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

\+ MAC.APP. 151/2021, CM APPL. 11713/2021, CM APPL. 9164/2025 &CM APPL. 10232/2025.

SARLA DEVI & ORS. .....Appellants

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

versus

AMIT & ORS. .....Respondents

Through: Mr. Rajeev M. Roy, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **01.04.2026**

1. This appeal has been filed challenging the judgment of 4th February 2019 passed by the Motor Accidents Claims Tribunal, Rohini Courts ('***MACT/Tribunal***') in *MACT No. 5386/2016*, awarding compensation of *Rs.7,63,820/-* along with interest @ *9%* per annum.

2. On 18th August 2009, deceased, *Man Singh,* along with his family was traveling from Noida to Lucknow in a *Tempo Traveller*, which was allegedly driven in a rash and negligent manner by respondent no.1/driver and despite warning to drive carefully. The vehicle collided with a truck parked in the middle of the road near *District Etawah, Uttar Pradesh*, at about 4 AM, resulting in grievous injuries to the occupants. *Man Singh* succumbed to his injuries.

3. Criminal proceedings were lodged, and claim petition was filed by the

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legal representatives.

4. The MACT awarded compensation to be paid jointly and severally by respondent Nos. 1, 2, and 4.

5. Respondent no. 4 was the owner of the truck on whom *30%* liability had been fastened, whereas *70%* liability had been fastened on the owner of the T*empo Traveller* itself.

6. The Insurance Company was exonerated on the basis that the insurance policy for the *Tempo Traveller* was related to a private vehicle policy and did not cover a situation where it had been taken on hire.

7. The whole issue, therefore, revolved around whether the *Tempo Traveller* was taken on hire or not. In this regard, the testimony of **PW1**, the wife, was examined, who stated that her husband, her brother, and her brother-in-law were travelling in the vehicle.

8. **PW-2**/*Ayodhya Prasad Singh* was the complainant, who was also travelling in the vehicle.

9. However, the Insurance Company had relied on the statement of *Sh. Subhash Chand Jain,* given to the police, where he stated that the *Tempo Traveller* had been taken on rent for the purpose of the younger brother's *godh bharai* ceremony, for which they were going from *Noida to Lucknow.*

10. The MACT noted the statement of *Subhash Chand Jain* given to the police, and stated that there is no evidence on this aspect by the driver and the owner, or even by the claimant and on that basis, and accordingly, exonerated the Insurance Company.

11. After hearing the arguments submitted by *Mr. Parashar*, counsel for claimant, and *Mr. Rajeev M. Roy,* counsel for the Insurance Company, it will be relevant that *Mr. Subhash Chand Jain* is also examined by the parties in

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order that this aspect of evidence is closed i.e. *whether the vehicle had been taken on rent/hire or was used in a private capacity*, since this relates directly to the issue of exoneration of the insurance company.

12. Aside from this, *Mr. Parashar* has relied on ***Akula Narayana v The Oriental Insurance Company Ltd. & Anr.*** 2025 INSC 1301, particularly *paragraph 12,* to state that the Insurance Company should be made liable to pay the claimant; however, they can recover the said amounts from the driver and owner. Relevant paragraph is extracted as under:

> "*12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court recently in Rama Bai v. Amit Minerals 2025 SCC OnLine SC 2067 again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).*"
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> (emphasis supplied)

13. Considering that the driver and owner have not been appearing/represented in this matter, this issue of *pay and recover* will also have to be considered by the MACT.

14. The matter is, therefore, remanded back to the MACT for determination on the above points.

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15. List before the MACT on 4th May 2026.

16. Appeal is, therefore, disposed of. Pending applications (if any) are rendered infructuous.

17. Copy of the order be sent to MACT.

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

ANISH DAYAL, J

APRIL 1, 2026/RK

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