2026:DHC:5591

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 13th July 2026*

\+ **MAC.APP. 15/2026**

MS. ANSHU KASHYAP .....Appellant

Through: Mr. Varun Tyagi, Mr. Bharat Gupta and Mr. Ishan Srivastava, Advs.

versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD. & ORS. .....Respondents

Through: Mr. Brijesh Bagga, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This appeal has been filed seeking enhancement of compensation awarded by the impugned judgment dated 14th August 2025, passed by Motor Accident Claims Tribunal ('***MACT***') Saket Courts, in MACT No. 234/2019, whereby compensation at *Rs.40,91,841/-* along with interest *@7.5%* per annum was awarded.

2. The case relates to an accident which occurred on 06th December 2018, where injured claimant, a teacher employed with SDMC Primary School sustained grievous injuries after being hit from behind by an offending RTV when she was walking towards the school. She was declared as *84%* permanently disabled with respect to both lower limbs.

3. *Mr. Varun Tyagi*, counsel for appellant, contends that the compensation ought to be enhanced on the following grounds:

(i) That the MACT assessed the functional disability at *10%*, despite applying the principles enunciated in ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, which is wholly disproportionate to the certified permanent disability. Although the appellant continued in her employment as a teacher, her full potential and career prospects in the teaching profession have been substantially impaired.

(ii) That future prospects ought to have been granted at *30%*, since she was in permanent employment and was 41 years of age at the time of the accident.

(iii) That the Tribunal awarded attendant charges by taking the monthly expenses at *Rs.6,000/-* and applying the appropriate multiplier. However, the monthly attendant charges ought to have been assessed on the basis of the minimum wages payable to an unskilled worker at the time of the accident, *i.e.*, *Rs.13,896/-*.

(iv) That compensation towards loss of amenities of life was awarded at a meagre amount of *Rs.2,00,000/-*.

(v) That although appellant lost a six-month-old foetus, the Tribunal awarded only *Rs.5,00,000/-* towards such loss, which is wholly inadequate. It is, further submits that appellant has not only lost the foetus but has also lost the ability to conceive and carry a child in the future. He further submits that her husband has since left her on account of the injuries sustained in the accident, and she is left without any support except for the attendants whom she has engaged.

4. *Mr. Brijesh Bagga,* counsel for the Insurance Company, on the other hand, contends that appellant had a pre-existing functional disability on account of dwarfism, certified at *40%*, which has duly been taken into consideration by the Tribunal. He, therefore, submits that the assessment of functional disability at *10%* by the Tribunal is justified.

5. On the issue of loss of the foetus, *Mr. Brijesh Bagga*, counsel for the Insurance Company, submits that a separate claim ought to have been filed, since the loss pertains to a separate life. He contends that even the award of *Rs.5,00,000/-* towards the loss of the foetus ought not to have been granted.

6. The other objection, *Mr. Bagga*, counsel for Insurance Company, raises is that appellant is still continuing in her job and as per the record her income has since increased from *Rs.35,000-40,000/-* at the time of the accident and subsequently to *Rs.70,000/-,* the MACT noting that there was no immediate reduction in earnings.

7. *Mr. Bagga* further submits that there is no evidence on record to establish that appellant requires the services of an attendant.

Analysis

8. Having considered these submissions and the assessment by the MACT, the Court is of the opinion as under:

8.1. The *functional disability* has been certified as *84%* permanent disability in relation to both lower limbs. Even application of ***Raj Kumar*** (*supra*) will not result in functional disability being calculated at *10%*, which is a highly depressed figure. The pre-existing disability of *40%* on account of dwarfism has no relevance to a disability, which has been incurred to the lower limbs due to the accident. Functional disability relates, per principles enunciated in ***Raj Kumar*** (*supra*), to the injured's ability to continue with a regular life with depressed functionality. Accordingly, the functional disability will be taken at *60%*. The job of a teacher may not require heavy physical labour but requires a lot of mobility and hours of standing, strenuous effort is required in order to commute to and from the school and reduced options for postings or promotions.

8.2. As regards future prospects, since appellant was in permanent employment with an SDMC school, the addition towards future prospects ought to be *30%*, in terms of the principles laid down in ***National Insurance Company Limited v. Pranay Sethi & Ors***., (2017) 16 SCC 680, and not *25%* as awarded by the Tribunal.

8.3. As regards the submission that there is no material on record to establish the requirement of an attendant, this Court finds, upon considering the evidence on record, particularly the photographs, medical treatment records, and the Disability Certificate, including the photograph appended thereto, that appellant would undoubtedly require the assistance of one attendant.

8.4. As far as the *attendant charges* are concerned, there is no reason why the minimum wages of an unskilled worker will not be taken for one attendant. Therefore, the minimum wages applicable to unskilled worker in Delhi at *Rs.13,896/-* will be taken along with a multiplier of 14, considering that the injured was 41 years on the date of the accident.

8.5. As regards compensation for loss of foetus, this Court has perused the judgment relied on ***Raghav Singh v Dinesh Kumar & Ors.*** 2023:DHC:5590 and ***Prakash & Ors. v Arun Kumar Saini & Anr.,*** 2010 SCC OnLine Del

478. Relying on these judgments, it is submitted by counsel for respondent/Insurance Company that a separate claim ought to have been instituted for loss of foetus. It can be seen from the judgment of ***Prakash*** (*supra*) which has been relied upon in ***Raghav*** (*supra*), that an award was passed granting compensation for death of seven months' pregnant woman. Appeal was filed seeking compensation for the death of the unborn child in the womb. The question before the Court was whether unborn child in the womb should be considered at par with a loss of a minor child. A Co-ordinate Bench of this Court traversed the law on cases of loss of foetus, as well as the rights of unborn child in various statutes namely, *Limitation Act, 1963*, *Hindu Succession Act, 1956*, *Indian Succession Act, 1925*, *Transfer of Property, 1882* and *Indian Penal Code, 1860* as also the English law discussing the '*born alive rule*'. The Court concluded that unborn child aged five months onwards in mother's womb till its birth is treated as child in existence and that unborn child is a '*person*' who can be subject of damages for death, as foetus is another life in a woman, and loss of foetus is a loss of child. Thereby, claimants were held entitled to loss of foetus and Court granted *Rs. 2,50,000/-* as compensation.

8.6. Similarly, in ***Raghav*** (*supra*), the Tribunal awarded compensation for the death of a female constable who was eight months pregnant at the time of the accident and the same was assailed by claimants as inadequate compensation awarded towards loss of foetus at *Rs. 2,50,000/-*. This Court considering that ***Prakash*** (*supra*) was a 2010 case and that claimant had lost his entire family in the accident awarded compensation of *Rs. 5,00,000/-*, but left it to be decided on the facts and circumstances of each case.

8.7. Furthermore, this issue has been dealt with by the Supreme Court in

Shiv Kumar v. Gainda Lal, (2022) 14 SCC 342 where in an appeal was preferred for enhancement of the compensation, granted by High Court of Punjab and Haryana. One of the grounds for enhancement of the compensation was the loss of foetus. The case related to the death of the wife of the claimant, who died in a motor accident. In this matter, the Supreme Court held that the claimants are entitled to receive enhanced compensation under the head of *loss of foetus*, and accordingly enhanced the compensation to *Rs. 1,00,000/-* for the same.

8.8. In the aforementioned cases, no finding has been returned that a separate claim ought to have been filed for loss of foetus as has been claimed by counsel for respondent/ Insurance Company.

8.9. In English law, the *born alive rule* is followed. Reliance may be placed on the judgment of ***Paton v British Pregnancy Advisory Service Trustees*** [1979] QB 276 which states that foetus cannot have a right of its own until it is born and has no separate existence from its mother. To acquire legal personality a child must not just be born but also born alive; stillbirth does not grant any legal personality. Therefore, Queen's Bench in ***Burton v Islington Health Authority*** [1993] QB 204 noted that a stillborn child cannot bring an action or have another person bring an action on their behalf in tort. This English Law has been subject to criticism as it is based on out-dated evidential presumption due to advent of advance diagnostic tools to determine that the child is alive in the womb.

8.10. However, this is not to say that the mother cannot claim compensation for personal injury on account of emotional distress caused due to the death of her unborn child. Reliance is placed on ***Giardina v. Bennet*** 111 N.J. 412, 545 A.2d 13, passed by the Supreme Court of New Jersey in a case of a baby who was stillborn, resulting from negligence of the obstetrician. One of the questions that was considered by the Court, was the claim of compensation to the parents under tort of negligence causing death of foetus. A claim was filed under the *Wrongful Death Act* by the parents of the stillborn child as a result of tortious conduct. The Court, traversed the common law principle regarding the compensation for death of a foetus, and noted that the abovesaid Act did not contemplate the foetus as a "*person*" but "*merely a part of his mother without separate existence or personality*". However, the Court went further and upheld the entitlement of parents to be eligible for compensation on account of the stillborn foetus, as it is a tort against parents, entailing direct infliction of emotional distress, and mental suffering. The relevant findings are reproduced herein below:

> *"We are satisfied that our common law has evolved to a point that would recognize a valid cause of action for the emotional injuries suffered by parents in this kind of a case. Parents under such facts would be entitled to claim compensatory damages based on their emotional distress and mental anguish, proximately caused by the negligent conduct of their doctor that results in the stillbirth of their baby."*
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> (emphasis added)

8.11. This Court has departed from the *born alive* rule in ***Prakash*** (*supra*), wherein unborn child was considered to be a '*person*' who can be subject for the claim of damages. Even though no finding has been returned that a separate claim ought to be filed, and even if the argument of counsel for respondent/ Insurance Company is accepted, the injured claimant would have a claim for personal injury due to loss of foetus and compensation would have to be awarded on that count. In the present case, the injured in addition to psychiatric injury due to loss of foetus has also been rendered incapable of having children in the future, in this circumstance the injured claimant will also have a claim for personal injury for grant of compensation.

8.12. However, having regard to the peculiar facts and circumstances of the present case, as well as the decision of this Court in ***Raghav Singh v. Dinesh Kumar & Ors.*** 2023:DHC:5590, wherein compensation of *Rs.5,00,000/-* was awarded for the loss of a foetus in a fatal accident case, this Court is not inclined to defer the matter solely on the ground that a separate claim ought to have been filed.

8.13. The issue is already before this Court and same is being decided by this Court keeping in mind beneficial object of Motor Vehicles Act. Since compensation of *Rs.5,00,000/-* was awarded in the year 2018 for an accident which occurred in 2013, a sum of *Rs.7,50,000/-* is considered appropriate towards compensation for the loss of the foetus.

8.14. The aforesaid determination regarding compensation for the loss of the foetus is rendered in the peculiar facts and circumstances of the present case. The submission of *Mr. Brijesh Bagga,* counsel for Insurance Company, that the present determination should not be treated as a precedent for deciding similar issues in future, is accepted.

9. On the issue of raise by *Mr. Bagga*, counsel for the Insurance Company, of continued income even after the accident, the same will have to be addressed.

10. The MACT has given loss of the future income on the basis of the annual income, calculated on basis of ITR, at the time of the accident and taken the multiplier of 14 on the presumption that the loss of income will be calculated from the date of the accident.

11. In response to the Court's query, counsel for appellant, submits that

appellant was retained in her job, however, there is a need to accommodate loss of promotional opportunities as a consequence of disability suffered and loss of income suffered post-retirement.

12. This Court in ***Govind Singh Mauni v Tej Bhan & Ors.*** 2026: DHC:102 considered post-retirement loss of potentiality incurred and applied multiplier of 9 to account for post-retirement loss of potentiality to earn. Further, considering that there would be loss of promotional opportunities future prospects at *30%* should be granted as the injured was 41 years of age at the time of the accident. Essentially, the Court factors in that appellant continues to be paid her salary with increments but would suffer loss of potentiality of income post-retirement.

13. Accordingly, the benchmark income will be taken as *Rs.5,39,488/-* per annum and future prospects at *30%* with a multiplier of 9, which would basis the retirement age of 60, factoring in the functional disability at *60%.*

14. The revised compensation is as under:

S.no	**Heads of Compensation**	**Awarded by tribunal**	**Awarded by the Court**
	Pecuniary Loss		
1.	Medicine and Treatment (A)	Rs. 98,658/-	Rs. 98,658/-
2.	Expenditure on special diet (B)	Rs.1,00,000/-	Rs.1,00,000/-
3.	Expenditure of conveyance (C)	Rs. 1,47,800/-	Rs. 1,47,800/-
4.	Attendant Charges (D)	Rs. 12,48,000/-	Rs. 23,34,528/-
5.	Annual Income of injured (E)	Rs. 5,39,488/-	Rs. 5,39,488/-
6.	Future prospects @ 30% (F)	Rs. 1,34,872/-	Rs. 1,61,846/-
7.	Loss of income (G)	Rs.3,53,279/-	Rs.3,53,279/-
8.	Functional disability (H)	10%	60%
9.	Multiplier (I)	14	9

10.	Loss of future income [(E+F) x H x I]= J	Rs. 9,44,104/-	Rs. 37,87,204/-
	Non-pecuniary loss		
11.	Pain and suffering (K)	Rs. 5,00,000/-	Rs. 5,00,000/-
12.	Loss of Amenities of Life (L)	Rs. 2,00,000/-	Rs. 2,00,000/-
13.	Loss of foetus (M)	Rs. 5,00,000/-	Rs. 7,50,000/-
14.	Total	Rs.40,91,841/-	Rs. 82,71,469/-
15.	Enhanced Compensation	**Rs. 41,79,628/-**	
16.	Interest	7.5%	7.5%

Conclusion

15. Accordingly, the compensation is enhanced by *Rs. 41,79,628/-*.

16. Enhanced amount along with *7.5%* interest per annum from the date of filing the petition shall be deposited before MACT within a period of four weeks. It is directed that a lump sum amount of *Rs. 3,00,000/-* shall be released to the claimant from the deposit of enhanced amount within a period of two weeks thereafter. Remaining enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (***FDRs***) of *Rs. 25,000/-* each for periods of 3 month, 6 months, 9 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

17. By order dated 09th January 2026, it was noted that out of compensation of *Rs. 40,91,841/-* awarded along with interest @ *7.5%* per annum was directed to deposited by Insurance Company. Out of the total award amount, a sum of *Rs. 30 lakhs*, along with proportionate interest was directed to be kept in monthly FDR of *Rs. 20,000/-* each. Remaining amount, along with proportionate interest, has been directed to be released in her bank account.

Therefore, *Rs. 10 Lakhs* along with proportionate interest, has already been directed to be released in a bank account. Further, directions were passed for release of additional *Rs.10 Lakhs,* along with proportionate interest out of the amount deposited, on account of medical issues. The remaining amount shall continue to be deposited in FDRs of *Rs. 20,000/-* each, as already directed by MACT.

18. Accordingly, in view of the scheme set out by the MACT in the impugned award and the order of this Court dated 09th January 2026, the original compensation deposited shall continue to be disbursed as per the scheme set out by the MACT in the impugned award.

19. Accordingly, the appeal is disposed of.

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

21. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 13, 2026/mk/zb