



2026:DHC:4749



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

% *Reserved on : 22nd April 2026*
Pronounced on : 26th May 2026
Uploaded on : 29th May 2026

+ **MAC.APP. 294/2018**

VALISHA BEGUM & ORSAppellants

Through: Mr. Pankaj Gupta, Advocate.

versus

PAPPU & ORS (IFFCO TOKIO GENERAL INS CO LTD)

.....Respondents

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

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The present appeal is filed against the judgment dated 26th September 2017, passed by the Motor Accident Claims Tribunal (MACT), North-East District, Karkardooma Courts, in MACT No. 134/15, whereby the Tribunal dismissed the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 ('*MV Act*') by the Legal Representatives (LRs) of the deceased, holding that the negligence of the driver had not been established. However, a sum of Rs. 50,000/- along with interest @ 9% per annum from the date of filing of the claim petition was awarded under Section 140 of the MV Act.



The Incident

2. The accident occurred on 25th June 2015 at about 3:00 PM, when *Mohd. Tahir* was going towards Loni on his bicycle at a slow speed and on the correct side of the road. When he reached near *Loni, Ghaziabad*, a dumper truck bearing registration no. HR-63A-7784, driven in a rash and negligent manner, came from behind and struck the bicycle with great force. As a result, the bicycle fell onto the road, and the front wheel of the truck ran over the head of the bicyclist, causing fatal injuries.

3. The deceased was taken to Guru Teg Bahadur Hospital, Dilshad Garden, Delhi, where he was declared '*brought dead*'. FIR No. 286/2015 was registered against the driver of the offending vehicle, and subsequently, the driver was charge-sheeted by the police under Sections 279/304-A of the Indian Penal Code, 1860.

Impugned Award

4. As regards the issue of negligence, the Tribunal considered the testimony of **PW-2/ Priyant Kumar**, who deposed by way of evidence affidavit **Ex. PW-2/A** that the truck came from the backside and hit the bicycle with great force which resulted in the accident. **PW-2** in his cross examination deposed that deceased was going by his bicycle and offending vehicle was going in the same direction ahead of deceased. He deposed that he had seen the truck coming in rash and negligent manner in his rear-view mirror. Tribunal noted the inconsistent testimony that if truck was ahead of the bicycle then the question of said truck hitting the bicycle from the backside does not arise.



5. Further, the Tribunal noted that the site plan prepared by police at instance of **PW-2** also does not support the claimant as it does not show that the truck had hit the bicycle from behind. On the contrary the site plan shows that the bicyclist had taken a right turn and for this reason he came in front of the truck and thus the accident occurred. Tribunal held that filing of chargesheet against the driver is immaterial as the claim of negligence has to be established based on cogent evidence, negligence cannot be presumed solely based on the chargesheet.

Submissions of Appellant

6. Counsel for appellant/claimant submits that the involvement of the offending vehicle is not in dispute and the only question which arises for consideration is whether the offending vehicle was being driven in a rash and negligent manner at the relevant time. It is contended that the site plan clearly demonstrates that the offending truck had hit the claimant's vehicle from behind, which itself is indicative of negligence on the part of the driver of the offending vehicle.

7. It is further submitted that the testimony of **PW-2**, who is an independent witness, fully supports the case of the claimant with regard to the manner in which the accident had occurred. Reliance is also placed upon the fact that neither the driver nor the owner of the offending vehicle entered the witness box to rebut the allegations of negligence or to controvert the testimony led on behalf of the claimant, thereby warranting an adverse inference against them.

8. Counsel for appellant further submits that the driver of the offending vehicle has been charge-sheeted and criminal proceedings arising out of



the accident are pending against him. Reliance is placed upon the decision of the Supreme Court in *ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo* 2025 INSC 6, wherein it was observed that negligence can be determined on the basis of the police record available before the Tribunal and consideration thereof is not inadmissible. Reliance is also placed on the judgment of the Delhi High Court in *Santosh v Ashish & Anr.*, 2026:DHC:130 to contend that filing of a charge-sheet against the driver and pendency of the criminal case are relevant circumstances which ought to be taken into consideration while determining negligence.

Submissions of Respondent/ Insurance Company

9. Counsel for respondent/Insurance Company, in support of finding by the Tribunal that no negligence of driver is established, submits that a perusal of the site plan would show that the offending truck was proceeding on the correct side of the road and it was the bicyclist/deceased who had suddenly taken a right turn, as a consequence whereof the accident occurred. It is thus contended that the deceased was himself responsible for the accident and liability cannot be fastened on the driver.

10. It is further submitted that the testimony of **PW-2** is not reliable and suffers from material contradictions. Counsel for respondent/ Insurance Company contends that while in his evidence by way of affidavit, **PW-2** had deposed that the offending truck came from behind and hit the bicycle; however, during his cross-examination, he stated that the offending vehicle was proceeding ahead of the deceased in the same direction and that he had seen the truck through his rear-view mirror. It is thus argued that two inconsistent versions regarding the manner of the accident have



been put forth by **PW-2**, rendering his testimony unreliable for establishing negligence of the driver of the offending vehicle.

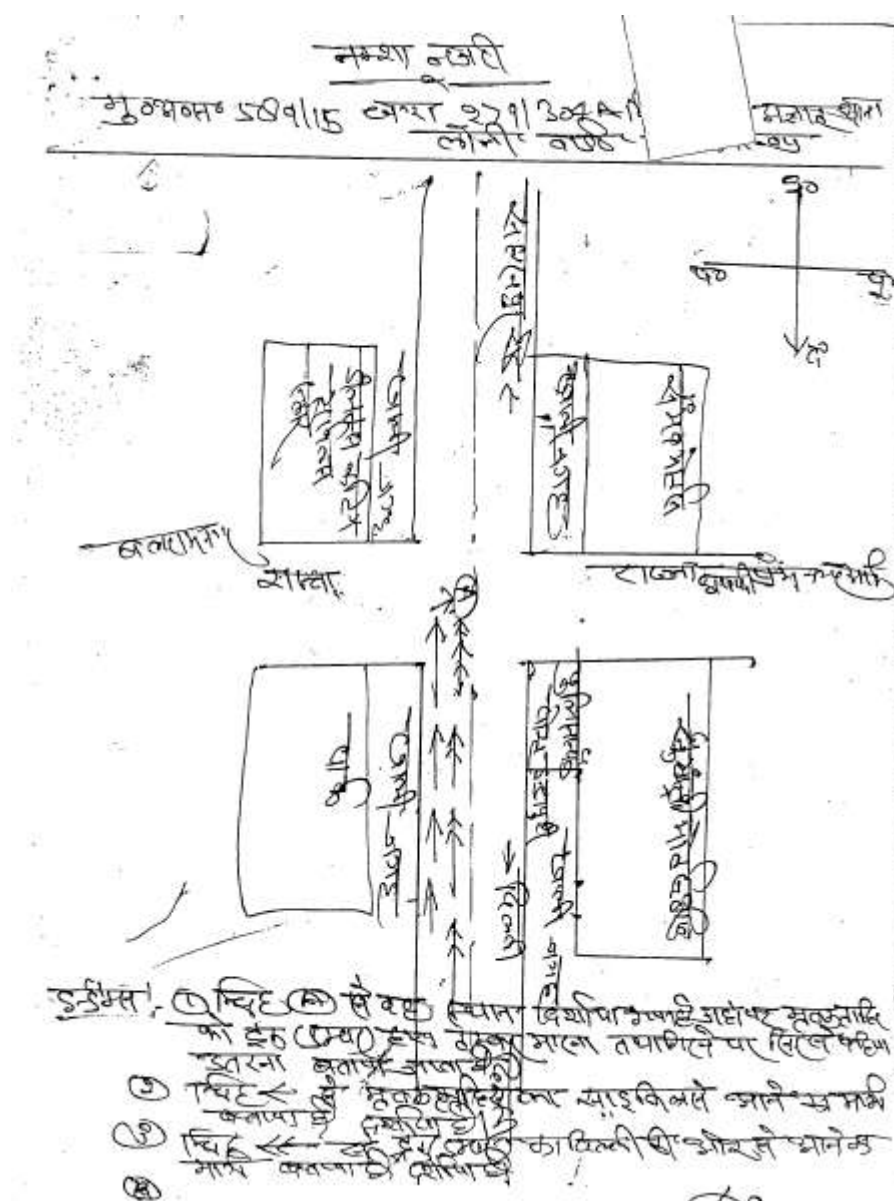
Analysis

11. The fundamental issue canvassed by appellant concerns the MACT's dismissal of the claim on the ground that no negligence on the part of the driver of the offending vehicle had been established. In this regard, what requires examination is the testimony of the witness, the record of the criminal proceedings, the site plan, and any rebuttal evidence offered by the driver and owner. Since **PW-2** was an eyewitness, it would be apposite to examine why his evidence was not considered credible by the MACT. *Priyant Kumar/PW-2* clearly stated in his affidavit by way of examination-in-chief that the deceased was riding his bicycle opposite *Sambhav Motors, Loni, Ghaziabad, U.P.*, when the offending truck, being driven at a high speed from the Delhi side, struck the bicycle with great force. The vehicle ran over the head of the deceased, causing crush injuries to which he succumbed.

12. In his cross-examination, **PW-2** stated that he was running a gym at *Loni, Ghaziabad*, and was travelling from his home to Loni on a motorcycle. He confirmed that both the deceased on the bicycle and the offending vehicle were travelling in the same direction. However, his testimony was recorded as "*the alleged offending vehicle was also going in the same direction ahead from the deceased.*" This was interpreted by the MACT as a contradiction, since if the offending vehicle was ahead of the deceased, there could have been no collision.



13. Further, in his cross-examination, **PW-2** stated that the deceased came under the rear right-side wheel of the offending vehicle. He also stated that he had not informed the police about the accident, but that the police had arrived at the spot, recorded his statement, and prepared the site plan at his instance. The site plan, therefore, requires consideration and is extracted herein for reference:





14. The single arrow depicts the movement of the bicycle, whereas the double arrow depicts the movement of the truck. It is clear from the site plan that both were travelling in the same direction, and the point of collision is shown directly in front of the truck's path.

15. Counsel for the Insurance Company contended that the arrow depicting the movement of the bicycle suggests that it was turning towards the right and that the truck consequently collided with it.

Assessment of FIR and Site Plan

16. A perusal of the FIR shows that it was registered at 5:30 p.m. on the very same day, whereas the statement of **PW-2** was recorded on spot.

17. The FIR was registered at the instance of *Shamim Ahmed*, the uncle of the deceased. His statement, as recorded in the FIR, states that the deceased had left at around 3:00 o'clock on a bicycle to purchase medicines from Loni when a truck coming from the Delhi side struck him from behind and the front wheel crushed his head.

18. Having assessed the testimony, the site plan, and the FIR, the following possible situations emerge:

- (i) **First**, the eyewitness testimony may not have been credible, since the witness allegedly saw the accident through his rear-view mirror but nevertheless did not report the matter to the police. The FIR was lodged at the instance of the deceased's uncle, and the eyewitness statement was recorded subsequently.



- (ii) **Second**, the eyewitness testimony may indeed have been credible and authentic, and he may have witnessed the truck mowing down the cyclist through his rear-view mirror. Although he did not report the incident to the police, his statement was recorded and the site plan was prepared at his instance. He also stated that he had appeared before the Court at the instance of the elder brother of the deceased.
- (iii) **Third**, there exists the straightforward possibility that the truck struck the cyclist from behind, as a result of which the cyclist came under the front wheel of the truck, which is consistent with the FIR.
- (iv) **Fourth**, it is possible that the cyclist and the truck were travelling parallel to each other, with the cyclist on the left side of the truck, and that the cyclist suddenly turned right at the crossing. Consequently, the truck driver may not have been able to stop the vehicle in time, resulting in the cyclist being struck and run over, eventually coming under the rear wheel of the truck, as stated by the witness.

19. There are certain inconsistencies within these possible scenarios. However, what is clear from the FIR is that the offending vehicle was involved in the accident, since the driver fled from the spot and the truck was subsequently seized from the place of occurrence

20. A reading of the FIR, which was registered immediately after the accident, makes it evident that *Priyant Kumar* was present at the relevant time and had stated that he had witnessed the accident. On the basis of the



FIR and applying the standard of preponderance of probabilities, the occurrence of the accident cannot be easily displaced. Considering that the testimony of **PW-2** was recorded nearly one and a half years later, minor inaccuracies in the recording of his evidence cannot be ruled out. While the FIR states that the deceased was crushed under the front side of the truck, the testimony of **PW-2** records that he came under the rear right-side wheel of the vehicle.

21. There may also have been some confusion regarding the meaning of “*agla pahiya/अगला पहिया*” as mentioned in the FIR. In any event, it stands established that an accident involving the truck did occur, since the truck driver fled the scene and the vehicle was seized. On the standard of preponderance of probabilities, negligence on the part of the truck driver in mowing down the cyclist must therefore be inferred.

22. A bicycle is a slow-moving vehicle, whereas a truck is a large and heavy vehicle. Consequently, the truck driver, in all circumstances, is expected to maintain proper control over the vehicle so that even if there is any wayward cyclist, the truck driver is able to avoid mowing the cyclist down by keeping the vehicle under effective control.

23. As regards the issue of negligence, reliance can also be placed on the judgment of Supreme Court in ***Ranjeet v. Abdul Kayam Neb***, 2025 SCC OnLine SC 497, wherein the Supreme Court noted as under:

“4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to



prove the death of the deceased due to negligence of the bus driver.

5. In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants.”

(emphasis added)

24. Considering that in this case both FIR and chargesheet have been filed itself is proof of negligence of the driver.

Contributory Negligence

25. The only remaining issue is whether contributory negligence can be attributed to the cyclist, who may possibly have turned right in front of the truck, as reflected in the site plan and as vehemently contended by Mr. A.K. Soni, counsel for the Insurance Company.

26. Since the site plan was prepared at the instance of the eyewitness, whose testimony this Court finds credible, the aspect of contributory negligence would necessarily have to be taken into account.

27. It is possible that the cyclist was legitimately turning right and that the truck driver either failed to notice him or was unable to control the vehicle in time. Equally, it is possible that the cyclist turned right without ensuring that there was no oncoming traffic proceeding straight ahead, including the truck.

28. In either event, compensation ought to be awarded to appellants, who are the Legal Representatives (LRs) of the deceased, subject to deduction on account of contributory negligence.



29. Contributory negligence, in tort law, contemplates a situation where a person's own negligence has materially contributed to the harm suffered, thereby warranting apportionment of liability to the extent of such negligence. The Supreme Court in ***Municipal Corporation of Greater Bombay v. Laxman Iyer***, 2003 (8) SCC 731, explained the term 'negligence', 'composite negligence' and 'contributory negligence'. For ease of reference relevant paragraph is extracted as under:

“6. The plea which was stressed strenuously related to alleged contributory negligence. Though there is no statutory definition, in common parlance “negligence” is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different



conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Whichever party could have avoided the consequence of the other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn., para 328.) It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as



seems just and equitable. Apportionment in that context means that damage is reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn., p. 361.)”

(emphasis added)

30. In view of the above, although the primary negligence rests upon the driver of the offending truck, who was under a greater duty to maintain control over a heavy vehicle, the conduct of the deceased cyclist also contributed to the occurrence of the accident. The site plan indicates that the cyclist may have turned right at the crossing immediately before the collision without ensuring safe passage. Thus, on the standard of preponderance of probabilities, the deceased is also liable to be attributed contributory negligence to a limited extent. However, considering the nature of the offending vehicle and the higher duty of care cast upon its driver, the contributory negligence of the deceased is assessed at 20%.

31. The only issue that survives for consideration pertains to the computation of compensation. Considering that the accident occurred in the year 2015 and the impugned award was passed in 2017, more than a decade has lapsed since the death of the deceased. In the facts and circumstances of the case, this Court deems it appropriate to remand the



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matter to the MACT for fresh consideration on the aspect of computation of compensation in accordance with the settled principles of law. The MACT shall endeavour to decide the said issue within a period of three months from the date of receipt of this order, on the basis of existing evidence on record. Only if considered absolutely necessary, the MACT will requisition any additional evidence.

32. Accordingly, list the matter before the concerned MACT on 10th June 2026 for further directions.
33. The appeals stand disposed of with above directions.
34. Pending applications, if any, are rendered infructuous.
35. Copy of this judgement be sent to concerned MACT.
36. Judgement be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

MAY 26, 2026/mk/zb