



2026:DHC:8721



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 11th August 2026*
Pronounced on : 05th October 2026
Uploaded on : 06th October 2026

+ MAC.APP. 263/2017 & CM APPL. 10252/2017

THE ORIENTAL INSURANCE CO LTDAppellant

Through: Mr. A.K. Soni and Mr. Pavan
Kumar, Advs.

versus

DALIP KUMAR GUPTA & ORSRespondents

Through: Ms. Parul Dutta, Adv. for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed by the Insurance Company assailing the impugned judgment dated 10th January 2017 passed by Motor Accident Claims Tribunal, South District, Saket Courts, New Delhi (*'MACT/Tribunal'*) in MACT No. 75478/2016 by which compensation of Rs. 34,08,200/- along with 8% interest per annum was awarded.

The Incident

2. The accident occurred on 27th April 2011 at about 7:30 pm near Gate No. 2, AIIMS Hospital, in front of bus stand, Ring Road, New



2026:DHC:8721



Delhi when the door of Honda City Car bearing no. HR-26-M-7364 (hereinafter, '*offending vehicle*') was suddenly opened by respondent no.9/driver. The car door hit against the leg of *Smt. Chander Prabha* (hereinafter, '*deceased*') who was riding as a pillion rider on the motorcycle no. DL-3S-BJ-4679. Due to the accident, the motorcyclist lost balance and they fell on the road, as a result of which the pillion rider sustained fatal injuries.

3. The deceased was 47 years of age and was working as an Accounts Officer, earning gross salary of Rs. 2,67,000/-. The claim petition was instituted by her husband, daughter and son (hereinafter, '*claimants*').

4. Respondent no.4/*Gaurav Sharma* was the registered owner of the offending vehicle and contested the claim petition by stating that the vehicle had already been sold to respondent no.5/*Gaurav Mittal* on 11th October 2010. It was further stated that respondent no.5/*Gaurav Mittal* had sold the vehicle to respondent no.6/*Gurvinder Singh* on 16th November 2010, who subsequently sold it to respondent no.7/*Pankaj Sapra* on 4th January 2011, after which it was transferred to *Ravi Kant Sapra* and was sold to respondent no.8/*SK Bhatia* on 28th June 2011. The vehicle was recovered from the possession of respondent no.8/*SK Bhatia*, the current owner. The offending vehicle was insured with appellant/Insurance Company.



2026:DHC:8721



The Impugned Award

5. Respondents/claimants had examined *Jot Prakash*, Accounts-Assistant at EFY Enterprises, as '**PW-1**', who had brought on record the salary slip, service record and bank statement of deceased. The husband of claimant was examined as '**PW-2**', who tendered his evidence in affidavit as **Ex.PW2/A**. During the cross-examination, he had stated that he was not an eye-witness to the accident. *Uma Shanker* was examined as '**PW-3**' and had stated that he was an eye-witness. *Dharmender Gupta* was examined as '**PW-4**' and tendered his evidence by way of affidavit as '**Ex PW4/I**'. He claimed to be an eyewitness to the accident stating that he was present on the spot of accident and had informed about the details of the accident after coming across a pamphlet. *Prem Kumar Khurmi* was examined as '**PW-5**' and was also an eyewitness to the accident, however, he had not informed the police about the accident.

6. Appellant/Insurance Company, on the other hand, had examined *SI Harpal Singh*, Investigation Officer ('**IO**') as '**R6W1**' who stated that he had filed an '*untraced report*' on 28th January 2012 and during the investigation, no involvement of the offending vehicle was found.

7. As regards the issue of negligence, the Tribunal relied upon the testimony of eyewitnesses- *PW-3* to *PW-5* to hold that the accident had occurred due to rash and negligent driving of respondent no.9/driver. MACT observed that the matter had not been contested by the driver and owner, despite having knowledge of the proceedings and the witnesses



2026:DHC:8721



had only been cross examined by the Insurance Company on the basis of which no adverse inference could be drawn.

8. MACT awarded Rs. 34,08,200/- to respondents/claimants by assessing the annual income of deceased as Rs. 2,67,000/-, relying upon the evidence tendered by *PW-1* and Form-16 presented for assessment year 2011-2012. 30% was awarded towards future prospects and 1/3rd was deducted towards personal and living expenses, by considering her husband, daughter and son to be dependants. Multiplier of '13' had been taken. The compensation was tabulated as under:

Heads of compensation	Amounts
Loss of dependency	Rs. 30,08,200/-
Loss of love and affection	Rs. 1,50,000/-
Loss of consortium	Rs. 1,50,000/-
Funeral expenses	Rs. 50,000/-
Loss of estate	Rs. 50,000/-
Total	Rs. 34,08,200/-

Submissions on behalf of Appellant

9. The primary contention raised by appellant/Insurance Company was the involvement of offending vehicle in the accident. *Mr. A.K. Soni*, counsel for appellant/Insurance Company, drew the attention of the Court to the FIR, which noted that the accident had occurred due to a *golden Honda City car*, however, the registration number of the vehicle



2026:DHC:8721



could not be noted. The complaint had been filed by driver of the motorcycle.

10. *Mr. Soni*, also drew the Court's attention to the chargesheet filed by the IO, which noted that the driver of offending vehicle could not be traced during the investigation. After 95 days of the occurrence of the accident, an eyewitness, namely *Dharmendra Gupta (PW-4)*, among others had reached out to the husband of deceased by finding their number on a poster and had informed them about registration number of the offending vehicle. The chargesheet also noted that the husband of deceased had received the information from *PW-4* regarding the involvement of offending vehicle 30 days prior to giving this statement.

11. *Mr. Soni*, further pointed out the Detailed Accident Report ('*DAR*') filed before the MACT, which noted that as per the Call Detail Records ('*CDR*') of *PW-4*, his location was not found to be at the spot of the accident contradictory to the statement made by him. The Forensic Science Laboratory ('*FSL*') Report of the car recorded that there were no signs of impact or fresh repairing and denting.

12. Appellant/Insurance Company had examined the IO as *R6W1*, who stated that an '*untraced report*' ['*Ex.R6W1 (colly.)*'] had been filed on 28th January 2012, along with a final report. No involvement of the offending vehicle was found during investigation of the accident which had taken place from 28th April 2011 to 28th January 2012.



2026:DHC:8721



13. In his cross-examination, he had stated that a protest petition had been filed by the respondents/claimants. He further stated that the vehicle had been exchanged between 5 people and colour of the offending vehicle was 'golden', as alleged. He denied the suggestion that he had not investigated the case properly.

14. *Mr. Soni*, contended that the MACT had erred by relying upon the testimonies given by *PW-3*, *PW-4* and *PW-5*, which were not reliable.

15. *PW-3* was the driver of motorcycle and had stated in his cross-examination that he did not know the registration number of the offending vehicle and had not informed the police about it. He denied the suggestion that he had not informed the police about the description of offending vehicle and the alleged vehicle in question was not involved in the accident.

16. *PW-4* was a hawker present at the spot of accident selling handkerchiefs and combs near *Tilak Nagar* and *Sagar Pur*. He stated that he came across a poster on 6th July 2011 seeking details of the accident which had occurred on 27th April 2011 and had thereafter, provided the information to the husband of deceased. In his cross-examination, he stated that on the date of accident, he was returning from *Kalkaji Mandir* and got down at the AIIMS bus stop. He had noted down the vehicle number on a visiting card. He stated that he had not reported the accident to the police and that he did not know the family of deceased prior to the accident.



2026:DHC:8721



17. *PW-5* was also stated to be an eyewitness and he stated that he did not inform the police about the accident. He was travelling towards *Uttam Nagar* from *Faridabad* on the day of accident and was present at the bus stop when the accident took place.

18. *Mr. Soni*, stated that while the evidence of *PW-3* to *PW-5* had been discussed in the impugned award, however, the evidence of *R6W1* had not been discussed by the MACT. Furthermore, name of the driver had not been invoked in the criminal proceedings.

19. *Mr. Soni*, placed reliance on the decision of this Court in ***Oriental Insurance Co. Ltd. v. Naresh Kumar & Ors.*** 2026:DHC:2876, whereby, the Court was examining a case where the IO had received information regarding the number of offending vehicle after 47 days of the accident, through an alleged informer. In that case, the case diary, as examined by the Court had recorded a different offending vehicle. The Court had noted that the sudden appearance of such ‘*highly specific*’ information after 47 days from the registration of the FIR remained unexplained. Therefore, in view of the facts therein, the appeal of Insurance Company was allowed.

Submissions on behalf of Respondents

20. As regards the testimony of witnesses, *Ms. Parul Dutta*, counsel for respondents/claimants, stated that while *PW-3* had not noted down the registration number of offending vehicle, he had described the make



2026:DHC:8721



of the vehicle, being, a Honda City in golden colour to the police on the date of accident. FIR had also been registered one day after the accident.

21. In response to the issue of the location of *PW-4* at the time of the accident, *Ms. Dutta*, stated that the CDR location does not provide an accurate account and only locates the nearest tower. Moreover, no question had been put to the witness regarding his location not being the same as the accident spot.

22. While the driver and owner had not entered the witness box, *Ms. Dutta*, stated that name of the driver had been disclosed by respondent no.7/*Pankaj Sapra*, who had sought time file reply, however, had not filed a reply. It was reiterated that the only witness examined by appellant/Insurance Company was the IO.

23. An application had been filed under Order VII Rule 11 of Code of Civil Procedure, 1908 (*'CPC'*) by the appellant/Insurance Company, challenging the involvement of vehicle which had been rejected by the Tribunal. Dismissal of this order had been challenged before this Court and *vide* order dated 29th January 2014, the Tribunal was directed to frame an additional issue, being, "*Whether a Honda City car bearing no. HR-26-M-7364 was met with an accident on 27.04.2011 at about 7.30 PM with motorcycle bearing no. DL-3S-BJ-4679?*"

24. In response to the query raised by the Court, counsel for respondents/claimants, stated that no criminal proceedings were instituted against the driver, considering that an '*untraced report*' had



2026:DHC:8721



been filed by the IO, in response to which a protest petition had been filed by them.

25. While notice had initially been issued to the driver and owner, respondent/*Gaurav* had filed a reply stating that the vehicle had already been sold by him and after subsequent transactions was recovered from the possession of respondent/*SK Bhatia*. Respondent/*Pankaj Sapra*, who was the owner at the time of accident had not been examined by respondents/claimants.

26. In support of her argument, *Ms. Dutta*, placed reliance on the decision of Supreme Court in *Anita Sharma v. New India Assurance Co. Ltd.* (2021) 1 SCC 171, whereby, the Court had stated that the assessment needs to be on the basis of preponderance of probabilities and not beyond reasonable doubt, as is the case in criminal proceedings. Fault should not be found merely because the best eyewitnesses have not been examined.

27. Further reliance was also placed on the decision of this Court in *Iffco Tokio General Insurance Co Ltd. v. Sunita Rani & Ors.* 2023:DHC:6484, where the Court had taken a view that the factum of involvement of vehicle could not be denied, even though he was not an eyewitness. Further, no doubt can be cast on the involvement of the vehicle merely because the police did not investigate the accident properly and identity of the vehicle had been traced out pursuant to efforts of the family of deceased.



2026:DHC:8721



Analysis

28. At the outset, Insurance Company has laid a strong challenge as regards involvement of the vehicle. The accident in question took place on 27th April 2011 near gate no. 2, AIIMS Hospital in front of the bus stand, Ring Road, New Delhi.

29. The allegation made was that the accident occurred due to opening of door of the offending vehicle. Respondent no. 4/*Gaurav Sharma* was the registered owner, however, the vehicle had undergone multiple transfers and was recovered from the possession of respondent no. 8/*S. K. Bhatia*. Details of the transfer of vehicle have been narrated in *paragraph 4* above. Appellant/Insurance Company was directed to deposit the compensation amount, since the insurance policy continued to be in the name of respondent no. 4/*Gaurav Sharma*.

30. On an appeal filed by the Insurance Company against the dismissal of their application under Order VII Rule 11 of Code of Civil Procedure, 1908, by order dated 29th January 2014, this Court had directed MACT to frame the following issue:

“Whether a Honda City car bearing no. HR-26-M-7364 was met with an accident on 27.04.2011 at about 7.30 PM with motorcycle bearing no. DL-3S-BJ-4679?”

31. Respondent no.1/husband of deceased examined himself as *PW-2*, along with three alleged eyewitnesses, who were examined as *PW-3*, *PW-4* and *PW-5*. All three eyewitnesses deposed on the same lines on



2026:DHC:8721



factum of the accident, by identifying the offending vehicle. While *PW-3* and *PW-4* were cross-examined by the Insurance Company, *PW-5* had been cross-examined by the owner. As regards the issue of negligence, MACT had essentially decided the issue in favour of claimants by relying upon the deposition of eyewitnesses, confirming the involvement of offending vehicle and factum of the accident.

32. FIR No. 147/2011 was registered the next day, *i.e.*, 28th April 2011, on the basis of DD No. 48A registered on the complaint of *Uma Shanker*, who was the driver of motorcycle on which the deceased had been riding as pillion. He stated that he was working as an Accounts Manager with *M/s Atelier Associates Pvt. Ltd.*, Noida and his acquaintance, *Prabha Mahajan* (deceased), had been riding pillion with him and they had been travelling towards her residence in *Hari Nagar*.

33. *Uma Shankar* stated that when they reached near AIIMS bus stop, a Honda City car of golden colour was standing in front of the bus stop. When he tried to go around the car from the right side, suddenly the car door opened and *Prabha Mahajan* who was sitting as pillion fell and sustained fatal injuries.

34. As per his statement, the offending vehicle fled away and '*he could not note the number*'. Therefore, there was no indication as to the identity of offending vehicle.

35. After investigation, chargesheet had been filed with the remarks "*untraced*". Statement of *Uma Shankar* was noted yet again, where he



2026:DHC:8721



stated that he did not note down the number of the offending vehicle. The chargesheet further revealed that they tried to trace the offending vehicle, but were unsuccessful.

36. On 01st August 2011, identity of the offending vehicle first came to light on the basis of an appeal for identification, which was made through a poster put up by the family of deceased at the bus stand requesting for any information regarding the offending vehicle and the accident. Pursuant to that, some people called up *Uma Shankar*, amongst them was one *Dharmender Gupta*, who gave his phone number and stated that the car number was *HR-26M-7364*.

37. It was found that the number of *Dharmender Gupta* had been given to the husband of deceased/*Dalip Kumar Gupta*, whose statement had also been recorded. He stated that he had received this information 30 to 35 days prior and had told his friend *Uma Shankar* about the same. However, they had no idea about the address of *Dharmender Gupta*.

38. Thereafter, summons had been issued to *Dharmender Gupta*, who stated that he sells handkerchiefs on a *rehdi*/cart and on 27th April 2011, when he was travelling in front of AIIMS around 07:15 p.m., driver of the offending vehicle had opened its door, due to which, the pillion rider travelling on the motorcycle fell down on the road. He had noted down the number of the offending vehicle and after the incident, driver of the offending vehicle fled the scene in his car. Driver of the motorcycle had taken the injured pillion rider to the hospital in an auto.



2026:DHC:8721



39. He stated that he saw the poster on 05th July 2011. He stated that he did not know the husband of deceased/*Dalip Kumar Gupta* prior and called the number given on the poster on 6th July 2011. In the testimony given by him (*PW-4*) before the MACT, he stated that he came across a pamphlet pasted on the bus stand on 6th July 2011 for notifying, if anybody had any information regarding the accident. Following that, he rang the number and told the details of accident.

40. In his cross-examination, he stated that he had seen the number of the offending vehicle and had written down the number on a visiting card. He stated that the telephone numbers on the poster were of “*Dalip uncle*” and “*Dalip uncle called me to his residence as I had told him on phone about the accident.*”

41. The other eyewitness, *Prem Kumar (PW-5)* had stated that on 27th April 2011, he was waiting for a bus at the bus stand, when he saw the motorcycle with the deceased sitting as a pillion rider. The accident occurred when the door of offending vehicle was suddenly opened by its driver. In his cross-examination, he stated that he had not informed the police about the accident and his statement had not been recorded and he was never approached for any statement. On the date of the accident, he was coming from *Faridabad* and proceeding towards *Uttam Nagar*.

42. *Uma Shankar (PW-3)* who was the driver of motorcycle, tendered his evidence by way of affidavit and deposed about the circumstances of the accident during his cross-examination. He admitted that he had



2026:DHC:8721



neither disclosed registration number of the offending vehicle to the police, nor had he noted down the same. He stated that the deceased was his sister-in-law. He denied the suggestion that he was deposing falsely to help the LRs of deceased on account of being related to them. He also stated that the FIR had been registered 30-40 days after the accident.

43. Yet another fact was brought to the attention of the Court by *Mr. A.K. Soni*, counsel for appellant/Insurance Company, with reference to the DAR which had been filed on 3rd February 2012, which notes that, as per the call detail records (*'CDR'*) location of the eyewitness was not found to be near AIIMS Hospital. It was further noted that, as per the FSL report, there were no signs of impact, fresh repair, or denting observed on the offending vehicle. As per the investigation conducted, it was stated that the accident had not occurred because of the said Honda City car and, therefore, an untraced report had been duly filed.

44. In the opinion of this Court, the testimony of *PW-3*, would have no bearing, except for the factum of the accident, but not in respect of involvement of the particular offending vehicle, since he clearly stated that he had not noted down the number of the offending vehicle. Further, it may also be noted that as per his statement, the FIR had been registered 30-40 days after the accident, however, the FIR in question had been registered on 28th April 2011, *i.e.* the next day after the accident on his complaint. Moreover, in his cross examination, he stated that the deceased was his sister-in-law, however, in the statement given



2026:DHC:8721



to the police, husband of deceased/*Dalip Kumar Gupta* has been stated as a mere friend.

45. *PW-5* who is also stated to be an eye witness, does not explain in his affidavit as to how, he came to know about the proceedings before MACT and how he came to give evidence in favour of the claimants in identifying the offending vehicle. No detail has been provided by *PW-5* in this regard. He simply stated that he was an eyewitness and he was conversant with the facts and circumstances of the accident.

46. In his cross examination, he clearly stated that he did not inform the police about the accident and neither did the police approach him for recording of his statement. The provenance of this eyewitness cannot be confirmed, since there is no background as to how he came around to testify in identifying the offending vehicle.

47. As regards *PW-4*, the timeline is a bit suspicious. *PW-4* stated he was a hawker and he saw the accident on 27th April 2011, but only informed the husband of deceased on 06th July 2011 when he saw the poster on the bus stand, even though he had written down the number of the offending vehicle on a visiting card. Even if he was a good Samaritan, it cannot be believed that having seen the accident, the injury sustained by the pillion rider and having noted down the number of the offending vehicle, he chose not to share it with the police. Moreover, he chose to retain the number and only, per chance, on seeing the poster, of



2026:DHC:8721



which, no evidence has been placed, he reported it to the husband of deceased.

48. Even after the information was provided to the husband of deceased on 06th July 2011, the said information was only supplied to the police after 30 to 35 days, when his statement had been recorded. This aspect is quite incredible.

49. Therefore, the chain of stated facts does not inspire confidence in the credibility of this witness. Besides the investigation, the DAR stated that his CDR showed that he was not present near the AIIMS hospital at that particular time. *Ms. Dutta*, counsel for claimant, countered this by stating that the CDR tower locations may not be accurate. However, the evidence that has been placed by the investigation team, in this regard, has to be believed for lack of any other evidence provided by *PW-4* in terms of his whereabouts.

50. With no evidence in support of his location near AIIMS hospital, as well as, the existence of the poster which had been put up and the omission on his part to inform the police, even if he had noted down the number of the offending vehicle, all these do not justify the MACT having taken this witness to be a credible witness. Moreover, the MACT has made a summary assessment in the sense where all three witnesses were aligned in their testimony, which is not correct, as explained above. Moreover, apart from denying their liability on account of transfer of



2026:DHC:8721



ownership, no evidence is available on behalf of the owner and the driver.

51. MACT also discounted the clear testimony of SI *Harpal Singh (R6W1)*, who stated that he had investigated the matter and found no involvement of this vehicle and an untraced report had been filed. He admitted that the claimants had filed a protest petition and he did not know whether it has been decided by the Court. He denied the suggestion that he had not investigated the case properly.

52. The Court is inclined to accept *Mr. A.K. Soni's* plea, in terms of reliance placed upon the decision of this Court in *Naresh Kumar (supra)*. The Court had taken a view that mere filing of a chargesheet against a vehicle which was ultimately seized, on the basis of a '*highly specific*' information after 47 days from the registration of the FIR, not only in respect of the registration number, but also the name of the driver, does not warrant a finding of rash and negligent driving of the alleged offending vehicle.

53. Accordingly, in this view of the matter, the Court is inclined to allow the appeal of Insurance Company and set aside the impugned award with regard to the issue relating to negligence.

54. By order dated 15th March 2017, the Court had directed the deposit of entire amount of compensation along with interest @ 8% before the MACT and had stayed the enforcement of impugned award.



2026:DHC:8721



55. Considering that no directions for release of compensation were passed by the Court, the MACT is directed to release the amount of compensation deposited along with accrued interest to appellant/Insurance Company.

56. If any amount has been released to the claimants, the same shall not be recoverable from the claimants.

57. Considering that this is a case of '*hit-and-run*' by an untraceable vehicle which occurred in 2011, the claimants shall be at liberty to approach the Claims Enquiry Officer of the Sub-Division or Taluka in which the accident took place, in view of the procedure provided under Clause 20 of the Solatium Scheme, 1989, formulated by the Central Government under Section 163(1) of the Motor Vehicles Act, 1988. Alternatively, claimants may seek compensation under *Compensation to Victims of Hit and Run Motor Accidents Scheme, 2022*, if applicable.

58. In view of the above, the appeal is allowed and disposed of.

59. Pending applications (if any) are rendered infructuous.

60. Statutory deposit, if any, shall be refunded to appellant/Insurance Company.

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

ANISH DAYAL
(JUDGE)

OCTOBER 05, 2026/RK/sp

Signature Not Verified

Digitally Signed By: RAHUL
KUMAR CHAUDHARY
Signing Date: 06.10.2026
14:36:01

MAC.APP. 263/2017

Page 18 of 18