



2025:DHC:6943



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

% ***Date of Decision: 07.08.2025***

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+ **MAC.APP. 819/2018, CM APPL. 37672/2018**

H D F C ERGO GENERAL INSURANCE CO LTDAppellant
Through: Ms. Niyati Jadaun, Advocate

versus

RAMJI & ORSRespondents
Through: Mr. Parmil Kumar, Advocate for R-1

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+ **MAC.APP. 820/2018, CM APPLs. 37668/2018, 37670/2018**

H D F C ERGO GENERAL INSURANCE CO LTDAppellant
Through: Ms. Niyati Jadaun, Advocate

versus

EKTA SHARMA & ORSRespondents
Through: Mr. Parmil Kumar, Advocate for R-1

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+ **MAC.APP. 821/2018**

H D F C ERGO GENERAL INSURANCE CO LTDAppellant
Through: Ms. Niyati Jadaun, Advocate

versus

LATA SHARMA & ORSRespondents
Through: Mr. Parmil Kumar, Advocate for R-1
to R-4

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+ **MAC.APP. 822/2018, CM APPL. 37697/2018**



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H D F C ERGO GENERAL INSURANCE CO LTDAppellant
Through: Ms. Niyati Jadaun, Advocate

versus

LATA SHARMA & ORSRespondents
Through: Mr. Parmil Kumar, Advocate for R-1

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 37670/2018/*Application for condonation of delay*

1. This Application has already been disposed of by an Order dated 18.12.2018 and has become infructuous.

MAC.APP. 819/2018

MAC.APP. 820/2018

MAC.APP. 821/2018

MAC.APP. 822/2018

2. The present Appeals have been filed under Section 173 of the Motor Vehicle Act, 1988 impugning the award dated 07.06.2018 [hereinafter referred to as "Impugned Award"] passed by the learned Presiding Officer, MACT-01, Karkardooma Courts, New Delhi. By the Impugned Award, the following amounts have been awarded to the Respondents/Claimants:

MAC. APP. No.	Petition No. Trial Court	Amount awarded to	Amount awarded
MAC.APP. 819/2018	MACT No. 351/2016	Ramji/Respondent No. 1	Rs. 1,03,000/- along with 9% interest per annum
MAC.APP.	MACT No.	Ekta	Rs.



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820/2018	352/2016	Sharma/Respondent No. 1	46,000/- along with 9% interest per annum
MAC.APP. 821/2018	MACT No. 354/2016	Lata Sharma, Divya Sharma, Ekta Sharma and Anuj Sharma/Respondent Nos. 1 to 4, LRs of deceased	Rs. 6,50,000/- along with 9% interest per annum
MAC.APP. 822/2018	MACT No. 353/2016	Lata Sharma/Respondent No. 1	Rs. 46,000/- along with 9% interest per annum

3. Learned Counsel appearing on behalf of the Appellant raises a two-fold challenge in the present Appeals. Firstly, she submits that the Appellant/Insurance Company was wrongly made liable since the offending vehicle did not have a permit to ply. Secondly, she submits that no recovery rights were granted against the driver and the owner of the offending vehicle.

4. Briefly the fact are that the Respondents/Claimants were standing waiting for a vehicle at village Anwar Pur Mor, District Punsheel Nagar, UP to go to Pilkhuwa, District Punsheel, UP. A tempo which was being driven in a rash and negligent manner hit the deceased/Avantika Sharma and all other persons standing there and due to the accident all the injured were referred to a hospital in Punsheel Nagar, UP. Thereafter Ms. Avantika Sharma one of the injured was referred to Safdarjung Hospital in New Delhi, where she passed away during treatment on 06.12.2011.

4.1 Four separate Claim Petitions being *MACT No. 351/2016*, *MACT No.*



352/2016, *MACT No. 354/2016* and *MACT No. 353/2016* were filed, by the legal representatives of the deceased and the other 3 Petitions by the injured persons as well.

4.2 Although the Respondent Nos. 2 and 3/driver and the owner of the offending vehicle in *MAC.APP 819/2018* were served by publication before the learned Trial Court, they did not appear and were proceeded *ex parte* by the learned Trial Court by Order dated 16.08.2014. All four Claim Petitions were decided together by the learned Trial Court since they arise from the same accident and *MACT No. 354/2016* was treated as the main Petition and evidence was led in that Petition culminating in the four Impugned Awards.

5. As stated above, the only ground that has been raised by the Appellant/Insurance Company is that the vehicle, although insured, did not have a permit to ply.

6. Learned Counsel appearing on behalf of the Appellant submits that the Notice under Order XII Rule 8 of the CPC [hereinafter referred to as “Notice”] was sent to the driver and the owner of the vehicle, however since there was no response to the Notice, adverse inference should have been drawn by the learned Trial Court for non-production of the vehicular permit and related documents. This Notice was not exhibited but marked as Mark ‘A’.

6.1 Learned Counsel further submits that the Impugned Award suffers from infirmity since the aspect of the fitness as well as permit was not taken into account by the learned Trial Court.



7. A perusal of the written statement filed by the Appellant/Insurance Company which was placed on record before the learned Trial Court, also shows that the ground taken therein was that the vehicle was being driven without a valid permit.

8. Order XII Rule 8 of the CPC sets out that a Notice to be sent under this provision is required to comply with the provision. It is to be sent in Form 12 Appendix C of the Act. The affidavit of the person sending the notice or his clerk, of the service of any notice and of the time when the notice was served, with a copy of the notice to produce shall in all cases should be sufficient evidence of the service of such notice. Order XII Rule 8 of the CPC reads as follows:

*“ORDER XII
Admissions*

....

8. Notice to produce documents. - Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the Service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.”

9. The examination of the Impugned Award shows that although the Notice was placed on record by the Appellant/Insurance Company and numbered as Mark ‘A’, the Appellant/Insurance Company did not place on record any postal receipt of dispatch of this Notice or the requisite Affidavit.

9.1 This is evident from the finding in the Impugned Award. It was held that there was no evidence on record that there was violation of the Insurance Policy. The relevant extract is reproduced below:

“57. Liability: Petitioners have proved that the offending vehicle was



insured with the insurance company i.e. HDFC ERGO General Insurance Co. Ltd, and insurance policy is already on record. Respondent No. 3 has admitted that the offending vehicle was insured with the Respondent No. 3 on the day of accident, but it is argued that it was a case of violation of insurance policy as the offending vehicle was not carrying a permit and Respondent No. 3 has served a legal notice U/O 12 rule 8 CPC upon the Respondent No 2 to produce permit of the vehicle but he has failed to produce the same despite service of legal notice and insurance company is not liable to pay this compensation. It is further argued that even this lapse was noticed by the MACT Court at Ghaziabad at the time of adjudicating earlier judgment Mark E as per which it was, observed that the offending vehicle was not carrying the permit and recovery rights were granted to the company. It is argued that in this case also recovery rights are ought to be granted as owner has failed to produce the permit despite service of legal notice. However, the argument of Ld. Counsel for Insurance Company has no force. In this case, Respondent no. 3 has failed to prove any violation of Insurance policy as service of legal notice u/o 12 rule 8 CPC upon the respondent no 2 could not be proved. No doubt the insurance company has relied upon the legal notice which was allegedly served upon the owner of the offending vehicle but no postal receipt of dispatch of notice or AD card of service of notice upon the respondent no. 2 has proved on record. In fact, in the absence of any proof of service or record of dispatch, it could not be proved merely by the photocopy of judgment of MACT Court that too without certified copy that it was a case of violation of terms of insurance policy....

[Emphasis supplied]

10. Concededly, the compliance of provisions of Order XII Rule 8 of the CPC has not been undertaken by the Appellant/Insurance Company for any adverse inference to be drawn against the driver or owner of the offending vehicle. No other ground has been shown by the learned Trial Court for the Application either.

11. The Respondents/Claimants on the other hand produced PW-1 Ekta Sharma who was also present at the spot at the time of the accident. As the eye witness and the Claimant in MACT No. 352/2016, she deposed about the rash driving by the Respondent/Driver of the offending vehicle. PW-2 Lata Sharma [Claimant in MACT No. 353/2016] and PW-3 [Claimant in



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MACT 351/2016] corroborated this testimony. In addition, the Claimants proved that the offending vehicle was insured.

11.1 Although the Appellants examined R3W1 Deepender Singh as their witness he did not prove that the Notice was in fact dispatched or that there was any violation of the insurance policy.

12. In these circumstances, the contention of the Appellant/Insurance Company that there was a violation of the Insurance Policy was not proved.

13. Learned Counsel appearing on behalf of the Appellant has not been able to show the Court any other document or evidence *qua* her contention that the offending vehicle was driven without a valid permit.

14. In view of the foregoing discussions, these Appeals are dismissed. All pending Applications stand closed.

TARA VITASTA GANJU, J

AUGUST 7, 2025

g.joshi/pa