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

% ***Date of decision: 03rd September 2026***

\# **CNR No. DLHC011881922013**

\+ **MAC.APP. 1124/2013**

THE NEW INDIA ASSURANCE CO LTD .....Appellant

Through: Mr. Pankaj Seth, Ms. Shruti Jain and Ms. Tanya Jindal, Advs.

versus

SAMPAT & ORS .....Respondents

Through: Mr. S.N. Parashar and Mr. Ritik Singh, Advs. for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This appeal has been filed by the Insurance Company assailing the judgment dated 09th September 2013 passed by the Motor Accident Claims Tribunal [‘***MACT***’], Karkardooma Courts, Delhi, in MACT No. 18/2012, whereby compensation of *Rs.10,98,500/-* along with interest @ *9%* per annum was awarded.

2. The accident occurred on 11th December 2011, when the deceased, *Karan*, aged 21 years, was travelling as a pillion rider on motorcycle bearing registration No. DL-7S-BL-7567, driven by respondent No. 4, from Noida towards his home. At a crossing, the motorcycle was hit by an unknown vehicle. An FIR was registered against the driver of the unknown vehicle. The claim, however, was raised against *Kishan Verma*, the driver of

the motorcycle, who also died in the accident. His mother, *Geeta Verma*, was impleaded as a party and was examined as **R1W1**.

3. *Mr. Pankaj Seth*, counsel for the Insurance Company, submits that all the legal heirs of the deceased driver ought to have been impleaded as parties and, in their absence, a finding of negligence could not have been returned against the deceased driver. In support of his submission, he relies upon the judgment of the Supreme Court in ***Machindranath Kernath Kasar v. D.S. Mylarappa,*** (2008) 13 SCC 198 and he specifically relies on the following paragraphs:

> "*38. The issue to be examined herein is whether in the claim cases before the Motor Accidents Claims Tribunal, the <u>driver of a vehicle who has been accused of negligence is a necessary party to the proceedings or whether the owner alone can be impleaded</u>.*
>
> *39. In this case, two sets of claim cases were heard together, one filed by the passengers of KSRTC bus and the other filed by the driver of the said bus. In short, unless the finding of negligence in the claim cases of the passengers was negatived in the claim case filed by the driver himself, the said finding of negligence on the part of the driver could not have been varied.*
>
> *40. <u>The analysis of our findings aforementioned</u> is:*
>
> *(i) In the first set of claims cases, the driver of the bus was held to be negligent and, therefore, a ruling that the driver is a necessary party would mean that the bus driver must necessarily be involved in these proceedings. However, the driver of the bus had sufficient opportunity to make a representation against the allegation of negligence as he was examined as RW 1 in the claim cases filed by the passengers, even though he was not formally impleaded as a respondent. Hence, the High Court has correctly held that he was a "party" to the proceedings.*
>
> *(ii) In the claims filed by the driver of the bus (namely the appellant herein), specific allegations were made*

against the driver of the truck. Hence, the question is whether the driver of the truck must necessarily be made a party to the proceedings. He was not.

Here, one must bifurcate the terms "party" and "necessary party". "Party" has been correctly defined by the High Court in the impugned judgment in terms of involvement in the proceedings regardless of formal impleadment. However, a necessary party has been defined in 5th Edn. of Black's Law Dictionary as follows:

"In pleading and practice, those persons who must be joined in an action because, inter alia, complete relief cannot be given to those already parties without their joinder. Fed.R.Civil P. 19(a)"

41. First and foremost, as has been stated in the body of the judgment, natural justice would mandate involvement of a driver, as an adverse finding on negligence cannot and should not be made against him without giving him the opportunity to at least make a representation as a witness. More importantly, however, one must look at the kind of evidence which must be led in such cases. The appellants have, as noticed hereinbefore, relied on Patel Roadways [ILR (2000) Kant 3286] to try and prove that the driver need not be a party. Firstly, this case only relates to formally impleading the driver as a party. However, the fact that joint tortfeasors have been mentioned in the judgment is relevant."

(emphasis added)

4. It is evident from the aforesaid paragraphs that the Supreme Court was considering a case where the driver of the alleged offending vehicle was alive and, therefore, had to be given an opportunity to defend himself against the allegation of negligence, including by appearing as a witness. The facts of the present case are materially different. The driver of the offending vehicle, *i.e.* the motorcycle on which the deceased was travelling as a pillion rider, had

himself died in the accident. His mother was impleaded as a party and was also examined as a witness. In these circumstances, the plea of the Insurance Company that all the legal heirs of the deceased driver were required to be impleaded is without merit and serves no meaningful purpose.

5. The issue of negligence has to be determined on the basis of the facts and circumstances established on record. In the present case, claimants examined the father of the deceased, *Prabhu Dayal*, as **PW1**, who deposed regarding the accident, as well as the age and occupation of his son. The claimants also examined *Ram Kishore* as **PW2**, who was stated to be an eyewitness to the accident. *Ram Kishore* categorically deposed that on 11th December 2011, at about 11:40 p.m., while he was standing at the *Gol Chakkar in Sector-1, Noid*a, waiting for a bus to reach his home, the offending motorcycle, being driven rashly, negligently and carelessly, came from the wrong side of the road and was hit by an unknown car. As a result, the motorcycle fell and both the driver and the pillion rider sustained grievous injuries. He further stated that someone called the police, pursuant to which police personnel arrived and took the injured persons to the hospital.

6. **PW2** was duly cross-examined by the Insurance Company and rebutted the suggestion that he was deposing falsely. There was no other evidence placed by the Insurance Company in regard to the accident.

7. On a preponderance of probabilities, the MACT concluded that the accident occurred due to the negligence of both the driver of the motorcycle and the driver of the unknown vehicle and, accordingly, treated the case as one of composite negligence. Since compensation could be claimed against either of the joint tortfeasors, the issue was decided in favour of the claimants and against the driver of the motorcycle, resulting in liability being fastened

upon the Insurance Company.

8. This Court finds no merit in the contention of the Insurance Company that all the legal heirs of the deceased driver were required to be impleaded and examined before a finding of negligence could be returned against him.

9. Moreover, *Geeta Verma*, the mother of the deceased driver, had in any event been examined as **R1W1**. She stated that the deceased was sitting on the pillion due to his own fault, despite the driver, deceased *Kishan Verma*, having asked him not to sit on the pillion while he was holding a learner's licence. She further stated that the deceased was riding on the motorcycle without wearing a helmet and was, therefore, himself responsible for the injuries sustained.

10. In the cross-examination, she clearly stated that she had not seen the alleged accident and had merely heard of it. The motorcycle was owned by her and her son used to ply the motorcycle and was holding a learner's licence. She categorically stated that he was not having any permanent licence.

11. In these circumstances, the objection of the Insurance Company with regard to the impleadment of the legal heirs of the deceased driver is rejected.

12. As regards the quantum of compensation, certain aspects require realignment in terms of the principles laid down by the Supreme Court in ***Sarla Verma v. DTC**, (2009) 6 SCC 121* and ***National Insurance Co. Ltd. v. Pranay Sethi**, (2017) 16 SCC 680*.

13. The MACT assessed the monthly income of the deceased at *Rs.6,656/-*. The finding of the monthly income is sustained. Future prospects are required to be added to the said income.

14. In view of the age of the deceased, who was 21 years old at the time of

the accident, the multiplier applicable in terms of ***Sarla Verma*** (*supra*) is 18.

15. The MACT had awarded future prospects at *50%*. Since the deceased was 21 years of age and was not in permanent employment, future prospects are required to be assessed at *40%*, in terms of the applicable principles laid down in ***Pranay Sethi*** (*supra*).

16. Further, compensation for conventional heads such as *loss of consortium*, *loss of estate*, and *funeral expenses* are also to be aligned in terms of ***Pranay Sethi*** (*supra*). Compensation awarded under the head of loss of love and affection shall be *nil*, in view of the law laid down in ***United India Insurance Co. Ltd. v. Satinder Kaur***, (2021) 11 SCC 780.

17. Considering that there were three claimants, namely mother, brother, and father, *loss of consortium* would be *Rs.40,000 x 3,* totalling to *Rs. 1,20,000/-*; *loss of estate* will be taken at *Rs.15,000/-* and *funeral expenses* will be taken at *Rs.15,000/-*.

18. The revised compensation will be as under:

S. No.	Heads	Awarded by the Tribunal	Awarded by this Court
1	Income of deceased (A)	Rs. 6,656/-	Rs. 6,656/-
2	Add Future Prospects (B) 40%	Rs. 3,328/-	Rs. 2,662/-
3	Less: Personal expenses of deceased (C) ½	Rs. 4,992/-	Rs. 4,659/-
4	Monthly Loss of dependency (A+B)-C=(D)	Rs. 4,992/-	Rs. 4,659/-
5	Multiplier (E)	16	18
6	Total loss of dependency (D x E)x 12 = (F)	Rs. 9,58,464/-	Rs. 10,06,344/-
7	Compensation for loss of consortium (G) (Rs. 40,000x3)	*Nil*	Rs. 1,20,000/-
8	Compensation for loss of estate (H)	Rs. 10,000/-	Rs. 15,000/-

9	Compensation towards funeral expenses (I)	Rs. 25,000/-	Rs. 15,000/-
10	Compensation for loss of love and affection (J)	Rs. 1,00,000/-	*Nil*
11	Medical Bills (K)	Rs. 5,000/-	Rs. 5,000/-
12	Total compensation (G+H+I+J+K)= (L)	Rs. 10,98,464/-	Rs. 11,61,344/-
13	Enhanced Compensation	Rs. 62,880/-	
14	Rate of Interest Awarded	9%	9%

19. Accordingly, the compensation is enhanced by *Rs. 62,880/-* [‘***enhanced amount***’]

20. The Insurance Company is directed to deposit the enhanced amount along with accrued interest *@9%* per annum from the date of filing the claim petition before the Registrar General of this Court within a period of four weeks from today.

21. Upon deposit of the enhanced amount along with accrued interest thereon, the same shall be released to claimant as a lumpsum.

22. This Court by order dated 09th December 2013 directed the Insurance Company to deposit the entire award amount along with up-to-date interest accrued thereon with the Registrar General of this Court. Upon deposit it was directed that *50%* of the awarded compensation be released in favour of the claimants as per the terms and conditions fixed by the Tribunal.

23. Since the appeal stands disposed of, and considering that the accident occurred in 2011 and the appeal has remained pending since 2013, with more than a decade having lapsed, the balance compensation, along with the accrued interest thereon, shall be released to the claimants in a lump sum.

24. *Mr. S.N. Parashar*, counsel for claimants, points out that there was no

apportionment awarded by the MACT.

25. By order dated 03rd February 2016, this Court had directed that the *50%* release of the amount shall be made to the mother of the deceased. The brother of the deceased, who was minor at that time, would now be a major.

26. In the facts and circumstances, the compensation is apportioned as under:

(i) *50%* share to the mother of the deceased;

(ii) *25%* share to the brother of the deceased; and

(iii) *25%* share father to the father of the deceased.

27. Accordingly, the appeal is disposed of.

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

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

(ANISH DAYAL)
JUDGE

SEPTEMBER 03, 2026/mk/*zb*