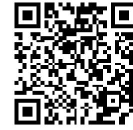


* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 30th April 2026***
Pronounced on : 29th May 2026
Uploaded on : 30th May 2026

\+ **MAC.APP. 20/2022 & CM APPL. 4585/2022**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

.....Appellant

Through: Mr. Shadab Khan, Advocate.

versus

AARTI KANDA & ORS.

.....Respondents

Through: Mr. S.N. Parashar, Advocate with Mr. Ritik Singh, Advocate for R-1 to 3.

\+ **MAC.APP. 444/2023**

POOJA & ORS. .....Appellants

Through: Mr. S.N. Parashar, Advocate with Mr. Ritik Singh, Advocate

versus

MOHD GULZAR & ANR. .....Respondents

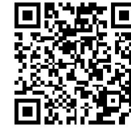
Through: Mr. Shadab Khan, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These appeals arise out of the same accident, being, *MAC. APP. No. 20/2022,* which has been filed by the Uttar Pradesh State Road Transport Corporation (hereinafter, '***Corporation***') assailing the



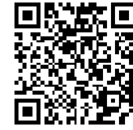
impugned judgment and award dated 12th November 2021 [hereinafter, '***first award***'], passed by Motor Accidents Claims Tribunal ('***MACT/Tribunal***'), Rohini Courts in *MACT No. 541/2017* awarding Rs. 29,28,600/- alongwith interest at the rate of 9% per annum to the legal representatives ('***LRs***') of deceased/*Jaspal Singh Kanda*.

2. *MAC. APP. No. 444/2023,* has been filed by the legal representatives ('***LRs***') of deceased/*Vijay Kumar* seeking setting aside the impugned judgment and award dated 29th May 2023 [hereinafter, '***second award***'], passed by the MACT, South-West, Dwarka Courts in *MACT No. 750/2017*, whereby the claim petition was dismissed.

The Incident

3. The accident in question occurred on 29th May 2017, when deceased/*Jaspal Singh Kanda* was travelling from Ghaziabad to Delhi on a scooter along with deceased/*Vijay Kumar* as a pillion rider. When they reached near Raj Nagar Extension, Ghaziabad, U.P. a U.P. Roadways bus bearing registration no. UP-81-BT-6607 (hereinafter, '***offending vehicle/bus***') allegedly driven in a rash and negligent manner by driver/*Mohd. Gulzar* hit the scooter of the deceased, resulting in grievous injuries to both occupants. They were removed to MMG Hospital where deceased/*Vijay Kumar* died during treatment and deceased/*Jaspal Singh Kanda* was shifted to GTB Hospital where he died during treatment.

4. Both the driver/*Mohd. Gulzar* and owner/Corporation appeared and contested the claim petition. In the case of deceased/*Jaspal Singh Kanda*, the claim was moved by his LRs, including, his wife, two sons



and mother. In the case of deceased/*Vijay Kumar*, the claim was moved by his LRs, including, his wife, two children and mother.

Impugned awards

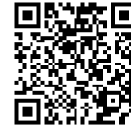
5. In the *first award*, MACT held the driver/*Mohd. Gulzar* liable for negligence and awarded compensation of Rs. 29,28,600/- along with 9% interest.

6. However, in the *second award*, the claim petition was dismissed by the MACT on the ground that negligence was not made out against the driver of offending vehicle.

7. *Mr. Shadab Khan*, counsel for Corporation, has challenged the first award on the basis that the MACT was amiss in relying only on the factum of filing of the FIR and charge-sheet, considering that there was no eyewitness to the accident which would justify the factum of rashness and negligence of driver/*Mohd. Gulzar*.

8. Moreover, there was no finding as regards contributory negligence, despite the categorical stand taken by driver/*Mohd. Gulzar* that the scooter was being driven on the wrong side of the road. *Mr. Shadab Khan*, counsel for Corporation, placed reliance on the decision of this Court in ***Usha Devi v. Mohan Lal & Anr.*** 2026:DHC:2694 whereby, the Court had deducted 50% towards contributory negligence of deceased.

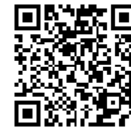
9. Further, the compensation awarded was excessive and disproportionate, including, the aspect of interest.



10. *Mr. S.N. Parashar*, counsel for claimants, has challenged the dismissal of the *second award* on the ground that, there was enough evidence on record proving negligence of the driver/*Mohd. Gulzar*. Reference was made to the site plan marked as ***R1W1/DX2*** in *MAC. APP. 444/2023***,** which shows that the scooter was being driven on the right side of offending vehicle, *i.e.* on the driver's side and the collision took place when they were driving in parallel. However, in his testimony, driver/*Mohd. Gulzar* had stated that the two-wheeler came from the opposite direction in front of the bus and, therefore, he could not have avoided a collision in any manner and there was no fault or negligence on his part.

11. *Mr. Parashar*, counsel for claimants, pointed to the cross-examination of driver/*Mohd. Gulzar,* ***R1W1***, where he stated that the site plan was correct and the scooter was coming from *Raj Nagar* and going towards Delhi. He further stated that he could not tell the distance between the scooter and the bus and that he ran away from the spot of accident after the accident had occurred, leaving the bus at the spot due to fear of public anger. He also stated that the department had suspended him for one month as punishment and, thereafter, sent him for training.

12. *Mr. Parashar,* counsel for claimants*,* states that there are severe contradictions in the testimony given as part of his affidavit by way of examination in chief and as per the cross-examination and site plan, and the same shows that testimony of the driver was not credible.



13. MACT, however, dismissed the claim petition on the basis that there was a lack of proof of negligence, relying upon the decision of ***Oriental Insurance Company Ltd. v. Meena Variyal and Ors.*** (2007) 5 SCC 428.

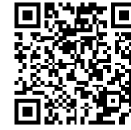
14. *Mr. Parashar,* counsel for claimants, also pointed out that an FIR was lodged against the driver/*Mohd. Gulzar*, which has now resulted in a charge sheet for offences punishable under Sections 279/338/304A of the Indian Penal Code,1860 (***'IPC'***).

Analysis

Negligence

15. For the purposes of examining the issue of negligence, one must deal with the *second award* first, which dismissed the claim petition on the ground that negligence was not established on the basis of the testimony of ***R1W1***. There is no conflict on the issue that there was no eyewitness to the accident. Therefore, what had to be gleaned from the available evidence was, whether the testimony of driver/*Mohd. Gulzar* in countering the claim of negligence, was consistent or not.

16. Lack of eyewitnesses does not mandate that there can never be any finding of negligence, as observed by the Supreme Court in ***Anita Sharma v. New India Assurance Co. Ltd.***, (2021) 1 SCC 171 wherein, the Court stated that non-examination of best eyewitnesses, as may happen in a criminal trial cannot be a reason for the Tribunal to not go ahead and determine the issue of negligence based on material placed before it. In such situations, nothing can be provided by the family of a



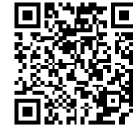
deceased in terms of evidence, except for the facts of the accident itself which usually form a part of the investigation by the police.

17. In the case at hand, driver/*Mohd Gulzar* gave his testimony as ***R1W1*** stating that he was the driver of offending vehicle owned by the Corporation. He stated that on 29th May 2017, he was driving from Meerut and going towards Delhi at about 06.20 p.m., when the offending vehicle/bus reached near Raj Nagar Extension, suddenly a two-wheeler came in front of the bus from *opposite direction* in a rash and negligent manner and dashed into the bus.

18. He stated that he was driving the bus in the correct lane at a normal speed and was therefore, not negligent, while the two-wheeler driver was driving at a high speed. He further stated that he took measures to save the bus and avoid the accident, however, since the bus was coming from the opposite direction it could not be controlled or avoided.

19. In the cross-examination by counsel for claimant, he admitted that he was arrested after the accident and a criminal case was pending against him and he had not filed any complaint regarding alleged false implication. Though, he was not suspended from his job, his route was changed for some days.

20. He stated that the road on which the accident took place had a divider in between and had two lanes. Left side was meant for buses and that the motorcycle was coming towards the bus from the wrong side and the motorcycle went under the left side tyre of the bus. He stated that he

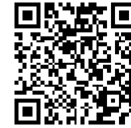


was driving at about 50-55 kmph, but could not produce any document in support, showing that a speed controller was installed in the bus and was working properly. He later produced a document, ***R1W1/DX1*** in support of his contention.

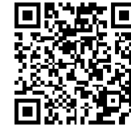
21. Further in a subsequent cross-examination conducted on 1st August 2022, he admitted that as per the site plan, it was correct that the scooter was coming from *Raj Nagar* towards Delhi and he could not tell the distance between the scooter and the bus and, he ran away after the accident and left the bus at the spot due to fear of public gathering.

22. He further stated that the department had suspended him for one month as punishment and was thereafter sent for training for another month.

23. In this context, it would be important to peruse the site plan which is extracted as under for reference:



24. The site plan clearly notes the place of accident marked as ***point A*** and the single arrow notes movement of the scooter, whereas, the double arrow notes movement of the bus. It is evident from the site plan that



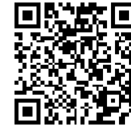
both vehicles were moving in the same direction and near the *situs* of collision *i.e.* ***point A***, the bus moved slightly to the right, resulting in a collision with the scooter.

25. It is, therefore, clear that in these circumstances, testimony of ***R1W1*** collapses completely. Not only has he wrongly stated in his examination-in-chief by way of affidavit, that the two-wheeler was coming from opposite direction which is completely contrary to the site plan, as also to his cross-examination, where he admitted that the scooter was also coming from *Raj Nagar* to Delhi.

26. Further, in the cross-examination conducted on 30th January 2020, driver/*Mohd. Gulzar* stated that only his route was changed and he had not been suspended by the Corporation, whereas, in the subsequent cross-examination conducted on 01st August 2022, he admitted that the department had suspended him for one month and he was sent for training.

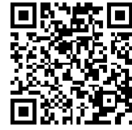
27. Even if he might have been moving in his left lane and the scooter might have been moving in parallel, the site plan shows that he moved slightly to the right and, therefore, the scooter would have come under the right wheel of the bus. However, he stated that the scooter came under the left wheel of the bus, which could not have been possible taking into account the site plan.

28. The issue of determination of negligence is based on application of the doctrine of *res ipsa loquitur* and the persuasive value of criminal proceedings and evidence on record, which has been discussed by this



Court in ***National Insurance Co. Ltd. v Shehnaj Begum & Ors*** 2026:DHC:13169. Proceedings before the Tribunal are in the nature of an inquiry, therefore, strict rules of procedure or evidence do not apply. The assessment of negligence has to be conducted on the test of *preponderance of probabilities*. Relevant observations of the Court are extracted 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.*

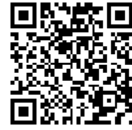


42. Having clearly sketched the contours of the procedure undertaken by a Tribunal, it brings us to the second issue, which is determination of negligence. The nature of the accident and the basic facts surrounding the same are presented before the Tribunal in the form of a DAR (Detailed Accident Report), 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.

…

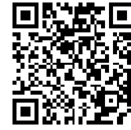
45. Therefore, for application of the principle, it must be shown that the offending vehicle was under the management of the defendant and that the accident was such that, in the ordinary course of things, it would not have happened if those who were in management had used proper care. Having reached 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)

29. The Court has also dealt with the scope of the determination of negligence as set out by the Supreme Court in ***Oriental Insurance Co. Ltd. v. Meena Variyal***, (2007) 5 SCC 428. Observations made by this Court in ***Oriental Insurance Co. v. Sunita Singh*** 2026:DHC:3190 may be relied upon and are extracted as under:

> *"44. Respondents/claimants in Meena Variyal (supra) had sought to submit that there was no obligation on claimant to prove negligence, relying upon the decision Gujarat SRTC (supra) where the Court had clarified that observations in Minu B. Mehta (supra) were one in the nature of obiter dicta. Supreme Court in Meena Variyal (supra) clarified that the Court did not state that in a claim based on negligence, there is no obligation to establish negligence. In Minu B. Mehta (supra), the Supreme Court was dealing with no fault liability and a departure from Fatal Accidents Act, 1855 leading to a theory of strict liability. The Court did not have an occasion to construe a provision like 163-A of MV Act, which provides for compensation without proof of negligence in contradistinction to Section 166 of the MV Act. Moreover, Minu B. Mehta (supra) was decided by a three Judge Bench while*

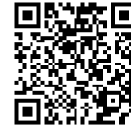


Gujarat SRTC (supra) was decided by a two Judge Bench.

45. Therefore, the Supreme Court in Meena Variyal (supra) stated that the obiter dicta in Minu B. Mehta (supra), though, not binding, had clear persuasive authority. Minu B. Mehta (supra) merely said that proof of negligence was necessary, but the Supreme Court in Meena Variyal (supra) clarified that these obiter observations governed a claim under Section 166 of the MV Act and were inapplicable when claim was made under Section 163-A of the Act.

46. This clarification by the Supreme Court merely reiterates a fundamental position under law, that, in a claim for liability based on negligence, claimant does have to prove negligence. However, what is the nature of that onus on the claimant needs to be understood. The claimant, who may be injured or a legal representative of the deceased, resulting from an accident, can at best provide facts of the accident which are available to them, by themselves or through police records to a Tribunal. This would include aspects of the nature of collision, vehicles involved, location of the vehicles, situs of the accident and in some cases involve an eyewitness testimony, as well. Beyond that, from this conspectus of facts, can an inference of negligence be drawn out. Onus on the claimant cannot be more than this, considering that the claimant would not have access to the information, which is otherwise available to respondent/driver, as to the conduct of respondent/driver while driving the offending vehicle at the time when the collision took place or the events leading to the collision.

47. At best, that can only be achieved by the claimant in cross-examination of the driver of offending vehicle, which as often seen in practice, do not appear before Tribunals, the liability being borne by the Insurance



> *Company. <u>Having discharged the onus to this extent, the Supreme Court's observation in Meena Variyal (supra) having endorsed the obiter dicta of Minu B. Mehta (supra), for a claim under section 166 of the MV Act, does not mean that this onus is jettisoned. But it also does not mean that there is something greater than this onus on the claimants to discharge for proving a claim."</u>*
>
> (emphasis added)

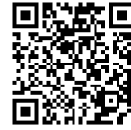
30. There is no doubt that criminal proceedings have been initiated against the driver/*Mohd. Gulzar* and owner/Corporation, which have not been controverted or any legal step taken by them.

31. The Supreme Court in various decisions has held that it is not amiss for the MACT to rely on the FIR and charge-sheet to consider that there was negligence on the part of the driver in case there are no eyewitness, on preponderance of probabilities.

32. In this regard, decision of the Supreme Court in ***Ranjeet & Anr v. Abdul Nayem Keb & Anr.*** 2025 SCC OnLine SC 497 and ***Meera Bai & Ors. v. ICICI Lombard General Insurance Co. Ltd. & Anr.*** 2025 INSC 600, may be instructive.

33. The Supreme Court in ***Ranjeet*** *(supra)* reiterated its position on the said issue, where it stated as under:

> *"4. <u>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</u>.*

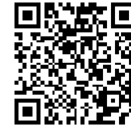


> *5. In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants."*
>
> (emphasis added)

34. Relevant observations of the Supreme Court in ***Meera Bai*** *(supra)* are extracted as under:

> *"2. The claimants before the Tribunal have filed an appeal from the order of the High Court which allowed the appeal of the insurance company and dismissed the claim petition for reason of no eyewitness having been examined to prove the rash and negligent driving.*
> *3. On facts, it needs to be stated that the accident occurred on 29.01.2015 when the deceased was travelling pillion in a motorbike driven and owned by the second respondent. The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving. A charge sheet was filed against the owner driver. The owner driver filed a written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.*
> *4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established."*
>
> (emphasis added)

35. In these circumstances, the finding of MACT, which ignored these contradictions and held that the issue of negligence has not been proved,



cannot be sustained. Furthermore, such a finding is also inconsistent with the *first award*.

36. For all these reasons, as discussed above, the appeal filed by claimants assailing *second award* in *MAC APP. 444/2023,* against the rejection of their claim is, therefore, allowed and the impugned award is set aside.

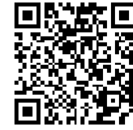
37. Accordingly, the matter is remanded back to the MACT to decide the issue of quantum of compensation, which shall be decided within 3 months on the basis of evidence already on record. Further evidence may be requisitioned by MACT for any purpose, only if, it is considered extremely necessary.

38. In *MAC APP No. 20/2022*, counsel for Corporation had raised a plea that the deceased should have been held liable for contributory negligence and reliance was placed on ***Usha Devi*** *(supra)*. However, the same shall not be sustainable, as the Court in ***Usha Devi*** *(supra)* had arrived at that finding, on the basis that nothing had been put forth by the claimants in the cross-examination of driver of offending vehicle to suggest that he was solely negligent. Therefore, this decision shall not be applicable to the facts of the case at hand.

39. Accordingly, the assertions of the Corporation stand dismissed, as regards the issue of *negligence* and *contributory negligence*.

Compensation

40. *Mr. Shadab Khan*, counsel for Corporation, raised a plea that the compensation awarded in the *first award* is excessive. It is noted that the



deceased was working as a private driver earning a sum of Rs. 15,000/- per month, as stated in the testimony given by the widow of deceased. However, there being no documentary evidence, the MACT considered minimum wages of an unskilled worker at Rs. 13,584/-.

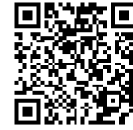
41. The deceased was aged about 34 years and, therefore, multiplier of '*16*' and *future prospects* were awarded at 40% in light of principles enunciated in ***National Insurance Company Limited v. Pranay Sethi*** (2017) 16 SCC 680 and ***Sarla Verma v. DTC*** (2009) 6 SCC 121.

42. Since, there were four dependants, deduction towards personal and living expenses was at 1/4th and *loss of dependency* was, therefore, correctly calculated at Rs. 27,38,600/-. *Loss of love and affection,* was rightly not given, whereas, *loss of consortium,* was given at ₹1,60,000/- for four family members and *loss of estate* and *funeral expenses* were cumulatively given at Rs. 30,000/-

43. Therefore, compensation awarded by the MACT, was entirely in line with the principles enunciated in ***Sarla Verma*** *(supra)* and ***Pranay Sethi*** (*supra*). The Court does not find any reason to alter or reject the same.

44. *Mr. Shadab Khan,* counsel for appellant/Insurance Company, raised an additional ground that the interest rate awarded by the MACT should be reduced.

45. The accident had taken place on 29th May 2017, and as per the rates prescribed by Reserve Bank of India ("***RBI***") for fixed deposits



ranged between 6.5% and 6.75%, which were increased to 7.25% in the subsequent year.

46. It would, therefore, be appropriate that an interest rate of about 7.25% be awarded on the compensation, which shall be computed from the date of filing of petition *i.e.* 05th July 2017.

Directions

In MAC. APP. 20/2022

47. By order dated 03rd February 2022, Court had directed the Corporation to deposit the entire awarded amount before the MACT, and 50% amount was directed to be released as per the scheme of disbursal, with interest calculated at the rate of 6.25% per annum and the balance amount was kept in an interest-bearing fixed deposit.

48. Considering that the compensation awarded by the MACT is upheld, the balance 50% amount shall be released at an interest rate of 7.25% from the date of filing, to the claimants as lump sum within six weeks. Balance amount, if any, shall be refunded to the Corporation.

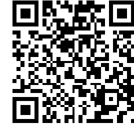
49. Statutory deposit, if any, shall be refunded to Corporation, only if the order of deposit has been complied with.

In MAC. APP. 444/2023

50. In view of the above discussion, the appeal stands allowed on the issue of negligence of driver/*Mohd. Gulzar*.

51. The matter is remanded back to the MACT to be decided on the issue of quantum of compensation within the next three months.

52. List before the MACT on 2nd July 2026.



53. Accordingly, both appeals are disposed of.

54. Copy of this judgment be sent to the concerned MACT.

55. Copy of this judgment be sent to the concerned bank.

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

(ANISH DAYAL)
JUDGE

MAY 29, 2026/RK/*sp*