



2026:DHC:130



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

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Date of decision: 08th January 2026+ **MAC.APP. 589/2025**

SANTOSH

.....Appellant

Through: Mr. S.N. Parashar, Mr. Ritik Singh,
Advocates.

versus

ASHISH & ANR. (SHRI RAM GENERAL INS. CO.
LTD.)

.....Respondents

Through: Mr. Abhishek Kumar Anand, Mr.
Jayaditya Dogra, Advocates for R-2.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J: (ORAL)**

1. This appeal has been filed assailing the judgment dated 27th January 2025, passed by the Motor Accidents Claims Tribunal ('*MACT*'), South-East District, Saket Courts in *MACT* No.751/2018, dismissing the claim petition. Claim petition as well as this appeal has been preferred by the wife of the deceased *Sh. Kapil*, who was travelling on the pillion of a two-wheeler driven by one *Ashish*/ respondent no.1 on 17th March 2018.
2. The two-wheeler had apparently skid and fallen near the AIIMS flyover and injury was sustained by the deceased *Sh. Kapil*, who was under treatment *vide* *MLC* No.5000844440/2018. *Sh. Kapil* was unconscious and declared unfit for statement by the doctor as is evident from the Medico-



2026:DHC:130



Legal Certificate (***MLC***). The MLC further notes very clearly that the informant was a relative named *Ashish* and that late *Sh. Kapil* was a pillion rider on two-wheeler vehicle which skid and fell near INA.

3. Counsel for appellant, therefore, states that these facts stand admitted basis the record.

4. Insurance company/respondent no.2 was exonerated by the MACT on the ground that the negligence of the driver was not proved. MACT relied upon case law to conclude that when the claimant has failed to prove that the damage was caused to the vehicle because of rash and negligent driving, no compensation could be awarded.

5. The issue, therefore, rotates around the aspect of rash and negligent driving by *Ashish*, who was admittedly the driver of the two-wheeler.

6. Counsel for appellant points out that an FIR No.86/2018 dated 18th March 2018 was registered under *Sections 279/304A of Indian Penal Code, 1860 (IPC)* and a chargesheet was filed implicating *Ashish/* respondent no.1.

7. Investigating Officer (***IO***), *SI Pradeep Kumar* was examined as *PW-3*, where he stated that no other vehicle was involved in the accident and that late *Sh. Kapil* was the pillion rider on the two-wheeler, while *Ashish* was driving the scooty in a '*rash and negligent manner*'. *PW-3* states that basis this statement/disclosure statement of *Ashish*, recorded before the IO and not before the Magistrate, a case of rash and negligent driving was registered.

8. Pursuant to a Court question as to how the IO had come to the conclusion that respondent no.1 was driving in rash and negligent manner, the reply was as under "*on the basis of disclosure of the R-1, mechanical inspection report of the vehicle and injury of deceased Kapil, I concluded*



2026:DHC:130



that the R-1 was driving the vehicle rashly and negligently”.

9. Counsel for respondent states that since there was no eye-witness to the accident, a presumption cannot be made that the accident was due to the rash and negligent driving of *Ashish/* respondent no.1 and, therefore, the claim could not be sustained.

10. Counsel for appellant states that the liability of insurance company to cover the claim of deceased, would be covered by the policy under third-party liability and as regards the issue of rash and negligent driving, the FIR and the chargesheet ought to have been taken into account by the MACT. Further, insurance company has also not ensured evidence of respondent no.1 nor was he brought into the witness box.

11. In support, he relies upon the decision of this Court in MAC.APP. 90/2024 titled as “***Oriental Insurance Co. Ltd. v. Kusum***”, which was a case of death by hit and run by a truck. Objection which was taken by the insurance company therein, was also that there was no eye-witness examined to establish the rash and negligent driving of the driver. The Tribunal in the award in that case had observed that compensation proceedings were not akin to a trial and the Tribunal was not bound by details of evidence as are required in a criminal prosecution but is more akin to an inquiry.

12. Therein, the Court relied upon the decisions in ***United India Insurance Company Limited v. Shila Datta & Ors.*** (2011) 10 SCC 509, ***Dulcina Fernandes & Ors. v. Joaquim Xavier Cruz & Anr.*** (2013) 10 SCC 646 and ***National Insurance Company Ltd. v. Smt. Pushpa Rana & Ors.*** 2009 ACJ 287, to note that if during the investigation of a case, the driver



2026:DHC:130



has been found negligent and put to trial and criminal case is registered, such documents would be sufficient to reach the conclusion that driver was negligent. The Court, therefore, upheld the award of the MACT on this account by noting as under:

“11. In the present case, the claimant had examined PW-2, Investigating Officer of the case, who deposed that he had recorded statement of the eye witness, Mukesh, however, he is not traceable. He proved the DAR Ex. PW1/4, which contains the site plan, mechanical inspection report as well as the Final Report under Sections 279/304A IPC.

12. The Site Plan and the Mechanical Inspection report filed clearly reflect the manner in which the accident had taken place. It cannot be overlooked that there was an eye witness to the accident, who was not traceable and could not be examined. Only because the eye witness is not examined, it cannot be said that there is no cogent evidence of eye witness to explain the manner in which the accident took place. The learned Tribunal on the basis of the documents, was correct in holding that the accident took place due to rash and negligent driving of the driver.”

(emphasis added)

13. To further buttress his submission, counsel for appellant relied upon the following decisions:

- I. ***Meera Bai & Ors. v. ICICI Lombard General Insurance Co. Ltd. & Anr.***, 2025 INSC 600: Where the Supreme Court was dealing with a similar situation, in that, an accident had occurred and the deceased was travelling pillion on a motor bike, whereas the owner of the motor bike was the driver of vehicle against whom an FIR was lodged for the offence of rash and negligent driving and a chargesheet was



2026:DHC:130



filed. Despite there being no eye-witness, the Court noted as under:

“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)

- II. ***Ranjeet v. Abdul Kayam Neb***, 2025 SCC OnLine SC 497.: Where the Supreme Court was yet again dealing with a claim petition, where no eye-witness was produced and the Tribunal refused to grant compensation and the Court held 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 eye-witnesses 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)

- III. ***Mangla Ram v. Oriental Insurance Co. Ltd.***, (2018) 5 SCC 656: Where the Supreme Court reiterated the principles regarding assessment of negligence in cases where evidence of eye-witnesses was not available. The Court referred to the decision in ***Dulcina Fernandes***, 2013 ACJ 2712 (SC), and stated as under:

“25. In Dulcina Fernandes [Dulcina Fernandes v.



2026:DHC:130



Joaquim Xavier Cruz (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13], this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]"

(emphasis added)

14. In deference to this consistent view of the Supreme Court, the Court is of the opinion that considering a criminal case has been registered, element of rash and negligent driving has been alleged by the prosecution and a chargesheet has been filed against the driver/respondent no.1 of the vehicle, this aspect ought to have been taken into account by the MACT before dismissing the claim petition.

15. Respondent no.1, himself was the concerned offender and admittedly was driving the vehicle. It would have been imperative for respondent no.1 to have been examined during the proceedings by the MACT.

16. *Mr. Sameer Dandwani*, counsel appears for respondent no.2/ insurance company. Respondent no.1 has already been served as noted in order of the Joint Registrar dated 26th November 2025, however, no one



2026:DHC:130



appears.

17. In this view of the matter, the appeal is allowed. The matter is remanded back for the Tribunal for a fresh reconsideration. Parties may take up all their pleas before the Tribunal.

18. Tribunal will not be influenced by its judgment dated 27nd January 2025, impugned herein and will apply its mind afresh in the matter, keeping in mind the aforementioned position in law, however after hearing the parties.

19. Pending applications (if any) are rendered infructuous.

20. The matter may be listed on 22nd January 2026 before the MACT.

21. Copy of this order be sent to the Principal District & Sessions Judge, South-East District, Saket Courts, Delhi for information and necessary compliance.

22. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 8, 2026/ak