$~17

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

\+ MAC.APP. 252/2019

ZAHIDA BEGUM .....Appellant

Through: Mr. Anshuman Bal, Adv.

versus

ICICI LOMBARD GEN INS CO LTD & ORS .....Respondent

Through: Ms. Suman Bagga and Ms. Mouli Sharma, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% 26.02.2026

1. Pursuant to an accident which occurred on 25th October 2013, involving a motorcycle on which the deceased was alleged to be travelling as a pillion rider and which was allegedly driven by *Mohd. Fahim*, and insured with respondent no.3, a collision occurred with the offending vehicle/truck, which hit the motorcycle and fled from the spot, resulting in fatal injuries to the deceased *Mohd. Nazakat Hussain*. An **FIR No.259/2013** under Sections 279/304A/427 of the Indian Penal Code 1860 [***IPC***] was registered at Police Station *Garhmukteshwar, Hapur*, Uttar Pradesh. A claim petition was filed under *Section 163(A)* of the Motor Vehicles Act 1988, on the basis that the deceased *Mohd. Nazakat Hussain* was a pillion rider and, therefore, a third party to the insurance policy covering the motorbike.

2. However, the Motor Accident Claims Tribunal ["***MACT***"] by order dated 15th March 2017, assessed the evidence before it and reached a

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 09/03/2026 at 11:14:40

conclusion that the claimant could not prove that he was a pillion rider on the motorcycle; rather he was driving the motorcycle which was owned by him.

3. This conclusion was based on the evidence of *Zahida Begum* [**PW-1**], mother of the deceased and appellant herein, who stated in her evidence that she did not know who was driving the vehicle at the time of the accident.

4. In her cross-examination, she stated that, 4 months prior to the accident "*we had purchased the motorcycle bearing registration no. DL-6SAL-3859, but I do not remember the name of the seller*". Regarding the other person, who was allegedly involved in the accident *Mohd. Fahim*, she only stated, "*one person whose name I do not know was also accompanying my son at the time of the accident*".

5. The other aspect considered by the MACT was that the statement of *Mohd. Fahim*, allegedly the driver of the motorcycle, was recorded by the police only after 3 days, wherein he stated that he was driving the motorcycle and the deceased was the pillion rider. Not only did he not file any Medico-Legal Case Report ["***MLC***"] regarding his injuries allegedly sustained in the accident, but only after three days later did *Mohd. Fahim* appear and state that he was driving the vehicle.

6. The MACT also notes that it remained unexplained as to how and why *Mohd. Fahim* disappeared from the place of the accident when *Nazakat Hussain* died on the spot.

7. The FIR was recorded on the statement of the brother of the deceased, but remained silent about the presence of *Mohd. Fahim* on the motorcycle at the date of the accident. Aggrieved by the dismissal of the claim petition, the claimant filed an appeal [***MAC.APP. 763/2017***] before this Court. Counsel appearing for the appellant in that appeal, withdrew the appeal *vide* order

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 09/03/2026 at 11:14:40

dated 25th August 2018, seeking liberty to move the Tribunal by way of a review petition. The Court dismissed the appeal as withdrawn, with liberty.

8. Subsequently, an order was passed on 3rd December 2018 on the review application filed by the claimant [*impugned order*], dismissing the application. The order dated 3rd December 2018 stated that there was no discovery of any new fact or evidence, which was not within the knowledge of the claimant at the time of the inquiry, nor was there any mistake or error apparent in the passing of the award.

9. The MACT stated that they had considered all materials on record and that a re-inquiry could not be conducted merely to enable a party to correct or re-examine fresh evidence.

10. *Mr. Anshuman Bal*, counsel for appellant, states that the statement of *Zahida Begum* was given by mistake and *Mohd. Fahim's* statement had not been properly recorded; therefore, the matter ought to have been reheard by the MACT, and the review application be allowed.

11. *Ms. Suman Bagga*, counsel for respondent/Insurance Company, counters this by stating that when the first appeal being ***MAC.APP. 763/2017*** was filed, issue related to *Zahida Begum's* statement that they had bought the motorcycle four months earlier and, therefore, the deceased would effectively step into the shoes of the owner of the vehicle and would not be covered by third-party insurance.

12. She states that *ad invitum* appellant chose to withdraw it and file the review application; alternatively they could have pressed all their points in appeal itself. Now, having had the review petition dismissed, they are re-agitating the matter, which cannot be allowed.

13. This Court has examined the records and the submissions of the parties.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 09/03/2026 at 11:14:40

It does appear unusual that presence of *Mohd. Fahim* was not noted in the FIR, nor was he available during the preliminary investigation, nor did he file any MLC for his injuries, while his friend and passenger (if the claimant's assertion is to be believed) died on the spot. The resurgence of *Mohd. Fahim* three days later to give a statement to the police also does seem suspicious.

14. *Zahida Begum's* statement in the cross-examination that they had purchased the vehicle four months earlier also lends credence to the possibility that the deceased was driving the vehicle on the day of the accident. Whatever the situation may have been, the insurer cannot be made liable in this regard, considering that the deceased has not been established as a third party.

15. In view of the same, this Court is not inclined to entertain the appeal, same is, accordingly, dismissed.

16. Pending applications, if any, are rendered infructuous.

17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 26, 2026/MK/tk

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 09/03/2026 at 11:14:40