



2026:DHC:8950



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 08th October 2026

CNR No. DLHC010063402021

+ MAC.APP. 21/2021 & CM APPL. 1443/2021

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Kunal Aggarwal, Advocate.

versus

SUSHEV KUMAR & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENTANISH DAYAL, J. (ORAL)

1. This appeal has been filed by the Insurance Company challenging the impugned award dated 19th October 2020 passed by Motor Accidents Claims Tribunal ('*MACT/Tribunal*'), New Delhi District, Patiala House Courts, awarding compensation of Rs. 65,34,081/- along with interest at 9% in relation to the injury sustained by claimant in an accident which occurred on 09th December 2014.

2. The claimant was travelling with his colleagues in a car bearing registration no. UP-16X-2222 driven by one *Intazar Hussain*. When they reached *Tolstoy Marg red light, Barakhambha Road*, a truck bearing no. HR-38K-0190 (hereinafter, '*offending vehicle*'), came from the Tolstoy Marg



side, skipped the red light and hit their car. The car went under the front and rear wheels of the offending vehicle and was dragged for about 15 meters.

3. The occupants sustained grievous injuries and *Intazar Hussain* was declared brought dead. Counsel for appellant/Insurance Company, states that the other two claim petitions were settled with respect to the other injured claimant-*Suman Sindhu* and deceased-*Intazar Hussain*.

4. Claimant/*Sushev Kumar* was certified with 30% permanent visual disability and was also treated equivalent to his functional disability at 30%, since it was assessed to have an actual impact on his earning capacity.

5. *Mr. Kunal Aggarwal*, counsel for appellant/Insurance Company, contends that the insurer of the vehicle in which the claimant/*Sushev Kumar* had been traveling in, also ought to have been impleaded as a party, considering that there was contributory negligence on behalf of the driver of the car in which the claimant had been travelling as an occupant.

6. However, on an examination of both the impugned award and the evidence, the Court does not find any material in terms of any proof of negligence of the driver of the car itself, which has been placed on record.

7. Quite to the contrary, evidence of the claimant/*Sushev Kumar* (*'PW-1'*) is clear and states that their vehicle had hit the truck from its left side in the middle and the car had been dragged for quite some distance. He denied that driver of the car did not apply brakes, due to which the accident took place. He volunteered that as per the investigation report, the vehicle had skidded on the road and there were impressions of tyre marks on the road.

8. As regards the issue of contributory negligence, it is pertinent to note that burden of proving contributory negligence lies on the person alleging



contributory negligence. Reliance can be placed on the decision of Supreme Court in ***Usha Rajkhowa v. Paramount Industries***, (2009) 14 SCC 71, wherein, the Court dealt with a case involving a collision between a truck and a car, and the Tribunal had attributed 50% contributory negligence to the driver of the car. The Supreme Court, while considering the principles governing contributory negligence and the burden of proving the same, held as under:

“20. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak [(2002) 6 SCC 455 : 2002 SCC (Cri) 1355]. That was also a case of collision between a car and a truck. It was observed in SCC p. 458, para 8:

“8. ... The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as ‘negligence’. Negligence ordinarily means breach of a legal duty to care, but when used in the expression ‘contributory negligence’ it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an ‘author of his own wrong’.”

21. This Court further relied on an observation of the High Court of Australia in Astley v. Austrust Ltd. [(1999) 73 ALJR 403] to the following effect:

“A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care



depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases, the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

22. Keeping these principles in mind, we find that there was absolutely no evidence to suggest that there was any failure on the part of the car driver to take any particular care or that he had breached his duty in any manner. Such breach on his part had to be proved by the insurance company as it was its burden and for that, the panchnama of the spot, showing tyre marks caused by brakes, and the panchnama of the damaged car and the truck could have been brought on record. The insurance company has obviously failed to discharge its burden. We, therefore, respectfully follow the abovementioned judgment."

(emphasis added)

9. Reliance may also be placed upon the decision of this Court in ***UPSRTC v. Subhash & Anr.***, 2026:DHC:7203, where this Court was



considering the issue of contributory negligence in a head-on collision between a car and a truck, where the truck had been coming from the opposite side and had collided with car resulting in the death of an occupant of the car. Traversing the law on contributory negligence in head-on collisions, this Court culled out the following principles:

“8. The following principles can be culled out from the abovementioned judgments:

I. Head-on collision does not, by itself, establish contributory negligence: The mere fact that two vehicles collided head-on cannot lead to an automatic inference that both drivers were equally negligent. Contributory negligence must be determined from the evidence and surrounding circumstances of each case.

II. Burden lies on the party alleging contributory negligence: The insurer or the party alleging contributory negligence must establish, by cogent evidence, the specific act or omission attributable to the claimant which materially contributed to the accident or the resultant injury. In the absence of such evidence, no deduction can be made on the ground of contributory negligence.

III. Contributory negligence requires proof of failure to exercise reasonable care: There must be evidence showing that the claimant failed to take reasonable care for his or her own safety and that such failure materially contributed to the accident or damage suffered. Mere involvement in, or presence during, the accident does not amount to contributory negligence.

(emphasis added)

10. MACT has correctly assessed this as a serious attempt to stop the car. There is no dispute that the truck driver had skipped the red light and, therefore, the issue of composite negligence or contributory negligence stands



to be not proved and cannot be taken into account.

11. The other issue that has been raised relates to the quantum of compensation. While assessing the compensation, MACT has taken the income of injured on the basis of his earnings in *Zephyr Infratech Private Limited*, Noida UP, where he was earning a gross salary of Rs. 50,000/- per month. The employment certificate had been exhibited as *Ex. PW-1/H* and salary slips for three months had also been exhibited. *Ankit Kumar*, Director of the Company had been examined as *PW-2*. He stated that the Company had 50 employees, out of which 20 to 25 were employees working in marketing.

12. MACT also took into account that he had completed his post-graduation, *i.e.* Masters in Computers Applications (*MCA*) and the claimant/ *Sushev Kumar* had been working on probation with the Company for three months.

13. The notional income was taken at Rs. 46,685/- per month after assessing the salary slips. Therefore, the Court considers this to be just and reasonable and therefore, the contention of appellant/Insurance Company is rejected.

14. Accordingly, the appeal stands dismissed. Pending applications (if any) are rendered infructuous.

15. By order dated 15th January 2021, appellant/Insurance Company was directed to deposit the entire compensation amount along with accrued interest before the Tribunal and 50% was directed to be released as per the scheme of impugned award and balance amount was kept in interest bearing fixed deposits. Considering that the appeal has been dismissed, the balance amount along with accrued interest, shall continue to be released as per the scheme of MACT.



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16. Statutory deposit, if any, be refunded to Insurance Company, only if the order of deposit has been complied with.
17. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 8, 2026/RK/sp

Signature Not Verified

Digitally Signed By: RAHUL
KUMAR CHOPDHARY
Signing Date: 16.10.2026
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