



2026:DHC:5505



\$~4 to 8

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

%

Date of decision: 09th July 2026

+ **MAC.APP.335/2018 & CM APPL.12965/2018, CM APPL.
12966/2018, CM APPL. 88/2024**

MAGMA HDI GENERAL INSURANCE CO LTD Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav
Verma, Advocates.

versus

JAGJEET KAUR & ORS Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1.
Mr. Rajeev M. Roy, Mr. P.
Srinivasan, Advocates.

(5)

+ **MAC.APP. 260/2023**

MAGMA HDI GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav
Verma, Advocates.

versus

SHAKUNTALA & ORS. Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1.
Mr. Rajeev M. Roy, Mr. P.
Srinivasan, Advocates.

(6)

+ **MAC.APP. 262/2023**

MAGMA HDI GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav
Verma, Advocates.

versus



2026:DHC:5505



INDU GUPTA & ORS.

.....Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1.
Mr. Rajeev M. Roy, Mr. P.
Srinivasan, Advocates.

(7)

+

MAC.APP. 265/2023

MAGMA HDI GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav
Verma, Advocates.

versus

RITA MAHAJAN & ORS. (FUTURE GENERALI INDIA INS. CO.
LTD.)

.....Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1 & 2.
Mr. Rajeev M. Roy, Mr. P.
Srinivasan, Advocates.

(8)

+

MAC.APP. 334/2023

SMT RITA MAHAJAN & ANR.

.....Appellants

Through: Mr. S.N. Parashar, Advocate.

versus

SH PRAMOD KUMAR & ORS.

.....Respondents

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav
Verma, Advocates for Respondent
no.3/Insurance Company.
Mr. Rajeev M. Roy, Mr. P.
Srinivasan, Advocates for
Respondent no.5.

CORAM:**HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT**



2026:DHC:5505



ANISH DAYAL, J (ORAL)

1. These appeals have been filed in respect of an accident which occurred on 26th November 2013 between 3 a.m. to 4 a.m. when *Arvinder Singh* along with companions, *Rishabh Mahajan*, *Umesh Kumar* and *Mohit*, were travelling in a *Swift* car bearing registration no. DL-8CU-8120 (hereinafter, '**Swift car**'). When the *Swift* car reached the over bridge on Yamuna Expressway, they collided with a Canter bearing registration no. UP-84T-0509 (hereinafter '**offending vehicle**'), driven by *Pramod Kumar*, owned by *Charan Singh* and insured by Magma HDI General Insurance Co. Ltd. ('**Magma**'). All the occupants received injuries and ultimately succumbed to the injuries. MACT held that the accident was caused due to negligence of the driver of offending vehicle and awarded compensation to the legal representatives.

2. **MAC.APP.335/2018, MAC.APP.260/2023, MAC.APP.262/2023 and MAC.APP.265/2023** were filed by Magma/Insurance Company asserting that there was negligence on the part of *Arvinder Singh* (*driver of the Swift car*) since he crashed into the offending vehicle from its rear end, contributory negligence ought to be attributed to him. Considering that the *Swift* car was insured with Generali Central Insurance Co. Ltd. ('**Generali Central**') (formerly known as *Future Generali India Insurance Co. Ltd.*), they have been arrayed as respondent in these appeals.

3. As regards the other co-passengers, it ought to be treated as a case of composite negligence between the offending vehicle and the *Swift* car, therefore, the insurer of *Swift* car-Generali Central should be held partly liable.



2026:DHC:5505



4. *Mr. Ved Vyas Tripathi*, counsel appearing on behalf of Magma/Insurance Company, has pointed out to the site plan asserting that it was a four-lane carriage way on the Yamuna Expressway, and the Swift car was being driven in the second lane and collided from with the offending vehicle from the rear. In his support, he has relied upon decisions of the Supreme Court in ***Oriental Insurance Co. Ltd. v. Meena Variyal*** (2007) 5 SCC 428, ***Syad Akbar v. State of Karnataka***, (1980) 1 SCC 30 and ***Nishan Singh v. Oriental Insurance Co. Ltd.***, (2018) 6 SCC 765.

5. The propositions placed by *Mr. Tripathi* were; ***firstly***, relying upon the decision in ***Meena Variyal***, (*supra*), negligence has to be provided specifically by the claimant in order to fasten liability on the offending vehicle and the insurer; ***secondly***, principle of *res ipsa loquitur* cannot apply to situations where there are complicated facts *i.e.* rear end collisions or contributory negligence of the driver which have to be then sustained and assessed; and ***thirdly***, as per ***Nishan Singh*** (*supra*), contributory negligence has to be fastened on the vehicle which collided with the vehicle in front from the rear end.

6. To the contrary, *Mr. Rajeev M. Roy*, counsel appearing on behalf of Generali Central/Insurance Company and *Mr. S.N. Parashar*, counsel appearing on behalf of claimants placed reliance on the testimony of eye-witness, *Mr. Mahender Singh* ('PW-4') in ***MAC.APP.260/2023***, ***MAC.APP.262/2023*** and ***MAC.APP.265/2023***. He stated that he was travelling on the Yamuna Expressway on that day at about 04.00 a.m. and saw a Canter (*offending vehicle*) going towards Delhi from Agra side, which came into the same lane as that of the *Swift* car and applied emergency brakes, due to which the *Swift* car struck against the offending



2026:DHC:5505



vehicle and was dragged for a distance of about 100 metres.

7. *PW-4* stated that other public persons had gathered at the spot and helped in rescue of the occupants and the police arrived after an hour. He took the phone of injured who was sitting in the rear seat of the car and informed his relatives. He was duly cross-examined by Magma/Insurance Company, where he stated that he had not called the police, nor was he approached for a statement. Since there was no ‘100 number’ call facility in the year 2013, he was unable to make a complaint. He further provided the details of his travel between *Nozil* and *Bulandshahar*.

8. *Mr. Tripathi*, however, contented that he was not a credible witness, since despite his testimony, he had not been a part of the police investigation and was not part of the criminal proceedings, as well.

9. The Court has assessed and examined the impugned award, particularly *paragraph 23*, which records the testimony of *PW4* in fair amount of detail. *Paragraph 23* of the impugned award is extracted as under:

“23. In order to decide the present issue, we may look into the oral testimony of the eye witness i.e. PW-4, Sh. Mahender Singh. PW-4 deposed that on 26.11.2013 he was riding his motorcycle from Nozil, Mathura to Delhi and at about 03.45 A.M.-04.00 A.M., when he reached at the flyover of Mirzapur, near Jungle Gram Roniza, Yamuna Expressway, he saw the offending vehicle suddenly swerve into the lane of the car and apply emergency brakes in front of the car, due to which the car rammed into the rear of the offending vehicle. He further deposed that the offending vehicle-dragged the car for about 100 meters due to which all the occupants of the car sustained grievous injuries. He further deposed that he took the phone of one of the



occupants of the rear seat of the car and conveyed information about the accident to his relative. He further deposed that police arrived at the spot an hour after the accident and at about 05.50 A.M. all the occupants of car were shifted to Kailash Hospital. He further deposed that the accident took place due to rash and negligent driving of R-1. The above oral testimony of PW-4 has gone unrebutted and unchallenged qua R-1 and R-2 as they did not bother to come forward and cross examine PW-4. PW-4 was subjected to a brief cross examination by R-3 (insurer of offending vehicle). During cross examination PW-4 was able to depose about the registration number of his motorcycle which he was riding at the relevant time, the exact course of his travel from Bulandshahar to Nozil and further to Delhi and the time when he left Nozil for Delhi on the date of accident. PW-4 admitted that he was not examined as a witness in the relevant FIR, but he did not betray any signs of falsity or untruth in his oral testimony as to the facts deposed before this Tribunal. He declined the sole suggestion given by R-3 (insurer of the offending vehicle) to the effect that he (PW-4) did not witness the accident. In totality, PW-4 seems to have withstood the test of cross examination as R-3 (insurer of the offending vehicle) could not bring any material on record which could discredit the oral testimony of PW-4. During cross examination by R-4 and R-5, PW-4 reiterated that the accident took place due to rashness and negligence of R-1. As such, this Tribunal finds the oral testimony of PW-4 to be reliable and trustworthy.

(emphasis added)

10. What seems to appeal to this Court is the MACT's observation while examining the witness, where it was noted that, "*PW-4 admitted that he was not examined as a witness in the relevant FIR, but he did not betray any signs of falsity or untruth in his oral testimony as per the facts deposed*



2026:DHC:5505



before this Tribunal". The MACT, therefore, found his oral testimony reliable and trustworthy. Aside from this, no other evidence has been placed on record by Magma/Insurance Company, nor has any attempt been made to summon the driver of offending vehicle in order to establish a case of contributory negligence.

11. Moreover, the driver of offending vehicle was charge sheeted in the FIR which has been taken as a strong circumstance to support the testimony of claimants. In this regard, it would be apposite to refer to the decisions of Supreme Court in ***Ranjeet v. Abdul Kayam Neb***, 2025 SCC OnLine SC 497 and ***Meera Bai v. ICICI Lombard General Insurance Company Ltd. & Anr.*** 2025:INSC:600 where the Supreme Court held that in the absence of witness testimonies, an inference of negligence can be drawn by the MACT on the basis of FIR and charge sheet.

12. Relevant findings of the Supreme Court in ***Ranjeet*** (*supra*) are extracted as under:

"4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.

5. In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants."

(emphasis added)

13. In ***Meera Bai*** (*supra*), the relevant observations of Supreme Court are extracted as under:



2026:DHC:5505



“2. The claimants before the Tribunal have filed an appeal from the order of the High Court which allowed the appeal of the insurance company and dismissed the claim petition for reason of no eyewitness having been examined to prove the rash and negligent driving.

3. On facts, it needs to be stated that the accident occurred on 29.01.2015 when the deceased was travelling pillion in a motorbike driven and owned by the second respondent. The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving. A charge sheet was filed against the owner driver. The owner driver filed a written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.

4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.”

(emphasis added)

14. In fact, it has been noted by the MACT in *paragraph 27* that, since testimony of *Arvinder Singh* was not available, in no way can an assertion be made that the offending vehicle had not swerved into the lane or there was any mechanical defect due to which the driver of offending vehicle had to change lanes suddenly, therefore, an inference was drawn that in the given facts and circumstances, neglect and default was on the part of driver of offending vehicle.

15. As regards the plea taken by *Mr. Tripathi*, that the doctrine of *res ipsa loquitur* may not apply in cases where the set of facts are complicated such as the present one, involving a rear end collision, may not hold ground



2026:DHC:5505



considering that the proceedings before the MACT are in the nature of an inquiry and therefore, assessment of negligence has to be conducted on the test of preponderance of probabilities. Reliance may be placed upon the decision of this Court in ***National Insurance Co. Ltd. v Shehnaj Begum & Ors.*** 2026:DHC:13169, where the Court traversed the law on *res ipsa loquitor* in motor accident cases and noted as under:

“Summarizing

38. *From the above discussion relating to the nature of inquiry before the Tribunal, the operation of the doctrine of res ipsa loquitur, and the applicable standard of proof, three aspects emerge clearly.*

39. *First, that the proceedings before the Motor Accident Claims Tribunal are in nature of an inquiry and are not hemmed in by rules of procedure or evidence. The Supreme Court in Shila Datta (supra) [passages extracted in paragraph 20 (a) above], has elaborated on this aspect. Essentially, a claim under Section 165 of the MV Act, is neither a suit nor an adversarial lis.*

40. *Tribunal holds an inquiry and makes an award to determine compensation, which ought to be just and reasonable. The procedure to be followed is summarised in the best discretion of the Tribunal. It has the power under Section 169 of MV Act to summon persons possessing special knowledge of the matters relevant to the inquiry.*

41. *In Anita Sharma (supra), the Supreme Court emphasised that fault may not be found merely because Tribunals do not examine some of the best eyewitnesses, as in a criminal trial, but should do their best to analyse the material placed on record by the parties.*

42. *Having clearly sketched the contours of the procedure undertaken by a Tribunal, it brings us to the second issue, which is determination of negligence. The nature of the accident and the basic facts*



surrounding the same are presented before the Tribunal in the form of a DAR (Detailed Accident Report), or through an FIR, or a recording in a police diary, along with the claim for compensation. In order to arrive at an assessment of negligence and, therefore, consequential liability in tort law, the principle of *res ipsa loquitur*, particularly in accident cases, is often brought into play.

43. Doctrine of *res ipsa loquitur* constitutes an exception to the general rule that the burden of proving negligence lies upon the claimant. The facts, “tell its own story” and “speak for itself”. The fact of the accident itself sometimes constitutes evidence of negligence. The principal function of the maxim is to prevent injustice, that would be caused to a plaintiff who would otherwise be compelled to prove the precise cause of the accident and responsibility of the defendant, when the facts are unknown to plaintiff but lie only within the knowledge of defendant. The burden then shifts to the defendant, who can, by leading evidence, rebut the inference drawn by the Court based on the doctrine.

...

45. Therefore, for application of the principle, it must be shown that the offending vehicle was under the management of the defendant and that the accident was such that, in the ordinary course of things, it would not have happened if those who were in management had used proper care. Having reached a reasonable inference based on the facts of the accident and being presented with a defence raised by defendants that they exercised care to avert foreseeable harm, the issue before the Tribunal would be how to balance the two aspects and what parameter is to be applied in measuring this balance, or in assessing which side the scales tilt.

46. This brings us to the third aspect, which is the test to be applied. It is well settled that the test or the burden of proof which applies is not that of beyond a reasonable doubt (as in criminal cases), but on the test



2026:DHC:5505



of preponderance of probabilities.”

(emphasis added)

16. Since no other evidence has been led to prove the assertion of contradictory negligence, except for reliance placed on *Nishan Singh* (*supra*), which cannot be applied as a formulaic principle, but applies on the specific facts of the case, the Court is not inclined to displace the finding of MACT in this regard.

17. Accordingly, the finding of negligence arrived at by the MACT in the impugned award is sustained.

18. An additional plea for enhancement of compensation awarded to the deceased-*Rishabh Mahajan* in *MAC.APP. 334/2023*, has been made by *Mr. S.N. Parashar*, counsel for claimants.

19. *Mr. S.N. Parashar*, stated that the MACT awarded minimum wages of an unskilled worker while calculating loss of dependency, despite there being educational certificates and income tax returns (*ITRs*) placed by the claimants on record. The educational certificates show that the deceased was in his first year, studying Bachelor of Computer Applications (*BCA*) at *Guru Gobind Singh Indraprastha University* in Delhi. Mother of deceased had also stated in evidence by way of affidavit that the deceased was working as an Event Manager and earning money as a DJ artist and was supporting the family.

20. Considering that the deceased was doing a professional degree course, even assuming potentiality of income, awarding minimum wages of an unskilled worker may not subsist. Accordingly, minimum wages of a skilled worker at Rs.9,802/- as pleaded by *Mr. S.N. Parashar*, shall be



2026:DHC:5505



applied for assessing loss of dependency.

21. Further, compensation awarded towards *loss of estate and funeral expenses* shall be aligned as per *National Insurance Co. Ltd. v. Pranay Sethi* (2017) 16 SCC 680, therefore, same shall be awarded at Rs. 16,500/- each.

22. Compensation awarded to claimants in *MAC.APP. 334/2023* is revised as under:

S. No.	Heads	Awarded by the Tribunal	Awarded by this Court
1	Income of deceased (A)	Rs. 8,086/-	Rs.9,802/-
2	Add: Future Prospects (B) @ 40%	Rs. 3,234.4/-	Rs. 3,920.8/-
3	Less: Personal expenses of deceased (C)	Rs. 5,660.2/-	Rs. 6,861.4/-
4	Loss of dependency (A+B)-C=D	Rs. 5,660.2/-	Rs. 6,861.4/-
5	Annual loss of dependency (Dx12) = (E)	Rs. 67,922.4/-	Rs. 82,336.8/-
6	Multiplier (F)	18	18
7	Total loss of dependency (E x F)= (G)	Rs. 12,22,603/-	Rs. 14,82,063/-
8	Compensation for loss of consortium (H)	Rs. 88,000/-	Rs. 88,000/-
9	Compensation for loss of estate (I)	Rs. 20,000/-	Rs. 16,500/-
10	Compensation towards funeral expenses (J)	Rs. 20,000/-	Rs. 16,500/-
11	Total compensation (G+H+I+J) =K	Rs. 13,50,603/-	Rs. 16,03,063/-
12	Rate of Interest Awarded	9%	9%



2026:DHC:5505



Directions

23. In view of the above, compensation payable to claimants in **MAC.APP. 334/2023** has been enhanced by Rs. 2,52,460/- [**‘enhanced amount’**]

24. Enhanced amount along with accrued interest will be deposited by Magma/Insurance Company before the MACT within the next four weeks, which will be released to claimants as lumpsum amount, within two weeks thereafter.

25. This Court has passed orders directing deposit of compensation and release of part compensation. In **MAC.APP.335/2018**, *vide* order dated 6th April 2018 Magma/Insurance Company was directed to deposit 60% of the compensation before the Registrar General of this Court and on 3rd January 2024, further directions for release of 50% compensation were given. Magma/Insurance Company is directed to deposit the balance amount, along with accrued interest before the Registrar General within six weeks, which shall be released as per the directions of MACT.

26. In **MAC.APP.260/2023** and **MAC.APP.262/2023**, *vide* order dated 17th May 2025, this Court directed Magma/Insurance Company to deposit 75% of the compensation before the MACT, and similarly in **MAC.APP.265/2023**, directions for deposit of 75% compensation before the MACT were passed on 19th May 2023. These amounts were to be released as per the scheme of impugned award.

27. Considering that these appeals have been disposed of, balance compensation, along with accrued interest, be deposited before MACT



2026:DHC:5505



within the next six weeks, which will be released to respective claimants, as per the directions of the MACT given in the impugned award.

28. Accordingly, the appeals are disposed of in the above terms.
29. Pending applications, if any, are rendered infructuous.
30. Copy of this judgment be sent to the concerned MACT.
31. Copy of this judgment be sent to the concerned bank for information and necessary compliance.
32. Statutory deposit, if any, be refunded to Magma/Insurance Company, only if the order of deposit has been complied with.
33. Magma HDI General Insurance Co. Ltd. is now Magma General Insurance Ltd. and, therefore, refund of statutory deposit shall be made in that name.
34. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 9, 2026/ak/sp