



2026:DHC:3197



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

% **Reserved on : 11th March 2026**
Pronounced on : 17th April 2026
Uploaded on : 18th April 2026

+ **MAC.APP. 702/2019, CM APPL. 33839/2019 & CM APPL. 12711/2026**

IFFCO TOKIO GENERAL INSURANCE CO LTD

.....Appellant

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

versus

REKHA DEVI & ORS

.....Respondents

Through: Mr. Jatinder Kamra & Mr. Brijesh
Kumar, Advs. for claimants

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal filed by the Insurance Company assails the award dated 30th April 2019 passed by MACT, North-West District, Rohini, Delhi in MACT No.50441/2016.

2. The Insurance Company effectively questions the compensation granted by the MACT on the basis that the negligence and, therefore, liability was fastened on the driver/owner of the TSR in which the deceased claimant was travelling, which was involved in an accident where a truck dashed into it and then ran away from the spot. Being a hit-and-run case, the Insurance Company asserts that the claim should fall under Section 140 of



the Motor Vehicle Act, 1988 (*'MV Act'*), on the principle of no fault liability, since there was no negligence on the part of the TSR's driver.

The Incident

3. The accident occurred on 30th March 2009, when *Sh. Ved Prakash* (the deceased), a cleaner with Delhi Transport Corporation, was travelling in TSR bearing registration no. DL-1RE-5310 as a paid passenger. At about 3:15 a.m., when they reached the *chowk* at *Sarai Peepal Thala, GTK Road*, the driver of the TSR tried to cross the *chowk* where blinkers were blinking. Suddenly, a truck came from the *fruit mandi gate* and as both vehicles were at high speed, they dashed into each other, and the accident occurred. The truck ran away from the spot as TSR turned turtle. The deceased was crushed under the wheel of the truck and died on the spot.

4. The claim petition mentioned that the accident occurred due to the composite negligence of the TSR and the truck, as both were being driven rashly and negligently.

5. FIR No.67/09 was registered at PS Adarsh Nagar under Sections 279/304A Indian Penal Code, 1860. Post-mortem of the deceased was conducted, and the cause of death was opined to be cranio-cerebral damage consequent to roadside accident.

The Impugned Award

6. The TSR driver (respondent no.5 herein) and owner of the TSR (respondent no.6 herein) filed their written statements stating that no accident had been due to the negligence of the driver of TSR. The TSR was insured with the Insurance Company. The Insurance Company filed its written statement stating that the accident took place due to sole negligence



on the part of the unknown/untraceable truck.

7. While deciding issue no. 1, the MACT relied upon the testimony of **PW1**, *Sh. Shani Dev*, who deposed that he was passing through the *chowk Sarai Pipal Thala, GTK road* at about 3:10 a.m., when the TSR collided with the truck. According to him, the offending truck had passed more than the middle of the road and was turning left with indicators on. He further stated that the TSR's headlight was not working, and the driver took a sudden cut towards the left after noticing the offending truck, but lost balance.

8. Since the offending truck was turning, it scratched the right side of the TSR. Due to the sudden application of brakes, a passenger sitting on the back seat of TSR was thrown out and crushed under the back wheel of the truck.

9. He further deposed that one of the persons present at the spot of accident gave a call to the police and somebody took the purse of the victim and found an I-card. As the police did not reach the spot, he saw the I-card and went to the address of the victim to inform the deceased's family. He met the son of the deceased at the address mentioned in the I-card, who noted down his name and address.

10. He deposed that the accident occurred due to the sheer negligence of the driver of the TSR and, to some extent, that of the offending truck. He stated that the driver of the TSR was responsible to the extent of 75% since he was driving at high speed, without a headlight, and had not noticed the offending truck, which had already crossed more than middle of the road.

11. **PW1** was cross-examined by the counsel for driver and the owner of the TSR.

12. The Tribunal relied on the testimony of **PW1** and concluded that the



accident occurred due to the composite negligence of the TSR and the offending truck, which remained untraceable.

13. On the issue of liability, the Tribunal concluded that driver, owner and the Insurance Company will be jointly and severally liable to pay the compensation.

Submissions on behalf of Insurance Company

14. *Ms. Suman Bagga*, counsel for the Insurance Company, made the following submissions to support her argument that the accident occurred solely due to the negligence of the truck driver and not the TSR driver:

- (i) FIR was lodged against the unknown truck driver, and no chargesheet was filed by the police, and an untraceable report was filed.
- (ii) It was a case of a hit and run, and, therefore, in the alternative, the claimants were entitled to compensation under Section 140 of the MV Act on the principle of no fault liability.
- (iii) The driver filed his written statement taking the plea that the accident in question took place due to the sole negligence of the truck. The Insurance Company also filed a written statement denying its liability and reiterating that the accident took place due to the sole negligence of the driver.
- (iv) There was no mention of the alleged eyewitness, *Shani Dev*, in the police investigation.
- (v) The so-called eyewitness did not inform the police about the accident in question and instead claimed that he had gone to the address of the deceased to inform the family, which was an



unnatural behaviour.

- (vi) With regard to the statement of the alleged eyewitness not being recorded by the police, the legal representatives of the deceased filed a protest petition dated 28th September 2009, but this was only after the recording of the evidence of the eyewitness before the Tribunal and no such attempt had been made prior to the same.
- (vii) The case was re-investigated by the police, but the earlier untraced report still prevailed. The re-investigation stated that the alleged eyewitness had not participated or joined the investigation. Statement of witness from the DCP office was recorded as **PW4**, who deposed that there was no possibility to trace the offending truck.
- (viii) MACT did not discuss the evidence of **PW4** and only relied upon the statement of **PW1**, holding that it was a case of composite negligence.
- (ix) On the ground of fake driving license, it granted recovery rights to the Insurance Company against the owner of the TSR.

Submissions on behalf of claimants

15. *Mr. Jatinder Kamra*, counsel for claimants, however, placed the following submissions:

- (i) Reliance on the testimony of eyewitness by the MACT, considering that he was not a tortfeasor, was appropriate.
- (ii) The fact that the eyewitness went to the house of the deceased was a conduct of a reasonable person and a good Samaritan.
- (iii) There was no evidence led by the driver or the Insurance Company



before the MACT; only written statements were filed.

- (iv) Police report is basis the statement of the driver.
- (v) **PW1**, being a good Samaritan, went to the house the same day, as stated by him in his testimony.
- (vi) The Insurance Company, in any event, has recovery rights.
- (vii) The deceased was neither the driver nor the owner of any of the vehicles involved in the accident and had the right to claim from any tortfeasor involved in the accident. In support of this contention, reliance was placed on the decision in *National Insurance Company Limited v. Baby Sapna Saxena through Hariom Saxena & Anr.* 2017:DHC:4440, wherein a Coordinate Bench of this Court, in a case of head-on collision involving an untraceable truck, held that since two vehicles had collided head-on, negligence on the part of both drivers was apparent merely because one of the vehicles remained untraceable.
- (viii) Counsel for respondents further relied on the principles of *res ipsa loquitur*, which means that the accident speaks for itself, and that it is sufficient for the claimant to prove the occurrence of accident. He contended that two essential conditions must be satisfied for the application of *res ipsa loquitur*: **first**, that the thing, which caused the damage, was under the control of defendant; and **second**, that the accident must be such as not in the ordinary course of things happen without negligence. *Res ipsa loquitur* is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. It provides that there is



presumption of negligence unless rebutted by the wrongdoer and shifts the onus to the defendant. For this, he relied upon the judgment of a Coordinate Bench of this Court in *National Insurance Company Limited v. Gita Bindal & Ors.* 2012:DHC:6368.

- (ix) It was further submitted that reliable witnesses cannot be disregarded in proceedings before the MACT. In this regard, reliance was placed on *Kusum Lata & Ors. v. Satbir & Ors.* AIR 2011 SC 1234, particularly *paragraph 9*.
- (x) Counsel also argued that in cases of composite negligence, there can be no apportionment of liability between the tortfeasors, as it is open to the claimant to recover the entire compensation either from both jointly or from any one of them. Reliance was placed on *Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors.*, (2014) 3 SCC 590, particularly *paragraphs 2, 6, 7, and 11*.

Analysis

16. The accident occurred on 30th March 2009. The deceased was travelling in TSR, which was insured by appellant/Insurance Company, as a paid passenger. The collision occurred in the middle of the road with a truck, which fled from the spot and could not be traced. As per the *post-mortem* report, the cause of death was *cranio-cerebral damage* consequent to the roadside accident

17. The claimants/legal representatives of the deceased contended that the accident was caused due to the negligence of the TSR driver (Respondent no. 5 herein).



18. The MACT held that, considering that the nature of collision being head-on, the case involved composite negligence. The Tribunal relied upon the testimony of **PW1**, the eyewitness, who was duly cross-examined before the Tribunal. Accordingly, the MACT held that the claimants had the right to recover compensation from any of the tortfeasors involved, i.e. the truck driver/owner or the TSR driver, and concluded that liability was joint and several. The appellant/Insurance Company was held liable to pay the compensation amount to the claimants with rights of recovery against the owner/driver of TSR.

19. The testimony of **PW1**, therefore, has to be carefully examined in assessing the finding of negligence. **PW1** deposed that he was a driver by profession and was passing through the area at about 3:00 a.m. on 30th March 2009, when he saw the TSR being driven at high speed and overtaking *Maruti 800*, being driven by him. He stated that the TSR headlights were not on, and he was following the TSR once it had overtaken him. At about 3.15 a.m., while crossing the chowk at *Sarai Peepal Thala, GTK Road*, the TSR driver failed to notice a truck crossing from the *fruit mandi side*. The TSR, at high speed and without headlights, applied sudden brakes to avoid the truck, which was crossing the road, and lost balance and collided with the truck. Since the truck itself was turning to the left side of the middle portion of the offending truck scratched the TSR. Due to the impact, the deceased was thrown out, and he was crushed under the rear wheel of the truck, while the TSR turned turtle.

20. **PW1** further stated that the traffic light was at a blinking position and a crowd gathered at the spot of the accident. Since the deceased had been



crushed, the police were called, but they did not reach the spot, and somebody took out a purse from deceased's pocket, which had an I-card of the deceased. **PW1** decided to go to the address of the victim and met the son of the deceased. **PW1** in fact stated that the TSR was liable to the tune of 75% due to high speed, absence of headlights, and failure to notice the truck.

21. During cross-examination by the TSR driver and owner, **PW1** gave detailed explanations regarding his presence at the spot at 3:00 a.m., stating that he was returning from a party at his employer, whose name he specified as *Ajay Kumar*, who has his residence in *Vijay Nagar, Ghaziabad*. He stated that the party ended at about 1:30 a.m., and he left around 2:00 a.m. towards *Ashok Vihar*. He was driving alone, having already dropped off other passengers. He also noted the registration number of the TSR and described the truck as brown with a Haryana registration.

22. He gave details of what happened after the collision and stated that, after checking the address of the deceased on the I-card received from deceased's wallet, he went to inform the family at their address. He specified that he reached the deceased's house in *Narela* at around 4:45-5:00 a.m. and informed the son of the deceased that the victim had died on the spot. He further stated that he was approached by the legal heirs of deceased 22-25 days after the death and again after 45-60 days.

23. In the cross-examination by the Insurance Company, **PW1** stated that the owner of the *Maruti 800*, which he was driving, is *Ajay Kumar* with address at *Vijay Nagar, Ghaziabad*. However, he did not know the specific address. He also named the two persons whom he had dropped prior to the accident near *Sunderlal Jain Hospital* at about 2:45-3:00 a.m. He further



stated that he did not make any effort to take the deceased to the hospital, but helped the injured-driver of the offending vehicle to board the TSR to the hospital.

24. **PW2**, the son of the deceased, stated that he was informed about the accident on 30th March 2009 itself by *Shani Dev/PW1*, who intimated him about the accident at his residence. He then went to the spot of the accident and then to the hospital, where he found that his father had already passed away.

25. There is nothing substantial in the cross-examination of **PW2** with which he was confronted to destabilize his testimony.

26. The testimony of **PW1**, in the opinion of the Court, is fairly detailed and fully sustained in cross-examination. The doubt raised by the counsel for the Insurance Company, that it was unnatural conduct for **PW1** to have gone to the house of the deceased instead of taking the deceased to the hospital, may not be correct, considering the facts and circumstances of the case. From the testimony of **PW1**, it appears that the victim, i.e., the deceased, had already been crushed under the wheels of the truck, while the injured driver had already been taken to the hospital by the public. There is nothing to suggest that **PW1** was related to or known to the family of the deceased so as to fabricate a story. In fact, his statement that he went to the address of the deceased on the basis of the information available on the I-card is further corroborated by the testimony of **PW2**, the son of the deceased. In his cross-examination, **PW1** provided specific details as to how and why he was driving at 3:00 a.m. at that location in a *Maruti 800* owned by his employer, *Ajay Kumar*, and also named the persons he had dropped off. The testimony



is, therefore, consistent, and there is nothing to suggest that the witness was set up.

27. Moreover, a perusal of the site plan corroborates the testimony of **PW1**.

28. The fact that the eyewitness was not part of the police investigation cannot be held to exonerate the driver of the TSR from his negligence.

29. The final report, however, suggests that the witness was summoned but did not appear. Enquiries were made at the *fruit mandi*, where it was stated that no such records were maintained. Further enquiries with APMC officials revealed that only records of traders were maintained, and not of all vehicles; therefore, records of vehicles exiting the *fruit mandi* were not available with the APMC.

30. The evidence of **PW1** by way of affidavit is dated 21st August 2009, and the cross-examination was recorded on 24th August 2009. These were prior to the request for reinvestigation made on 20th September 2009 by the son of the deceased. Thus, the final report dated 21st December 2009 was subsequent to the request for reinvestigation. It is evident that the son of the deceased, after the testimonies were recorded before the MACT, was attempting to have the testimony recorded in the criminal investigation as well.

31. As regards composite negligence, the counsel for respondent has relied upon *Pawan Kumar (supra)*, wherein the Supreme Court held that in cases of composite negligence, the driver and owner of both vehicles are jointly and severally liable, and it is open to the claimants to enforce the award against both or entirely against one of them.



32. Reliance has also been placed on ***Kusum*** (*supra*), where, although the Tribunal had found that the involvement of the offending vehicle was not proved, the issue arose as to why reliable eyewitness evidence had been ignored. It was held that MACT proceedings are distinct from criminal proceedings and must be assessed differently.

33. As regards a head-on collision, where one of the vehicles had fled away and was untraced, this Court in ***Baby Sapna Saxena*** (*supra*), *paragraph 6 and 8*, stated as under:

“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, in spite 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.

8. The evidence of Rohit Saxena, one of the three injured claimants, he having appeared as PW-6 during the inquiry, clearly proved, virtually with no contest, that the two vehicles had collided head-on. In the facts and circumstances, negligence on the part of the drivers of both the vehicles is writ large. The witness had also affirmed on oath that the car driver was also moving at excessive speed. If other vehicles were coming from the opposite side and if traffic in both the directions was moving in the same lane, the driver was expected to take proper precaution and keep the speed of vehicle in check so that the possibility of head-on collision could be



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avoided. The fact that he was unable to do so itself indicates negligence on his part.”

(emphasis added)

34. Accordingly, the appeal stands dismissed.
35. Pending applications, if any, are rendered infructuous.
36. Statutory deposit, if any, be refunded to Insurance Company.
37. Compensation be released to claimants as per the directions passed by MACT in the impugned award.
38. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

APRIL 17, 2026/mk/bp