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

\# **CNR No. DLHC012245782014**

\+ MAC.APP. 1057/2014 & CM APPL. 19159/2014

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. A.K. Soni, Advocate.

versus

SURENDER SINGH BISHT & ORS .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% 28.10.2026

1. This appeal has been filed assailing the impugned Award dated 22nd August 2014 passed by the Motor Accident Claims Tribunal, South-East District, Saket Courts, New Delhi ('***MACT/Tribunal***') in Suit No.454/2010, whereby compensation of *Rs. 12,48,353/-* was awarded along with interest at the rate of 9% per annum.

2. Claimant has not been represented since 2025. Attempts have been made also to serve them through the counsel who had previously appeared in the appeal as well as before the MACT. However, the said counsel has not been available, and the Registry has noted that they have since passed away. No other address of the claimant is available on record.

3. This Court is proceeding to hear the appeal as certain aspects of the impugned award need to be aligned.

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4. The *loss of future income,* which was awarded as per *paragraph 20* of the MACT Award, was computed by taking the notional income of the claimant, adding 50% towards future prospects, and applying a multiplier of '17' on the basis of his age being 27 years.

5. On the issue of quantum, *Mr. A.K. Soni*, counsel for the Insurance Company, raises two objections. ***Firstly***, the claimant was self-employed, as is evident from his testimony, and future prospects ought, therefore, to have been assessed at *40%*. ***Secondly***, as per the claimant's PAN card, his date of birth was 21st October 1973, whereas the accident occurred on 17th September 2010, making him approximately 37 years of age at the time of the accident. He further points out that claim petition also records the claimant's age as approximately 36 years. Accordingly, the appropriate multiplier ought to have been *15.*

6. Since the claimant was self-employed, *future prospects* ought to have been assessed at ***40%***, in accordance with the principles laid down in ***National Insurance Co. Ltd. v. Pranay Sethi***, (2017) 16 SCC 680.

7. The Court has perused the PAN card of the claimant which records that the claimant's date of birth is 21st October 1973. The accident occurred on 17th September 2010, which makes the claimant approximately 37 years of age at the time of the accident. The appropriate multiplier, therefore, is '***15***' and not '17', in terms of the principles laid down in ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr***., (2009) 6 SCC 121 and ***Pranay Sethi***. (*supra*).

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8. Accordingly, the compensation towards *loss of future income* be recalculated by applying ***40%*** towards *future prospects* and a multiplier of '***15'***.

9. *Mr. A.K. Soni*, counsel for appellant/Insurance Company, has also raised the issue of contributory negligence, contending that the claimant was crossing the road when he met with an accident. However, no evidence has been placed on record by the Insurance Company to establish contributory negligence. The driver and owner of the offending vehicle did not appear before the MACT. On the aspect of contributory negligence, the principle consistently applied by the Supreme Court is that such a defence must be specifically pleaded and supported by material indicating that the claimant's own act or omission had a proximate role in causing the accident.

10. In ***Jiju Kuruvilla v. Kunjujamma Mohan***, (2013) 9 SCC 166, in a case involving a head-on collision, the Supreme Court held that apportionment of liability can arise only where there is tangible material to infer contributory negligence, and that mere conjectures cannot dilute the tortfeasor's responsibility. The relevant paragraphs are extracted as under:

> "*20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative*

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evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

...

21. In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises."

(emphasis added)

11. Further, reliance can also be placed on the judgment of ***Prabhavathi & Ors. v. The Managing Director, Bangalore Metropolitan Transport Corporation,*** 2025 INSC 293, wherein it was held that, in the absence of evidence on record, it cannot be presumed that the accident occurred due to the rash and negligent driving of both vehicles. The relevant paragraph is extracted as under:

"*11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvilla v. Kunjujamma Mohan, where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in Kumari Kiran v. Sajjan Singh and Ors. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the*

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accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed."

(emphasis supplied)

12. Further, merely crossing the road cannot, in itself, be a ground for attributing contributory negligence to the injured-claimant.

13. *Mr. Soni* has also challenged the assessment of the claimant's functional disability at *50%*, despite his permanent disability having been assessed at *28%*.

14. However, in the opinion of this Court, the assessment by the MACT is correct and should not be interfered with for the reason that 28% permanent disability comprises 25% impairment of cognitive functions and 3% disability on account of deformity over the head.

15. The revised compensation would be as under:

S.no	Heads	Awarded by the Tribunal	Awarded by this Court
PECUNIARY LOSS			
1.	Expenditure on Medical Bills and medical treatment (A)	Rs. 5,000/-	Rs. 5,000/-
2.	Expenditure on conveyance, special diet and attendant charges (B)	Rs. 1,50,000/-	Rs. 1,50,000/-
3.	Income of injured per month(E)	Rs. 4,401/-	Rs. 4,401/-
4	Loss of income (L)	Rs.l,00,000/-	Rs.l,00,000/-
5.	Add: Future prospects (F)	50%	40%
6.	Multiplier (G)	17	15
7.	Functional disability (H)	50%	50%
8.	Loss of future	Rs. 6,73,353/-	Rs. 5,54,526/-

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	income/future earnings [(E+F) x 12 x G x H] = (I)		
NON-PECUNIARY LOSS			
9.	Pain and suffering (J)	Rs. 1,50,000/-	Rs. 1,50,000/-
10.	Loss of amenities of life (K)	Rs. 1,50,000/-	Rs. 1,50,000/-
11.	Disfigurement (M)	Rs. 20,000/-	Rs. 20,000/-
12.	Total compensation (A + B + C + D + H + I+ J+ K+L+M) = (N)	Rs. 12,48,353/-	Rs. 11,29,526/-
13.	Interest awarded	9% per annum	% per annum
14.	Reduced compensation	**Rs. 1,18,827/-**	

16. Accordingly, the compensation is reduced by *Rs. 1,18,827/-*.

17. By order dated 21st November 2014, the Court had issued notice in the appeal and directed the Insurance Company to deposit the entire awarded amount with the Registrar General of this Court, with 60% of the amount to be released in terms of the directions contained in the impugned Award.

18. Accordingly, the reduced amount of compensation, along with the interest accrued thereon, be refunded to the Insurance Company by the Registrar General within two weeks. The balance amount payable to the claimant, after taking into account the amount already released pursuant to the order dated 21st November 2014, shall be released to the claimant in a lump sum, along with the accrued interest.

19. Statutory deposit, if any, be refunded to the appellant/Insurance Company along with accrued interest.

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20. Appeal stands disposed of in above terms. Pending applications are rendered infructuous.

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

ANISH DAYAL, J

OCTOBER 28, 2026/ak/bp

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