2026:DHC:7422

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

% ***Reserved on: 18th August 2026***
Pronounced on : 02nd September 2026
Uploaded on : 03rd September 2026

\# **CNR No. DLHC010316172018**

\+ **MAC.APP. 178/2018 & CM APPL. 6002/2018**

IFFCO TOKIO GENERAL INSURANCE CO LTD. ....Appellant

Through: Ms. Suman Bagga, Ms. Mouli Sharma, Advocates.

versus

RADHEY SHYAM AND ORS .....Respondents

Through: Mr. Jatinder Kamra, Advocate.

\# **CNR No. DLHC010081472019**

\+ **MAC.APP. 135/2019**

RADHEY SHYAM & ANR .....Appellants

Through: Mr. Jatinder Kamra, Advocate.

versus

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

Through: Ms. Suman Bagga, Ms. Mouli Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These cross-appeals have been filed assailing impugned award dated 06th November 2017, passed by the Motor Accident Claims Tribunal, North

District, Rohini Courts, Delhi ['*MACT/Tribunal*'] in ***Suit No.4564/2016***, whereby compensation of *Rs.12,10,000*/- along with interest at the rate of 9% per annum was awarded, in relation to an accident which occurred on 15th March 2012, and resulted in the death of *Anil Kumar Maurya* [hereinafter, '***deceased***'], who was *18 years old* at the time.

2. ***MAC.APP.178/2018*** has been filed by the Insurance Company, assailing the finding of the MACT on the issue of negligence, as well as the fastening of liability upon the driver of the motorcycle on which the deceased was travelling as a pillion rider, whereas ***MAC.APP.135/2019*** has been filed by the Legal Representatives ['***LRs***'] of the deceased seeking enhancement of the compensation awarded by the MACT.

<u>The incident</u>

3. The accident in question occurred on 15th March 2012. On that day, deceased/*Anil Kumar Maurya* was travelling as a pillion rider on the motorcycle bearing registration no. *DL-8SAT-1508*, which was being driven by *Akash* [*respondent no.4 in MAC.APP.178/2018*] in a rash and negligent manner. It was alleged that at about 09:30 a.m. when they reached near *40 Foota Road, Prem Nagar, near Mubarakpur Road, Delhi*, *Akash* tried to overtake the tractor-trolley proceeding ahead of them, but due to the high speed, said motorcycle got stuck in the tractor-trolley, as a result of which the deceased, who was riding as a pillion rider, fell onto the road, and got caught under the rear wheel of the tractor trolley, sustaining grievous injuries. He was taken to *Sanjay Gandhi Memorial Hospital, Delhi*, where he was declared '*brought dead*'.

4. Parents of the deceased filed a claim petition under Sections 166 and

140 of the Motor Vehicles Act, 1988 ['*MV Act*'], alleging that the accident occurred "*solely due to high speed, rash and negligent, zigzag driving*" of *Akash*, who was driving the motorcycle. The said motorcycle was insured by the appellant/Insurance Company in ***MAC.APP. 178/2018***.

Submissions on behalf of the Insurance Company

5. *Ms. Suman Bagga*, counsel for the Insurance Company, contended that the claim filed alleging sole negligence on part of the motorcycle driver/*Akash*, was not made out, as the claimants had failed to prove the negligence of the motorcycle driver/*Akash*. This assertion was based upon the following submissions:

i. ***firstly***, that the claim itself, as stated above, had been filed alleging sole negligence on part of the motorcycle driver and, therefore, had to be proved on that basis;

ii. ***secondly***, the statement of the motorcycle driver/*Akash*, was recorded, wherein he stated that one tractor-trolley came from behind in a negligent manner and hit the motorcycle with great force, as a result of which he and the pillion rider fell on the road;

iii. ***thirdly***, the chargesheet also records the statement of motorcycle driver/*Akash*, who stated that the tractor was in front of them, was loaded with bricks, and was being driven by its driver in a high speed and negligent manner. When he tried to overtake it from the left side, the tractor pressed the motorcycle towards the side, as a result of which, the pillion rider was caught under its rear wheel.

iv. ***fourthly,*** the statement of **PW-2**, *Raj Kumar Budh*, who was pressed as an eyewitness by the claimants, recorded that he was returning to his house in his car around that time, when two boys overtook him from the right side and hit against a tractor trolley in its back left side. The pillion rider fell under the wheel of the tractor and was crushed under that wheel. **PW-2** further stated that he had told the police about the negligence of both the drivers. The same was also reiterated by him during his cross-examination;

v. ***fifthly***, *Ms. Bagga* relies upon the evidence of **R2W1** [*motorcycle driver/Akash*], who gave a brief statement before the MACT, upon which he was not cross examined by counsel for claimants, despite opportunity having been given. On this basis, she contends that the claimants have neither taken any steps towards proving negligence on part of the motorcycle driver/*Akash* nor confronted him with any suggestions in that regard;

vi. ***sixthly,*** she relies upon the site plan, wherein it is noted that the collision was caused by the tractor, which pressed the motorcycle towards the side;

vii. ***seventhly***, she relies upon the letter written by father of the deceased to the *Human Rights Commission*, wherein he stated that he, along with *Akash*, had gone to the police station to register an FIR. He also wrote that the police officials did not record in the FIR what was mentioned by *Akash*, and instead obtained his signatures by threatening him. He further stated that that the police took all steps to save the tractor driver.

6. On this basis, *Ms. Bagga*, counsel for the Insurance Company, contends, that on one hand, despite claiming sole negligence on part of the motorcycle driver/*Akash*, no proof was provided by counsel for the claimants

and, on the other hand, consistent statements were made by father of the deceased that he and *Akash* had gone together to register an FIR and had a grievance that the tractor driver had not been roped in by the police.

7. It is a matter of fact that the chargesheet or the final report which was filed, was against an untraced vehicle, and therefore, nobody was being accused therein. This cast a doubt regarding the involvement of the offending vehicle/motorcycle.

Submissions on behalf of the claimants

8. *Mr. Jatinder Kamra*, counsel, appearing for the claimants, counters the arguments made by *Ms. Bagga*, and submits the following:

i. ***firstly***, that said accident was a case of composite negligence and the same was stated by father of deceased, *Radhe Shyam*, who testified as **PW-1**, in his evidence by way of affidavit;

ii. ***secondly***, neither was any written statement filed by the motorcycle driver/*Akash*, nor did he state anything during his examination-in-chief, and therefore, there was no occasion to cross-examine him on any aspect;

iii. ***thirdly***, the motorcycle driver/*Akash* admittedly did not possess a driving license and, therefore, ought to be treated as being negligent in any case, whatsoever;

iv. ***fourthly***, in the written statement filed by the Insurance Company, it did not take the defence that that the motorcycle driver/*Akash* was not negligent. The response in the written statement was merely related to the breach of policy conditions and the accident having occurred due to the negligent driving of the tractor driver who could not be traced by the police.

v. ***fifthly***, since the motorcycle was insured under a comprehensive package policy, the pillion rider would, in any case, be entitled to compensation. In this regard, he relied upon the decision of this Court in ***Yashpal Luthra & Anr. v. United India Insurance Co. Ltd. and Anr.***, 2009:DHC:5510. For ease of reference, the relevant portion from ***Yashpal Luthra*** (*supra*) is extracted as under:

> "3. *On 24th February, 2006 at about 9.30 pm, the deceased was returning home on motorcycle bearing No.DL-7SAU-2074 being driven by his friend. The deceased was sitting on the pillion of the said motorcycle. At Ahuja Park red light near Lodhi Road Complex, the aforesaid motorcycle was hit by an unknown vehicle, due to which the deceased fell down and suffered fatal injuries.*
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> *xx*
>
> *5. Respondent No.1 contested the claim petition before the learned Tribunal on the ground that respondent No.1 has not covered the risk of a pillion rider on the two-wheeler. The learned Tribunal accepted the plea of respondent No.1 and exonerated respondent No.1 from the liability. The learned Tribunal passed the award of Rs.4,53,300/- against respondent No.2 only.*
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> *xx*
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> *7. With respect to the liability of respondent No.1 under the policy, the General Manager of respondent No.1 was examined by this Court under Section 165 of the Indian Evidence Act on 5th November, 2009 when he admitted the liability of respondent No.1 in respect of the deceased and undertook to deposit the entire award amount along with interest as per the award of the learned Tribunal within 30 days. This Court also examined the officers of Insurance Regulatory and Development Authority (IRDA) and Tariff Advisory*

Committee (TAC) on 26th October, 2009. The IRDA issued circular dated 16th November, 2009 and convened a meeting of all the Insurance Companies on 26th October, 2009 when all the Insurance Companies admitted their liability in respect of a pillion rider on a two wheeler and occupants in a private car under the package/comprehensive policy. IRDA has also issued a circular dated 3rd December, 2009 to all the Insurance Companies to implement the circular dated 16th November, 2009 within a fixed time frame. The detailed judgment in this regard has been passed by this Court on 9th December, 2009."

(emphasis added)

vi. ***Sixthly***, he relies upon the decision of the Supreme Court in ***Pawan Kumar v. Harkishan Dass Mohan Lal,*** (2014) 3 SCC 590, to contend that in cases of composite negligence, the claimant is entitled to sue all or any of the tortfeasors, and both the tortfeasors, in such cases, would be considered jointly and severally liable. For ready reference, the relevant paragraphs from ***Pawan Kumar*** (*supra*) have been reproduced hereinbelow:

"*7. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:*

> *"WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is*

said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

………………………...

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous...."

(emphasis added)

vii. ***Seventhly***, he relied upon the decision in ***National Insurance Co. Ltd. v. Baby Sapna Saxena***, 2017 SCC OnLine Del 9942, rendered by a Single Judge of this Court on 11th August 2017, wherein, in a similar case, where the police could not locate the truck driver and the FIR resulted in an untraced report, the Court observed that the FIR is only the starting point of action in criminal law and cannot prevent a case from being brought out against such other persons whose involvement or complicity can be proved by the evidence which is available. In this regard, the relevant paragraphs from ***Baby Sapna Saxena*** (*supra*) are extracted as under:

"5. The basic contention urged by the appellant is that the accident having occurred on 01.11.2012, no first information report was immediately lodged and further that Hari Om Saxena, father of the three injured children had lodged a report two days after the occurrence, i.e. on 3.11.2012, with the local police station which resulted in FIR No. 88/2013 being registered, the effect whereof was that the accident had been caused due to negligence on the part of the truck driver, the identity of which was not known. It is the submission of the insurer that the police could not locate the truck driver inspite of investigation and eventually the said FIR resulted in an untraced report being submitted in the court of Magistrate, putting a curtain on such proceedings. It is submitted that the pleadings on the basis of which the present petitions were filed and the evidence to the effect that the driver of the car was also negligent have been manufactured only to extract money.

6. The submissions of the insurance company do not impress this Court. It is trite that FIR is only the starting point of action in terms of criminal law. It is never expected to be a compendium of entire facts on which the criminal charge is expected to be eventually founded. If contrary were the expectation, there would be no need for any investigation. The purpose of the investigation is to find out the truth. If the police, inspite of investigation, is unable to trace out the offending vehicle - the truck in the present case - it does not mean that there cannot be a case brought out against such other persons whose involvement or complicity can be proved by the evidence which is available."

(emphasis added)

Analysis and findings

9. It is quite clear from the statement made by the father of deceased, *Radhe Shyam* [**PW-1**] in his evidence by way of affidavit, that the substratum of the claim was composite negligence, even though in the claim petition it

was taken as sole negligence.

10. It is a settled principle of law that in cases of composite negligence, where two vehicles are involved, the claimant can sue any or all of the tortfeasors, who would be jointly and severally liable. It is quite clear that the claimant had also pressed his claim against the motorcycle driver/*Akash*. It is another matter that in the initial stages, father of the deceased attempted to rope in the tractor driver by stating so in the FIR, but since the FIR resulted in an untraced vehicle, the claimants cannot be precluded from laying a claim against the motorcycle driver/*Akash*.

11. This claim against the motorcycle driver/*Akash* is also buttressed by the evidence of the eyewitness, **PW-2**/*Raj Kumar Budh*, who clearly stated the circumstances in which the accident occurred, in that the motorcycle driver/*Akash* and the pillion rider/deceased had overtaken him from his right side in a fast speed, and hit against the tractor-trolley on its back left side. He stated that the pillion rider "*fell under the wheel of the tractor and was crushed under that wheel*". He further stated that he had picked up the boy [*deceased*] and taken him to *Sanjay Gandhi Memorial Hospital* in his car, where he got him admitted. The driver of the motorcycle/*Akash* also accompanied him to the hospital. He also stated that on being called by the police, he went to *PS Rohini*, where he was interrogated by the police regarding the accident.

12. **PW-2**/*Raj Kumar Budh* further stated that the accident took place due to the rash and fast driving of said motorcyclist. During his cross-examination, he stated that he had told the police about the negligence of both the drivers and that it was true that the "*driver of motorcycle as well as*

of tractor both were negligent in their driving". Moreover, the statement furnished by the motorcycle driver/*Akash* clearly recorded that a passerby had taken his friend and him to *Sanjay Gandhi Memorial Hospital* for treatment. The testimony of **PW-2**/*Raj Kumar Budh*, is therefore, corroborated by the statement of the motorcycle driver/*Akash*. While recording the FIR as well, the statement of motorcycle driver/*Akash* was noted, wherein he stated that "*one person in Nano car came there for our help and brought both of us at SGM Hospital wherein doctor declared Anil dead*".

13. The reliance placed by the Insurance Company upon the site plan, as well as upon the one-line statement made by the police official who prepared the site plan, may not be determinative of the issue of negligence so as to fasten the entire negligence upon the driver of the tractor. The statement made in the site plan is cursory. It merely states a fact that the accident was caused by the tractor, which caused the motorcycle to be pressed towards the side. This by no means, can be considered as determining the issue of negligence or as excluding the negligence on part of the motorcycle driver/*Akash*.

14. The reliance placed by *Ms. Bagga*, counsel for Insurance Company, upon the letter written by the father of the deceased to the *Human Rights Commission* also does not take away the negligence attributable to the motorcycle driver/*Akash*. It must be noted that the letter was written on 02nd April 2012, about a month after the accident had taken place, when the father of the deceased would have been making desperate attempts in order to obtain compensation in respect of the death of his son.

15. What is determinative is that the motorcycle driver/*Akash* neither filed any evidence nor stated anything material during his examination-in-chief. He merely stated, "*On 15.03.2012, I was driving motor cycle DL-8S-1508. On that day, I along with my friend Anil Kumar Maurya was going to market Chhaterpur road to purchase ration. Our motorcycle met with an accident. I was not having any driving license. Said motorcycle was owned by Sh. Pawan Kumar Mishra*".

16. Therefore, in the opinion of this Court, *Mr. Kamra's* assertion that there was no requirement to cross examine the motorcycle driver/*Akash*, who testified as **R2W1**, is quite appropriate and apposite. There is nothing which the motorcycle driver/*Akash* states in terms of the negligence being fastened solely upon the driver of the tractor and, therefore, no purpose could be served by cross-examining him further. Moreover, no written statement was filed by the motorcycle driver/*Akash*, despite the fact that a claim of sole negligence was made against him by the claimants in the claim petition. Furthermore, neither was any evidence placed on record by the Insurance Company, nor did the written statement filed by it contain any assertion to the effect that the motorcycle driver/*Akash* was not negligent, particularly when the written statement had been filed in response to a claim of sole negligence on the part of the motorcycle driver/*Akash*.

17. Considering also that the motorcycle driver/*Akash* was driving without a driving license, the Court is inclined to consider that, at the very least, it was a case of composite negligence. Therefore, fastening of the liability, by the MACT, upon the motorcycle driver/*Akash*, and consequently upon the Insurance Company for payment of compensation, is not amiss.

18. Furthermore, the statements made by the motorcycle driver/*Akash* throughout the proceedings were inconsistent. In the statement made before the police, he states that the tractor hit him from behind. However, while recording the FIR, he stated that he overtook the tractor from the right side. Further, again, in the chargesheet, he stated that he tried to overtake the tractor from the left side. Therefore, variance in the statement made before the police and what is recorded in the FIR is quite evident.

Conclusion

19. In view of the above, the assessment made by the MACT, ***first*** in, rejecting the testimony of **R1W1**, *Sh. Akhilesh Jha*, who was not an eyewitness, and whose testimony was based on hearsay, and ***second***, in relying upon the testimony of **PW2**, *Raj Kumar Budh*, an eyewitness, whose testimony stood corroborated, was not amiss. The finding of negligence is required to established on the basis of the '*preponderance of probabilities*', and accordingly, there is no material on record to arrive at a conclusion contrary to the one arrived at by the MACT.

20. *Mr. Kamra*, counsel for the claimants, has, in the cross-appeal preferred by him, also sought alignment of the awarded compensation with the principles enunciated by the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi*** (2017) 16 SCC 680.

21. Accordingly, the following adjustments shall be made:

i. *Loss of love and affection* shall be deleted in terms of decision of the Supreme Court in ***United India Insurance Co. Ltd. v. Satinder Kaur,*** (2021) 11 SCC 780;

ii. Compensation towards *funeral expenses* and *loss of estate* has been rightly awarded at *Rs.15,000/-* each; However, *loss of consortium* shall be granted at ***Rs.80,000/- (Rs.40,000 × 2)***, in respect of both parents of the deceased;

iii. *Loss of dependency* was calculated by taking the notional income of deceased at *Rs.12,000/-* per month and applying a multiplier of '15'. The same ought to be corrected, and accordingly, a multiplier of '**18**' along with *future prospects* at **40%,** shall be granted, considering that the deceased was *18 years old* at the time of the accident.

22. In view of the above, the compensation shall be revised as under:

S. NO.	HEADS	AWARDED BY THE TRIBUNAL	AWARDED BY THIS COURT
1.	Monthly income of deceased (A)	Rs. 12,000/-	Rs. 12,000/-
2.	Add Future Prospects (B) @40%	NIL	Rs. 16,800/-
3.	Less Personal expenses of the deceased (C) @ 50%	Rs. 6,000/-	Rs. 8,400/-
4.	Monthly loss of dependency [B-C = D]	Rs. 6,000/-	Rs. 8,400/-
5.	Annual loss of dependency (Dx12)	Rs. 72,000/-	Rs. 1,00,800/-
6.	Multiplier (E)	15	18
7.	Total loss of dependency (Dx12xE = F)	Rs. 10,80,000/-	Rs. 18,14,400/-
8.	Loss of love and affection	Rs. 1,00,000/-	NIL
9.	Compensation for loss of consortium (G) (40,000x2)	NIL	Rs. 80,000/-
10.	Compensation for loss of estate (H)	Rs. 15,000/-	Rs. 15,000/-
11.	Compensation towards funeral expenses (I)	Rs. 15,000/-	Rs. 15,000/-

12.	Total compensation (F+G+H+I = J)	Rs. 12,10,000/-	Rs. 19,24,400/-
13.	Interest	9%	9%
14.	**Enhanced amount**	**Rs. 7,14,400/-**	

Directions

23. For the aforesaid reasons, compensation has been enhanced by ***Rs.7,14,400/-*** ['***enhanced amount***'].

24. It is therefore directed that the enhanced amount along with interest at the rate of *9%* per annum, be deposited before the MACT within a period of *four weeks*. It is directed that a lump sum amount of *Rs. 2,00,000/-* shall be released in favour of the claimants from the deposit of enhanced amount within a period of *two weeks* thereafter. Remaining enhanced amount, along with accrued interest till date, shall be kept in Fixed Deposit Receipts ['***FDRs***'] of *Rs. 20,000/-* each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of the claimants. The amount of FDRs on maturity would be released to the Savings Bank Account of the claimants upon due verification. The apportionment of the enhanced amount shall be the same as that directed by the MACT in respect of the originally awarded amount.

25. The originally awarded amount, along with accrued interest thereon, if not already released, shall be released in favour of the claimants in terms of the directions passed by the MACT *vide* impugned award dated 06th November 2017.

26. Appeals are disposed of in the above terms.

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

28. Statutory deposit, if any, shall be refunded to the Insurance Company.

29. Copy of this judgment be sent to the concerned MACT/bank for information and necessary compliance.

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

(ANISH DAYAL)
JUDGE

SEPTEMBER 2, 2026/ak/ya