



2026:DHC:5449



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 06th July 2026**+ **MAC.APP. 221/2022 & CM APPL. 33685/2022CM APPL. 47344/2025**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate (*through VC*)

versus

SUNNY & ORS. Respondent

Through: Mr. Varun Sarin, Ms. Parul Dutta,
Mr. Shantanu Sharma, Mr.
Sanjeev Malik, Advocates for R-
1.**CORAM:**
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT**ANISH DAYAL, J (ORAL)**

1. This appeal has been filed by the Insurance Company (*appellant herein*), seeking to set aside the impugned award dated 16th February 2022 [*'impugned award'*], passed by the Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi [*'MACT'*], in DAR No. 384/2017, whereby compensation of Rs. 49,20,122/- along with interest @ 6% per annum was awarded.

2. The case pertains to an accident suffered by the injured aged 23 years on 30th January 2016 resulting in 90% permanent physical disability in relation to the whole body. Although, the functional disability was assessed by the Tribunal at 60%.

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3. *Mr. A.K. Soni*, counsel for Insurance Company, has challenged the award of compensation on the ground that the accident occurred due to the negligence of claimant. It is submitted that claimant, while riding his motorcycle from the *SDA Market side* and attempting to merge onto the *Outer Ring Road*, was hit by the truck (*'offending vehicle'*), which, according to claimant, was being driven in a rash and negligent manner.

4. The *second* ground urged is that the Insurance Company ought to have been granted recovery rights, as the driver of the offending vehicle did not possess the requisite endorsement on his driving licence to transport hazardous goods.

Analysis

5. On the *second issue*, when queried by the Court, *Mr. Soni* fairly submitted that no evidence had been placed on record to establish that the offending vehicle was, in fact, carrying hazardous goods at the time of the accident.

6. The MACT has noted this aspect in *paragraph 58* of the impugned award, observing that there is not a single document on record to show that the truck was carrying hazardous goods. The Mechanical Inspection Report, the seizure memo, and the *panchnama* relating to the release of the vehicle on *superdari* are all silent in this regard. In these circumstances, this Court is inclined to concur with the finding of the MACT.

7. Lack of endorsement for carrying hazardous goods, has also been considered by Court also in *Anil Langan & Anr v. M/s National Insurance Co Ltd & Ors.* 2026:DHC:5339 where this Court taking into account previous views expressed by Co-ordinate Benches in *Manish*



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Garg and Anr. v. United India Insurance Co. Ltd. and Anr. 2025:DHC:4995 and ***Amit Sharma v. New India Assurance Co. Ltd. and Ors.*** 2025:DHC:3878 and ***National Insurance Company Ltd. v. Sonia Mittal*** (2017) SCC Online Del 11202, held that the burden of proof is on the Insurance Company to prove that the offending vehicle was carrying any hazardous goods and that the evidence on record also needs to be considered whether the offending vehicle was carrying hazardous goods. If there is no material on record to show that the offending vehicle was carrying hazardous goods, there is no requirement of endorsement.

8. The submission of the Insurance Company in this regard and the evidence on record suggests that there is no proof that the offending vehicle was carrying hazardous goods, accordingly, the plea of the Insurance Company in this regard is rejected.

9. On the *first issue*, Mr. Soni has relied upon the site plan, which indicates that while the offending vehicle was proceeding straight on *Outer Ring Road*, the injured, who was riding his motorcycle, entered the main carriageway from the adjoining road. The collision is shown to have occurred shortly after the motorcycle took a left turn at Point 'A'. The site plan is extracted below for ready reference:

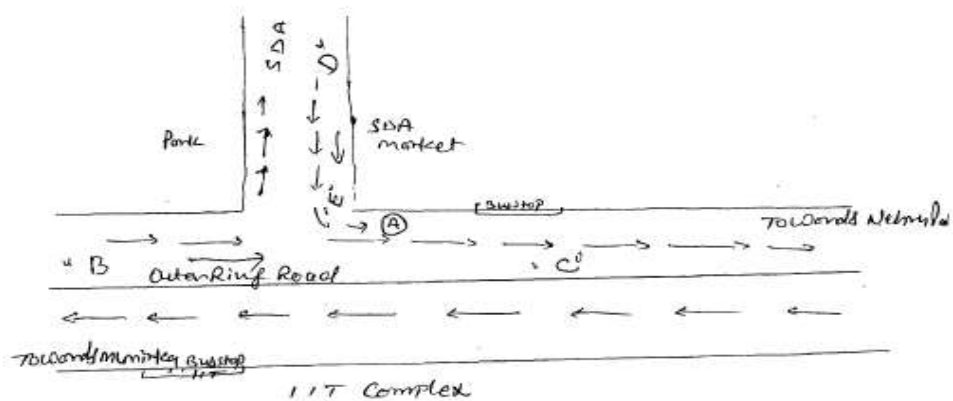
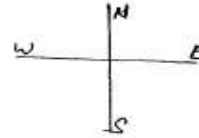


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Cafe fire No. 151/16 dt 30/1/16 418 279/337 IP Cr. P.S.
Vasant Vihar N. Delhi

नम्ब्रा मोका नजरी



नोट:- नम्ब्रा मोका मोका से 'A' जहाँ वह हत्या दृश्यमा गया है
जहाँ पर कारदात का होता पाया गया है नम्ब्रा मोका
दो परता छिना एकेल तैपा छिया गया।

जहाँ SCINNY 'A'
सन्नी ५० किजप
५० B-3, एरफफ काकोनी
फतेहपुर देवी, नई दिल्ली

32 Amit Solanki
PS Vasant Vihar

10. In this regard, the cross examination of **PW-1** needs to be considered. **PW-1**/ injured stated that the driver of the offending vehicle did not blow any horn and the offending vehicle was being driven at high speed. Whereas, it was stated that he was driving the motorcycle at 10 to 20 kilometres per hour. He denied the suggestion that he hit the offending vehicle from behind.

11. On the other hand, the testimony of *Umesh Kumar*, driver of the

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offending vehicle, stated that he was not driving the vehicle in a rash and negligent manner and in fact the injured had hit him *from behind*. This was considered by the MACT as contradictory in conjunction with the site plan and, therefore, no contributory negligence was attributed to the injured.

12. What is relevant here is the Mechanical Inspection Report, which forms part of the DAR; the Mechanical Inspection Report of the truck indicates “*L/siderear Tyre outside Scratched*”. The Mechanical Inspection Report of the motorcycle indicates “*Front mudguard broken & H/Light R/Side Scratched & broken. H/Brake lever & leg guard Scratched L/Side*”.

13. If these findings are read in conjunction with the site plan, they indicate that the offending vehicle was already proceeding on the main carriageway when the motorcycle attempted to merge onto it and collided with the rear portion of the offending vehicle.

14. A motorcyclist entering the main carriageway is under a duty to exercise due care, particularly when another vehicle is already proceeding on the road. It is possible that the claimant did not have sufficient opportunity to notice and react to the movement of the offending vehicle, or that he failed to exercise due caution by not adequately checking the traffic approaching from his right before entering the carriageway. In either of these circumstances, this Court is unable to agree with the finding of the MACT that no contributory negligence can be attributed to the injured/claimant.

15. Contributory negligence, in tort law, contemplates a situation where a person’s own negligence has materially contributed to the harm



suffered, thereby warranting apportionment of liability to the extent of such negligence. The Supreme Court in ***Municipal Corporation of Greater Bombay v. Laxman Iyer***, 2003 (8) SCC 731, explained the term ‘negligence’, ‘composite negligence’ and ‘contributory negligence’. For ease of reference relevant paragraph is extracted as under:

“6. The plea which was stressed strenuously related to alleged contributory negligence. Though there is no statutory definition, in common parlance “negligence” is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is



absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Whichever party could have avoided the consequence of the other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn., para 328.) It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage is reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where



there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn., p. 361.)”

(emphasis added)

16. From the above, it is evident that contributory negligence is attracted where the conduct of the injured has materially contributed to the occurrence of the accident. In the present case, the site plan, read together with the Mechanical Inspection Reports, indicates that the offending vehicle was already proceeding on the main carriageway when the claimant attempted to merge onto the road and struck the rear portion of the truck. The driver of the offending vehicle cannot be absolved of his duty to drive with due care, but the claimant also failed to exercise the degree of caution expected of a prudent road user while entering a busy carriageway. Accordingly, this Court is of the considered view that the accident occurred due to the negligence of both the driver of the offending vehicle and the claimant. Finding of the MACT that no contributory negligence could be attributed to the claimant is, therefore, unsustainable and deserves to be modified by apportioning liability on account of the claimant's contributory negligence. Accordingly, the Court is inclined to award contributory negligence of the injured at 20%.
17. The Court, however, notes that the *functional disability* has been assessed by the Tribunal at 60% despite the Disability Certificate



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certifying at 90% and the statement of **PW-2**, Dr. Satish Kumar, Orthopedic, Professor and Consultant Head, RML Hospital stating that the physical disability was in relation to the whole body. He sustains his testimony in the cross-examination and states that “*it is wrong to suggest that the above percentage of disability of the patient is not with respect to his whole body or that it relates to a particular limb only*”.

18. In this regard, the Court is surprised at the finding of the MACT which assessed the *functional disability* at 60%, evident from *paragraph 35* of the impugned award. It is pertinent to note that no reasoning has been given by the MACT for assessing the functional disability at 60%.

19. In this regard, testimony of **PW-1** injured is also noted where he states in his additional affidavit by way of evidence, even in July 2018 his treatment was still going on. He was taking regular physiotherapy and treatments on various dates, in relation to which, he placed relevant documents on record.

20. It is evident from the discharge summary that he was admitted in the hospital from 30th January 2016 and discharged on 16th February 2016 and was diagnosed with *diffuse axonal injury with distal right humerus condyle* and had to undergo various operative procedures. Further, as per document **Ex. PW1/8**, injured was not able to report to work after accident his services got terminated.

21. Reliance can be placed on the judgment of **Raj Kumar v. Ajay Kumar** (2011) 1 SCC 343, the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's



pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are extracted as under:

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;



(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

(emphasis added)

22. Applying the aforesaid principles to the facts of the present case,



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this Court finds that the MACT has committed an error in assessing the claimant's *functional disability* at 60% without assigning any reasons. The medical evidence, including the Disability Certificate and the uncontroverted testimony of **PW-2**, clearly establishes that the claimant suffered 90% permanent physical disability in relation to the whole body. The evidence further demonstrates that the claimant remained hospitalised for a considerable period, continued to undergo treatment and physiotherapy even thereafter, and ultimately lost his employment on account of his inability to resume work. In these circumstances, there is nothing on record to justify reducing the functional disability to 60%. On the contrary, the nature of injuries, the medical evidence, the impact of the disability on the claimant's vocation as security supervisor and reduced future employability indicate that the functional disability ought to correspond with the disability certified in relation to the whole body. The finding of the MACT restricting the functional disability to 60% is, therefore, unsustainable and is liable to be modified. Accordingly, in the opinion of this Court, the *functional disability* should be taken at 90%.

23. The revised compensation is as under:

S. no	Heads of Compensation	Awarded by Tribunal	Awarded by the Court
	Pecuniary Loss		
1.	Medicine and Treatment (A)	Rs. 93,872/-	Rs. 93,872/-
2.	Expenditure on special diet (B)	Rs. 1,44,000/-	Rs. 1,44,000/-
3.	Expenditure on conveyance	Rs. 30,000/-	Rs. 30,000/-
4.	Attendant Charges	Rs. 1,44,000/-	Rs. 1,44,000/-
5.	Income of injured per month	Rs. 16,590/-	Rs. 16,590/-



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	(C)		
6.	Future prospects @ 40% (D)	Rs. 6,636/-	Rs. 6,636/-
7.	Loss of income (C) x 24=(E)	Rs. 3,98,160/-	Rs. 3,98,160/-
8.	Functional disability (F)	60%	90%
9.	Multiplier (G)	18	18
10.	Loss of future income [(C+D) x 12 x F x G]= H	Rs. 30,10,090/-	45,15,134/-
	Non-pecuniary loss		
11.	Pain and suffering (K)	Rs. 2,50,000/-	Rs. 2,50,000/-
12.	Compensation for mental and physical shock (L)	Rs. 2,50,000/-	Rs. 2,50,000/-
13.	Loss of Amenities of Life (M)	Rs. 1,00,000/-	Rs. 1,00,000/-
14.	Disfigurement (N)	Rs. 2,50,000/-	Rs. 2,50,000/-
15.	Loss of matrimonial prospects (O)	Rs. 2,50,000/-	Rs. 2,50,000/-
16.	Total	Rs 49,20,122/-	64,24,166/-
17.	Contributory Negligence @ 20%	Rs 49,20,122/- (Nil)	20% of 64,25,166 = 51,40,133/-
18.	Enhancement	Rs. 2,20,011/-	
19.	Interest	6%	6%

Directions

24. The compensation is enhanced by Rs. 2,20,011/-.

25. By order dated 01st August 2022, this Court directed that subject to deposit of 50% of the award amount along with accrued interest with the Tribunal there shall be stay of the impugned award. By order dated 18th October 2022, it was directed that 50% of the deposited amount shall be released to claimant.

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26. It is directed that the balance amount along with accrued interest shall be deposited with the Tribunal within a period of four weeks and the same shall be disbursed to the claimant in terms of the directions given by the Tribunal in the impugned award.

27. Enhanced amount along with 6% interest per annum from the date of filing the petition shall be deposited before Tribunal within a period of four weeks. It is directed that a lump sum amount of Rs. 2,20,011/-. Along with accrued interest @6% per annum shall be released to the claimant from the deposit of enhanced amount within a period of two weeks thereafter.

28. Accordingly, the Appeal is disposed of. Pending applications are rendered infructuous.

29. Statutory deposit, if any, shall be refunded to appellate/Insurance Company only upon deposit of the enhanced amount along with the accrued interest.

30. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 06, 2026/RK/zb