



2026:DHC:1653



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

% *Date of decision: 23<sup>rd</sup> February 2026*

(20)

+ **MAC.APP. 87/2021 & CM APPL. 6135/2021**

UNITED INDIA INSURANCE COMPANY LIMITED

....Appellant

Through: Ms. Mahua Kalra, Advocate  
(through VC).

versus

SMT SOBHANA & ORS.

.....Respondents

Through: Mr. Shivam Goel, Ms. Ramya S.  
Goel, Ms. Sanya Sharma,  
Advocates for R7 (through VC).

(21)

+ **MAC.APP. 322/2021**

SHOBHNA & ORS.

....Appellants

Through: Mr. Ved Vyas Tripathi, Advocate  
(through VC).

versus

RAVI & ORS.

.....Respondents

Through: Mr. Shivam Goel, Ms. Ramya S.  
Goel, Ms. Sanya Sharma,  
Advocates for R2 (through VC).  
Ms. Mahua Kalra, Advocate for  
R3 (through VC).

(22)

+ **MAC.APP. 327/2021**

VIRENDER

..Appellant



2026:DHC:1653



Through: Mr. Ved Vyas Tripathi, Advocate  
(through VC).

versus

RAVI & ORS. (M/S UNITED INDIA INSURANCE CO. LTD.)

.....Respondents

Through: Mr. Shivam Goel, Ms. Ramya S.  
Goel, Ms. Sanya Sharma,  
Advocates for R2 (through VC).  
Ms. Mahua Kalra, Advocate  
(through VC) for R3.

(23)

+

**MAC.APP. 91/2021 & CM APPL. 6555/2021**

UNITED INDIA INSURANCE COMPANY LIMITED

.....Appellant

Through: Ms. Mahua Kalra, Advocate  
(through VC).

versus

SH VIRENDER & ORS.

.....Respondents

Through: Mr. Ved Vyas Tripathi, Advocate  
(through VC).  
Mr. Shivam Goel, Ms. Ramya S.  
Goel, Ms. Sanya Sharma,  
Advocates for R3 (through VC).

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J (ORAL)**

**MAC.APP. 87/2021 & MAC.APP. 322/2021**

1. These cross-appeals have been filed assailing impugned award/judgment dated 21<sup>st</sup> September 2020 passed by Motor Accident



Claims Tribunal [**MACT**], Rohini Courts, Delhi (hereinafter, '**Tribunal**') in **MACT Case No.105/2019** where compensation of Rs.23,13,000/-, along with interest at the rate of 9% was awarded in respect of death of *Sh. Rajender* (hereinafter, '**deceased**') in an accident which occurred on 15<sup>th</sup> February 2017.

2. Legal representatives ('**LRs**') of deceased are *Smt. Shobhna* (wife of deceased), *Master Ratan* and *Master Raman* (sons of deceased), *Sh. Munni Lal* and *Smt. Sridevi* (parents of deceased) [hereinafter, '**claimants**'].

3. Insurance Company has challenged the award essentially on the basis of contributory negligence of the driver of motorcycle bearing registration no. *DL-7SS-3477*, on which the deceased was sitting as a pillion rider. The motorcycle was being driven by one *Virender*, who was injured in the said accident with respect to which cross-appeals have been filed, namely, **MAC.APP.91/2021** by Insurance Company and **MAC.APP.327/2021** by injured/*Virender*.

4. In this light of the matter, this particular appeal cannot sustain, considering contributory negligence cannot be fastened on the pillion rider. Further there is no evidence on record to state that there was any contribution of pillion rider in the alleged contributory negligence.

5. Reliance in this regard may be placed on Supreme Court's observations in ***Yashwant Krishna Kumbar v. Divisional Manager, United India Insurance Co. Ltd.*** SLP (C) NO. 22599/2024 in order dated 25<sup>th</sup> November 2025, where the Supreme Court was adjudicating



an appeal filed by the pillion rider on the ground that contributory negligence of 50% was attributed by the Tribunal and High Court. Allowing the pillion rider's appeal, the Supreme Court held as under:

“16. In cases where contributory negligence is sought to be attributed to a pillion rider in a motor vehicle accident, the burden squarely lies on the party alleging such negligence to establish, by cogent material, that any act or omission on the part of the pillion rider contributed to the occurrence of the accident. In the absence of such proof, no finding of contributory negligence can be sustained against a pillion rider.

17. This Court is therefore of the considered view that the Tribunal committed a manifest error in reducing the compensation by 50% on the ground of alleged contributory negligence of the claimant. The insurer, on whom the burden squarely rested, led no evidence to establish even remote negligence attributable to the claimant. Consequently, the finding of contributory negligence cannot be sustained and is liable to be set aside, restoring the claimant's entitlement to the full measure of compensation determined in accordance with law.”

(emphasis added)

6. Insurance Company's appeal i.e. **MAC.APP.87/2021** is, therefore, dismissed.

7. **MAC.APP.322/2021** is the appeal filed by claimants for enhancement of compensation on the basis of benchmark income which was taken as Rs.9,724/- as minimum wages of an unskilled worker. Evidence was placed on behalf of wife of deceased that he was working at *M/s. Abhishek Enterprises, O-26, Budh Vihar, Phase-1, New Delhi*, as



a helper and was earning *Rs.14,400/-* per month.

8. *Smt. Shobhana (wife of deceased)* had placed on record salary slip exhibited as **EX.PW2/3**. However, since no one was examined to prove the said salary slip, minimum wages of an unskilled worker were taken. A perusal of the salary slip (**EX.PW2/3**) shows that *Rajender* was being given daily wage of *Rs.480/-*. The said salary slip has been signed by *Sh. Kuldeep Sharma*, Proprietor for *M/s. Abhishek Enterprises*. Even though, *Sh. Kuldeep Sharma* did not come into the witness box, the testimony of **PW2 (wife of deceased)** may be taken into account.

9. She has categorically stated in her evidence by way of affidavit that the income of her husband was *Rs.14,400/-* per month. In her cross-examination, she reiterated that her husband was working at *M/s. Abhishek Enterprises*, and she rebutted the suggestion that the deceased was working anywhere else.

10. No other evidence was produced by the Insurance Company to support their argument, if at all, that the employment records were forged or fabricated.

11. In this view of the matter, considering that it was a death case, benchmark income of the deceased should be taken at *Rs.12,480/- (480 × 26)*, considering he was a daily wage worker.

12. Compensation will, therefore, be computed as under:

S. No.	Heads of compensation	Awarded by the Tribunal	Awarded by this Court
1	Income of deceased (A)	Rs. 9,724/-	Rs. 12,480/-
2	Add: Future Prospects (B) @ 40%	Rs. 3,889/-	Rs. 4,992/-



2026:DHC:1653



3	Less: Personal expenses of deceased (C)	Rs. 3,403/-	Rs. 4,368/-
4	Loss of dependency [(A +B)-C = D]	Rs. 10,210/-	Rs. 13,104/-
5	Annual Loss of Dependency (Dx12)	Rs. 1,22,520/-	Rs. 1,57,248/-
6	Multiplier (E)	17	17
7	Total loss of dependency (DxE = F)	Rs.20,82,880/- (rounded off)	Rs.26,73,216/-
8	Medical expenses (G)	-	-
9	Compensation for loss of consortium (H)	Rs. 2,00,000/-	Rs. 2,00,000/-
10	Compensation for loss of estate (I)	Rs. 15,000/-	Rs. 15,000/-
11	Compensation towards funeral expenses (J)	Rs. 15,000/-	Rs. 15,000/-
12	Total compensation (F+H+I+J=K)	<b>Rs. 23,13,000/-</b> (Rs. 23,12,880 rounded off)	<b>Rs. 29,03,500/-</b> (Rs. 29,03,216/- rounded off)
13	Rate of Interest Awarded	9%	9%

13. *Vide* order dated 22<sup>nd</sup> February 2021, this Court directed the Insurance Company to deposit the entire awarded amount, out of which 75% amount was disbursed to the claimants as per the scheme of disbursement by the Tribunal and the remaining amount was kept in interest bearing FDRs.

14. Enhanced compensation along with 9% interest per annum from the date of filing the petition will be deposited before the Tribunal within a period of four weeks and shall be disbursed as per the directions to be given by the Tribunal.

15. List before the Tribunal on 23<sup>rd</sup> March, 2026.



16. Copy of this judgment be sent to the concerned Tribunal.
17. Claimant's appeal *i.e.* **MAC.APP.322/2021** is disposed of with the said directions. Pending applications, if any, are rendered infructuous.
18. Statutory deposit, if any, be refunded to appellant.
19. Judgment be uploaded on the website of this Court.

### **MAC.APP. 91/2021 & MAC.APP. 327/2021**

1. These cross-appeals have been preferred against impugned award/judgment dated 21<sup>st</sup> September 2020 passed by Motor Accident Claims Tribunal [*MACT*], Rohini Courts, Delhi (hereinafter, '*Tribunal*') in *MACT Case No.106/2019*, where compensation of Rs.2,73,000/- at an interest of 9% p.a. was awarded in favour of injured/claimant after deducting 20% towards contributory negligence.
2. Insurance Company has filed this appeal (**MAC.APP.91/2021**) seeking enhancement of the contributory negligence as determined by the Tribunal. On 15<sup>th</sup> February 2017, at about 09:30 P.M., deceased/*Rajender* was sitting as a pillion rider on the motorcycle, driven by the injured/*Virender*. When they reached near *Sector 20, Rohini Pocket-16, D-2 Block*, one car bearing registration no. DL-1NA-0056 (hereinafter, '*offending vehicle*'), driven by *Sh. Ravi* (*'driver*') and owned by *M/s Avinash Tourist Taxi Services* (*'owner*'), collided with the motorcycle. As a result of this collision, both deceased/*Rajender* and injured/*Virender* fell down on the road and sustained grievous injuries. Deceased/*Rajender* expired on 19<sup>th</sup> February 2017. FIR was registered against respondent no.2/*driver*.



3. In the written statement, driver and owner stated that the accident occurred due to rash and negligent driving of injured/*Virender*, who struck against the offending vehicle, since he could not control his motorcycle due to his excessive speed. It has also come to light that injured/*Virender* did not have a valid and effective driving license and was not wearing a helmet. Since there was a breach of terms and conditions of the insurance policy, right of recovery was given to Insurance Company against the owner of offending vehicle.

4. However, on the basis of these facts, 20% contributory negligence was fastened on injured/*Virender* which has been assessed in *paragraph nos. 55-57* of the impugned award.

5. *Mr. Ved Vyas Tripathi*, Counsel for injured/claimant has placed reliance upon the decision of Supreme Court in *Dinesh Kumar v. National Insurance Co. Ltd.* (2018) 1 SCC 750, where Supreme Court considered the issue, whether driving a vehicle without licence can itself amount to contributory negligence and held that the plea of contributory negligence cannot be accepted merely on that basis.

6. Previous decision in *Sudhir Kumar Rana v. Surendra Singh* (2008) 12 SCC 436 was followed by *Dinesh Kumar (supra)*, particularly reliance was placed upon the following paragraph to arrive at an opinion that deduction on contributory negligence was made without any basis:

*“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and*



*negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.*”

(emphasis added)

7. Ms. Mahua Kalra, Advocate, appearing on behalf of Insurance Company, on a query posed by the Court, states that there is no other evidence on record hinting that injured/*Virender* was driving negligently and considering that the Insurance Company has been given a right of recovery against the owner of offending vehicle, they shall be pursuing the same.

8. Considering this opinion of the Supreme Court, which has been referred to above, the appeal of injured/*Virender i.e. MAC.APP.327/2021* is allowed.

9. Accordingly, the aspect of *contributory negligence* stands deleted from the impugned award. The aspect of *pay and recover* against the owner is a subject matter of other appeals *i.e. MAC.APP.17/2022* and *MAC. APP.25/2022*, which is listed before this Court on 16<sup>th</sup> March 2026.

10. The Supreme Court in *K.S. Muralidhar v. R. Subbulakshmi and Anr.* 2024 SCC Online SC 3385, observed that “*pain and suffering*” cannot be captured by any fixed definition, drawing on legal, medical, and philosophical sources to emphasise its deeply subjective and life-



altering nature. It recognised that translating such profound human loss into money is an inherently artificial exercise, yet courts must ensure fairness, consistency, and sensitivity to the victim’s lifelong deprivation. The Court stressed that in cases of severe or 100% disability, compensation must meaningfully reflect the permanent rupture in the victim’s physical, emotional, and existential well-being. Relevant paragraphs are extracted as under:

*“13. While acknowledging that ‘pain and suffering’, as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.*

*13.1 The entry recording the term ‘pain and suffering’ in P. Ramanatha Iyer’s Advanced Law Lexicon reads as under:—*

*“Pain and suffering. The term ‘Pain and suffering’ mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.*

*This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The, [1900] A.C. 113, 116]”*

...

*13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in Heil v. Rankin, as referred to in Attorney General of St. Helenav. AB as under:—*



*“23. This principle of ‘full compensation’ applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in Andrews v. Grand & Toy Alberta Ltd., 83 DLR (3d) 452, 475-476, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of ‘full compensation’ for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in H West & Son Ltd. v. Shephard, [1964] A.C. 326 when he said:*

*‘The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.’*

*24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in Wells v. Wells, [1999] A.C. 345, 394H when he said: ‘One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.’”*

...



14. In respect of ‘pain and suffering’ in cases where disability suffered is at 100%, we may notice a few decisions of this Court:—

14.1 In *R.D Hattangadi v. Pest Control (India) (P) Ltd.* It was observed:

*“17. The claim under Sl. No. 16 for ‘pain and suffering’ and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs. 3,00,000 each under the two heads. The High Court has allowed Rs. 1,00,000 against the claims of Rs. 6,00,000. When compensation is to be awarded for ‘pain and suffering’ and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs. 1,50,000 in respect of claim for ‘pain and suffering’ and Rs. 1,50,000 in respect of loss of amenities of life. We direct payment of Rs. 3,00,000 (Rupees three lakhs only) against the claim of Rs. 6,00,000 under the heads “‘pain and suffering’” and “Loss of amenities of life”.*

14.2 This Judgment was recently referred to by this Court in *Sidram v. United India Insurance*



*Company Ltd reference was also made to Karnataka SRTC v. Mahadeva Shetty (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed:*

“18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned...”

(emphasis added)

11. Therefore, considering the principles laid down in ***K.S. Muralidhar (supra)***, compensation for pain & suffering is granted at ***Rs.1,00,000.***

12. Future prospects at 40% shall have to be granted as per the principles enunciated in ***National Insurance Co. Ltd v. Pranay Sethi (2017) 16 SCC 680.***

13. Therefore, revised computation is as under:

S No.	Heads	Awarded by the Tribunal	Awarded by this Court
<b>PECUNIARY LOSS</b>			
1	Expenditure on treatment (A)	Rs. 23,953/-	Rs. 23,953/-
2	Expenditure on conveyance (B)	Rs. 15,000/-	Rs. 15,000/-



3	Expenditure on special diet (C)	Rs. 25,000/-	Rs. 25,000/-
4	Expenditure on nursing attendant (D)	Rs. 20,000/-	Rs. 20,000/-
5	Income of injured (E)	Rs. 9,724/-	Rs. 9,724/-
6	Add: Future Prospects (F)	-	Rs. 3,900/-
7	Multiplier (G)	17	17
8	Functional disability (H)	3%	3%
9	Loss of income (I)	Rs. 29,172/-	Rs. 29,172/-
10	Loss of future income/future earnings [(E+F) x 12 x G x H] = (J)	Rs. 59,600/- (rounded off Rs. 59,510/-)	Rs. 83,400/- (rounded off Rs. 83,378/-)
<b>NON-PECUNIARY LOSS</b>			
11	Pain and suffering (K)	Rs. 50,000/-	Rs. 1,00,000/-
12	Loss of amenities of life (L)	Rs. 50,000/-	Rs. 50,000/-
13	Total compensation (A + B + C + D + I + J + K + L) = M	<b>Rs. 2,73,000/- (rounded off Rs. 2,72,725/-)</b>	<b>Rs. 3,46,525/-</b>
14	Less:Contributory negligence @ 20%	Rs. 54,600/-	-
15	Compensation awarded	Rs. 2,18,400/-	Rs. 3,46,525/-
16	Interest awarded	9%	9%

14. *Vide* order dated 22<sup>nd</sup> February 2021, this Court directed the Insurance Company to deposit the entire awarded amount, out of which 50% amount was disbursed to the claimant as per the scheme of disbursement by the Tribunal and the remaining amount was kept in interest bearing fixed deposits.

15. Enhanced compensation along with 9% interest per annum from the date of filing the petition will be deposited before the Tribunal within a period of four weeks and shall be disbursed as per the directions to be



2026:DHC:1653



given by the Tribunal.

16. List before the Tribunal on 23<sup>rd</sup> March, 2026.
17. Copy of this judgment be sent to the concerned Tribunal.
18. Accordingly, appeals are disposed of with the above observations.
19. Pending applications, if any, are rendered infructuous.
20. Statutory deposit, if any, be refunded to appellant.
21. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**FEBRUARY 23, 2026/ak/sp**