

Usha Deva & Ors vs Mohan Lal & Anr

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Court : Delhi

Decided On : Apr-01-2026

Judge : Hon'Ble Mr. Justice Anish Dayal

Appeal No. : MAC.APP./173/2016

Appellant : Usha Deva & Ors

Respondent : Mohan Lal & Anr

Advocate for Pet/Ap. : Mr. Pankaj Gupta, Mr. Shadab Khan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 15th January 2026

Pronounced on : 1st April 2026

Uploaded on : 2nd April 2026 + MAC.APP. 173/2016 USHA DEVI & ORS
.....Appellants Through: Mr. Pankaj Gupta, Advocate.

versus

MOHAN LAL & ANRRespondents Through: Mr. Shadab Khan,
Advocate for Respondent no.2. + MAC.APP. 725/2015 & CM APPL.

44495/2025 MOHAN LAL & ANRAppellants Through: Mr. Shadab Khan, Advocate.

versus

USHA DEVI & ORSRespondents Through: Mr. Pankaj Gupta, Advocate for Respondent nos.1 & 2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed assailing the impugned award dated 2nd July 2015 passed by the Motor Accident Claims Tribunal, Rohini Courts, (North-West), Delhi (MACT/Tribunal) in MACT No.433/2008. The MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 1/22 cross-appeal has been filed by the claimants seeking enhancement of compensation. The Incident

2. On 27th February 2008 at about 12:15 P.M., Sh. Prem Lal (since

deceased), along with his brother-in-law Sh. Amardeep Singh, father-in-law Sh. Kripal Singh and some other relatives were going to Agra, Uttar Pradesh from Delhi by Indica car bearing registration No. DL-8CJ-2670, driven by the deceased. When they reached NH-2 near Fatiha Pul, PS Farha, Mathura, U.P., the offending vehicle, i.e. U.P. Roadways Bus bearing registration No. UP-80-AC-9090, driven by Mr. Mohan Lal (hereinafter referred to as driver), allegedly at a very high speed, rashly and negligently came from the side of Agra and hit the Indica car with great force. As a result, the occupants, including the deceased, sustained injuries. During the course of treatment, Sh. Prem Lal passed away.

3. Mohan Lal, who was the driver of offending vehicle, filed the written

statement stating that he was driving the offending vehicle at normal speed and properly. When he reached Fatiha Pul and was descending from the railway bridge, the Indica car was coming from the side of Delhi at a fast speed and was on the wrong side of the road, and it struck against the driver side of the offending vehicle. He tried his best to avoid the accident, but driver of Indica car could not control and dashed against the offending vehicle, due to which the accident occurred.

4. Post the framing of issues, the following witnesses were examined:

(i) PW1, Smt. Usha Devi - wife of the deceased;

(ii) PW2, Sh. Devender Singh - eye-witness; and MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 2/22

(iii) R1W1, Mohan Lal - driver of the offending vehicle. Impugned Award

5. Regarding the issue whether accident was caused due to the rash and

negligent driving of the offending car, the MACT examined the evidence and reached the conclusion that the accident was caused by Mohan Lal, who was driving the offending vehicle in a rash and negligent manner and had caused the death of Sh. Prem Lal. The Indica car was on the wrong side of the road due to traffic diversion, and there was no negligence on the part of the driver of the Indica car.

Compensation

6. Total compensation of Rs.7,58,200/- was awarded along with interest @ 7.5% per annum. The components are tabulated as under: SL. No. Compensation under various heads Amount awarded

1. Loss of dependency Rs.5,23,200/-

2. Loss of love & affection Rs.1,00,000/-
3. Loss of Consortium Rs.1,00,000/-
4. Funeral expenses Rs.25,000/-
5. Loss of estate Rs.10,000/- Total Rs.7,58,200/- Submission on behalf of Driver of the offending vehicle
7. The following submissions were placed by Mr. Shadab Khan, counsel for driver of the offending vehicle:

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 3/22 i. The issue of negligence was decided by the MACT primarily on the testimony of PW2, Sh. Devender Singh, who was an interested witness, being real brother of Smt. Usha Devi. It was contended that he appeared only to improve the case of the claimants. ii. FIR was lodged at the behest of one Amardeep Singh, who is the son of Sh. Kripal Singh, owner of Indica car. FIR did not mention that PW2 was travelling with them. However, PW2 stated in his affidavit of evidence that he, along with Prem Lal, were going to Agra. Further, although PW2 stated that the police recorded the statement of the injured person regarding the accident, he did not state that his own statement was recorded by the police, nor did he claim that he sustained any injuries. He also did not state that he had taken the injured to the hospital. iii. If PW2 had been present at the spot, he could have made the call to the police, and the FIR could have been lodged at his behest. He was merely the witness for identification of dead body, as recorded in the charge-sheet. Had he been present at the spot, he would have been made an eyewitness. iv. During cross-examination, PW2 made a story relating to the construction on one of the carriageway of the road, but it was not stated in the evidence of PW1 nor in the claim petition. There were no documents on record which show that PW2 was present on the spot, or that one side of road was blocked due to any construction work or that PW2 was following the Indica car.

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 4/22 v. The claimants in the claim petition did not state that PW2 was also going along with the deceased, nor was the same stated in the FIR. Moreover, the FIR did not state that Amardeep Singh, who lodged the FIR, was travelling in the car. vi. Bus driver appeared as a witness (R1W1) and deposed about the manner of accident. The same was not disputed during cross-examination of R1W1, and no question was put to him regarding the manner in which the accident occurred. vii. Site plan clearly shows that the Indica car was on the wrong side of the road, and, therefore, the bus driver could not be negligent for the said accident. Since the accident was a head-on collision, both drivers ought to have been held liable for contributory negligence, in light of the law laid down by the Supreme Court in *Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors.* (2006) 3 SCC 242. viii. As regards computation of compensation, it was contended that age of the deceased was 45 years as per the date of birth mentioned in the driving licence on the date of accident, which was corroborated by post-mortem report, which mentioned age as 44 years, and Ration Card, which also mentioned age of deceased as 44. Accordingly, multiplier ought to have been used at 14, whereas it was taken at 16. ix. The amount of Rs.1,00,000/- awarded towards love and affection has been held to be no longer justified as per Supreme Courts decision in *United India Insurance v. Satinder Kaur* (2021) 11 SCC 780.

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 5/22 x. Loss of consortium has been awarded at Rs.1,00,000/-, whereas as per *National Insurance Company v. Pranay Sethi & Ors.* (2017) 16 SCC 680, it ought to be around Rs.40,000/- per family member. xi. Funeral expenses have been awarded at Rs.25,000/-; however, as per *Pranay Sethi (supra)*, it ought to be awarded at Rs.15,000/- and Loss of estate also at Rs.15,000/-.

Submission on behalf of Claimants

8. Counsel for legal representative of the deceased, relating to the

insureds contributory negligence, submitted that the main focus in reply by respondent nos.1-4 (Usha Devi and the other claimants) was that the eye-witness (PW2/ Devender Singh) categorically stated that one side of the road was closed and they were travelling on the extreme left side of the other side as clear from the site plan. There was no suggestion to the witness that there was no road closure.

9. He further submitted that once there is double traffic and there is a

divider, the question of travelling in the wrong direction does not arise. The credibility of PW2 in his cross-examination was not impeached. FIR and the charge-sheet state that the negligence was attributed to driver of the offending vehicle. The driver had not challenged before any authority that he had been wrongly arrayed in the case. In his cross-examination, as R1W1, he admitted that a criminal case was pending against him. Considering that the involvement of the vehicle was not under challenge, the claimants were only required to prove the negligence of the touchstone of preponderance of probability and had failed to bring any record to the contrary, nor had they examined the Investigating Officer of the case.

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 6/22

10. The driver did not state in his evidence that both sides of the road were functional.

11. On the issue of multiplier, it was submitted that no ground had been

taken in the appeal, and the issue could not be raised at the stage of arguments. It was also contended that no amount had been awarded towards future prospects, even though the deceased was stated to be a property dealer. Though no documentary proof of income was produced,

it was submitted that the deceased could not be treated as an unskilled labourer and that minimum wages of a semi-skilled worker ought to have been applied. Analysis

12. Examination of the site plan would show that it was a head-on

collision and occurred on the right side of the road next to the divider which separated the other carriageway. For ease of reference, site plan is extracted hereunder: MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 7/22

13. From the site plan, it is clear that Indica car was coming from the front

and travelling on the left side of the carriageway, whereas the bus was travelling on the right side of the carriageway, and the accident had occurred at point A.

14. The testimony of PW2, Devender Singh, would have to be examined with some care, since interpretation of that is mostly in dispute.

15. In his affidavit (Ex. PW2/A), PW2 stated that he was travelling along

with his brother-in-law, Prem Lal, on 27 February 2008 in the Indica car when the bus coming from the Agra side hit the car with great force. The bus stopped at the spot, but the driver fled away, and an FIR was registered.

16. In his cross-examination though, he stated that he was travelling in a

Tavera car and was following the Indica car, and the speed of the Indica car was about 40 kmph. He also stated that the entire traffic was diverted to the right side of the road as work was going on to the left side.

17. He further stated that there were five persons travelling in the said car and that after the accident we took out the deceased Prem Lal from the Indica car and took everyone to hospital.

18. The FIR, however, was registered at the behest of Amardeep Singh,

who stated that Prem Lal was his relative and that the accident occurred due to the rash and negligent driving of the bus. The Indica car was hit, and all those in the car were injured. As per his statement, his father, Sardar Kripal Singh, was going in his Tata Indica car along with Prem Kumar, Chaudhary ji and some other friends of his father from Delhi to Agra. As regards the issue whether there were 4 or 5 passengers, it may not be relevant, considering that even in the Detailed Accident Report (DAR), it has been

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 8/22 recorded that Prem Lal was going to Agra with his brother-in-law Amardeep Singh, father-in-law Kripal Singh and other relatives.

19. It is further noted that Devender Singh/PW2 was mentioned in the

police record only for identification of the dead body, whereas Amardeep Singh was cited as a witness. Accordingly, it was contended that Devender Singh was introduced as an eyewitness and, therefore, his testimony was unreliable.

20. There is no evidence on record in either of the testimonies recorded of PW1, PW2 or R1W1 that the road was closed on the other side, nor does it form part of the site plan.

21. Moreover, the testimony of PW2 seems to be completely unreliable.

He initially stated that he was in the Indica Car, and later he stated that he was following the Indica Car. He was neither the one who informed the police nor was shown to have taken the deceased to the hospital. He was the real brother of Smt. Usha Devi and could possibly have been introduced later to be placed as an eyewitness.

22. Even in the evidence, Devender Singh, PW2, did not state that the

road was closed on the other side and, therefore, they were forced to travel on this side of the road. Even Amardeep Singh did not state that in the statement

recorded at the time of the lodging of the FIR.

23. As regards the age of the deceased, it is clear from the driving license, which forms part of the TCR, that his date of birth was 14th March 1963; therefore, his age on the date of his death would have been 44 years. The Ration Card was made on 8th November 2006 and notes the year of birth as

1964. Even the post-mortem report notes that his age was about 44 years.

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 9/22 Accordingly, there can be no doubt that the multiplier of 16 was incorrectly assessed only on the basis of the PAN Card, where his date of birth is shown as 10th June 1972 (age being calculated as 35 years on the date of the accident by the Tribunal).

24. Even though the MACT in the impugned award was convinced about

the testimony of PW2, it cannot be said, after perusal of the testimony, that it inspires confidence; therefore, the MACT has been amiss in that determination. Even assuming that the road was closed on the other side and the Indica car had been forced to travel on the wrong side of the carriageway, both the car and the bus ought to have been cautious to avoid a head-on collision. If indeed there was traffic coming from the other side, the bus driver ought to have been careful, and so would the Indica car going on the right side would have been extra careful as to avoid a collision.

25. The Supreme Court in T.O. Anthony v. Karvarnan (2008) 3 SCC 748,

held that when an injury is caused partly by another persons negligence and

partly by the injured persons own lack of care, the injured person is said to be contributorily negligent. This does not completely bar them from claiming compensation; instead, the amount of damages they can

recover is reduced according to the extent to which their own negligence contributed to the injury. The relevant paragraphs of T.O. Anthony (supra) are extracted as under: 6. Composite negligence refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 10/22 case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles : are involved in an

accident, and one of : the, drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore, where the injured is himself partly liable, the principle of composite negligence will not apply nor can there be an automatic inference that the

negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 11/22 composite negligence and contributory negligence. The High Court has failed to correct the said error. (emphasis added)

26. The argument that the charge-sheet was not challenged, cannot be

determinative of the matter. The assessment of the respective negligence of the parties is made on the basis of preponderance of probability. The criminal record, at best would have given some kind of indication or guidance but considering the burden of proof in a MACT inquiry is different than a criminal proceeding, it cannot become fully conclusive.

27. The Supreme Court in *Bimla Devi v. Himachal RTC* (2009) 13 SCC

530, stated that strict proof of the manner of the accident is seldom possible and that once the claimants place material such as the FIR, site plan or eyewitness account, the Tribunal must accept the occurrence on a preponderance of probabilities. Relevant paragraphs are extracted as under: 11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis--vis the averments made in a claim petition.

15. In a situation of this nature, the Tribunal has rightly

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 12/22 taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties. (emphasis added)

28. Similarly, in *Kusum Lata v. Satbir* (2011) 3 SCC 646, the Supreme

Court cautioned that the Tribunal and the High Court must not discard otherwise reliable evidence on hyper-technical grounds, such as non-mention of an eyewitness in the FIR, given the traumatic circumstances in which such accidents occur. The Court held that MACT proceedings do not require the strict proof applicable in criminal trials and that the evidence must be appreciated in a realistic and humane manner. Relevant observations are as follows: 8. Both the Tribunal and the High Court have refused to accept the presence of Dheeraj Kumar as his name was not disclosed in the FIR by the brother of the victim. This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 13/22 down the number of the offending vehicle it was also not unnatural.

9. There is no reason why the Tribunal and the High Court

would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. (emphasis added)

29. In ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo

(2025) 2 SCC 599, the Supreme Court held that FIR, charge-sheet, and final

report can be relied upon by the Tribunal to infer rash and negligent driving. Filing of a charge-sheet prima facie indicates negligence. The Tribunal needs to have a holistic view of the evidence available with it. The following was observed by the Supreme Court:

8. As regards the reliability of charge-sheet and other documents collected by the police during the investigation in motor accident cases, this Court in Mangla Ram v. Oriental Insurance Co. Ltd. (2018) 5 SCC 656, held in para 27, thus : 27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 and 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 14/22 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the tribunal. (emphasis supplied)

9. It is true that the Tribunal had looked into the oral and

documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in *Mathew Alexander v. Mohd. Shafi*

(2023) 13 SCC 510 this Court held thus : 12. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused

by a particular vehicle

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 15/22 in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes v. Joaquim Xavier Cruz* (2013) 10 SCC 646 which has referred to the aforesaid judgment in *Bimla Devi*.

11. Thus, there can be no dispute with respect to the

position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible. (emphasis added)

30. In light of the observations made by the Supreme Court in a plethora of judgments, it would be imperative for this Court to assess the evidence placed on record by the parties.

31. A perusal of the FIR reveals that Amardeep Singh, in his statement, has not stated that he was travelling in the car at the time of the accident. Therefore, his testimony to that extent cannot be relevant.

32. There is no mention of a road blockage in the FIR, the statements or

the charge-sheet. In the cross-examination of Mohan Lal (the driver), nothing has been put forward on behalf of the claimants that he himself was driving negligently or that the road was blocked on the other side. None of

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 16/22 these aspects has been recorded; in fact, the cross-examination is extremely short, and the only thing which is noted is as follows: I have not made any complaint against the driver of the Indica car regarding rash and negligent driving of the car by him. I was arrested by the police and I am on bail.

33. Furthermore, the Supreme Court in Mohammed Siddique & Anr. v

National Insurance Company Ltd. & Ors. 2020 INSC 17 held that contributory negligence applies only when there is a clear link between the victims violation of law and either the occurrence of the accident or the severity of the injuries. If the accident could have been avoided, or the harm could have been minimised had the victim not violated the law, the victim may be held partly responsible. The relevant paragraph is extracted as under: 13....There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked... (emphasis added)

34. The Supreme Court in Pramodkumar Rasikbhai Jhaveri v. Karamasey Kunvargi Tak & Ors. (2002) 6 SCC 455, observed as under:

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 17/22 9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question

of the defendant's negligence is decided. The standard of a reasonable man is as relevant in the case of a plaintiff's contributory negligence as in the case of a defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in *Astley v. Austrust Ltd.* [(1999) 73 ALJR 403] is worthy of quoting: A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property. (emphasis added)

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 18/22

35. In view of the above, the claimants have failed to prove that the

negligence was only on part of driver of the offending vehicle. Submission of the claimant that the FIR and chargesheet are enough to prove sole negligence on the part of driver is unmerited. There seems to be some contributory negligence by the deceased, considering he was

driving on the wrong carriageway. Even if it is accepted (though not proved) that the other carriageway was closed due to road work, driver of the Indica car ought to have been extra careful in avoiding any oncoming traffic and using all precautions like slow driving, blinking hazard lights, and honking to warn the oncoming vehicles of their presence. None of this has been stated by the witnesses in their testimonies before the MACT.

36. To the contrary, Mohan Lal, driver of the offending vehicle, has categorically stated that Indica car was on the wrong side of the road, in high speed, and he tried his best to avoid the accident.

37. Accordingly, contributory negligence of 50% is attributed to the deceased.

38. As regards the issue of assessment of quantum, Smt. Usha Devi

deposed as PW-1 and stated that deceased was a property dealer and used to earn Rs.7,000/- per month; however, she had not adduced any evidence/document to prove the earnings of the deceased, also no document had been filed to show educational qualifications of the deceased. Accordingly, the MACT was right in assessing it as minimum wages of an unskilled worker and, therefore, Rs.3,633/- per month had been taken as the monthly income.

39. As per Pranay Sethi (supra), since deceased was self-employed, MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 19/22 future prospects ought to have been taken into account.

40. In this regard, the following shall be granted:

i. Future Prospects at 25%, considering that the deceased was 44 years of the age and was self-employed at the time of accident. ii. Only Rs. 1,00,000/- was awarded towards the loss of consortium, whereas there were four dependents and, therefore, loss of consortium would be Rs. 40,000/- X 4 = Rs. 1,60,000/-. iii. Compensation awarded under the head

of Loss of love and affection ought to be deleted, in view of United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others (2021) 11 SCC 780 iv. Funeral expenses were awarded at Rs. 25,000/-; shall be reduced to Rs. 15,000/- in terms of Pranay Sethi (supra). v. Loss of estate awarded at Rs. 10,000/-; shall also be enhanced to Rs. 15,000/- in terms of Pranay Sethi (supra).

41. The revised computation, therefore, is provided as under:

S. Heads of compensation Awarded by the Awarded by this No. Tribunal
Court 1 Income of deceased (A) (less Rs. 3,633/- Rs. 3,633/- Income Tax) 2 Add Future Prospects (B) - 25% of 3,633 = Rs. 908.25/- Rounded off to Rs. 908/- 3 Less Personal expenses of the Rs. 908/- Rs. 1,135.25/- deceased (C) @ 1/4th 4 Monthly loss of dependency [(A Rs. 2,725/- Rs. 3,405.75/- +B)-C = D] 5 Annual loss of dependency Rs. 32,700/- Rs. 40,869/- (Dx12) 6 Multiplier (E) 16 14 7 Total loss of dependency Rs. 5,23,200/- Rs. 5,72,166/-

MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 20/22 (Dx12xE = F)
8 Medical expenses (G) - - 9 Compensation for loss of Rs. 1,00,000/- 40,000 x 4 = consortium (H) Rs. 1,60,000/- 10 Compensation for loss of love Rs. 1,00,000/- - and affection (I) 11 Compensation for loss of estate Rs. 10,000/- Rs. 15,000/- (J) 12 Compensation towards funeral Rs. 25,000/- Rs. 15,000/- expenses (K) 13 Total compensation Rs. 7,58,200/- Rs. 7,62,166 (F+G+H-I+J+K = L) 14 Rate of Interest Awarded 7.5% per annum 7.5% per annum

42. As stated above, the deceased is liable for the contributory negligence

to the extent of 50% and thus, compensation payable to the claimant is Rs. 3,81,083/- (Rs.7,62,166 - 50% of Rs. 7,62,166), along with the interest at the rate of 7.5% per annum from the date of filing of the claim petition. Directions

43. Vide order dated 18th September 2015, this Court directed the

appellant/UPSRTC to deposit the awarded amount, subject to which stay was granted. Further the Court directed release 50% of the amount to claimants, in terms of the award passed by MACT and the remaining amount was directed to be kept in an interest-bearing FDR. On 05th October 2016, this Court noted that in terms of order dated 18th September 2015, 50% of the amount has been released and directed the Registrar General of this Court to release monthly interest on the FDR to Smt. Usha Devi, wife of the deceased every month by transferring the same to her savings bank account.

44. Accordingly, the balance amount, if any, as per the revised computation, shall be released to Smt. Usha Devi/claimant upon due MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 21/22 verification and the balance be released in favour of UPSRTC.

45. Accordingly, the appeals stand disposed of with above directions.

46. Pending applications, if any, also stand disposed of as being rendered infructuous.

47. Statutory deposit, if any, be refunded to Insurance Company.

48. Judgment be uploaded on the website of this Court. ANISH DAYAL (JUDGE) APRIL 01, 2026/ak/bp MAC.APP. 173/2016 and MAC.APP. 725/2015 Page 22/22

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