



2026:DHC:7847



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

*Reserved on: 12th August 2026.
Pronounced on: 15th September 2026.
Uploaded on: 16th September 2026.*

CNR No. DLHC010150892026

+ **MAC.APP. 246/2026, CM APPL. 23791/2026, CM APPL.
23792/2026 CM APPL. 23793/2026 & CM APPL. 23794/2026.**

MUNICIPAL CORPORATION OF DELHIAppellant

Through: Ms. Tajinder Viridi, Standing
Counsel for MCD.

versus

SUNNY MAKKAR AND ORS.Respondents

Through: Mr. Amulya Dhingra, Ms. Anvika
Shukla, Advs.

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

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ANISH DAYAL, J.

1. This appeal has been filed assailing the impugned award dated 12th September 2025 passed by the Motor Accidents Claims Tribunal [*MACT*], West, Tis Hazari Courts in MACT No. 313/2019, awarding compensation of *Rs.1,16,42,016/-* along with 9% interest to the legal representatives of deceased (hereinafter, '*claimants*').

The Accident

2. The accident in question occurred on 10th August 2018 at about 01:30 p.m. in front of *Shop No. 6 and 7, near Arya Samaj Mandir, Block No. 2, Subhash Nagar, New Delhi* when *Smt. Teena Makkar* (hereinafter, '*deceased*') along with her sister-in-law *Smt. Honey Makkar* were



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travelling by foot. It had been claimed that, when they turned towards *Chhatri wala park* from *Arya Samaj* crossing, a truck bearing registration no. DL-1M-3658 (hereinafter, '**offending vehicle/truck**') driven by respondent no.3/*Phool Kumar* (hereinafter, '**driver**') hit the deceased, due to which she fell down and the rear tyre of the offending vehicle ran over her.

3. It was further alleged that the driver of offending vehicle stopped the vehicle for a while, saw both the pedestrians from his window and fled away in the truck.

4. The deceased succumbed to her injuries on 10th August 2018 at Deen Dayal Upadhyay Hospital, Delhi ('**DDU**') and her *post-mortem* was conducted. FIR No. 515/2018 was registered at P.S. Rajouri Garden, under Sections 279/304A of Indian Penal Code, 1860 ('**IPC**') on the complaint of eyewitness- *Smt. Honey Makkar*.

5. Detailed Accident Report ('**DAR**') was filed stating that respondent no.3/*Phool Kumar* was the driver of offending vehicle and appellant/Municipal Corporation of Delhi ('**MCD**') was the registered owner. DAR was accompanied by the chargesheet and other documents, including, Mechanical Inspection Report ('**MIR**').

Submissions on behalf of parties

6. *Ms. Tajinder Viridi*, counsel for appellant/MCD, contended that:

- (i) *Firstly*, the eyewitness-*Smt. Honey Makkar* ('**PW-2**'), sister-in-law of the deceased, who was travelling on foot, along with deceased is an interested witness and, therefore, her testimony cannot be relied upon.



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(ii) *Secondly*, there was no CCTV footage, despite the accident having occurred in a crowded area and;

(iii) *Thirdly*, the FIR and charge-sheet have been registered mainly on the basis of statement of eyewitness-Smt. Honey Makker, therefore, the same cannot be relied upon.

7. To the contrary, Mr. Amulya Dhingra, counsel for respondents/claimants, contended that:

(i) *Firstly*, in view of the decision of Supreme Court in **Ranjeet v. Abdul Kayam Neb** 2025 SCC OnLine SC 497, once the FIR and charge-sheet are on record, the same have a persuasive value on the issue of negligence and no further evidence is required, even if eyewitnesses are not examined.

(ii) *Secondly*, no evidence has been led by appellant/MCD before the MACT;

(iii) *Thirdly*, **PW-2** was walking along with the deceased and there could not have been any better witness than her and;

(iv) *Fourthly*, driver of the offending vehicle who passed away during the pendency of proceedings, had given a statement that he was a gardener and had been asked to drive the vehicle by the supervisor.

8. In order to buttress his submissions, Mr. Dhingra, relied upon the following decisions:

(a) Where the witness is related to the claimant – **Sunita & Ors. v. Rajasthan State Road Transport Corporation & Ors.** (2020) 13 SCC 486 and **Baban Shankar Daphal & Ors. v. State of Maharashtra**, 2025 SCC OnLine SC 137.



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- (b) Touchstone of preponderance of probabilities – ***Mangla Ram v. Oriental Insurance Co. Ltd. & Ors.***, (2018) 5 SCC 656, ***Sunita (supra)***, ***New India Assurance Co. Ltd. v. Tanuj Sehrawat***, 2026 SCC OnLine Del 203 and ***IFFCO Tokio General Insurance Co. Ltd. v. Kanchan & Ors.***, 2024 SCC OnLine Del 155.
- (c) Principle of *res ipsa loquitur* - ***Kanchan (supra)***.
- (d) Relevance of FIR and Chargesheet in Motor Accident Claims - ***Mangla Ram (supra)*** and ***Smt. Rashmi Maravi & Ors. v. Sanjay Kumar Pandey & Ors.***, Misc. App. No. 7546/2023.
- (e) No evidence led for claiming contributory negligence - ***Kanchan (supra)*** and ***Tanuj Sehrawat (supra)***.
- (f) Income tax returns ('ITRs') as proof of stable income – ***Malarvizhi & Ors. v. United India Insurance Co. Ltd. & Anr.***, (2020) 4 SCC 228.
- (g) Future prospects – ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.***, (2017) 16 SCC 680.
- (h) Deduction of 1/3rd towards personal expenses – ***Sarla Verma v. Delhi Transport Corporation & Anr.***, (2009) 6 SCC 121, ***Kamlesh Mittal & Ors. v. Oriental Insurance Co. Ltd.***, 2014 SCC OnLine Del 4529 and ***National Insurance Co. Ltd. v. Geeta Tripathi***, 2026 SCC OnLine Del 1458.
- (i) Loss of consortium – ***New India Assurance Co. Ltd. v. Somwati & Ors.***, (2020) 9 SCC 644.



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(j) Interest Rate – *National Insurance Co. Ltd. v. Laxmi Bisht & Ors.*, 2026 SCC OnLine Del 3577 and *Oriental Insurance Co. Ltd. v. Satish Chandra*, 2023 SCC OnLine Del 7923.

Analysis

On Negligence

9. Assessing the submissions of appellant/MCD, at the outset, it is noted that FIR was registered on the date of accident *i.e.* 10th August 2018, noting *Honey Makkar* as the complainant. Her statement as recorded in the FIR, stated that at about 01:30 p.m. she along with her sister-in-law-*Teena Makkar* (deceased), was going from *Arya Samaj Chowk* towards *Chhatri wala park* and truck coming from the *Chhatri wala park* side was of a dark green colour. A car was standing in front of *Shop No. 6 and 7* and they started walking alongside the car to cross it.

10. *Teena Makkar* was walking slightly behind her and the truck, being driven in a rash and negligent manner crashed into the deceased and she fell down due to the impact. After hearing the impact, *Honey Makkar* turned back and saw that the rear wheel of the truck had run over the right side of *Teena Makkar's* body. After an outcry from the onlookers, driver of the truck paused for a while, saw what had happened in his rearview mirror and then ran away.

11. *Ms. Virldhi*, counsel for appellant/MCD, sought to draw out contradictions in the testimony of *PW-2*, who had stated that the truck was coming from the front side, whereas, the husband of deceased-*Sunny Makkar* (*'PW-1'*) in his evidence by way of affidavit, stated in *paragraph 4* that the driver had hit the deceased from behind.



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12. She further stated that there was no independent witness. Further, it was a crowded area and the driver could not have driven the truck rashly and negligently. She contended that *PW-2* herself in her cross-examination had stated that the accident took place in a crowded area.

13. The appellant/MCD's plea in this regard is completely untenable and unsustainable.

14. To begin with, it has to be understood that the Tribunal has to assess the issue of negligence on a *preponderance of probabilities* and therefore, the testimonies have to be assessed on that basis. In this case, there is a clear and categorical evidence of the eyewitness, which is the sister-in-law (*PW-2*). Her being an interested witness does not discount her testimony. If such a position is taken in claims filed under motor accidents, no eyewitness would be considered reliable, if a companion, co-occupant of the deceased testifies in support. What has to be seen is, whether the testimony of the witness is credible and is sustained in the cross-examination and is corroborated by the other documents on record.

15. As noted above, the FIR was recorded on the same day, therefore, it cannot be said that it was recorded much later or the story was cooked up. The statement of *Honey Makkar/PW-2* was recorded in the FIR. The Medico-Legal Certificate (*'MLC'*) duly records that the deceased was brought to casualty at around *01:47 p.m.* in gasping state with a history of road traffic accident recorded around *01:30 p.m.*

16. It was stated in the MLC that she had fallen over and had been run over by a truck on the right half of her body. The bruises which were recorded were over the right shoulder, right chest, right thigh, upper back and swelling over the right thigh.



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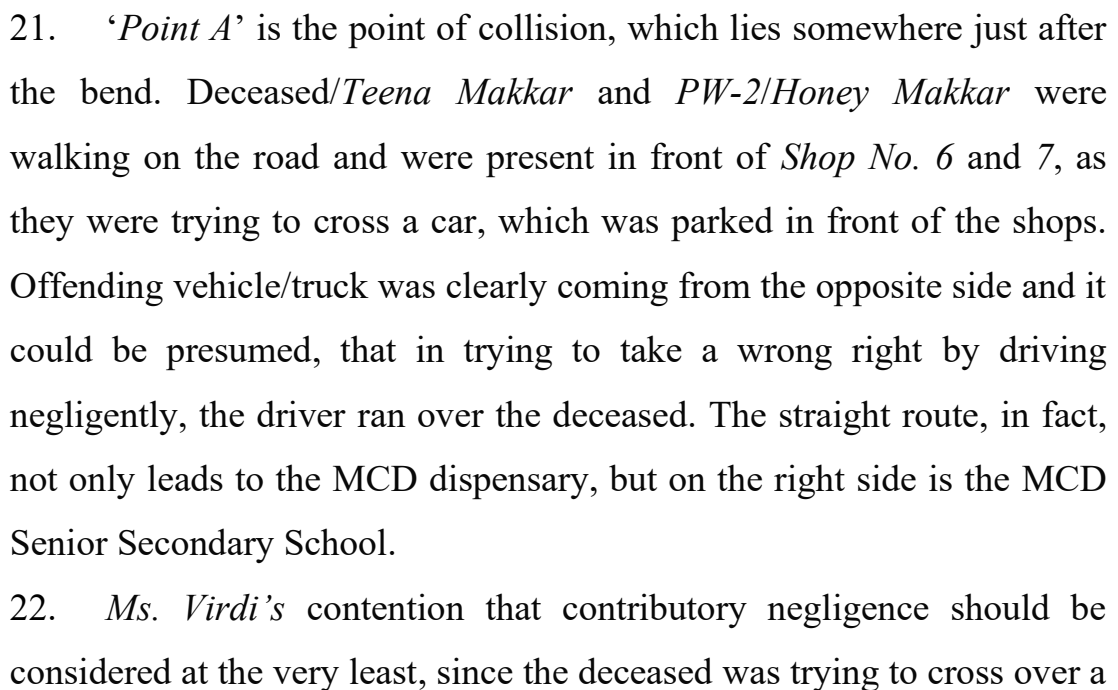


17. Therefore, the testimony of *Honey Makkar/PW-2* with respect to the nature of accident and rear wheel of the offending vehicle/truck running over right side of the deceased is completely and thoroughly corroborated, by what has been recorded by DDU in the MLC. Nature of the injuries were external, as also noted in the *post-mortem* report.

18. *Ms. Viridi*, counsel for appellant/MCD, relied upon the Mechanical Inspection Report ('*MIR*') to state that no fresh damage was noted on the offending vehicle, which had been inspected on 16th August 2018, *i.e.* 6 days after the accident. This has no bearing on the matter for the reason that, the collision did not occur between two vehicles, but rather a heavy vehicle, a carrier truck in this case, running over a human being; therefore, it is not expected that a vehicle would sustain any damages on its body or any other part. A plea to that effect would run contrary to all logic and, therefore, has to be rejected.

19. Though, the driver of offending vehicle/truck had passed away during the proceedings before the MACT, a chargesheet had been filed against him.

20. *PW-2's* testimony has also been fully corroborated by the site plan, which is extracted herein for reference:





car and, therefore, came in the way of the MCD truck cannot be accepted. *Firstly*, proof of contributory negligence has to be given and no evidence has been led by appellant/MCD; *secondly*, even if the two ladies were crossing over a parked car in front of a shop, there is no reason for a truck, which is coming from the opposite side and ought to stick to its left carriage way, to hit them. There is no plea or evidence to the effect that the deceased was standing in the middle of the road and coming in the route of the offending vehicle/truck.

23. 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 held 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)

24. Further, the onus is on the party alleging contributory negligence to prove through cogent evidence that the claimant/victim was negligent. Reliance in this regard may be placed on Supreme Court's observations in ***Yashwant Krishna Kumbar v. Divisional Manager, United India***



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Insurance Co. Ltd. SLP (C) NO. 22599/2024 in order dated 25th November 2025, where the Supreme Court was adjudicating an appeal filed by the pillion rider on the ground that contributory negligence of 50% was attributed by the Tribunal and High Court. Allowing the pillion rider's appeal, the Supreme Court held as under:

“16. In cases where contributory negligence is sought to be attributed to a pillion rider in a motor vehicle accident, the burden squarely lies on the party alleging such negligence to establish, by cogent material, that any act or omission on the part of the pillion rider contributed to the occurrence of the accident. In the absence of such proof, no finding of contributory negligence can be sustained against a pillion rider.

17. This Court is therefore of the considered view that the Tribunal committed a manifest error in reducing the compensation by 50% on the ground of alleged contributory negligence of the claimant. The insurer, on whom the burden squarely rested, led no evidence to establish even remote negligence attributable to the claimant. Consequently, the finding of contributory negligence cannot be sustained and is liable to be set aside, restoring the claimant's entitlement to the full measure of compensation determined in accordance with law.”

(emphasis added)

25. Having considered the aforesaid judgments, the legal position that emerges is that contributory negligence cannot be inferred merely from the violation of a statutory requirement by the victim. The essential requirement is to establish a causal connection between the act or omission attributed to the victim and either the occurrence of the



accident or the nature and extent of the injuries suffered. The burden of establishing such contributory negligence lies upon the party alleging it, and such finding must be supported by cogent evidence rather than conjecture or presumption.

26. Even otherwise, driver of any vehicle is supposed to account for pedestrians or people crossing over and is supposed to apply brakes to stop or slow down their vehicle. A responsible driver naturally is one that is alert, aware of the surrounding circumstances and applies brakes, as and when it is required. The vehicle must always be in control of the driver, taking into account, all the exigencies and uncertain situations which can occur on a road. It would be extremely fanciful to assume that in a crowded area, the driver would not be confronted with any such situations.

27. In case of injuries arising out of an accident, *Section 134* of Motor Vehicles Act, 1988 (*‘MV Act’*) casts a duty on the driver to take steps to ensure medical attention. The said section is extracted as under:

“134. Duty of driver in case of accident and injury to a person

When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or



treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise;
(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

- (i) insurance policy number and period of its validity;
- (ii) date, time and place of accident;
- (iii) particulars of the persons injured or killed in the accident;
- (iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section the expression “driver” includes the owner of the vehicle.]”

(emphasis added)

28. Duties of a driver have been categorized under *Rules of the Road Regulations, 1989*, (***Rules of the Road Regulations***) made by the Central Government in the exercise of powers conferred under *Section 118* of MV Act. *Rule 8* provides the duty of a driver to slow down and maintain caution at road junctions. The said Rule is extracted as under:

“Rule - 8. Caution at road junction.

The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction, pedestrian crossing or a road corner, and shall not enter any such intersection, junction or crossing until



he has become aware that he may do so without endangering the safety of persons thereon.”

29. Further, the Central Government introduced *Motor Vehicles (Driving) Regulations, 2017* which were published on 23rd June 2017 by the Ministry of Road Transport and Highways and were introduced in supersession of Rules of the Road Regulations. The regulations were introduced on issues, including, lane traffic discipline, right of way, roundabouts, etc. The relevant regulations providing the duty of drivers are extracted as under for ease of reference:

“5. Duties of drivers and riders.-

(1) Every driver shall at all times drive the vehicle with due care and caution.

(2) The driver shall ensure that at the time of driving a vehicle, he is in full control of his physical and mental abilities and physically and mentally fully fit to drive a vehicle.

(3) The driver shall at all times maintain a good lookout and concentrate on the road and the traffic and avoid any activity which distracts, or is likely to distract, his attention.

(4) The driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, the elderly and the differently abled persons.

(5) The driver shall ensure that his vehicle, while moving or when stationary, does not cause any hindrance or undue inconvenience to other road users or to the occupants of any properties.

(6) The driver shall ensure that his view is not obstructed and his hearing is not impaired by passengers, animals, the load, equipment in the vehicle or by the condition of the vehicle.

(7) The driver shall ensure that he and the other occupants of the vehicle wears seat belts, if provided in the vehicle.



(8) The driver shall ensure that a child up to twelve years of age is seated in an appropriate child restraint system, wherever provided.

(9) Wherever provided by or under the law, the rider of a motor cycle, with or without a side car, and the pillion-rider and occupant of the side car shall wear protective head gear (helmet) or such other safety device as specified under any law for the time being in force.

(10) The driver shall ensure that loud music is not played in the vehicle.

(11) The driver shall not watch digital motion pictures or videos while driving, except where required for route navigation:

Provided that the driver shall use a device for route navigation in such a manner as not to distract his attention from driving.

(12) The driver shall strictly comply with the laws for the time being in force relating to prohibition on consumption of alcohol and drugs and smoking, and also ensure compliance thereto by the other crew, riders and passengers, if any.

(13) The driver shall take care of himself and the passengers of the vehicle, when getting into or out of a vehicle so as to ensure his own safety and the safety of the other staff, the passengers and other road users.

(14) The driver shall not, in any public place, drive a vehicle which, to his knowledge, has a defect, or which he could have discovered by exercising ordinary care, and on account of which defect the driving of the vehicle is likely to cause undue danger to the safety of the occupants of the vehicles or other road users.

(15) If a technical defect is discovered in a vehicle while it is being driven, the driver shall take the vehicle off the road in the quickest possible manner:

Provided that powered two wheelers may be pushed to safety in a situation of discovery of a technical defect during driving.

(16) While riding or driving a motor cycle or a three



wheeler, the driver or the rider shall not hold on to or push any other vehicle.

(17) The driver of a motor cycle or a three wheeler shall at all times hold the handle bar with both hands except when signalling the manoeuvre as specified in regulation 9.

(18) The driver may take his feet off the pedals or foot rests only if the road conditions so require or safely permit.

...

29. Action in case of vehicular accident.-

(1) The driver shall maintain absolute cool in case of an accident and do nothing that may harm the other driver or vehicle involved in the accident or any other person.

(2) Minor accidents, -

- i. the driver or drivers, as the case may be, involved in the accident shall alight from the vehicle and take pictures of the vehicles, the occupants of the vehicles, any pedestrian or any other person or vehicle, whether motor vehicle or otherwise, and the accident scene, if possible;
- ii. the drivers shall pull the vehicles out of the road immediately so that the vehicles are clear of on coming traffic;
- iii. the driver or drivers shall place reflective traffic warning triangles near or around the vehicles to alert other drivers, and turn on hazard warning lights;
- iv. the driver or the riders shall immediately call the police or ambulance or nearest hospital if anyone has been hurt;
- v. The driver shall not leave the scene of an accident, even if it was a minor accident, until everything has been resolved to everyone's satisfaction.

(3) Major accidents,-

- (a) every person involved in the accident shall check himself and other occupants of the vehicle



or vehicles involved in the accident to see if anyone has been injured;

(b) if someone has been hurt, medical assistance and police shall be called immediately;

(c) once the condition of the driver and the passengers or riders has stabilised, the persons involved in the accident shall try to take pictures of the persons and vehicles involved in the accident, including the registration plates of the vehicles and the accident scene;

(d) the driver or drivers involved in the accident shall move the vehicles vehicle off to the side of the road, if possible, at the earliest;

(e) if it is not possible to move the vehicle or vehicles, the driver or drivers involved in the accident shall remain in the area of the incident until the police arrives unless the same is not possible due to injuries sustained in the accident;

(f) the driver and the other occupants shall cooperate with the police authorities in the investigation of the accident;

(g) if involved in an accident with another vehicle, the drivers shall exchange the following information with that driver: name, address, phone number, insurance company, policy number, driving license number and registration number of the vehicle.

...

39. Pedestrian crossings, footpaths and cycle tracks.-

(1) While approaching an uncontrolled pedestrian crossing, the driver shall slowdown, stop and give way to pedestrians, users of invalid carriages and wheelchairs.

(2) If traffic has come to a standstill, the driver shall not drive the vehicle on the pedestrian crossing if he is unlikely to be able to move further and thereby block the pedestrian crossing.

(3) When any road is provided with a footpath or cycle track, no vehicle shall drive on such footpath or track,



except on the directions of a police officer in uniform or where traffic signs permitting such movement have been displayed.”

(emphasis added)

30. Notably, the Supreme Court recently in the decision of ***Maniyar Iliyaz @ Shaik Riyaz & Anr v. P. Ayyappan & Ors.*** 2026 INSC 647 has expounded in detail and extensively on the *rights of pedestrians* and, in fact, elevated the *right to walk* to a fundamental right. The Supreme Court observed that the *right to walk*, including the right to safe and demarcated footpaths, is a fundamental right flowing from Articles 19(1)(d) and 21 of the Constitution of India, 1950. Relevant paragraphs are extracted from the discussion as under:

“20. Returning to the discussion and the articulation of the right, the correlative duty and followed by the constitutional statutory remedies, in conclusion, we declare as under:

a. The right to walk is a fundamental right under Part III of the Constitution. It is integral to the right to movement guaranteed under Article 19(1)(d), read with Article 19(1)(a), Article 19(1)(b), Article 19(1)(c) and Article 21 of the Constitution of India. The fundamental right to walk will take within its sweep the right to demarcated footpaths. These rights are primary and shall have priority over movement by motorised vehicles.

b. The fundamental right to walk on demarcated footpaths has a correlative duty. If the road exists, there is a duty to ensure that there are demarcated and well-maintained footpaths for walkers. The duty bearers are the urban development authorities, municipal corporations, municipalities and even panchayats, who must endeavour to demarcate,



construct, maintain, and safeguard footpaths and other necessary pedestrian infrastructure, as walking is integral to life.

c. The violation of the right to walk on demarcated footpaths will entitle the citizens to invoke constitutional and legal remedies against duty bearers for restitution and compensation. This remedy is independent of the remedies that are available under the Motor Vehicles Act, 1988.”

(emphasis added)

31. Reference may also be drawn to the decision of Supreme Court in ***Dalbir Singh v. State of Haryana***, (2000) 5 SCC 82, whereby, the Court was adjudicating a criminal appeal filed by the driver, while driving a bus, had knocked down a cyclist. After being hit, the victim was dragged by the bus for some distance and thereafter, passed away. The driver was convicted under Sections 279 and 304-A of Indian Penal Code, 1860 and was sentenced to imprisonment of 3 months and 1 year. Dismissing the appeal, the Supreme Court made certain observations regarding the conduct of drivers and the duty of care that must be maintained while driving a motor vehicle. Relevant observations of the Court are extracted as under:

“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere.



Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

...

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

(emphasis added)

32. Reliance may also be placed upon the decision of Karnataka High Court in ***M.N. Rajan v. Konnali Khalid Haji***, 2003 SCC OnLine Kar 497, where the Court analyzed the duty of a care of a lorry driver which ran over the deceased in an accident which occurred on 2nd June 1995. The deceased who had been riding as a pillion rider on a motor cycle fell



down as a result of her veil getting stuck in the back wheel of the motorcycle. Traversing the law on duty of care which is to be maintained by drivers, the Court made the following observations:

*“16. In this case, we are concerned with the duty of the driver of the lorry to the pillion rider and driver of the Motor Cycle only. The Courts, in pursuance of their policy of preventing harm, do insist on stricter standards of care being observed. This is especially, true in highway cases where the accident rate causes concern. In *Rider v. Rider* [(1973) O.B. 505.] considering the earlier opinion in *Bright v. Ministry of Transport* [(1971) 2 Lloyd's Rep. 68.] their Lordships held that while driving the Motor Vehicles on highways, it is folly not to anticipate; folly in others. This opinion was reiterated in *Rae v. Dumbarton Council* [1973 S.L.T. (Notes) 23.]. Thus, it is clear that high standard of care is expected of by the highway users and in fact there are various statutory regulations on special matters. Apart from the standard of care required of a person who use the highways, the principles upon which the law proceeds are of ordinary negligence cases, viz. that a person should not do or omit anything which he should reasonably anticipate might injure another person. When a person drives the vehicle on the highway, the speed at which the vehicle should be driven must be reasonable in the circumstance. No hard and fast rule can be specified. The general rule is that the vehicle should be driven at a speed which enables the driver to stop within the limits of his vision, particularly having regard to the weather and state of the road. If the driver does not exercise these precautions while driving the vehicle, his failure to do this will very likely result in the driver being held, in whole or in part, responsible for the collision. In “*Jungnickel v. Laing* [(1966) 111 S.J. 19.] it was held that the driver is under no duty to give warning of his intention to slow down; those following should keep clear. The only exception*



is that the driver of a following vehicle cannot be blamed if the vehicle ahead stops so suddenly as to give him no chance of avoiding a collision.

17. The precept of “negligence” means failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The test of negligence lies in default to exercise the ordinary care and caution which is expected of a prudent man in the circumstances of a given case. The duty to exercise such a care and caution including reasonable use of his faculties of sight and intelligence to observe and appreciate danger or threatened danger of injury is undoubtedly on the driver of an automobile. If he fails to do so and such failure is the proximate cause of the injury or death, he is guilty of negligence. In other words, the test is whether the driver could, by exercising normal diligence and caution, avert the accident. “Negligence” is the omission to do which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It is trite, the negligence is not a question of evidence; it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omission which could be reasonably foreseen to be likely to cause physical injury to persons. The degree of care required, of course, depends upon the facts in each case.

...

19. In the case of Sharada Bai v. Karnataka State Road Transport Corporation [ILR 1987 Kar 2730 DB.] M.N.- Venkatachalaiah J., as he then was, speaking for this Court after recalling the words of Lord thwatt and Lord Porter in London Passenger Transport



Board v. Upson [1949 AC 155.] and Lord Dunedin in Craig v. Glasgow Corporation [(1919) 35 TLR 214.] and observation of Charlesworth and Percy, in their Treatise on negligence,, (Sevent Edition) and judgment of this Court in Seethamma v. Benedict D'SA [1966 (1) Mys. L.J. 577.] held thus;—

“A driver, particularly of a public transport vehicle, is expected to have a proper look-out and provide for the safety of the other users of the road. In a busy city, a driver must anticipate and provide for the more common follies of other users of the road. In crowded city roads it is not unoften that pedestrians dart across the road, cyclists and scooterists attempt to weave a zig-zag path between other moving vehicles; school children who are left to fend for themselves, cross the streets unmindful of the hazards of the traffic; and all these are a part of the realities of the urban predicament, which any driver, more particularly of a public transport system, ought to be cognizant of. He must keep his anticipatory reflexes geared to be able to stop the vehicle at a very short-notice. Roads are not meant only for heavy vehicles; they are also meant for other users of the road and the drivers of heavy-vehicles must negotiate their vehicles in such a way as not to jeopardise the safety of the other users of the road.”

(emphasis added)

33. In the present case, the written statement filed by appellant/MCD before the MACT was simply to the effect that the offending vehicle/truck was not involved in the accident, nor did the driver/*Phool Kumar* cause the accident and, that the truck was not even present on the site at the time of accident.



34. MACT noted that no evidence was brought on record to prove any negligence on part of deceased. *PW-2* was cross-examined and her cross-examination does not elicit anything, which would dilute her testimony.

35. In evidence, seizure memo of the offending vehicle had been placed, along with arrest memo of the accused, which had been proved by *PW-3*, who had brought the complete record of chargesheet and final report. The driving licence had also been placed on record by ASI *Kuldeep Singh*. No evidence was placed on record by appellant/MCD or the driver.

36. It is imperative to note that the proceedings before the MACT are in the nature of an inquiry and therefore, assessment of negligence has to be conducted on the test of preponderance of probabilities. Reliance may be placed upon the decision of this Court in *National Insurance Co. Ltd. v Shehnaj Begum & Ors.* 2026:DHC:13169, where the Court traversed the law on *res ipsa loquitur* in motor accident cases and noted as under:

“Summarizing

38. From the above discussion relating to the nature of inquiry before the Tribunal, the operation of the doctrine of res ipsa loquitur, and the applicable standard of proof, three aspects emerge clearly.

39. First, that the proceedings before the Motor Accident Claims Tribunal are in nature of an inquiry and are not hemmed in by rules of procedure or evidence. The Supreme Court in Shila Datta (supra) [passages extracted in paragraph 20 (a) above], has elaborated on this aspect. Essentially, a claim under Section 165 of the MV Act, is neither a suit nor an adversarial lis.

40. Tribunal holds an inquiry and makes an award to determine compensation, which ought to be just and



reasonable. The procedure to be followed is summarised in the best discretion of the Tribunal. It has the power under Section 169 of MV Act to summon persons possessing special knowledge of the matters relevant to the inquiry.

41. In Anita Sharma (supra), the Supreme Court emphasised that fault may not be found merely because Tribunals do not examine some of the best eyewitnesses, as in a criminal trial, but should do their best to analyse the material placed on record by the parties.

42. Having clearly sketched the contours of the procedure undertaken by a Tribunal, it brings us to the second issue, which is determination of negligence. The nature of the accident and the basic facts surrounding the same are presented before the Tribunal in the form of a DAR (Detailed Accident Report), or through an FIR, or a recording in a police diary, along with the claim for compensation. In order to arrive at an assessment of negligence and, therefore, consequential liability in tort law, the principle of res ipsa loquitur, particularly in accident cases, is often brought into play.

43. Doctrine of res ipsa loquitur constitutes an exception to the general rule that the burden of proving negligence lies upon the claimant. The facts, “tell its own story” and “speak for itself”. The fact of the accident itself sometimes constitutes evidence of negligence. The principal function of the maxim is to prevent injustice, that would be caused to a plaintiff who would otherwise be compelled to prove the precise cause of the accident and responsibility of the defendant, when the facts are unknown to plaintiff but lie only within the knowledge of defendant. The burden



then shifts to the defendant, who can, by leading evidence, rebut the inference drawn by the Court based on the doctrine.

...

45. Therefore, for application of the principle, it must be shown that the offending vehicle was under the management of the defendant and that the accident was such that, in the ordinary course of things, it would not have happened if those who were in management had used proper care. Having reached a reasonable inference based on the facts of the accident and being presented with a defence raised by defendants that they exercised care to avert foreseeable harm, the issue before the Tribunal would be how to balance the two aspects and what parameter is to be applied in measuring this balance, or in assessing which side the scales tilt.

46. This brings us to the third aspect, which is the test to be applied. It is well settled that the test or the burden of proof which applies is not that of beyond a reasonable doubt (as in criminal cases), but on the test of preponderance of probabilities.”

(emphasis added)

37. In any event, the MACT was correct in noting that principle of *res ipsa loquitur* would apply, considering that the truck had mowed down a pedestrian and that the implicit duty was on the driver to see that the driving did not endanger the life of any other user on the road. The MACT has correctly noted that, “*he has failed to exercise the caution incumbent upon him and has clearly neglected his duty of circumspection*”.

38. In these circumstances, the Court is not inclined to accept the plea of appellant/MCD that there was contributory negligence.



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Quantum of compensation

39. *Ms. Virdi*, counsel for appellant/MCD, stated that the age of deceased was 33 years at the time of accident and her income has been wrongly assessed. It had been stated by her husband/*PW-1* that the deceased was running her own boutique and was also a director at *M/s. Smart Kitchen Pvt. Ltd.* having its office at *Mansarovar Garden*, New Delhi, where she was working in administration and was drawing a monthly income of *Rs.80,000/-*. She used to make profit of about *Rs.60,000/-* per month from her business.

40. The Income Tax Return (***ITR***) for Assessment Year (***AY***) 2016-2017 till 2018-2019 was filed. In support of the income of deceased, *Sh. Rinku Kumar*, Inspector from Income Tax Department (***PW-6***) was examined, who testified in favour of ITRs of deceased for AYs 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019, exhibited as ***Ex.PW6/1 (Colly.)*** and Form 26AS exhibited as ***Ex.PW6/2 (colly.)***.

41. *Sh. Brij Belawal* from Ministry of Corporate Affairs (***PW-7***) deposed that he had brought the records pertaining to *M/s. Smart Kitchens Gallery Pvt. Ltd.* and deceased had been serving as the director from 26th September 2016 till 01st December 2017.

42. *Prince Chhabra*, Site Engineer in *M/s Smart Kitchens Gallery Pvt. Ltd.* (***PW-8***) had also examined and brought the remuneration account of deceased, exhibited as ***Ex.PW8/2***, along with Form-16 for the periods of Financial Years (***FY***) 2016-2017 and FY 2017-2018 (till 31st July 2018), exhibited as ***Ex.PW8/3***.



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43. Basis the last ITR of deceased, MACT calculated the gross income and after deducting tax, arrived at the annual income of Rs.7,70,749/- and monthly income of Rs.64,230/-.

44. Thereafter, for calculation of loss of dependency, future prospects at 40% were awarded and deduction of 1/3rd was made towards living expenses.

45. The Court does not find any infirmity in the impugned award as regards the calculation of loss of dependency or towards non-pecuniary damages, including, loss of consortium, loss of estate and funeral expenses, which have been aligned with the principles of *Pranay Sethi (supra)*.

46. Accordingly, in view of the above, the appeal is dismissed.

47. Considering that no stay had been directed by this Court and the appeal has been dismissed, appellant/MCD shall deposit the entire amount of compensation, along with accrued interest, if not deposited, before the MACT within four weeks, which shall be disbursed as per the directions of MACT.

48. Statutory deposit, if any, shall be refunded to appellant/MCD, only if the compensation amount has been deposited.

49. Copy of this judgment be sent to the MACT/Bank, for information and compliance.

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

51. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 15, 2026/MK/sp