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

% ***Reserved on : 30th January 2026***
Pronounced on : 10th March 2026
Uploaded on : 10th March 2026

\+ **MAC.APP. 822/2025 & CM APPL. 81939/2025**

UNITED INDIA INSURANCE COMPANY LTD .....Appellant

Through: Mr. Hari Prakash Sharma and Mr. Vibhash Jha, Advs.

versus

LAKSHMI KUMARI & ORS. .....Respondents

Through: Mr. Pankaj Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed assailing impugning award dated 28th October 2025 passed by Motor Accidents Claims Tribunal ['***MACT***'] North District, Rohini Courts, Delhi in MAC Petition No. 523/2023 whereby the MACT awarded Rs. 35,11,000/- along with interest @ 7.5% per annum.

The Accident

2. On 9th June 2023, *Vatan Kumar* (hereinafter, '***deceased***') along with his father was travelling to *Dabua Mandi, Faridabad* from *Azadpur Mandi,*

Delhi for unloading vegetables on his vehicle *i.e.,* TATA Ace bearing no. DL1L-AH-7470. At about 4:30 am, when they reached near *Ajronda Pull, Khatushyam Temple*, truck bearing registration no. HR55X-2035 (hereinafter, '***offending vehicle***') was lying parked in the middle of road on the wrong side without any indication, resulting in a collision of deceased's vehicle into the offending vehicle. As a result of this incident, deceased sustained severe injuries and later succumbed to the same. FIR No. 443/2023 was registered at Police Station, Sector 8, Faridabad.

Impugned Award

3. Claim petition was filed by surviving legal heirs of deceased including, his wife/*Lakshmi Kumari*, one year old son/*Sibosh Kumar*, and parents/*Rani Devi* and *Shyamanand Mukhiya* (hereinafter, '***claimants***'). Written statements were filed by respondent no.2/driver and respondent no.3/owner of the offending vehicle, as also by appellant/Issuance Company.

4. During the course of proceedings, the Tribunal framed the following issues:

> *"1) Whether deceased Vatan Kumar has died in road side accident occurred on 09.06.2023 at about 4.30 AM, near Ajronda Pull, Khatu Shyam Temple, within the jurisdiction of PS. Sector — 8, District Faridabad, due to rashness and negligence on the part of Sh. Manoj Kumar Ray/R1 who was driving vehicle bearing registration no. HR55-X-2035, owned by Sh. Anil Langan and insured with United India Insurance Company Limited/R3?0PP.*

2) Whether the petitioners are entitled to compensation if so, to what extent and from which of the respondents? OPP."

5. While determining ***issue no.1***, MACT concluded that the accident occurred due to negligence of respondent no.2/driver of offending vehicle and relied upon testimony of ***PW-1***, father of deceased who stated that he alongwith his son went to *Dabua Mandi, Faridabad* for unloading vegetables and was told to wait, while his son proceeded towards *Sector-16 Mandi*. During his cross examination he stated that after about 10-15 minutes he took an auto for Delhi and upon reaching the spot of accident, he saw a group of people gathered there. It was admitted by him that he had not seen the accident.

6. Reliance was placed on criminal case record ***Ex. PW-1/9 (colly)*** which included, FIR No. 443/2023 and charge-sheet which had been filed establishing that the accident had occurred due to negligence on part of respondent no.2/driver of offending vehicle.

7. MACT relied upon decisions of Supreme Court in ***N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal***, (1980) 3 SCC 457; ***Sohan Lal Passi v. P. Sesh Reddy***, (1996) 5 SCC 21 and ***Dulcina Fernandes v. Joaquim Xavier Cruz***, (2013) 10 SCC 646, to highlight that the purpose of granting compensation is to ameliorate the sufferings of victims of motor vehicle accidents and technicalities should not be a ground to dismiss claim petitions and defeat the rights of claimants.

8. Further reliance was placed on ***Vimla Devi v. National Insurance Co. Ltd.***, (2019) 2 SCC 186, a case where no eyewitness was examined by the claimants, the Apex Court held that criminal case record, including, charge-sheet will be enough to establish that the accident was caused by offending vehicle based on pre-ponderance of probabilities.

9. MACT further noted that respondent no.2/driver of offending vehicle and other material witnesses, who could have testified as to how and under what circumstances the accident occurred, were not produced in witness box; FIR had been registered promptly without any delay and therefore, there was no possibility of false implication of respondent no.2/driver and respondent no.3/owner of offending vehicle.

10. ***PW-1***, father of deceased/*Shyamanand Mukhiya's* name was mentioned at serial no.1 in the charge-sheet. Testimony of ***PW-1*** remained unrebutted, as neither the driver nor owner chose to cross examine him and hence, there was no reason to disbelieve his testimony.

11. Further, the *post mortem* report also showed that death was caused due to *cranio cerebral injuries* and *thoracoabdominal* injuries, along with other injuries to extremities, with their complications, as described and those injuries were consistent with the injuries sustained by deceased in the accident in question.

12. On ***issue no.2*** regarding compensation, *loss of dependency* was calculated on the basis of age of deceased being 27 years at the time of accident. Due to lack of proof, income of deceased was taken as minimum wages of an unskilled worker i.e. Rs. 17,234/- per month; multiplier of 17

was adopted; future prospects at 40% and deduction of 1/3rd was made towards personal expenses considering, that the deceased was survived by his widow, minor son and parents. Subsequently, father of deceased was not taken as a dependant.

13. Loss of consortium was taken at Rs. 48,400/- for each claimant; funeral expenses of Rs.18,150/- were awarded, loss of estate was also awarded at Rs.18,150/- by applying principles of ***National Insurance Co. Ltd. v. Pranay Sethi***, (2017) 16 SCC 680 and two escalations of 10%, since the accident occurred on 9th June 2023.

Analysis

14. *Mr. Hari Prakash*, Advocate appearing for appellant/Insurance Company has contended that the MACT ought to have assigned contributory negligence to the deceased, since he had rammed his vehicle into the offending vehicle from the back. Considering that the accident took place in June, it has been argued that there would have been enough visibility at 4:30 am. Additionally, *Mr. Hari Prakash*, Advocate also raised a ground that the deceased did not have a valid driving licence.

15. *Mr. Pankaj Gupta*, Advocate for claimants/respondents contended that the question of contributory negligence does not arise, since as per the testimony of ***PW-1***, upon reaching the spot of accident he saw that the offending vehicle was parked in middle of the road that too without any safety measures, indicators, parking lights, etc. *Mr. Pankaj Gupta* contended that ***PW-1*** had not been cross examined by either respondent no.3/owner or

respondent no.2/driver of the offending vehicle. Further, respondent no.2/driver had not taken a defence in his written statement that the accident occurred due to negligence of the deceased. He has drawn attention to the FIR which was registered under Section 283/304A of Indian Penal Code, 1860 ('***IPC***') to assert that Section 283 of IPC deals with danger, obstructions in public way or line of navigation.

16. Charge-sheet was filed against respondent no.2/driver of offending vehicle and had not been challenged by him; further he did not mount the witness box to counter that point. Reliance in this regard has been placed on the following judgments by counsel for claimants/respondents:

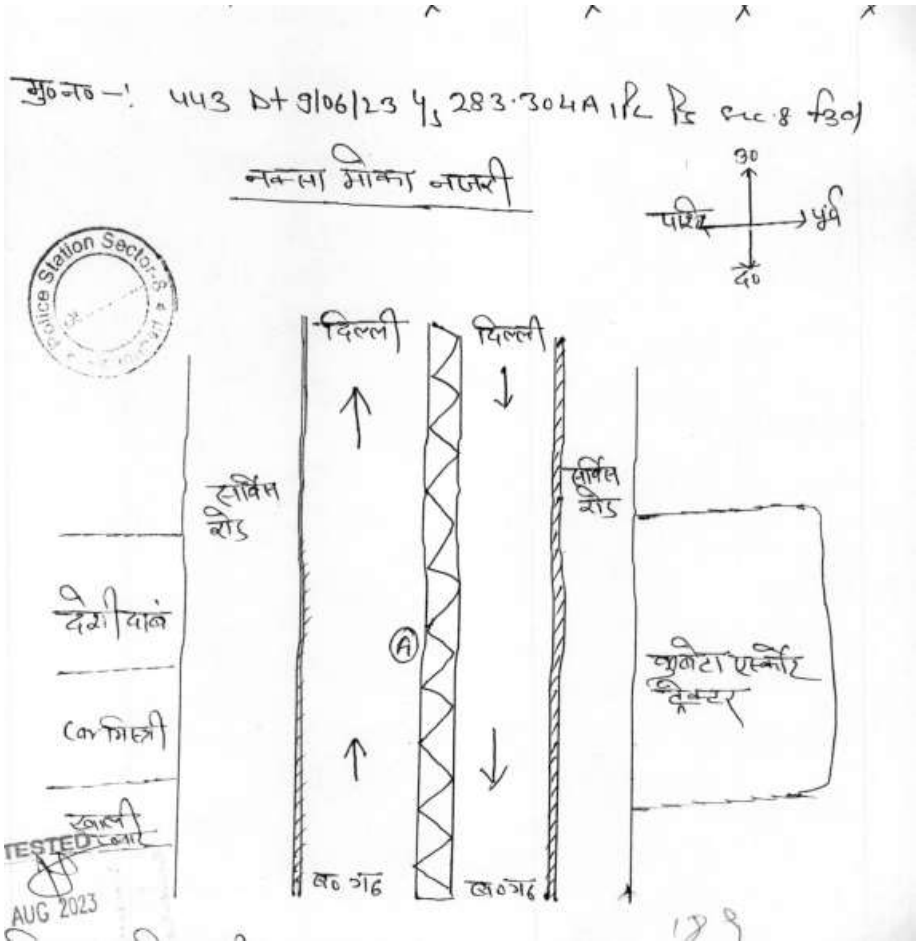
i. ***Sushma v. Nitin Ganapati Rangole,*** 2024 SCC OnLine SC 2584.
ii. ***Shammi Sharma & Ors. v. Randhir Singh & Ors.*** SLP (C) No. 21699/2018, decided on 31.01.2025
iii. ***National Insurance Co. v. Nisha Jha & Ors.*** 2024:DHC:8224
iv. ***Jumani Begam v. Ram Narayan,*** 2019 SCC OnLine SC 1707
v. ***Archit Saini v. Oriental Insurance Co. Ltd.,*** (2018) 3 SCC 365

17. It has been contended that appellant/Insurance Company failed to bring on record any evidence to the contrary nor did they examine the Investigating Officer ('***IO***') of the case. Reliance has been placed on the following judgments by counsel for claimants/respondents:

i. ***Ashok Kumar & Anr. v. Karan Bhatia*** 2024:DHC:9284
ii. ***Santosh v. Ashish & Anr.*** 2026:DHC:130

18. Reliance has also been placed on *Rules of the Road Regulations, 1989* with regards to abandonment/parking of a vehicle on road without any safety measures.

19. As per the site plan, which is extracted as under, there were two carriageways on the road and the accident occurred on the road from Bahadurgarh to Delhi where the offending vehicle was parked on right side of the road instead of left side, and the deceased rammed his vehicle into the offending vehicle from behind.



20. Counsel for appellant/Insurance Company has relied on the decision of this Court in ***Vandana Kumari v. Ramesh*** 2018:DHC:3819 which deals with the issue of contributory negligence where the car was driven by one, *Mr. Narender Singh*. The matter was remanded back to Tribunal for fresh adjudication to the extent of contributory negligence. However, this case does not assist the appellant/Insurance Company, considering that it is not conclusive and merely analyses the issue of sudden braking and rear end collisions.

21. On the issue of rear end collision, two aspects need to be considered - ***firstly***, cases where there is flowing traffic and the vehicle in front applies sudden brakes, in which case the matter has to be assessed as regards duty of the person following the vehicle to have maintained safe distance in order to avoid a collision. In such cases, contributory negligence would have to be considered; ***secondly***, cases where an abandoned vehicle is parked on a road with moving traffic and without any indication, lighting, or a warning sign, and at a time of the day when it would be difficult to have visibility of the said abandoned vehicle. In these cases, considering the location and time of day of such accident, negligence is mostly attributed to person who abandoned the vehicle on the road.

22. For this purpose, the Court must first examine the decisions referred to by counsel for respondents/claimants.

23. In ***Sushma*** (*supra*), the matter relates to an abandoned trailer-truck parked in the middle of a highway, without any warning signs or indicators or parking lights and a car colliding in it resulting in death of passengers.

Tribunal held that it was a case of contributory negligence, noting that the deceased had failed to take appropriate cautionary/preventive measures in order to avoid colliding with the stationary truck parked in middle of the road. The decision was appealed before Division Bench of High Court of Karnataka which upheld the decision of Tribunal by applying *rule of last opportunity* and holding that had the driver of the car been more cautious, he could have averted the accident. This decision was then appealed to the Supreme Court which reversed findings of the Courts below on the basis that contributory negligence of driver of vehicle could not vicariously be attached to the passengers to reduce their compensation. Aside from this, the Court opined as under:

> *"**27.** A highway or a road is a public place as defined in Section 2(34) of the Act:—*
>
> > *"**2(34)** "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"*
>
> ***28.** Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.*
>
> ***29.** Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any "public place" in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.*

30. *Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.*

31. *Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.*

32. *Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.*

33. *These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken*

while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire responsibility for the negligence leading to the accident was of the truck owner/driver.

34. *In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises. Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical."*

(emphasis added)

24. In ***Shammi Sharma*** *(supra)* facts of the case were such that the deceased was driving his car towards Delhi but due to glare of headlights of oncoming vehicles, dashed against a truck which was stationed in middle of the road. Objection was taken that there was negligence on part of the car driver, considering that he was driving rashly and negligently and under the influence of alcohol.

25. Tribunal drew adverse inference since driver of the offending vehicle had not been examined and concluded that there was no negligence on part of truck driver and the claim petition was rejected. Appeal was filed before

the High Court, but was also dismissed on the basis that the IO had not been examined to prove exact position of the truck.

26. On appeal, Supreme Court noted that there were no eyewitnesses to the accident, except driver of the truck for considering mode, manner and method in which the accident occurred. Inmates of the car had already succumbed to their injures and burden was cast on truck driver to enter the witness box. Court noted *Section 122* of *Motor Vehicles Act, 1988* (‘***MV Act***’) which mandates that no person in charge of a vehicle can allow a vehicle to be abandoned, which likely causes or is likely to cause danger, obstruction, or undue inconvenience to other road users. Additionally, the Court relied on *Rule 109* read along with *Rule 105* of Central Motor Vehicles Rules, 1989 (‘***MV Rules***’). Relevant observations of Supreme Court are as under:

> *“14.1 It would be apposite to note that Section 122 of the then Motor Vehicles Act, 1988, would mandate that no person in-charge of a Motor Vehicle can allow the vehicle to be abandoned which is likely to cause danger to other users of the public place or to the passengers. It reads thus:*
>
> > *“122. Leaving vehicle in dangerous position.- No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.”*
>
> *Rule 109 of the Motor Vehicles Rules requires to be read along with Sub-Rule (2) of Rule 105 and they read as under:*

109. Parking light.- Every construction equipment vehicle, combine harvester and motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationery on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in the rule 105 sub-rule (2)…

105. Lamps.- [(1) Save as hereinafter provided, every motor vehicle, while being driven in a public place, during the period half an hour after sunset and at any time when there is no sufficient light, shall be lit with the following lamps which shall render clearly discernible persons and vehicles on the road at a distance of one hundred and fifty five meters ahead:

(a) in the case of motor vehicle other than three-wheelers, three-wheeled invalid carriages and motorcycles, two or four head lamps;

(b) in the case of motor cycles, three-wheelers and three-wheeled invalid carriages one or two head lamps;

…

(2) Every such motor vehicle other than a three wheeler shall also carry-

(i) [two lamps (hereinafter referred to as the rear lamp) showing to the rear a red light visible in the rear from a distance of one hundred and fifty-five metres; and in the case of a motor cycle one lamp showing the red light to the rear visible from a distance of seventy-five metres]; and

(ii) Lamp, which may be the rear lamp or some other device, illuminating with a white light the whole of the registration mark exhibited

[on the rear of the vehicle including construction equipment vehicle], and on the side in the case of construction equipment vehicle] so as to render it legible from a distance of fifteen metres to the rear: ...

14.2 A perusal of the above provisions would clearly indicate that no vehicle can be left in a dangerous position or abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. The aforesaid rules also mandate that two (2) red parking lights, one on each side in the rear is to be provided and it should remain lit even when the vehicle is kept stationery on the road. Such rear lamps/lights which is required to be lit is to be visible from a distance of 155 meters. Thus, above provisions make it explicitly clear that a driver of such vehicle who intends to park the vehicle is expected to take all possible care and caution to prevent any untoward incident occurring apart from the parking lights being lit, so that other users of road would be able to clearly see the parked vehicle and accordingly they can manoeuvre their vehicle.

14.3 Though in Exhibit P18 namely, the report is said to have been lodged by the driver of the truck with the Bilashpur police it has been stated that he had lit the indicators and had also put the stones to indicate that vehicle had broken down. However, said plea has remained as a plea without proof. In other words, the driver of the truck who had lodged the report Exhibit P18 did not enter the witness box. He did not speak about the contents of Exhibit P18. Production of a document would not prove its contents. Thus, the initial burden which was cast on the driver of the truck and the owner of the truck was not discharged, so as to contend that the burden had shifted on the claimants to rebut the evidence tendered by them. In the absence of any such material being placed on record, we

are of the considered view that Tribunal as well as the High Court fell into error in arriving at a conclusion that Exhibit P18 alone would suffice to arrive at a conclusion that the accident had occurred on account of the negligence of the deceased himself."

(emphasis added)

27. In ***Jumani Begam*** *(supra)* the deceased was driving a motorcycle and collided with a truck-trailer which was parked on the road. MACT estimated contributory negligence at 50% and High Court affirmed this view of contributory negligence. Supreme Court noted that evidence of the driver of truck trailer wherein, even though it was stated that indicators had been lit, the testimony did not fully inspire confidence before the MACT. Eyewitness denied existence of any reflectors at the spot. Supreme Court therefore took the view that there was no reason for MACT then to proceed on conjecture in arriving at a finding of contributory negligence. Supreme Court noted as under:

*"**7.** MACT then discussed the evidence of the driver of the truck trailer, AW 1. After analysing the evidence of the driver, MACT held that his evidence did not inspire confidence, when he stated that indicators on the truck trailer had been lit. On the contrary, the eyewitness, AW 2, in the course of his cross-examination, denied the existence of reflectors at the spot. MACT noted that it did not appear that the truck trailer had been parked outside the area of the pakka road. In spite of its analysis in the above terms, MACT surmised that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This part of the reasoning of MACT is purely a matter of surmise. Once the substantive evidence before MACT established that the truck trailer had been parked on the*

> *road at night without any reflectors, we are of the view that there was no reason or justification for MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. We find from the judgment of the High Court that this aspect has not been discussed at all and the High Court simply proceeded to confirm the finding of contributory negligence. Consequently, on the first limb of the submission, the learned counsel appearing on behalf of the appellant is correct and the submission requires to be accepted."*
>
> (emphasis added)

28. In ***Nisha Jha*** *(supra)* the Insurance Company had filed an appeal against the MACT award before this Court by taking a ground that deceased hit the stationary vehicle from behind and therefore, contributory negligence of more than 20% ought to have been attributed. This Court noted that the driver never stated that any safety devices were put behind the truck for road users and there was no iota of evidence against the deceased. Eyewitness also deposed that the truck was parked in centre of the road and there were no indicators, stones or reflectors. This Court noted that the person driving a vehicle on the main highway expects no obstruction on road and if there is an obstruction, for any reason, proper indication ought to be provided. On that basis, it was held that Tribunal erred in holding that deceased was liable for contributory negligence and deducted 20%.

29. In ***Archit Saini*** *(supra)*, the facts of the case involved a gas tanker, which was parked in the middle of a road at 10:30 pm (*night time*) without any indicators or parking lights. Eyewitness confirmed that the parked truck could not be seen due to flashlights of oncoming traffic from opposite side

and the truck was parked without any indicators or parking lights. MACT held the driver of parked truck to be negligent for having caused the accident. High Court overturned the finding and opined it to be case of contributory negligence. After perusing the testimony of eyewitness (***PW-7***), site plan and analysis of Tribunal, the Supreme Court set aside the decision of High Court. The Supreme Court found credence in Tribunal's assessment, considering the version of ***PW-7*** as credible and holding the presumption against driver of gas tanker who had parked his vehicle in a negligent manner. Reliance in this regard was also placed on the charge-sheet, in conclusively setting aside the decision of High Court.

30. Counsel for respondents/claimants has also relied on certain decisions of this Court on adverse inference to be drawn if driver of offending vehicle has not led evidence, specially in cases where the offending vehicle was lying abandoned. In ***Ashok Kumar*** (*supra*), a Coordinate Bench of this Court held that:

> "*13…Where FIR is lodged, Chargesheet is filed, especially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal*."

31. Decision of this Court in ***Santosh*** *(supra)* has also been relied upon, where it was held as under:

> *"14. In deference to this consistent view of the Supreme Court, the Court is of the opinion that considering a criminal case has been registered, element of rash and negligent driving has been alleged by the prosecution and a chargesheet has been filed against the driver/respondent no.1 of the vehicle, this aspect ought to have been taken into account by the MACT before dismissing the claim petition."*

32. Keeping in mind these opinions of Supreme Court and the High Court, this Court examined the FIR which was registered at the behest of father of deceased/*Shyamanand Mukhiya*. He stated that he and his son had come in TATA Ace for unloading vegetables to *Dabua Mandi, Faridabad*. The son told his father to wait and he went to Sector-16 Mandi. A little later, he followed his son in an auto and when he reached *Ajronda Pull*, he saw that his son's vehicle had rammed in a standing truck and passerbys had taken his son to the hospital. On reaching the hospital, he learnt that his son had already passed away. Father of deceased/*Shyamanand Mukhiya* stated that had the truck not been standing on road, the accident would not have took place, since the truck had no indicator or reflector and therefore, the accident happened due to negligence of truck driver. Subsequently, charge-sheet was filed in line with contents of the FIR.

33. Father of deceased/*Shyamanand Mukhiya* reiterated this in his evidence by way of affidavit before the MACT and further repeated this aspect in his cross examination. No evidence was led on behalf of respondent no.2/driver and MACT therefore, drew adverse inference observing that there was no reason, as to why claimants would have falsely

implicated him. FIR was also registered on the same day of accident without any delay.

34. It is apposite to first consider the historical underpinnings of contributory negligence, in order to appreciate the relevance and purpose of principle of last opportunity. A common law principle, contributory negligence was a defence used by defendants in cases where plaintiff was responsible for the harm caused to them, by not exercising ordinary care even though, the defendant was the tortfeasor. If proved, plaintiff's claim was wholly rejected and nothing could be recovered by way of damages. One of the earliest decisions illustrating this was ***Butterfield v. Forrester*** (1809) 11 East 60, where Lord Ellenborough, C.J. observed, "*one person being at fault does not dispense with another's using ordinary care of himself*."

35. *Principle of last opportunity* is known to originate from the English case of ***Davies v. Mann*** (1842) 10 M & W 546 which, in brief, was a case of a donkey left by the plaintiff on a public highway and the defendant who was driving at an improper pace collided with the donkey resulting in injuries to the donkey. Instead of applying contributory negligence and holding the plaintiff entirely liable, as per the tort law principles prevalent at that time, an exception was carved out stating that, if the accident could have been avoided by the exercise of ordinary care by the defendant, plaintiff shall not be held liable for contributory negligence. Therefore, to encapsulate, the person who had the last opportunity to avoid an accident, notwithstanding negligence of the other person, shall be held liable for it.

36. The underlying premise of this principle then relates to proximity of plaintiff's act of negligence as a resultant cause of the accident. Additionally, knowledge on the part of defendant played a key role in determination of liability, if the peril could have been prevented had the defendant known or by adopting sufficient precaution.

37. The converse of this rule was also true *i.e.* if plaintiff could have avoided the resultant accident by ordinary care, regardless of the defendant's conduct at the last stage, the plaintiff would be held liable for contributory negligence. In ***Denver City Tramway Co. v. Cobb***, 164 F. 41 (8th Cir. 1908), the United States Court of Appeal, Eight Circuit referred the *doctrine of last chance* holding that where there is no negligence on the part of defendant subsequent to that of plaintiff or where the defendant has not been able to discover plaintiff's negligence in time to avoid the injury, defendant shall not be held liable for negligence.

38. Unlike traditional precedents attaching full or no liability, Courts now follow principle of apportionment of liability depending on the contribution of the claimant themselves to the accident. This shift has been statutorily recognized by United Kingdom in their legislation titled, *Law Reform (Contributory Negligence) Act, 1945*. Section 1(1) of the Act provides as under:

> *"1.* ***Apportionment of liability in case of contributory negligence.***
> *(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the*

> *damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage…"*

39. It would also be imperative to refer to decisions of Indian Courts to complete the picture.

40. The Supreme Court in ***Municipal Corpn., Greater Bombay v. Laxman Iyer***, (2003) 8 SCC 731 was dealing with a challenge on the ground of contributory negligence to be attributed to the victim in a road accident for contravening the traffic regulations. While referring to *the principle of last opportunity* in its assessment, the Supreme Court held as under:

> *"**7.** At this juncture, it is necessary to refer to the "doctrine of last opportunity". The said doctrine is said to have emanated from the principle enunciated in Davies v. Mann [(1842) 10 M&W 546 : 152 ER 588] which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but a test of causation. [See Davies v. Swan Motor Co. (Swansea) Ltd. [(1949) 2 KB 291 : (1949) 1 All ER 620 (CA)]] Though in some decisions, the doctrine has been applied by courts, after the decisions of the House of Lords in Volute [(1922) 1 AC 129 : (1921) 1 All ER Rep 193] and Swadling v. Cooper [1931 AC 1 : 1930 All ER Rep 257 : 100 LJ KB 97 : 143 LT 732 (HL)] , it is no longer to be applied. The sample test is, what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was*

the proximate cause of the accident, renders it one to be the result of contributory negligence."

(emphasis added)

41. *Rule of last opportunity* was mentioned in passing by Supreme Court in ***Sushma*** (*supra*) in the context of the circumstances in which the accident took place. Supreme Court observed that, if the accident took place during the day or when the place was well illuminated, perhaps, the car driver would have been equally responsible by applying rule of last opportunity. However, on the facts of the case, all circumstances pointed to the negligence of the truck driver who abandoned his truck in the middle of the road. Supreme Court does not deliberate any further on the *rule of last opportunity*.

42. The application of the *rule of last opportunity* having been discontinued both in common law and by statutory reform, the acceptable rule is of *apportionment of damages* for contributory negligence. For this purpose, the Courts must account for causation and the relative blame-worthiness of the parties.

43. Having examined the material on record, the Court finds no reason to differ with the view taken by MACT, particularly, since there is no evidence on record on behalf of respondent no.2/driver, respondent no.3/owner or appellant/Insurance Company that truck was not parked on the wrong side of road and had indicators/parking lights or any other indication that it was stationary. Further, the time was 4:30 am on a June morning, which by all assessments would be a pre-dawn time and there would not have been

enough light for anybody driving on that road to see the offending vehicle, as visibly parked on the wrong side of road. Moreover, the deceased could not have assessed that the truck was parked on wrong side of carriageway.

44. TATA Ace is not a small commercial vehicle and does not have much potential to be driven at a high speed or negligently or rashly. Moreover, the deceased was in middle of his morning business and had no reason to drive negligently, nor is there any evidence in that regard.

45. Counsel for appellant/Insurance Company also relied on Medico-Legal Certificate ('***MLC***'), as per which the alleged accident took place at 5:00 am, however, this would not be determinative of the timing of accident, if the accident had happened before that time.

46. Another issue raised by counsel for appellant/Insurance Company was that deceased was not holding a valid licence to drive dangerous and hazardous goods. Considering that appellant/Insurance Company has not placed any evidence in order to prove the same, the question of it being considered, does not arise.

47. As regards the driving licence held by deceased, counsel for respondents/claimants relied upon a decision of Supreme Court in ***Bajaj Alliance General Insurance Co. v. Rambha Devi & Ors.*** (2025) 3 SCC 95 and in ***Mukund Dewagan v. Oriental Insurance Company Ltd***. (2017) 14 SCC 663. The issue was, whether the Insurance Company ought to have been exonerated, if a person having a light motor vehicle ('***LMV***') licence was driving a commercial vehicle.

48. Matter has been settled by decision of Supreme Court in ***Mukund Dewagan*** (*supra*) where it was held that a driver holding LMV licence under Section 10(2)(d) of MV Act for a vehicle with gross weight under 7500 kgs would be permitted to operate as a transport vehicle without taking additional authorisation. This view has been affirmed by the Supreme Court in ***Rambha Devi*** *(supra)* which was a reference made to a larger bench primarily on the issue whether a driver holding an LMV license can operate a 'transport vehicle' without obtaining specific authorisation under Section 10(2)(e) of MV Act.

49. This Court in ***Jai Kumar & Anr. v. Oriental Insurance Co. Ltd. & Ors.*** 2026:DHC:121 has taken a view in this regard. Relevant paragraphs are extracted as under:

> *"17. For purposes of reference, the reasoning for the said conclusion was provided, inter alia in paragraph 17 and 18 of the said decision. Since there were differing views of various Benches on this issue, a reference was made by a three Judge Bench of the Supreme Court in Bajaj Alliance General Insurance Company Ltd. vs Rambha Devi and Ors., (2023) 4 SCC 723, to a Constitutional Bench on whether a person holding a driving license in respect of LMV could on the strength of same license be entitled to drive a transport vehicle of LMV class having unladen weight not exceeding 7500 kgs.*
>
> *18. The Constitution Bench of the Supreme Court deliberated upon the matter and returned an opinion by virtue of the decision reported as (2025) 3 SCC 95, upholding the view taken in Mukund Dewangan (supra) and noting as under:*
>
> > *"181. Our conclusions following the above discussion are as under:*

181.1. A driver holding a licence for light motor vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7500 kg, is permitted to operate a "transport vehicle" without needing additional authorisation under Section 10(2)(e) of the MV Act specifically for the "transport vehicle" class. For licensing purposes, LMVs and transport vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

181.2. The second part of Section 3(1), which emphasises the necessity of a specific requirement to drive a "transport vehicle", does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

181.3. The additional eligibility criteria specified in the MV Act and the MV Rules generally for driving "transport vehicles" would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7500 kg i.e. "medium goods vehicle", "medium passenger vehicle", "heavy goods vehicle" and "heavy passenger vehicle".

181.4. The decision in Mukund Dewangan (2017) [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and the MV Rules were not considered in the said judgment."

19. It would, therefore, transpire that the position of law as opined by the Supreme Court, would be that driver holding

a license for LMV under Section 10 (2) (d) of the MV Act for a vehicle with a gross vehicle weight under 7500 kgs would be permitted to operate a transport vehicle without needing an additional authorisation."

(emphasis added)

50. The appeal is accordingly dismissed.

51. Pending applications are rendered infructuous.

52. In view of the above, compensation awarded be deposited before MACT, if not already deposited, and released as per the directions given in the impugned award.

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

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

ANISH DAYAL
(JUDGE)

MARCH 10, 2026/sm/*sp*