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

% ***Reserved on: 15th September 2026***
Pronounced on :29th October 2026
Uploaded on :30th October 2026

\# **CNR No. DLHC011128382015**

\+ **MAC.APP. 244/2015**

UNITED INDIA INSURANCE COLTD ....Appellant

Through: Mr. Sankar N. Sinha, Advocate

versus

KRISHAN KUMAR & ORS ...Respondents

Through: Ms. Isha Khanna, Advocate with Ms. Ruchika Malik, and Mr. Suresh Bhati, Advocates.

\# **CNR No. DLHC011659852015**

\+ **MAC.APP. 367/2015**

KRISHNAN KUMAR @ KINU ....Appellant

Through: Ms. Isha Khanna, Advocate with Ms. Ruchika Malik, and Mr. Suresh Bhati, Advocates.

versus

UNITED INDIA INS. CO. LTD. & ORS. ....Respondents

Through: Mr. Sankar N. Sinha, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These cross-appeals have been filed assailing impugned award dated 03rd January 2015, passed by the Motor Accident Claims Tribunal, Dwarka Courts, New Delhi [hereinafter, '***MACT/Tribunal***'] in *MACP No.*

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351/12/14, whereby compensation of *Rs. 10,18,655/-*, along with interest at the rate of 7.5% was awarded, to the injured/claimant, *Krishan Kumar*. [hereinafter, '***impugned award***'].

2. ***MAC. APP. 244/2025*** has been filed by the Insurance Company challenging the finding of the MACT, as per which, injured/claimant suffered grievous injuries in an accident caused by a tyre burst in the offending vehicle, whereas ***MAC. APP. 367/2015*** has been filed by the injured/claimant seeking enhancement of the compensation.

The Incident

3. The alleged accident took place on 15th May 2011, when injured/claimant was travelling in a bus bearing registration no. *DL-1PA-4172* [hereinafter, '***offending vehicle/bus***'], which was being driven by its driver in a rash and negligent manner. The offending vehicle was driven over a large stone, leading to the bursting of its tyre and since injured/claimant was seated above the said tyre, he was struck by a ripped off aluminium sheet in the bus, resulting in grievous injuries.

Proceedings before the MACT

4. The Insurance Company put forth an alternative version to the aforesaid facts, alleging that the injury to injured/claimant was caused due to a cooler falling on the legs of injured/claimant. The Insurance Company also pointed out that the FIR had been registered after a delay of *seven months*.

5. The MACT, however, rejected the version put forth by the Insurance Company and relied upon the medical records as well as the testimony of injured/claimant, who testified as **PW-1**, to conclude that injured/claimant suffered grievous injuries due to the rash and negligent driving of driver of

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the offending vehicle.

6. The MACT also observed that delay in lodging the FIR would not, in itself, detract from the credibility of the testimony of injured/claimant. Accordingly, liability to pay compensation was fastened upon the Insurance Company.

Submissions on behalf of Insurance Company

7. The primary contention of *Mr. Shankar N Sinha*, counsel for Insurance Company, is that the injuries sustained by injured/claimant were on account of a water cooler falling on his leg, as opposed to him being struck by an aluminium sheet inside the offending vehicle, as alleged by injured/claimant.

8. The issue raised by *Mr. Shankar N Sinha*, counsel for Insurance Company, was that medical documents issued by the *Rao Tula Ram Memorial Hospital* and *Sir Ganga Ram Hospital* did not seem to suggest that there was a road traffic accident. He pointed out to the LAMA summary prepared by *Sir Ganga Ram Hospital*, which recorded the history of injured/claimant's injury and stated that the patient had come with alleged history of injury to right leg "*due to fall of cooler on his leg at home at 10:30pm on 15/05/11.*". It further noted that there was no history of any other injury.

9. *Mr. Shankar N Sinha*, counsel for Insurance Company, further pointed out to the fact that, no report, indicating any damage or repair in the offending vehicle, had been brought on record by injured/claimant. On this basis, he contended that the absence of such a report clearly demonstrated that a fraud had been perpetuated by injured/claimant.

10. *Mr. Sinha,* counsel for Insurance Company, also drew the attention of

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this Court to the testimony of **R3W1**, *Dr. Vipin Gupta* [*panel doctor of United India Insurance company*], who deposed that he had been on the Insurance Panel for the past 20 years, and came to the Court whenever he was called to render his opinion. As regards the nature of injury of injured/claimant, he deposed as under:

> "*After seeing the LAMA Summary I nowhere found that the injury were due to Road Accident rather the petitioner received injuries due to fall of cooler at home.*"

R3W1, however, admitted that he had not personally seen the patient and had opined on basis of the documents alone. In the medical report prepared by him, **R3W1** noted that injured/claimant was diagnosed as a case of "*Right Foot Crush Avulsion Injury*".

11. *Mr. Sinha,* counsel for Insurance Company, further submitted that even if the version presented by injured/claimant is to be believed, injuries sustained by the injured/claimant were due to a mechanical failure in the offending vehicle, i.e. a tyre burst, and not due to negligence on part of the driver of the offending vehicle. In this regard, he submitted that the petition having been filed under Section 166 of the Motor Vehicles Act, 1988, it was incumbent upon injured/claimant to establish that his injuries were caused on account of negligence of the offending vehicle and therefore, in these circumstances, where there is no material on record to establish rash and negligent driving by the driver of the offending vehicle, the Insurance Company cannot be roped in to pay compensation.

Submissions on behalf of injured/claimant

12. As regards the contention of Insurance Company in that the FIR had been registered after a delay of about *7 months*, *Ms. Isha Khanna*, counsel

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for injured/claimant, pointed out to *DD Entry 38B* dated 20th May 2011, registered upon a complaint by father of injured/claimant, wherein it was recorded that the accident had occurred on 15th May 2011.

13. She further pointed out to the testimony of **PW-4**/father of the deceased, who stated that initially he had been avoiding any legal action since he only wanted his son to "*get fit*". During his cross-examination, he admitted that he told the doctors at *Sir Ganga Ram Hospital* that his son had received injuries due to the fall of a cooler on his leg; however, he volunteered that, he had only told them so in order to ensure speedy treatment of his son since he was afraid that involvement of the police would have delayed his treatment. For ease of reference, said part from his testimony is extracted as under:

> "*It is correct that I told to the doctors of Ganga Ram Hospital that my son received injury by falling of cooler on his leg. Vol. I had told so because I was looking for speedy treatment of my son as making of police case may have delayed the treatment.*"

14. In this regard, *Ms. Isha Khanna*, counsel for injured/claimant, also drew attention of this Court to the casualty card issued by *Rao Tula Ram Memorial Hospital*, recording the following three points:

i) Alleged history of trauma due to hit by sharp object on 15th May 2011.

ii) Incised wound over medial aspect of right ankle.

iii) A remark that he did not want to do a police case regarding his son, and wanted to get the treatment done.

15. *Ms. Isha Khanna*, counsel for injured/claimant, submitted that involvement of the offending vehicle can also be established on the basis of testimony of *Shiv Narain* [*respondent no.3/owner*] who, upon the service of

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notice to him under Section 133 of the MV Act, stated, that on the day of the incident, the offending vehicle was being driven by his son, namely *Kuldeep Singh* [*respondent no.2/driver herein*]. The same was also confirmed by the testimony of **PW-11**/Investigating officer, *ASI Krishnan Kumar*, who deposed regarding the aforesaid admission made by *Shiv Narain* [*respondent no.3/owner*].

16. Even in his statement recorded under Section 313 of the Criminal Procedure Code, 1973 ['***CrPC***'], *Kuldeep Singh* [*respondent no.2/driver herein*], failed to take the defence that he was not driving the vehicle on the date of the accident; neither has he stepped in the witness box to rebut the occurrence of the accident.

17. As regards the issue of whether the accident was caused by the alleged tyre burst, *Ms. Isha Khanna*, counsel for injured/claimant, pointed out to the following documents:

i) Copy of notice to *Shiv Narain* [*respondent no.3/owner*] under Section 91 of the CrPC, wherein he stated that he did not have the bill of the old tyre which had burst on 15th May 2011 or of the new tyre which had subsequently been purchased or of the sale paper of said burst tyre of the bus but he does not deny the occurrence of the accident. He further stated that the tyre which was replaced by them after the incident had been given to a rubbish/scrap dealer (*kabaadi*);

ii) History and examination sheet issued by the *Medanta Hospital* recording "*history of injury to right ankle, as a result of RTA*"

iii) Testimonies of all the eye-witnesses, including **PW-1**/injured, **PW-2**/*Jai Bhagwan* and **PW-7**/*Chand Ram,* which were consistent, in that they were returning from a marriage party at

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Trilokpuri on 15th May 2011, when the rear tyre of the bus, that they were travelling in, burst due to which the metal sheet fixed below the seat, struck the leg of injured/claimant, leading to grievous injuries.

iv) Cross-Examination of **PW-11**/Investigating officer, *ASI Krishnan Kumar,* conducted by counsel for accused [*respondent no.2/driver*], wherein he denied the suggestion that injured/claimant had sustained injuries after a cooler had fallen on his legs.

18. *Ms. Isha Khanna*, counsel for the injured/claimant, further objected to the reliance placed by the Insurance Company upon the testimony of **R3W1**, *Dr. Vipin Gupta* [*panel doctor of United India Insurance company*], and submitted that the said doctor was an interested witness, as he was on the panel of the said Insurance Company and had formed his opinion purely on the basis of the documents produced before him, without personally examining the injured.

Analysis

19. Basis the documents which have been pointed to by *Ms. Isha Khanna*, counsel for injured/claimant, the Court is not inclined to accept the version put forth by the Insurance Company, in that the injured/claimant sustained injuries due to fall of a cooler.

20. *Mr. Sankar N. Sinha*, counsel for Insurance Company, attempted to persuade the Court that injury to the right leg of injured/claimant was sustained due to fall of a cooler on his leg and not on account of rash and negligent driving of the offending vehicle.

21. However, it is noted that two versions were presented by *Mr. Sinha*,

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counsel for Insurance Company, in his submissions before the Court. On one hand, it was stated that the injured/claimant, along with some other persons, was returning from a marriage party in the offending vehicle; at about 10:30 P.M., when the offending vehicle reached *Mother Dairy*, *Main Road Jaffarpur Kalan*, *Delhi*, its rear tyre burst. To this extent, the occurrence of the tyre burst is also admitted by the Insurance Company. It was stated that "*due to this mishap, a water cooler installed inside the bus dislodged and fell upon the leg of the injured, causing severe injuries*".

22. On the other hand, the Insurance Company has placed reliance on the LAMA summary prepared by *Sir Ganga Ram Hospital*, exhibited as **PW1/3**, wherein the patient's history was recorded as follows: "*injury to right leg due to fall of cooler on leg at home at 10:30 p.m. on 15th May 2011*". On this basis, it was contended that injured/claimant's injuries were not caused due to the offending vehicle.

23. This was buttressed by the testimony of **R3W1** [*panel doctor of the Insurance Company*] who stated that, after seeing the LAMA summary, he did not find that the injury had been caused due to road accident, and instead had been caused due to the fall of cooler at home.

24. However, in the opinion of this Court, the testimony of **R3W1** cannot be considered credible, not only because he was an interested witness, but also because the LAMA summary explicitly recorded the cause of the injury, leaving no scope for any further interpretation. What needs to be seen instead is the testimony of **PW-4**/father of the deceased, who stated that he had been avoiding any police involvement/legal action since he was only looking for speedy treatment for his son.

25. During his cross-examination, **PW-4**/father of the deceased admitted that he had told the doctors at *Ganga Ram Hospital* that his son

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[*injured/claimant*] had received injuries due to fall of a cooler on his leg in order to receive speedy treatment. This aspect also forms part of the casualty card issued by *Rao Tula Ram Hospital*, as noted above, wherein it was recorded that father of injured/claimant did not wish to pursue a police case and, instead wanted to receive treatment.

26. In these facts and circumstances, there is no reason to dislodge the testimony of **PW-4/**father of injured/claimant**,** in favour of the stand taken by the Insurance Company that the injury was caused due to the fall of a cooler.

27. Furthermore, neither has the Insurance Company led any evidence to establish that a cooler, which could have caused the injury, was installed in the offending vehicle, nor has it disputed or denied the fact that there was a tyre burst in the offending vehicle. In this regard, the documents placed on record by *Ms. Isha Khanna*, counsel for injured/claimant, are dispositive.

28. The history and examination sheet issued by *Medanta Hospital* on 19th May 2011, just after the accident, further records that there was history of injury to the right ankle as a "*result of a road traffic accident"*.

29. In view of the aforesaid, it seems highly improbable that on the date of the accident, injured/claimant would have gone to the hospital and, instead of seeking treatment for an injury caused by a cooler falling at home, concocted a story involving a motor accident merely to secure insurance coverage.

30. Moreover, in response to the notice served under Section 133 of the MV Act, *Shiv Narain* [*respondent no. 3*/*owner*] stated that *his son was driving the vehicle on 15th May 2011 at the time of the accident*.

31. The notice issued under Section 91 of the Cr.P.C. did not pertain to whether the vehicle had been involved in an accident. However, in response

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to the said notice, it was stated that the bill for the old tyre that had burst was not available, nor was the bill for the new tyre purchased or any record of the sale of the burst tyre to a *kabaadi*. However, the occurrence of the incident itself was not disputed.

32. It is also apposite to note the testimony of the IO, *ASI Krishnan Kumar*, who deposed as **PW-11** regarding the notice issued under Section 133 of the MV Act; during his cross-examination, he denied the suggestion that the injured/claimant had sustained injuries due to a cooler falling on his legs.

33. The testimonies of the witnesses i.e. **PW-1**, **PW-2**, **PW-3** and **PW-7** are also consistent. **PW-1** [*injured*/*claimant*] stated that, while returning from *Trilok Puri*, he was seated on the conductor's side of the bus, with the rear tyre of the bus located directly beneath his seat. At about 10:20 P.M., when they reached *Mother Dairy*, *Jaffarpur*, said tyre of the bus burst since the bus mounted upon a stone, as a result of which, the sheet of the bus located above the tyre and under the seat on which he was sitting, hit him on the right leg. Consequently, he suffered injuries whereby his blood started oozing out. He was then taken to *Rao Tula Ram Hospital*, where he was treated. However, on advice of the doctors, he was taken to *Ganga Ram Hospital* and, thereafter, to the *Medanta Hospital*. He was subsequently taken to *Chaitanya Hospital*, and then to *Jupiter Hospital*, *Mumbai*, where during the course of treatment, his right foot was amputated due to an infection.

34. During his cross-examination, he further stated that the band party had also been sitting at the back of the bus and that the band party was alighting from the bus when the tyre burst. He again stated that the tyre burst when the bus started moving. He also denied the suggestion that the

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amputation of his right foot was because of the doctor's negligence or that he had not received proper treatment.

35. **PW-2**, who was also an occupant in the bus, corroborated the testimony of **PW-1**. Furthermore, **PW-3**, another occupant of the bus, clearly stated, "*because of the tyre burst, the sheet lying above it got torn and the seat on which Krishan was sitting hit his leg due to which he received injuries*". He further deposed that *Krishan* [*injured/claimant*], had been sitting behind him.

36. **PW-7**, who was also an occupant of the said bus, further corroborated the aforesaid testimonies by stating that, one passenger, namely *Krishan* had sustained leg injuries due to bursting of the tyre. **PW-7** identified the person in the Court as the owner of the bus from whom he had hired the said bus, and confirmed that he had been issued a receipt at the time of hiring.

37. As regards the delay of *seven months* in lodging the FIR, which the Insurance Company has relied upon to contend that the case was falsely concocted, counsel for injured/claimant, *Ms. Isha Khanna*, drew the attention of this Court to *DD Entry No. 38B* dated 20th May 2011, recorded pursuant to the complaint made by father of the injured/claimant regarding the accident that occurred on 15th May 2011.

38. The aforesaid *DD entry* recorded that when they were returning at about 10:20 P.M., the complainant's son sustained injuries in relation to his right leg. Further, as per the rest of the occupants as well, the driver of the bus had been driving in a negligent manner right from the beginning.

39. The IO had visited the residence of the injured/claimant; however, the injured/claimant was out of *Delhi*. The FIR was eventually registered on 02nd December 2011, after seeking an opinion for the registration of the FIR.

40. As far as the FIR is concerned, the incident has once again been

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clearly stated. In fact, the FIR also records that that when they had gone to *Rao Tula Ram Marg Hospital*, his father, *Ashok Kumar* had to refused to get an MLC since he didn't wish to be involved in legal issues. The FIR thereafter narrates the history of injured/claimant's treatment, which finally culminated at the *Jupiter Hospital*, *Mumbai*, where his leg was amputated. Injured/claimant further stated that he had returned to *Delhi* in July 2011, but could not give his statement as he was undergoing treatment and was unavailable when the police visited.

41. Accordingly, in view of the aforesaid documents and testimonies, the assessment made by the MACT regarding the issue of negligence is, sustained.

42. The MACT, had also taken a note of the documents issued by *Sir Ganga Ram Hospital* and accepted the explanation for the delay in registration of the FIR. Accordingly, on the touchstone of *preponderance of probabilities*, it stands established that the injured/claimant sustained injuries as a result of the accident which on 15th May 2011, due to rash and negligent driving of the offending vehicle. The plea of the Insurance Company plea in this regard is therefore unmerited.

Mechanical Failure - Statutory claim for compensation

43. Another issue raised by the Insurance Company is that a mechanical failure cannot give rise to a statutory claim for compensation under Section 166 of the MV Act, and that in such cases negligence on part of the driver of the offending vehicle must be established.

44. In this regard, reference may be made to Section 166 of the MV Act, which permits applications for compensation arising out of accidents of the nature specified in Section 165(1) of the said Act. Section 165(1) provides

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for claims for compensation "*in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles*". It cannot, therefore, be presumed, as contended by the Insurance Company that the injuries did not arise out of the use of a motor vehicle merely because the accident involved a mechanical failure.

45. In this context, this Court considers it appropriate to discuss certain judicial decisions, wherein negligence has been attributed to the owner of the offending vehicle for injuries or death resulting from the use of a motor vehicle, notwithstanding that the accident originated from a mechanical failure.

46. In ***Ramji Hiralal Porte v. Premabai Patel*****,** 1998 SCC OnLine MP 7, the Division Bench of the Madhya Pradesh High Court was dealing with an accident, wherein tyre of the offending vehicle had punctured and its arm bolt was broken, as a result of which, the vehicle turned turtle, leading to instantaneous death of the driver. On the basis of the evidence, it was established that the accident occurred due to breakage of the arm bolt.

47. However, the Court held that when the accident occurs due to a mechanical defect, the owner of the vehicle has to prove that he had taken all necessary precautions to keep the vehicle in a road worthy condition and that the defect had occurred in spite of reasonable care and caution taken by the owner. For this, the owner must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The burden of proving that the accident had occurred due to a mechanical defect was upon the owner and, in order to absolve himself from liability, the owner must prove that he had exercised all reasonable care and that in spite of such reasonable care, the defect remained hidden, thus, making the accident inevitable. Reliance in this regard was placed upon the decision of the Supreme Court

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in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan***, (1977) 2 SCC 441.

48. Similarly, in ***Kaushnuma Begum v. New India Assurance Co. Ltd.***, (2001) 2 SCC 9, the Supreme Court was dealing with an accident involving a jeep, which capsized while it was in motion. The cause of the accident was attributed to bursting of the front tyre of the jeep. In the process of capsizing, the jeep had hit against the claimant who was walking on the road, resulting in fatal injuries to him. The Tribunal dismissed the claim for compensation, and the High Court subsequently dismissed the appeal, both holding that negligence on the part of the driver had not been established. The Supreme Court, however, considered Section 165(1) of the MV Act and observed that the jurisdiction of a Tribunal was not restricted to deciding claims arising out of '*negligence*' in the use of motor vehicles. Negligence was only one of the species of causes of action for making a claim for compensation in respect of accidents arising out of use of motor vehicles. The Court noted that "*there are other premises for such cause of action*".

49. The Supreme Court further noted that even where no negligence could be attributed to the driver, if the accident occurs while the vehicle was in use, the rule of '*strict liability*' under ***Rylands v. Fletcher***, (1863) 3 HL 330, would apply. The Court observed that the rule in ***Rylands v. Fletcher*** (*supra*) was approved by the Constitution Bench in ***M.C Mehta v Union of India***, (1987) 1 SCC 395.

50. Reliance was placed upon the decision of the Supreme Court in ***Gujarat SRTC v. Ramanbhai Prabhatbhai***, (1987) 3 SCC 234, wherein the Court considered the question regarding application of the rule in cases arising out of motor accidents. The Court noted the observation made by *E.S. Venkataramiah, J.* (as he then was), as under:

"*Today, thanks to the modern civilization, thousands of*

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motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] . From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault."

(emphasis added)

51. On this basis, the Supreme Court observed that, the rule in ***Rylands v. Fletcher*** (*supra*) may be followed until a new principle, which excels the former, can be evolved.

52. Furthermore, in ***I. Varalakshmi v. Andhra Pradesh State Road Transport Corporation Limited***, 2003 SCC Online Kar 823, the Kerala High Court was dealing with an accident where a stone was hurled at the wind screen of the bus, thus, smashing the glass, which hit the deceased on his forehead. It was alleged that the respondent- corporation had failed to provide adequate security by way of wire meshing of the windows and toughened window glass screens.

53. The Kerela High Court relied upon the decision in ***Kaushnuma***

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Begum (*supra*), as well as recognition of the rule of '*strict liability*' in ***Rylands v. Fletcher*** (*supra*), and held that the term "*arising out of the use of the motor vehicle has been given a wide interpretation*". The Court noted that, what was important was that there ought to be a causal connection, not necessarily a direct and immediate one, between the use of the vehicle and the accident-causing death or injuries to the claimants. The Court, therefore, held that a causal connection, between the use of the vehicle and the accident, is crucial for a true and correct assessment in such cases.

54. This Court, in ***National Insurance Co. Ltd. v Rajbir Singh***, 2012 SCC OnLine Del 4665, was dealing with an accident which occurred due to a tyre burst, following which the vehicle overturned, resulting in the death of its occupants. The Court, once again, relied upon the principles enunciated by the Supreme Court in ***Kaushnuma Begum*** (*supra*), and held that even though in the said case, negligence was proved basis evidence that the offending vehicle was being driven at high speed and that the accident could have been avoided if it was being driven at a normal speed, the appellant, in any case, could not have avoided liability in view the principle of '*strict liability*' .

55. In ***New India Assurance Co. Ltd. v. Mrunal Makarand Patwardhan***, 2023 SCC OnLine Bom 669, a Single Judge of the Bombay High Court was dealing with a case involving burst of the tyre of the offending vehicle. It was contended that there was no negligence on part of the driver, and that the tyre burst was an '*Act of God'*. The Court, however, held that that bursting of tyre could not be termed as an Act of God. The Court noted that a tyre burst was an act of human negligence and could be attributed to various reasons, including high speed, under inflated or over inflated tyres, second hand tyres, temperature etc and that the driver or owner of the

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vehicle is required to check the condition of the tyre before travelling.

56. The Court further noted that the Insurance Company had not examined the driver of the offending car to prove that there was another reason for the tyre burst, which was beyond the control of the driver or owner of the offending vehicle. Accordingly, the contention of the Insurance Company was rejected.

57. In this regard, it would also be useful to refer to certain observations made by the Supreme Court in ***Minu B. Mehta*** (*supra*), particularly the paragraphs which have reproduced hereinbelow:

> "***14.*** *In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. The law on this subject has been laid down in Henderson v. Henry E. Jenkins & Sons [1970 AC 282 : (1969) 2 All ER 756] . In that case the lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to a latent defect not discoverable by reasonable care on driver's part. It was found that the lorry was five years old and had done at least 150,000 miles. The brakes were hydraulically operated. It was also found after the accident that the brake failure was due to a steel pipe bursting from 7 mm. to 1 mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed that it was not a normal precaution to do this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind such as exposure to salt from the roads in winter or on journeys near the sea. The House of Lords held that the burden of proof which lay on*

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> *the defendants to show that they had taken all reasonable care had been discharged. The defect remained undiscovered despite due care. As the evidence had shown that something unusual had happened to cause this corrosion it was necessary for the defendants to show that they neither knew nor ought to have known of any unusual occurrence to cause the breakdown. (See Bingham's Motor Claims Cases, 7th Edn., p. 219).*
>
> ***15.*** *The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care the defect remained hidden. In this case in the written statement all that is pleaded is that the axle brake ring of the lorry came out and the driver lost control of the motor lorry and that the defect can develop in a running vehicle resulting in the driver's losing control of the steering wheel. Though it was stated that all precautions were taken to keep the lorry in a roadworthy condition it was not specifically pleaded that the defect i.e. the axle brake ring coming out, is a latent defect and could not have been discovered by the use of reasonable care. This lack of plea is in addition to the lack of evidence and the fact that the defence set up has been rightly rejected by the Tribunal*."
>
> (emphasis added)

58. The Supreme Court, therefore, held that in order to succeed in a defence that the accident had occurred due to a mechanical defect, the owner must prove that he had taken all necessary precautions to ensure that the vehicle was in a road worthy condition and, since no attempts was made to establish the same, the liability would lie.

59. It would also be relevant to note that Rule 94 of the Central Motor Vehicle Rules, 1989, explicitly states that, every motor vehicle shall be fitted with pneumatic tyres. They shall be kept properly inflated and in "*good and sound condition*." It further states that "*the tyre shall not be deemed to be of good and sound condition if any of the fabric of its casing is*

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exposed by wear of the tread or by any unvulcanised cut or abrasion in any of its parts".

60. Accordingly, applying the aforesaid principle to the facts of the present case, it is noted that no evidence has been placed on record by the driver, the owner or the Insurance Company to prove that the offending vehicle was in a roadworthy condition and that the tyre in question had burst due to a reason other than being overused or in a vulnerable condition. Neither was any evidence led by the driver, the owner or the Insurance Company to rebut the issue of '*strict liability*'. Accordingly, the Insurance Company's plea in this regard is also rejected.

Computation of compensation

61. *Ms. Isha Khanna*, counsel for injured/claimant, has sought enhancement of the compensation on two grounds, ***first***, that the MACT did not assess functional disability of injured/claimant and consequently no amount was awarded to him towards *loss of future earning capacity* and, ***secondly***, that no amount has been awarded to him towards cost of *prosthetic limbs.*

62. It was submitted by *Ms. Isha Khanna* that injured/claimant was a student of the 11th standard and suffered below knee amputation of the right leg, resulting in *70% permanent disability*, as a result of the accident. The disability certificate of injured/claimant was exhibited as Exhibit **PW-1/5**.

63. Deposition of **PW-2**/*Dr. T. K. Prasad* [*ENT consultant, Ram Tula Rao Hospital*] was also placed on record, who stated that he was one of the members of the medical board who had examined the injured/claimant. He stated that the injured/claimant's disability was permanent in nature. Injured/claimant could not move fast or stand on a leg for quite a long time.

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Further, he would face difficulty in climbing stairs or others place at height.

64. Accordingly, having regard to the aforesaid, this Court is of the opinion that the contentions raised on behalf of the injured/claimant in respect of enhancement of compensation ought to be considered.

65. Considering that the injured/claimant was *17 years of age* on the date of the accident, the notional income injured/claimant shall be determined on the basis of minimum wages applicable to a skilled worker in terms of the decision of the Supreme Court in ***Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari***, 2025 SCC OnLine SC 3446 and of this Court in ***Rubi Devi v. New India Assurance Com. Ltd***., 2026 SCC OnLine Del 2366, and ***Vineet Singh v. Oriental Insurance Co Ltd.***, 2026 SCC OnLine Del 2225.

66. The *loss of future earning capacity* of injured/claimant, shall, therefore, be calculated on the said basis, by taking the benchmark income of injured/claimant at *Rs. 7,410/-* per month [*minimum wages of a skilled worker applicable to Delhi in May 2011*]. *Future prospects* shall be granted at '**40%**', since injured/claimant was *17 years* of age at the time of accident and the multiplier shall be taken at '**18**'.

67. The Court also needs to assess the functional disability of the injured/claimant in terms of the decision in ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, wherein the Supreme Court held that functional disability must be assessed on the basis of the vocation of the claimant and the nature of the vocation that he could potentially pursue in view of his disability.

68. The injured/claimant has sought assessment of his functional disability at 100%, on the ground that he was participating in Under-13 boys' cricket. However, upon an overall assessment of the matter, this circumstance, by itself, may not be determinative of the extent of his

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functional disability.

69. However, since the injured/claimant suffered *70% permanent disability in relation to his right lower limb*, there can be no doubt that he would face an impediment in pursuing his desired vocation in the future. In view of the fact that the use of a prosthetic limb would aid the injured/claimant, the cost of which is being awarded by this Court, the functional disability of the injured/claimant shall at best, be assessed at 75%.

70. As regards the compensation towards *medical expenditure*, an amount of *Rs. 9,71,035/-* has been claimed by the injured/claimant in respect of the treatment undertaken by him in various hospitals. The details thereof have been tabulated as under:

Hospital	Expense incurred during and post treatment	E.pg (LCR)
RTRM Hospital, Delhi	-	-
Ganga Ram Hospital, Delhi	Rs. 1,18,435/-	279-298, 431, 433
Medanta Hospital, Gurgaon	Rs. 5,850/-	314, 316, 318
Deendayal Hospital, Pune	Rs. 12,000/-	401, 405
Jupiter Hospital, Mumbai	Rs. 2,36,418/-	324-326, 328-329, 331, 349-355, 359-365, 371-387, 449-475
Chaitanya Hospital, Mumbai	Rs. 3,10,046/-	273, 322, 407, 441, 443, 445, 447
Medicines and Post treatment	Rs. 2,88,286/-	270, 320, 403, 409, 421, 423, 425
Total amount:	**Rs. 9,71,035 /-**	

71. There is no reason why the said amount should not be awarded to the injured/claimant. The expenses incurred towards air travel to *Mumbai* for

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treatment, however, cannot be granted, as injured/claimants' decision to seek treatment in *Mumbai* was his own and not necessitated by the non-availability of such treatment in *Delhi*.

72. Compensation towards *pain and suffering* has been reasonably awarded at *Rs. 5,00,000/-*. *Loss of amenities*, which would include within its ambit the aspect of *loss of studies*, shall accordingly be awarded at *Rs. 1,50,000/-*.

73. Further, since injured/claimant has suffered amputation of his right leg below knee, the Court deems it fit to award amount towards the *cost of prosthetic limbs* to the injured/claimant, even though no evidence has been led by injured/claimant in this regard.

74. The principles relating to prosthetic limbs have now been clarified by the decision of the Supreme Court in ***Prahlad Sahai v. Haryana Roadways***, 2026 SCC OnLine SC 651. The case concerned a right leg crush injury resulting in amputation below the knee. The claimant therein relied upon the decision in ***Mohd. Sabeer v. U.P. SRTC***, (2023) 20 SCC 774, to contend that the injured was *32 years of age*; therefore, considering the assumed life expectancy of *70 years*, he would require prosthetic limbs for *38 years*. He further contended that since an artificial limb needs to be replaced *every 5 years*, maintenance charges would also have to be granted.

75. Traversing through the law in this regard, the Supreme Court, in ***Prahlad Sahai*** (*supra*), recognized a block of '*5 years*' as the reasonable replacement period for a prosthetic limb. Further, the Supreme Court assumed the life span of the claimant at *70 years* and concluded that the claimant would require *seven* prosthetic limbs. It, therefore, awarded a consolidated amount of *Rs.3,00,000/-* per limb on a standard basis for *seven limbs*. No interest was awarded on this amount, considering that it was being

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awarded as a consolidated lump sum. Maintenance of the prosthetic limb, at *Rs. 15,000/-* per annum was also awarded, amounting to *Rs. 75,000/-* for each block of *5 years*. For ready reference, relevant portion from ***Prahlad Sahai*** (*supra*) is reproduced hereinbelow:

> "*30. As would be clear from the discussion hereinabove, our Court has recognized a block of five years as the reasonable replacement period for a prosthetic limb, and we have followed the same.*
> *31. The appellant was thirty-two years in 2007. Applying an assumed life span of seventy years as the maximum for which as a standard formula compensation for prosthetic limb is awarded and calculating the life of one prosthetic limb as five years, the appellant will need seven prosthetic limbs. Insofar as the price is concerned, the appellant has claimed the 2007 price for the first block with interest @ 9 per cent. Though he has claimed for eight limbs the correct proportion to award would be seven limbs, since the amputation happened on 17.07.2009.*
> *32. We are inclined to award, like in Md. Shabir (supra), a consolidated amount towards the price. We are inclined to grant Rs. 3,00,000/- per limb on a standard basis for seven limbs. In view of the fact that a consolidated amount is being paid, no interest from the date of the accident is awarded. Considering that the price has been arrived at by broadly applying the case Md. Shabir (supra), which we find reasonable, we are not inclined to proceed on the basis of the notification relied upon by the Insurance Company.*
> *33. We are also inclined to award cost of maintenance of prosthetic limb at Rs. 15,000/- annually. For a block of five years, it would work out to approximately Rs. 75,000/-. We award a consolidated sum of Rs. 5,00,000/- till the assumed life span of seventy years.*"
>
> (emphasis added)

76. Accordingly, in the facts and circumstances of this case, considering that the injured/claimant was *17-years-old* at the time of the accident, and assuming his life span at *70 years*, the Court deems it fit to consider that he

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would require a prosthetic limb for another *53 years*. He would, therefore, require replacement of approximately '*11*' prosthetic limbs over his lifetime, assuming a replacement period of *5 years*.

77. The Court deems it fit to consider the cost of each prosthetic limb at *Rs. 3,00,000/-*, as claimed by the injured/claimant. Further, following the direction of the Supreme Court, an amount of *Rs. 75,000/-* for each block of *5 years* towards maintenance shall also be taken into consideration. Accordingly, the aforesaid amount, calculated at *Rs. 40,95,000/-*, shall be awarded to injured/claimant in this regard.

78. In view of the aforesaid directions regarding enhancement, the revised compensation shall be calculated as under:

S. No.	**Heads of Compensation**	**Awarded by Tribunal**	**Awarded by the Court**
	Pecuniary Loss		
1.	Compensation towards medical bills (A)	Rs. 4,35,655/-	Rs. 9,71,035/-
2.	Expenditure on conveyance and special diet (B)	Rs. 25,000/-	Rs. 25,000/-
3.	Attendant Charges (C)	Rs. 18,000/-	Rs. 18,000/-
4.	Income of injured per month (D)	NIL	Rs. 7,410/-
5.	Future Prospects (F)	NIL	Rs. 10,374/- [40%]
6.	Functional disability (G)	NIL	75%
7.	Multiplier (H)	NIL	18
8.	Loss of future earning capacity (I) [F X 12 X G X H]	NIL	Rs. 16,80,588/-
	Non-pecuniary loss		
9.	Pain and suffering (J)	Rs. 5,00,000/-	Rs. 5,00,000/-
10.	Loss of amenities/Loss	Rs. 40,000/-	Rs. 1,50,000/-

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	of studies (K)		
11.	Total [A + B + C + I + J+ K]	Rs. 10,18,655/-	Rs. 33,44,623/-
12.	**Enhanced compensation**	**Rs. 23,25,968/-**	
13.	Interest	7.5%	7.5%

Directions

79. Accordingly, the compensation shall stand enhanced by ***Rs. 23,25,968/-*** [‘***enhanced amount***’].

80. Enhanced amount along with 7.5% interest per annum from the date of filing the petition, shall be deposited before MACT within a period of *four weeks*. It is directed that a lump sum amount of *Rs. 5,00,000/-* shall be released in favour of the injured/claimant from the deposit of enhanced amount, thereafter. Remaining enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts [hereinafter, ‘***FDRs***’] of *Rs.25,000/-* each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of injured/claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant/injured upon due verification.

81. *Vide* order dated 09th March 2011, the Court had directed the Insurance Company to deposit the entire compensation amount, along with accrued thereon. Further, *vide* order dated 21st April 2015, 50% of the said amount was directed to be released in favour of the injured/claimant.

82. Accordingly, any balance amount from the originally awarded amount, along with accrued interest thereon, if not already released, shall be released in favour of appellant/claimant, as a lump sum, considering that the

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accident occurred way back in 2011.

83. Amounts towards prosthetic limbs, calculated at *Rs. 45,95,000/-* shall be deposited by Insurance Company before the MACT within a period of *six weeks* as a separate amount, not garnering interest for the period which has passed since the date of the accident. The amount, shall, however, be kept in an interest-bearing Fixed Deposit Receipt [‘***FDR***’].

84. Amounts towards prosthetic limbs shall be released only upon production of a verified original invoice and proof of payment from a reputed vendor.

85. Further, any amount deposited towards the *cost of the prosthetic limbs*, which is not withdrawn by the injured/claimant during his lifetime, shall be refunded to the Insurance Company.

86. Statutory amount, if any, shall be refunded to the Insurance Company, only if the order of deposit has been complied with.

87. Accordingly, both these appeals are disposed of in above terms.

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

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

(ANISH DAYAL)
JUDGE

OCTOBER 29, 2026/RK/*ya*

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