



2026:DHC:5272



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 29th May 2026*
Pronounced on : 02nd July 2026
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+ **MAC.APP. 629/2013 & CM APPL. 4888/2014CM APPL. 4889/2014**

ORIENTAL INSURANCE CO. LTD.Appellant

Through: Mr. Pankaj Seth and Ms. Shruti Jain, Mr. Shaumik Mazumdar, Advs.

versus

SHYAM SUNDER & ORS.Respondents

Through: Mr Manish Maini, Adv. *Amicus Curiae* for claimants

+ **MAC.APP. 725/2013**

AMIT KALRA & ANRAppellant

Through: Mr. V.N. Jha and Mr. B.K. Singh, Advs.

versus

SHYAM SUNDER & ANRRespondents

Through: Mr Manish Maini, Adv. *Amicus Curiae* for claimant
Mr. Pankaj Seth and Ms. Shruti Jain, Mr. Shaumik Mazumdar, Advs. For Insurance Co.

+ **MAC.APP. 194/2014**

SHYAM SUNDERAppellant

Through: Mr Manish Maini, Adv. *Amicus Curiae*

versus



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AMIT KALRA & ORS

.....Respondents

Through: Mr. V.N. Jha and Mr. B.K. Singh,
Advs. for R-1 & 2.
Mr. Pankaj Seth and Ms. Shruti
Jain, Mr. Shaumik Mazumdar,
Advs. for Insurance Co.

CORAM:**HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J.**

1. The judgment shall dispose of three appeals in relation to the accident which occurred on 18th July 2002, when *Shyam Sunder* suffered grievous injuries due to a collision which occurred near *Mool Chand flyover, New Delhi* allegedly with the offending vehicle *Maruti van* bearing registration No. DL-3CF-0772; while another vehicle, a *TSR/Auto* was also allegedly involved in the collision. The Motor Accident Claims Tribunal ('*MACT*') awarded a compensation of Rs.10,79,229/- along with interest @9% per annum:

- (i) *MAC.APP. 629/2013* has been filed by the Insurance Company seeking to set aside the impugned award, primarily on the ground that the offending vehicle *i.e. Maruti Van* was not involved in the accident; instead it was the *TSR/auto* that was involved in the accident.
- (ii) *MAC.APP. 725/2013* has been filed by driver and owner of the *Maruti Van* namely, *Amit Kalra* and *Rajiv Kumar Singh*, seeking setting aside of the impugned award on the ground that the accident did not occur due to the rash and negligent



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driving of the *Maruti van*; instead it was the *TSR/auto* that was involved in the accident.

- (iii) *MAC.APP. 194/2014* has been filed by the injured/appellant claiming enhancement of compensation by a sum of *Rs.15,00,000/-*.

The impugned award

2. In deciding *Issue No. 1* relating to causation and negligence, the MACT noted the broad circumstances in which the accident took place. *Shyam Sunder*/claimant at about 01:15 p.m. on 18th July 2002 alleged that when he was travelling on his two-wheeler scooter bearing Registration No. DL-3SZ-0794 near *Mool Chand flyover*, a *Maruti van* collided with him. He was rushed to the hospital on the same day and discharged on 02nd August 2002, but yet again was hospitalised and finally discharged on 07th August 2002. He suffered spinal fracture resulting in 75% disability and he was rendered paraplegic.

3. The driver/owner claimed that the accident had not been caused by *Maruti van*, but the claimant collided with a stationary TSR. It was further argued that the *Maruti van* was not being driven by *Amit Kalra*, the alleged driver, but by its owner *Rajiv Kumar Singh*. It was claimed that the *Maruti van* was just passing through; having seen the accident of claimant with the auto and as a *good Samaritan* took him to the hospital and paid the initial deposit for his medical expenses. It was alleged that since the TSR was not insured, the claimant has sought to fasten liability on the *Maruti van*.

4. *Rajpal Singh*, the Investigating Officer ('IO'), deposed as **R2W3**; the treating doctor, *Dr. Arun Goel* also testified as **R2W5**.



5. The MACT noted that the claimant at all stages had confirmed that the accident had occurred due to the erring driver *Amit Kalra*, who was plying the white colour *Maruti van* and the testimony remained unshaken. On the other hand, there were material deviations in the cross-examination of the driver/owner regarding the mode and manner of the accident. Taking into account other facts and circumstances and on the assessment of evidence, it was held basis preponderance of probabilities that the accident was caused by the offending vehicle. Accordingly, compensation was computed as under:

Treatment Expenses	Rs. 1,25,469/-
Pain & Suffering	Rs. 50,000/-
Diet & Conveyance	Rs. 30,000/-
Loss of Income	Rs. 32,904/-
Disability	Rs. 2,00,000/-
Attendant's Charges	Rs. 6,65,856/-
Total	Rs.11,04,229/-
Less Interim Award	Rs. 25,000/-
Balance Payable Sum	Rs.10,79,229/-

Submissions on behalf of the Insurance Company

6. *Mr. Pankaj Seth*, counsel for Insurance Company, canvassed the appeal on the following grounds: *firstly*, that driver of the offending vehicle was not holding any driving licence and he had been charge-sheeted, though acquitted later and, therefore, recovery rights ought to have been granted against driver and owner; *secondly*, that the offending vehicle was not involved in the accident and the same has been recorded in the MLC, wherein it was noted that the road traffic accident happened with auto *No. 5368*, given by the patient who was conscious, and the



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Maruti Van was implicated after about 7-10 days of the accident; *thirdly*, the IO proceeded with the enquiry after receiving complaint regarding the *Maruti van*. During that process, the driver was arrested and later released. The Mechanical Inspection was carried out on 07th October 2002, after three months from the date of the accident.

7. Aside from the MLC, *Mr. Seth*, counsel for Insurance Company, relied on the Mechanical Inspection Report, which did not show any notable damage on the vehicle and that the patient was stated to be conscious, oriented and cooperative and, therefore, the reporting in the MLC that the accident happened with auto was possibly correct.

Submissions on behalf of the driver/owner

8. *Mr. V. N. Jha*, counsel for driver and owner, pointed out that *Amit Kalra* had been acquitted in the criminal case in FIR No. 471/2002 under Sections 279/338 of the Indian Penal Code, 1860, and that the *Maruti van* was driven by *Rajiv Kumar Singh*, owner of the *Maruti Van*, on the date of the accident. The injured heard name of *Amit* when he was being transported. Since there was no way the injured who was driving ahead of the *Maruti van* would know who was driving the *Maruti van*. *Amit Kalra* did not possess a driving licence and there was no reason why he would have been driving the vehicle instead of *Rajiv Kumar Singh*.

9. The counsel for *Amit Kalra*, therefore, stated that the liability to pay compensation would rest with the Insurance Company since *Rajiv Kumar Singh* was driving the *Maruti van* and possessed a licence but *Amit Kalra* did not possess the license.



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Submissions on behalf of the claimant through Amicus Curiae

10. Mr. Manish Maini, Advocate, was appointed as *Amicus Curiae* by this Court's order dated 19th May 2026, since the claimant was from weaker section of the society and was not being represented properly.

11. Mr. Manish Maini, *Amicus Curiae*, contended that the persons in the Maruti van took the injured to the hospital and paid the hospital charges which showed guilty intent, that they had caused the accident. Moreover, the injured was in a semi-conscious state at the time he was taken to the hospital and, therefore, his statement that the TSR had been responsible for the accident may not be taken seriously. On the contrary, the accident happened due to Maruti van coming from the back side in fast and negligent manner and hit the scooter from the rear.

12. Moreover, **R2W5**, Dr. Arun Goel testified that he had not prepared the MLC. It was further contended that the statement of MLC was influenced by the driver and the owner, as it is not the attending doctor which gives the factum of the accident.

13. As regard the Mechanical Inspection Report, it was submitted that the Maruti van was being plied at a high speed and hit against a scooter but may not have damages to the body as the front bumper of Maruti van is made of plastic which may not been damaged otherwise and in any event, it was done 3 months after the accident. In the reply to notice under Section 133 given to the owner, no mention has been made as to who was driving the vehicle at the time of the accident, and it just mentions that *Amit Kalra* was '*present with him*' on the date of the accident.



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Analysis

14. *Dramatis personae* in this case have canvassed different versions of the incident. Therefore, it might be useful to first unravel who was probably responsible for the accident. The accident occurred on 18th July 2002 near *Moolchand flyover, Delhi*. FIR No. 471/2002 was registered at P.S. Lajpat Nagar under *Sections 279/338 of IPC* on 18th July 2002 itself. The injured was admittedly taken to *Moolchand Hospital* by *Amit Kalra* in the offending vehicle where his MLC was prepared.

15. The MLC, exhibited as **Ex.CW1/A**, notes that the injured was brought in at 01.45 p.m. on 18th July 2002, recording that there is an alleged history of road traffic accident over *Moolchand flyover* with an auto/TSR bearing *No.5368*. It was further noted that patient was conscious, oriented and cooperative, but was unable to move both the lower limbs and there were other injuries which were marked as '*dangerous*'. Accordingly, the referral was made to surgery.

16. *Dr. Arun Goel*, Consultant/Orthopaedic Surgeon and Head of Orthopaedics Moolchand Hospital (**R2W5**) gave his testimony on 17th October 2012, and brought along with him the records of the patient. He stated that the injured had remained conscious throughout treatment and he was in hospital till 19th July 2002 and due to poor prognosis, took discharge and left the hospital in night on the same day. In his cross-examination, he confirmed that the MLC was not prepared in his presence and he was not the person who recorded the history of the accident on the MLC. He stated that he did see the patient on the next day. Usually, an enquiry is made from the patient about the history, cause of injury and a



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separate note is made, in case the history does not tally with what was stated in the MLC.

17. He, therefore, stated that since there was no separate note, he was of the view that the history told by the patient may be the same as recorded earlier. It is also stated that consulting doctor does not deeply go into the details of the involvement of the vehicle or whether vehicle's number if it is reflected/recorded properly.

18. *Mr. Maini* argued that *Amit Kalra* had been charge-sheeted for rash and negligent driving and they did not complain or give any representation for false implication in the FIR. Moreover, no attempt was made by the driver/owner to summon and examine the TSR driver to substantiate their version of the occurrence of the accident. This contention by *Mr. Maini* is of some importance, considering that a huge challenge has been launched by the owner/driver regarding the non-involvement in the accident and it would have been easy enough for them to summon the TSR driver in order that his testimony could be placed on record.

19. *Mr. Maini* relied upon the statement of appellant/injured himself which gave the colour, description and registration number of the offending vehicle and name of the driver, as also the testimony of **PW3**, *Meenu*, wife of petitioner, who testified that respondent no.1/*Amit Kalra* had apologized to her for his mistake.

20. Perusal of the testimony of **PW3** is important. In the cross-examination, she states that when she got the information of the accident telephonically, she rushed to the hospital, found her husband to have already been examined and the police was present. She stated that "*the fact regarding the running of the vehicle in a rash and negligent manner, was*



*disclosed to me by my husband at the hospital” and “respondent no.1/Amit Kalra had also apologized before me for his mistake”. She further stated that no three-wheeler/auto person had contacted them and neither did the owner of the vehicle *Rajiv Kumar Singh* visited the house at any point of time. The husband could not attend the TIP proceedings in the criminal case owing to the fact that he was not in a proper medical condition. She denied that the accident was caused due to the negligence of a three-wheeler.*

21. **PW1**, the injured claimant’s testimony has to be considered with some focus. **PW1** denied that the accident has not occurred due to *Maruti* van. He stated that he was conscious when he reached the hospital and a statement was recorded by the police at the hospital. He specifically stated that the right side of the scooter had been broken due to the accident but does not remember what was the distance between the scooter and the TSR. He disclosed to the police that one *Maruti* van hit the scooter.

22. The testimony of the *Amit Kalra* is also to be assessed carefully. He states that the claimant was driving a scooter at a very high speed and one TSR was going ahead of the claimant. The three-wheeler stopped suddenly and the claimant could not stop himself from driving and, therefore, collided with the stationary three-wheeler. He further stated that the *Maruti Van* was driven by *Rajiv Kumar Singh* and he was sitting inside the *Maruti Van*. They had helped the claimant as good Samaritans. He admitted in his cross-examination that he did not have any driving license and was sitting in the van along with *Rajiv Kumar Singh*. He further stated that he had written to the police authority regarding false implication, but that complaint was not placed on record.



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23. The testimony of the IO examined as **R2W3** is notable. He states in his examination-in-chief that he received one DD No. 8A, after which, he went to Moolchand Hospital, saw injured *Shyam Sunder*, who was hospitalized. The MLC was received by him and prepared on his request. The treating doctor reported the injured to be *unfit* for making his statement. He went to the spot and found one TSR and one *Bajaj Chetak* scooter. He seized both the vehicles and sent the *tehrir* for registration as FIR. The FIR was lodged basis of DD entry and MLC result. The statement of the injured had not been recorded till the registration of the FIR. Later, he recorded the statement of the complainant but did not remember the date, but could be after 10 to 15 days after the accident.

24. On the allegation of the claimant that the vehicle was being driven by *Amit Kalra*, he made the search and came to know that the vehicle was owned by someone else and notice under Section 133 had been given. The owner produced the vehicle and *Amit Kalra* when he was arrested and the van was seized. The injured did not participate in the TIP, due to which, the TIP could not be conducted. Later, a charge-sheet was filed and Mechanical Inspection Report (MIR) was requisitioned. He states that as per the MIR, damage was seen on the scooter and TSR, but no damages were seen on a *Maruti* van. He stated that on 18th July 2002 when he reached the hospital, *Shyam Sunder* was not conscious.

25. **R2W3** in his cross examination stated that he did not arrest the TSR driver as there was no allegation against him. He also stated that *Amit Kalra* when asked about the DL, said that he was not holding the same. He did not receive the papers of insurance policy of TSR and stated that “*I cannot say that the accident occurred due to the TSR as has also been*



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shown by the site plan and has no liability of the Maruti Van.” He further states that “I say that the probability of TSR hitting the scooter and causing accident is remote as the TSR was ahead of the scooter and the van was behind it”. He stated that Rajiv Kumar Singh, owner of the Maruti van, never told him that he was plying the vehicle at the time of the accident, denied the suggestion that he falsely implicated the Maruti van. He further reiterated in another cross-examination that the injured was not conscious when he reached the hospital and he was not fit for statement.

26. Testimony with respect to the Mechanical Inspection Report was given by **R2W4**, *Shadi Lal*, retired Foreman. He stated in his cross-examination that he could not say whether the TSR and *Bajaj* scooter both suffered accident with each other as he has not visited the place. He stated that the damages on the *Maruti* van may not be visible since the front bumper is of plastic and few scratches can be noted. It was also stated that *‘I cannot say that the TSR may have hit the scooter as it is noted that its front tyre of the TSR has been found bursted’*

27. Reference may also be made to the statement of *Shyam Sunder* recorded before the police on 21st July 2002. He stated that when he was coming from his office and reached *Moolchand flyover*, a *Maruti* car hit him from behind. He fell on the side and due to the high speed, the *Maruti* van also hit the three-wheeler and then the owner of the *Maruti* van stopped the van on the same place. Some people put him in the *Maruti* van. After the accident when he reached hospital, he told the doctor details and later on became unconscious. He had heard the name of the driver as *Amit* in the vehicle.



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28. Counsel for *Amit Kalra* relied upon the statements made by the claimant in his cross-examination in the criminal case, where he stated “*I do not remember which vehicle was going ahead of me at the time of accident. There was no collision with the vehicle which was moving ahead of my vehicle*” and that “*I do not remember whether the police have recorded my statement. I do not remember I have ever made my statement before the police. I had filed the complaint with the police after about one and a half week of the accident. The complaint was filed by my wife*”.

29. In comparing the testimonies of **PW3**, wife of injured and **R2W3** /IO, counsel contended that the testimony of the wife was falsified since when the police reached the hospital the claimant was unconscious, whereas as per **PW3** when she reached the hospital the police was already present. If the accident being caused by *Maruti* van was known to **PW3**, there is no reason why the complaint was made 2 weeks after the accident. Therefore, the statement is an afterthought.

30. Moreover, testimony of the IO that they did not report for the TIP and TIP could not be conducted was also asserted. It was further stated that the *Amit Kalra* was acquitted in the Criminal Case No.355/2014 by Judgment dated 22nd August 2015. *Rajiv Kumar Singh* in the response statement recorded pursuant to Notice under Section 133 of the MV Act stated that he was producing *Amit Kalra* who was seated along with him in the vehicle.

31. It is pertinent to note that a notice under Section 133 of the Motor Vehicles Act was issued to the owner of the offending *Maruti* Van bearing registration No. DL-6CF-0772, namely *Rajiv Kumar Singh*. By the said notice, the owner was specifically directed to produce the driver, with or



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without the vehicle, on 7th October 2002 to facilitate completion of the investigation. In response to the said notice, *Rajiv Kumar Singh* produced *Amit Kalra* before the Investigating Officer and stated that *Amit Kalra* had been “*seated with him*” in the offending vehicle on 18 July 2002.

32. This circumstance assumes considerable significance for two reasons. *Firstly*, the notice required the owner only to produce the driver of the offending vehicle. Therefore, when the owner produced *Amit Kalra* in compliance with the notice, the natural and logical inference is that *Amit Kalra* was the person driving the vehicle at the relevant time. It would be wholly artificial to presume that the owner, when specifically directed to produce the driver, instead produced a person who was merely an occupant of the vehicle.

33. *Secondly*, the owner's statement that *Amit Kalra* was “*seated along with him*” is, by itself, vague and does not expressly clarify whether *Amit Kalra* was driving the vehicle. However, that ambiguity stands resolved when the statement is read in conjunction with the purpose of the notice under Section 133. Since *Amit Kalra* was produced in response to a direction requiring production of the driver, the only reasonable inference is that he was, in fact, the driver of the offending vehicle at the time of the accident.

34. This inference is further fortified by the evidence of **R2W3**, who, in his cross-examination, categorically stated that *Rajiv Kumar Singh* had never informed him that he himself was driving the Maruti Van at the time of the accident. Thus, there is no contemporaneous evidence to support the owner's subsequent claim that he was the driver.



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35. The MACT, in *paragraph 34* of the impugned award, rightly concluded that the offending vehicle was being driven by *Amit Kalra*. The Tribunal based its finding on (i) the testimony of the injured witness, which remained unimpeached in cross-examination, (ii) the production of *Amit Kalra* pursuant to the notice issued under Section 133 of the Motor Vehicles Act, and (iii) the evidence of the IO, who confirmed that *Amit Kalra* had been produced in compliance with the said notice. This Court finds no infirmity in the appreciation of evidence by the Tribunal. Accordingly, the finding that *Amit Kalra* was the driver of the offending vehicle is affirmed.

36. It is also significant that the response to the notice under Section 133 was furnished in the year 2002, contemporaneously with the investigation. In contrast, the affidavits of *Amit Kalra* (**R1W1**) and *Rajiv Kumar Singh* (**R2W2**) were filed only in 2009, nearly seven years later. Their cross-examinations were conducted even later, in 2011 and 2012, respectively. These subsequent assertions, made after the lapse of several years and contrary to the contemporaneous documentary record, do not inspire confidence and appear to be a clear afterthought intended to evade liability.

37. Further, it is admitted by the *Amit Kalra*/ **R1W1** in his cross examination by Insurance Company that he was produced along with the alleged offending vehicle before the IO, and he was subsequently arrested. This read along with response to the Section 133 notice and the testimony of IO/ **R2W3**, it cannot be doubted that that *Amit Kalra* was driving the offending vehicle at the time of the accident.



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38. For these reasons, the findings recorded by the MACT regarding the identity of the driver are based on a proper appreciation of the evidence on record and warrant no interference.

39. In the opinion of this Court the plea of Insurance Company that offending vehicle was not involved in the accident, is untenable and unacceptable.

40. **Firstly**, there is no forensic evidence that the accident occurred due to the TSR, as has been otherwise asserted by *Amit Kalra* and *Rajeev Kumar Singh*, or by the Insurance Company. Quite to the contrary, IO/**R2W3** in his cross examination stated that he could not say that accident occurred due to the TSR, as has been shown in the site plan. He further stated that probability of the TSR causing accident is remote. **Secondly**, testimony of **R2W4**, the foreman who had done the mechanical inspection, also denied any confirmation that TSR may have hit the scooter, as it was noted that the front tyre of the TSR was found burst. **Thirdly**, per testimony of **PW1**, injured claimant, suggestion that accident had not occurred due to Maruti Van was denied. **Fourthly**, no attempt was made by *Amit Kalra* and *Rajeev Kumar Singh*, driver and owner, to summon TSR driver in order to substantiate their claim that the accident had occurred with TSR. **Fifthly**, as stated subsequently, mechanical inspection of the scooter of claimant shows that rear number plate had been bent. **Sixthly**, there is also evidence of **PW3**, wife of injured claimant whose testimony accused *Amit Kalra* for having caused accident in question. **Seventhly**, that FIR and charge-sheet was filed against *Amit Kalra*, and even though he was acquitted, issue of negligence will have to



be seen on preponderance of probability rather than beyond reasonable doubt which obviously formed basis of order of acquittal.

41. Keeping all these points in mind, the Court notes that the MACT was not amiss in finding that accident occurred due to negligent driving of *Amit Kalra*, driver of the offending vehicle.

42. Counsel for driver/*Amit Kalra* submitted that *Amit Kalra* was acquitted in the criminal case (*FIR no. 471/2002 under Sections 279/338 of Indian Penal Code, 1860*) vide judgment dated 22nd August 2015 passed by Metropolitan Magistrate. However, in this regard the judgment of Supreme Court in *N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal*, (1980) 3 SCC 457, wherein it was held that acquittal of driver does not bar civil liability, as standard of culpable rashness is higher in criminal case than the negligence required in tort law, is taken into consideration and the plea on behalf of *Amit Kalra* is therefore rejected.

43. Having held that *Amit Kalra* was driving the offending vehicle, it stands established that he did not possess either a valid driving license or even a learner's license on the date of the accident. Consequently, the issue raised by the appellant-insurance company regarding its entitlement to recovery rights falls for consideration.

Recovery Rights

44. The MACT, in *paragraph 33* of the impugned award, held that *Amit Kalra*, being the driver of the offending vehicle, was the principal tortfeasor, while *Rajiv Kumar Singh*, as the owner, and the insurer were jointly and vicariously liable to satisfy the award. In light of the finding that *Amit Kalra* was driving the vehicle without a valid driving license, it



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becomes necessary to examine whether the insurer has established breach of the policy conditions so as to entitle it to pay the compensation to the claimants in the first instance with liberty to recover the same from the owner and driver in accordance with law.

45. The Supreme Court in various judgments, right from *National Insurance Company Ltd. v. Swara Singh*, 2004 3 SCC 97, *Parminster Singh v New India Assurance Co. Ltd.* 2019 (7) SCC 217 and *Shamanna v The Divisional Manager Oriental Insurance Ltd.* 2018 (9) SCC 650 has deliberated upon the principle of *pay and recover*. No doubt, the Supreme Court states that the insurance companies have to establish the available defenses and the breach of part of owner of the vehicle and the burden of proof being on them, in the peculiar facts of this case, it is quite evident that the owner, *Rajiv Kumar Singh* has made a concerted attempt to obfuscate the factum of *Amit Kalra* driving the offending vehicle. This is evident from the response to the notice under Section 133 of the Motor Vehicles Act and the delay in filing of affidavits by *Amit Kalra/R1W1* and *Rajiv Kumar Singh/ R2W2*. Moreover, it also stands in contrast to the testimony provided by **PW3**, who stated that *Amit Kalra* had apologized to her in the hospital for his mistake.

46. Clearly, a serious attempt was made in order to cover up the issue of driving the offending vehicle by an unlicensed *Amit Kalra*. Therefore, the Court is inclined to grant recovery rights to Insurance Company in this regard.

47. It is not as if insurance company has not chosen to cross examine *Amit Kalra* and *Rajiv Kumar Singh* on the issue of lack of a valid license



and *Amit Kalra* driving the offending vehicle. In this regard the following extracts may be relevant and are produced as under:

- (i) Cross Examination of *Amit Kalra*/ **R1W1** by Insurance Company— *“it is correct that on 07.10.2002, Rajiv Kumar Singh produced me under the reply under section 133 MV Act before the IO as I was sitting in the van bearing no. DL 6C F-0772 with Mr. Rajiv Singh, who was driving. It is correct that Rajiv Kumar Singh produced me before the IO along with the alleged offending vehicle. it is correct that I was arrested by the IO concerned in the case FIR No.471/2002 under Sec 279/338 IPC, PS Lajpat Nagar. It is correct that I have not issued any DL at the time of the alleged accident.... It is wrong to suggest that I named Rajiv Kumar Singh as the driver of the alleged offending vehicle to rescue from the claim”*
- (ii) Cross Examination of *Rajiv Kumar Singh*/ **R2W2** by Insurance Company — *“it is incorrect that on 18.07.2002, my Maruti Car no. DL6CF0772 was being driven by Amit Kalra. It was driven by me....It is wrong to suggest that I am trying to save Amit Kalra from present prosecution as he was not holding DL when he caused the accident.”*

48. Accordingly, the MACT having reached a finding on the identity of the driver being *Amit Kalra* and this Court not inclined to displace the said finding, the right of recovery should consequently follow.

49. *Rajiv Kumar Singh* at no stage has given any evidence in relation to the fact that he did check the license and exercised due diligence. Obviously, this evidence was not provided since the stand of *Rajiv Kumar*



Singh was that *Amit Kalra* was not driving the vehicle. Moreover, counsel for *Rajiv Kumar Singh*/ owner specifically admitted that *Amit Kalra* did not have a valid license.

50. The assertions by *Amit Kalra* that the accident actually occurred with an auto and mechanical inspection report of the Maruti Van stated that there was no dent in the front bumper to justify a rear end collision with the scooter. However, what has not been noticed is the mechanical inspection report of the scooter which was being driven by the injured/ claimant on the date of the accident, the said report notes the following damages: 1. Right hand bend, 2. & damage, 3. Scratches on the right hand, 4. W.S Beading, 5. Front Left Chassis bend, 6. Clutch mutha broken, 7. Handle bend, 8. Stepnee cover tornout 9. Rear no. plate bend.

51. Notably the finding at *Sr. No. 10* reflects that the rear number plate was bent which clearly justified the assertion of the claimant that there was a rear collision. As regards to the auto being involved, it has been found that there was tyre-burst. In this regard the testimony of *Shadi Lal* as **R2W4**, the retired foreman who had conducted the Mechanical Inspection Report would be relevant, as narrated in *paragraph 26* above, question of offending vehicle Maruti Van, driven by *Amit Kalra*, causing collision cannot be doubted.

52. Accordingly, **MAC APP. 629/2013** filed by the Insurance Company on the ground that offending vehicle was not involved in the accident, stands dismissed. **MAC APP 725/2013** filed by *Amit Kalra* and *Rajiv Kumar Singh* on ground that accident did not occur due to rash and negligent driving of Maruti Van also stands dismissed. Recovery rights, as discussed above, are granted to the Insurance Company.



Quantum of Compensation

53. Residual issue relates to enhancement of compensation sought by claimants. In this regard, *Mr. Manish Maini, Amicus Curiae* contended that the MACT had erred in adopting the claimants net salary at Rs.5,481/- per month of the claimant after deductions towards statutory benefits like GPF, CGHS, CGEGIS etc. As per the salary slip of appellant, gross salary was Rs.8,754/- per month.

54. Further, no compensation was given towards *loss of earning capacity* despite the fact that the injured was totally incapacitated for his entire life which led to loss of marketability. A multiplier of '9' ought to have been taken post-retirement to calculate *loss of earning capacity*. The claimant was a national level football player and had a promising sports career which got ruined after the accident.

55. The compensation towards *non-pecuniary* heads was also inadequate, considering the permanent disability was assessed at 75% with respect to the whole body. *Mr. Maini* submits that the injured was wheel chair bound and was living at the mercy of the family and accordingly, suffered 100% functional disability.

56. On the issue of deductions from the gross salary, *Mr. Maini* has relied upon the decision of the Supreme Court in ***Manasvi Jain v. Delhi Transport Corporation Ltd. & Ors.*** (2014) 13 SCC 12, wherein it was held that deductions on account of Provident Fund, GIS, house rent, were not to be deducted from the monthly salary. Reliance can also be placed on decision of Supreme Court in ***National Insurance Co. Ltd. v. Indira Srivastava & Ors.*** (2008) 2 SCC 763, ***Meenakshi v. Oriental Insurance***



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Co. Ltd. 2024 SCC OnLine SC 1872, *Manorma Sinha v. Divisional Manager Oriental Insurance Ltd.* 2025 SCC OnLine SC 2241, *Triveni Kodkany v. Air India Ltd.* (2021) 19 SCC 214 and *Sebastiani Lakra & Ors. v. National Insurance Company Ltd.*, (2019) 17 SCC 465, wherein the allowances which were beneficial to the members of the entire family were considered as part of the pay packet. Deductions on account of insurance, pensionary benefits and gratuity cannot be made from the income, since these amounts are earned by the deceased during his lifetime and are separate from the compensation granted to dependents under the MV Act.

57. The Court has perused the payslip of claimant and finds that he was on a pay-scale of Postal Assistant (4000-100-6000) and on a gross salary of Rs.8,754/- per month. In view of the above cited decisions, the deductions towards GPF, CGHS and CGEGIS would form part of the salary as has been enunciated by the Supreme Court in various decisions. Accordingly, salary of would taken at Rs.8,754/- per month.

58. The Disability Certificate assessed the permanent physical disability at 75% with respect to the whole body and he was 35 years of age on the date when this determination had been done. The claim which has been made is of the potentiality of earning post-retirement at the age of 60. Reliance can be placed on the judgment of this Court in *Govind Singh Mauni v Tej Bhan & Ors.* 2026: DHC:1020 in relation to potentiality of earning post-retirement, multiplier of 9 would be taken for loss of earning capacity, the judgment relied upon the decisions of Coordinate Bench in *Desh Raj Singh Gautum v Sunil Kumar* 2016: DHC 4159 and *Rajbir Singh v National Insurance Company Ltd & Ors.*



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2024:DHC:9034. Accordingly, the multiplier of 9 shall be adopted. As regard future prospects, injured was under 40 years of age at the time of the accident and was employed with Department of Post, therefore, based on the principles enunciated in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, future prospects are taken at 50%.

59. Considering that he suffered from 75% permanent disable, and was wheelchair bound, the Court is inclined to consider his functional disability at 75% itself, basis the principles enunciated in *Raj Kumar v. Ajay Kumar & Anr.*, (2011) 1 SCC 343.

60. As regards *non pecuniary* heads, considering the functional disability at 75%, the compensation awarded under non pecuniary heads is inadequate. Accordingly, the compensation awarded under head of *pain and suffering* is enhanced to Rs.2,00,000/- and an amount of Rs. 2,00,000/- is awarded under the head of *loss of amenities of life*.

61. The revised compensation is computed as under:

S. no	Heads of Compensation	Awarded by tribunal	Awarded by the Court
Pecuniary Loss			
1.	Treatment Expenses (A)	Rs. 1,25,469/-	Rs. 1,25,469/-
2.	Expenditure on special diet and conveyance (B)	Rs. 30,000/-	Rs. 30,000/-
3.	Attendant Charges (C)	Rs. 6,65,856/-	Rs. 6,65,856/-
4.	Income of injured per month (D)	Rs. 5,584/-	Rs. 8,754/-
5.	Future prospects @ 50% (E)	Nil	Rs. 4,377/-



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6.	Functional disability (F)	75%	75%
7.	Multiplier (G)	Nil	9
8.	Loss of income (C x 6)	Rs.32,904/-	Rs. 52,524/-
9.	Loss of future income [(D+E) x 12 x F x G]= H	Rs. 2,00,000/- (Lumpsum towards disability)	Rs. 10,63,611/-
Non-pecuniary loss			
10.	Pain and suffering (I)	Rs. 50,000/-	Rs. 2,00,000/-
11.	Loss of Amenities of Life (J)	Nil	Rs. 2,00,000/-
12.	Less Interim Award	Rs. 25,000/-	Rs. 25,000/-
13.	Total	Rs. 10,79,229/-	Rs. 23,12,460/-
14.	Enhanced Compensation	Rs. 12,33,231/-	
15.	Interest	9%	9%

Directions

62. In view of the above, the compensation is enhanced by Rs. 12,33,231/-.

63. By order dated 18th July 2013, this Court had directed the Insurance Company to deposit the entire originally awarded amount before Registrar General of this Court to be kept in FDR in auto renewal mode, subject to which there shall be stay on the execution of the impugned award. By order dated 08th October 2013 it was directed that 50% of the deposited amount shall be released in favour of claimant in terms of the impugned order passed by the tribunal.



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64. It is directed that the balance amount deposited with the Registrar General of this Court along with accrued interest shall be disbursed to the claimant in terms of the directions of the MACT in the impugned award.

65. Enhanced amount along with 9% interest per annum from the date of filing the petition shall be deposited before the Registrar General of this Court within a period of four weeks. It is directed that a lump sum amount of Rs. 2,00,000/- shall be released to the claimant from the deposit of enhanced amount within a period of two weeks thereafter. Remaining enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (FDRs) of Rs. 25,000/- each for periods of 3 month, 6 months, 9 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

66. The Appeals stand disposed of in above terms. Pending applications, if any, are rendered infructuous.

67. Statutory deposit be refunded to appellant/Insurance Company, only if the order of deposit has been complied with.

68. A copy of this judgment be sent to the concerned bank for information and compliance.

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

ANISH DAYAL
(JUDGE)

JULY 2, 2026/mk+ak+sm/zb