue in detail and the assessment has been stated in *paragraphs 16, 17 and 18*, which are extracted as under:

*“16. In respect of the factum and manner of accident, as per the testimony of PW-1, the accident took place on 20.08.2024, at about 3.30 p.m, at main Pusta Road, near Milan Vihar, Jagat Pur Mor, Sant Nagar, Burari between the motorcycle bearing registration No. DL-8SDF-1990 and the offending vehicle, i.e. Swift car bearing registration No. DL-ICAC-2049, when the driver of the offending vehicle opened the door of driver side suddenly and negligently without checking for oncoming traffic, and without giving any warning due to which, the motorcycle of the Petitioner collided with the door of the offending vehicle. His testimony to this effect was not discredited during his cross-examination, nor the Respondents brought on record any evidence or reason to disbelieve the same. The said testimony of the Petitioner/injured is also consistent with the contents of FIR No. 600/2024, u/s 281/125(b) BNS, PS Wazirabad. Even the mechanical inspection report of the*



offending vehicle reflects damage including damage to the front right side door, and front glass cracked whereas the mechanical inspection report of the motorcycle of the injured reflects damages including damage to the headlight, damage to the head light cover body etc., which is also consistent with the oral testimony of the injured.

17. Though in their reply, the Respondents No. 1 and 2 took the plea as to them having been falsely been implicated and as to no accident having taken place due to rashness or negligence of Respondent No. 1 or their vehicle, for reasons best known to them neither the Respondent No. 1 nor the Respondent No. 2 stepped into the witness box to controvert the factum of the accident involving the offending vehicle or to set up any defence, which warrants any adverse inference to be drawn that they did not do so as the accident in question had in fact taken place involving the offending vehicle and in the manner testified to by the Petitioner.

18. The act of opening the door of a vehicle by its driver, without any warning or indication itself indicates the existence of rashness and negligence on his part”.

(emphasis added)

7. In the opinion of this Court, reference to **Regulation 23** of **Rules of the Road Regulations, 1989**, which states that, ‘*the driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.*’ would not absolve appellant/Insurance Company from the liability which is fastened upon them due to the negligence of driver of the offending vehicle. Opening the car door without checking the oncoming traffic is certainly an act of sheer negligence, for which liability has to be correctly fastened on the driver of offending vehicle.

8. Ms. Bagga, counsel for appellant/Insurance Company has also challenged the quantum of compensation awarded *inter alia* on attendant



charges awarded at Rs.3,50,000/- and the assessment of functional disability at 90%.

9. This Court has examined the impugned award in particular, *paragraphs 37 and 38* in respect of attendant charges. Considering that he had suffered 90% permanent disability, there is no question that he would require some attendants throughout his life, considering that petitioner was 21 years of age and was working as a tutor. According to this Court, lump sum award of Rs.3,50,000/- for his lifetime is not exaggerated in any manner.

10. As regards the assessment of functional disability at 90%, evidence has been assessed by MACT, in particular *paragraphs 48 and 49* which are extracted as under, in which the issue of functional disability has been taken into account:

*“48. In the present case, the 90% permanent physical impairment reflected in Ex PW1/3 (also Ex PW2/1) is in relation to his both lower limbs, and the Respondents have not brought on record anything to disbelieve the said disability report. As per the disability certificate Ex PW1/3 (also Ex PW2/1), the Petitioner was a follow up case of traumatic paraplegia, which itself indicates that he had paralysis of both his lower limbs, effectively rendering his lower limbs non-functional and curtailing his future prospects in respect of employment.*

*49. Though PW2 Dr Sanjay Yadav testified in his cross-examination, that the hands of the Petitioner had no problem, and he could do work with his hands, the same does not negate the testimony of the Petitioner as to him being unable to move and him having become dependent on others for his daily routine, which has not been rebutted”.*

11. **PW-1** had also testified that he suffered permanent disability in both lower limbs and he has to undergo medical treatment for his injuries for the entirety of his life. He further testified that he cannot move or walk without



any escort and cannot do his daily routine work and has become dependent on others.

12. In *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are extracted as under:

*“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567] )*

*12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal*



should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

**13.** Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so



*that he continues to earn or can continue to earn his livelihood.”*

(emphasis added)

13. 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)

14. In this view of the matter and the observations of MACT in *paragraph 50*, Court is not inclined to interfere with the same.

15. Accordingly, the appeal is dismissed.

16. Pending applications, if any, are rendered infructuous.

17. Compensation amount awarded by the MACT stands confirmed and



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shall be released, along with the accrued interest, as per the directions given by the MACT.

18. Statutory deposit, if any, be refunded to appellant.
19. Judgment be uploaded on the website of this Court.

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

**MARCH 30, 2026/mk/sp**