2026:DHC:4824

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on : 25th March 2026***
Pronounced on : 29th May 2026
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\+ **MAC.APP. 175/2015 & CM APPL. 3065/2015**

RELIANCE GENERAL INSURANCE CO LTD .....Appellant

Through: Mr. Rajeev M. Roy, Advocate with Mr. P. Srinivasan, Advocate.

versus

MEENA KATIYAR & ORS .....Respondents

Through: Mr. Siddharth Mittal, Mr. Sumit K. Sharma, Ms. Shilpa G. Mittal, & Mr. Abhijeet Varshney, Advocates for Respondent No.5.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

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ANISH DAYAL, J.

1. The present appeal has been preferred assailing the award dated 14th November 2014 [“***impugned award***”] passed by the learned Motor Accident Claims Tribunal [“***Tribunal***”], Dwarka Courts, New Delhi in *MACP No. 329/11/14*, whereby compensation of *Rs.49,09,587/-* along with interest came to be awarded in a fatal accident case arising out of the death of *Shri Adarsh Kumar Katiyar* [“***deceased***”]. The appellant/Insurance Company contends, *inter alia*, that the Tribunal erred in assessing only **20%** *contributory negligence* on the part of the deceased despite the admitted position that the deceased had collided

with the offending vehicle from behind and that the driver-cum-owner [*respondent no.5 herein*] was holding a *fake license*. Challenge has also been laid to the addition towards *future prospects*, adoption of *multiplier, deduction towards income tax* and *personal expenses*, award under conventional heads, grant of enhanced interest, and refusal to grant recovery rights to the appellant despite alleged breach of policy conditions.

Incident

2. On 15th August 2010 at about 7:00 p.m., deceased was travelling from *Jaipur* to *Delhi* in a Hyundai car bearing registration no. *UP-16W-8764*. Upon reaching near *Malpura Village*, in front of HP Petrol Pump, *Bawal, Rewari*, the vehicle *tractor-trolley* bearing registration no. *HR-36M-5886* [“***offending vehicle***”], stated to be carrying bricks and driven by respondent no.5 [*driver-cum-owner*], allegedly applied brakes suddenly while taking a turn, due to which the deceased’s vehicle collided with the offending vehicle from behind and went underneath it.

3. Deceased sustained grievous injuries and was taken by the local police to *ESI Dispensary, Bawal, Rewari*, where he succumbed to the injuries sustained in the accident. Claimants [*respondent nos.1 to 4 herein*], being the legal heirs and dependents of deceased, thereafter instituted a claim petition alleging that the accident occurred solely due to the rash and negligent driving of respondent no.5.

4. As per claim petition, deceased was 53 years of age at the time of the accident and was employed as “*Deputy General Manager (Vendor Development)*” with *M/s Universal Autofoundry Pvt. Ltd*., allegedly earning a monthly salary of *Rs.60,000/-*. Offending vehicle was stated to

be owned by respondent no.1 and insured with the appellant/Insurance Company under a policy valid for the period from 29th October 2009 to 28th October 2010.

Impugned Award

5. On the issue of negligence, the Tribunal relied upon the testimonies of **PW-1** [*Meena Katiyar*, *wife of the deceased*], **PW-2** [*official witness who proved the criminal record*], and **PW-3** [*Vinod Chand Katiyar/eye-witness and brother-in-law of the deceased]*. **PW-3**/*eye-witness* deposed that the offending vehicle, namely the tractor trolley carrying bricks, was moving ahead of deceased's vehicle and suddenly applied brakes while taking a turn, resulting in the deceased's vehicle colliding with the tractor trolley from behind. The Tribunal observed that **PW-3**/*eye-witness* had withstood cross-examination, his presence at the site was believable, and his testimony regarding the manner of the accident was trustworthy and corroborated by the criminal record including ***FIR No. 244/2010,*** site plan, seizure memos and post-mortem report.

6. The Tribunal, therefore, held that the accident had occurred due to rash and negligent driving of the offending vehicle driven by respondent no.5 [*driver-cum-owner*]. However, while examining the aspect of contributory negligence, the Tribunal referred to *Rules 23 and 24 of the Rules of the Road Regulations, 1989* and observed that a vehicle following another vehicle is required to maintain "*sufficient distance*" to avoid collision in case the vehicle ahead suddenly slows down or stops. The Tribunal further observed that although the *tractor-trolley* had

abruptly applied brakes while taking a turn, the deceased was also required to maintain a "*safe distance*" and control over his vehicle.

7. The Tribunal concluded that the deceased had also contributed towards the occurrence of the accident since the collision had taken place from behind and it appeared that the deceased was driving at such speed that he could not control the vehicle in time to avoid the collision. Accordingly, *contributory negligence* on the part of the deceased was assessed to the extent of **20%** and deduction of the said amount was directed from the total compensation awarded.

8. On the aspect of income, the Tribunal accepted the evidence of **PW-4** [*official from Universal Autofoundry Pvt. Ltd*.], and held that the deceased was employed as *Deputy General Manager (Vendor Development)*. Monthly salary of deceased was assessed at *Rs.57,600/-,* from which 10% was deducted towards Tax Deducted at Source [***TDS***], resulting in assessed monthly income of *Rs.51,840/-* and annual income of *Rs.6,22,080/-*. Tribunal further added **15%** towards *future prospects* considering that the deceased was 53 years of age at the time of the accident. Since there were four dependents, **1/4th** deduction was made towards *personal expenses* and *multiplier* of '**11**' was applied.

9. As regards the defence of appellant/Insurance Company that the *tractor-trolley* was not covered under the insurance policy and that the vehicle was being used for commercial purposes, the Tribunal rejected the same relying upon the decision in ***New India Assurance Co. Ltd. v. Sanjay Tyagi & Ors***., 2014 SCC OnLine Del 1339, observing that "*mere attachment of a trolley with a tractor would not amount to violation of the terms and conditions of the insurance policy*". The Tribunal further held that the appellant/Insurance Company had failed to establish that

the driving licence of respondent no.5 was *fake*, despite the plea regarding missing licensing records and registration of a FIR in that regard. Consequently, no recovery rights were granted in favour of the appellant/Insurance Company.

10. The compensation awarded is tabulated as under:

S. No.	Heads	Amount Awarded
1.	Monthly Income	Rs.51,840/-
2.	Annual Income	Rs.6,22,080/-
3.	Future Prospects	15%
4.	Deduction towards Personal Expenses	¼th
5.	Multiplier	11
6.	Loss of Dependency	Rs.59,01,984/-
7.	Loss of Love and Affection	Rs.1,00,000/-
8.	Loss of Consortium	Rs.1,00,000/-
9.	Funeral Expenses	Rs.25,000/-
10.	Loss of Estate	Rs.10,000/-
Total Compensation		**Rs.61,36,984/-**
Less: 20% towards contributory negligence		**Rs.12,27,397/-**
Final Compensation Awarded		**Rs.49,09,587/-**
Interest		**7.5% p.a.**

Submissions on behalf of appellant

11. Counsel for appellant/Insurance Company contended that the Tribunal erred in assessing *contributory negligence* of the deceased only to the extent of **20%**, despite the admitted factual position that the deceased had collided with the offending *tractor-trolley* from behind. Reliance was placed upon the claim petition as well as the testimony of **PW-3** [*eye-witness*], who had deposed that the deceased was travelling behind the offending *tractor-trolley* carrying bricks and that the *tractor-trolley* had suddenly applied brakes while taking a turn, resulting in the deceased's vehicle colliding with the offending vehicle from behind.

12. It was submitted that the testimony of **PW-3** [*eye-witness*] regarding the *tractor-trolley* moving at a speed of *50–60 kmph* could not be accepted at face value, since it is common knowledge that the maximum speed of a *tractor* is ordinarily not more than *30 kmph* and attachment of a *trolley* loaded with bricks would further reduce its speed. According to the appellant/Insurance Company, the fact that the deceased's vehicle struck the *tractor-trolley* from behind clearly established that the deceased was driving at excessive speed and had failed to maintain "*sufficient distance*" from the vehicle moving ahead.

13. Reliance was placed upon *Rule 23* of the *Rules of the Road Regulations, 1989*, which mandates that the driver of a vehicle moving behind another vehicle shall maintain "*sufficient distance*" so as to avoid collision in the event the vehicle ahead suddenly slows down or stops. It was contended that the principle of *res ipsa loquitur* was applicable in the facts of the present case and the circumstances led to the only reasonable inference that the deceased himself had substantially contributed towards the occurrence of the accident. Reliance was further placed upon the decision of the Supreme Court in ***Nishan Singh & Ors. v. Oriental Insurance Co. Ltd.*** (2018) 6 SCC 765 to contend that *contributory negligence* to the extent of at least **50%** ought to have been attributed to the deceased.

14. Counsel for appellant/Insurance Company distinguished the decisions relied upon on behalf of respondent nos.1 to 4 [*claimants*], namely ***Archit Saini v. Oriental Insurance Co. Ltd.*** [2018] 1 S.C.R. 626 and ***Sushma vs Nitin Ganapati Rangole & Ors.*** 2024 INSC 706, contending that in those matters, the offending vehicles were parked in

the middle of the road without indicators, whereas in the present case the *tractor-trolley* was admittedly moving ahead of the deceased's vehicle.

15. As regards liability, counsel for the appellant/Insurance Company submitted that recovery rights ought to have been granted in favour of the appellant/Insurance Company since respondent no.5/driver-cum-owner had failed to establish that he possessed a valid and effective driving licence. It was contended that respondent no.5/driver-cum-owner, after filing written statement, stopped appearing before the Tribunal and was proceeded *ex parte*. Reliance was placed upon the testimony of **R3W1** from the *Licensing Authority, Farrukhabad*, to submit that the records pertaining to the driving licence produced by respondent no.5/driver-cum-owner were not traceable and an FIR had been registered regarding missing records. According to appellant, the burden to prove validity of the driving licence was upon respondent no.5/driver-cum-owner and adverse inference ought to have been drawn against him.

16. It was further submitted that the offending vehicle was a *tractor* attached with a *trolley* carrying bricks and was therefore being used for '*commercial purposes*' rather than '*agricultural purposes*'. Counsel for appellant/Insurance Company contended that only the *tractor* stood insured under the policy and not the attached *trolley*. It was submitted that attachment of a *trolley* required separate insurance coverage and use of the *tractor-trolley* for carrying bricks amounted to violation of policy conditions.

17. In support of the aforesaid contention, reliance was placed upon the decisions in ***Oriental Insurance Co. Ltd. v. Brij Mohan*** (2007) 7 SCC 56, and ***Dhondubai v. Hanmantappa Bandappa Gandigude*** 2023

SCC OnLine SC 2387. It was contended that the decision in ***Fahim Ahmad v. United India Insurance Co. Ltd.*** (2014) 14 SCC 148**,** relied upon on behalf of respondent no.5/driver-cum-owner was distinguishable, since in the present case attachment of the *trolley* with the *tractor* was admitted and undisputed. It was also contended that the decision in ***National Insurance Co. Ltd. v. V. Chinnamma*** (2004) 8 SCC 697, would not apply, as in the said case the *tractor* was being used for carriage of vegetables constituting agricultural produce, whereas in the present case the *tractor-trolley* was carrying bricks, which could not be treated as an '*agricultural purpose*'. Accordingly, it was submitted that the appellant/Insurance Company ought to have been granted recovery rights against respondent no.5/driver-cum-owner and the compensation payable by the appellant/Insurance Company deserved to be reduced proportionately on account of higher *contributory negligence* attributable to the deceased.

Submissions made on behalf of respondent nos.1-4/claimants

18. Counsel for respondent nos.1 to 4/claimants opposed the appeal and submitted that the challenge raised by the appellant/Insurance Company was essentially confined to the findings on *contributory negligence* and refusal to grant recovery rights. It was contended that no interference was warranted with the impugned award insofar as respondent nos.1 to 4/*claimants* were concerned.

19. As regards *contributory negligence*, it was submitted that the appellant/Insurance Company had neither led any independent evidence nor produced any documentary material to substantiate the plea that the deceased was negligent. According to claimants, the entire plea of

contributory negligence rested merely upon suggestions put during cross-examination, which by themselves could not constitute evidence.

20. Reliance was placed upon the testimony of **PW-3** [*eye-witness*], who had deposed that the offending *tractor-trolley* had abruptly applied brakes while attempting to take a turn, which led to the collision. It was contended that the appellant/ Insurance Company was selectively emphasizing the fact that the collision had occurred from behind while ignoring the evidence regarding "*sudden braking*" and "*abrupt turning*" by the offending vehicle.

21. Counsel for respondent nos.1 to 4 further submitted that the site plan demonstrated that the accident had occurred in the middle of the road and corroborated the version of **PW-3** [*eye-witness*]. It was also pointed out that the FIR and chargesheet filed by the police authorities remained unchallenged and the appellant/Insurance Company had not even summoned the Investigating Officer for examination.

22. Reliance was placed upon the decisions in ***Archit Saini and Another v. Oriental Insurance Company Ltd & Ors.*** (*supra*), ***Sushma and Others v. Nitin Ganpati & Ors*** (*supra*), ***Prabhavathi & Ors. v The Managing Director, Bangalore Metropolitan, Transport Corporation*** 2025 INSC 293 and ***Dheeraj Gupta v. Ajay Kumar & Anr @ Bharati AXA General Insurance Co. Ltd.*** 2024:DHC:1963, to contend that negligence could not be inferred merely because the collision had occurred from behind and that the overall facts and circumstances of the accident were required to be assessed.

23. Without prejudice to the aforesaid submissions, counsel for respondent nos.1 to 4 further contended that the deduction of **20%** towards *contributory negligence* itself was unwarranted and unsupported

by evidence on record. It was submitted that mere existence of a statutory obligation to maintain safe distance could not, by itself, lead to a presumption of negligence on the part of the deceased in absence of cogent evidence. According to the claimants, the deduction towards contributory negligence had resulted in unjust reduction of compensation payable to the legal heirs of the deceased.

24. On the aspect of quantum, counsel for respondent nos.1 to 4 submitted that the Tribunal had correctly appreciated the evidence led by the claimants, including the salary records and testimony of **PW-4,** while assessing the income of the deceased and computing compensation. It was further submitted that despite all family members being entitled to *consortium*, only a lump sum amount had been awarded under the said head.

25. It was also submitted that the claimants had lost their sole breadwinner in the year 2010 and had been deprived of compensation for a considerable period due to the pendency of proceedings. In these circumstances, the award of interest did not warrant any interference.

26. Counsel for respondent nos.1 to 4 further stated that even in absence of cross-objections, this Court, while exercising appellate jurisdiction in motor accident cases, is empowered to award just compensation where the facts of the case so warrant.

Submissions made on behalf of respondent no.5/ driver-cum-owner

27. Counsel appearing on behalf of respondent no.5/driver-cum-owner opposed the appeal and submitted that no ground for interference with the impugned award was made out insofar as refusal to grant recovery rights was concerned. It was contended that the appellant/Insurance

Company had primarily raised two objections, namely, that respondent no.5/driver-cum-owner was not holding a valid driving licence and that the *tractor-trolley* was being used for '*commercial purposes*' while only the *tractor* stood insured.

28. On the issue of driving licence, counsel for respondent no.5 submitted that the driving licence had duly been produced on record before the Tribunal. It was contended that appellant/Insurance Company had not taken any specific plea in its written statement alleging that the licence was *fake* and had also failed to lead cogent evidence to establish the same. Reliance was placed upon the testimonies of **R3W1** [*Amit Rastogi, Clerk from the Licensing Authority, Farrukhabad*] and **R3W2** [*Naresh Kumar, Deputy Manager of the appellant/Insurance Company*].

29. It was further submitted that the report of the Assistant Regional Transport Officer [***ARTO***] did not declare the driving licence to be *fake*, but merely recorded that several original records pertaining to driving licences were missing and that ***FIR No.334/2013*** under *Section 409* of the Indian Penal Code 1860 [***IPC***] had been registered in that regard. According to respondent no.5/driver-cum-owner, mere non-availability of records could not lead to the conclusion that the licence itself was '*fake*' or '*invalid*'. It was contended that the Tribunal, upon appreciation of evidence, had rightly concluded that the appellant/Insurance Company had failed to substantiate its defence regarding breach of policy conditions on account of fake driving licence.

30. As regards the plea that only the *tractor* stood insured and not the attached *trolley*, counsel for respondent no.5 submitted that the appellant/Insurance Company had failed to specifically plead and prove violation of policy conditions. It was contended that except for a vague

defence in the written statement, neither any specific issue was framed nor any evidence led by the appellant/Insurance Company to establish that the *tractor* was being used in violation of the insurance policy.

31. Reliance was placed upon the decision of the Supreme Court in ***Fahim Ahmad v. United India Insurance Co. Ltd.*** (*supra*), to contend that the insurer is required not only to plead breach of policy conditions but also substantiate the same through positive evidence. It was submitted that in the said decision, involving a *tractor-trolley* carrying sand, the Supreme Court had rejected the plea of breach in absence of cogent proof.

32. Counsel for respondent no.5 further relied upon the decision of this Court in ***New India Assurance Co. Ltd. v. Sanjay Tyagi and Others*** (*supra*), wherein it was held that mere attachment of a *trolley* with a *tractor* would not amount to violation of terms and conditions of the insurance policy where the *tractor* was insured for '*agricultural purposes*'. Reliance was also placed upon the decision in ***United India Insurance Co. Ltd. v. Rekha*** 2024 SCC OnLine Del 9019.

33. It was further contended that the reliance placed by the appellant upon ***Oriental Insurance Co. Ltd. v. Brij Mohan*** (*supra*) was misplaced, since the said decision pertained to gratuitous passengers and was distinguishable on facts. It was submitted that the judgment in ***National Insurance Co. Ltd. v. Chinnamma and Others*** (*supra*) referred to in ***Brij Mohan*** (*supra*), had itself been considered in ***Fahim Ahmed*** (*supra*), wherein the Supreme Court observed that a *tractor* fitted with a *trailer* may or may not answer the definition of a '*goods carriage*' depending upon the facts of each case.

34. Accordingly, it was submitted that no ground existed for grant of recovery rights in favour of the appellant/Insurance Company and the impugned award did not warrant interference insofar as respondent no.5/driver-cum-owner was concerned.

Analysis

35. The issues which have been raised by counsel for parties and which require this Court's assessment:

i) ***first,*** the issue of *contributory negligence* assessed at 20% with respect to the deceased;

ii) ***second***, the defence of the insurer regarding the attachment of the trolley to the tractor loaded with bricks;

iii) ***third***, the lack of a valid and effective driving licence.

Each of these issues are discussed hereunder in some detail.

I. *Contributory Negligence*

36. *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.

37. The accident occurred between the offending vehicle i.e. a *tractor-trolley* carrying bricks, admittedly moving ahead of deceased's vehicle, and allegedly applying brakes while taking a turn, resulting in deceased's vehicle colliding from behind. *Rear-end collisions* can be divided into two categories-***first***, where an abandoned/stationary vehicle is parked on the road without indication, lighting or warning signs, and the impacted/following vehicle crashes into the rear end, being unable to estimate that the offending vehicle is abandoned/stationary; and ***second***,

where there is flowing traffic and the vehicle in front suddenly applies brakes. In the latter case, the matter has to be assessed with regard to the duty of the person following the vehicle to maintain a '*safe distance*' in order to avoid a collision.

38. Considering that the facts of the present case fall within the second category, the decisions of this Court, the Supreme Court and some from other international jurisdictions, in this context, are briefly discussed hereunder:

a) ***Rajpal v. Dharampal*** 2012 SCC Online Del 31:

This Court was dealing with an accident which occurred due to the offending vehicle coming at a high speed, overtaking the two-wheeler scooter, and suddenly applied brakes. The Tribunal held that even though the accident had occurred on account of "*sudden application of brakes*", the two-wheeler rider had also contributed to the accident since he was not in full control of the vehicle. Ratio of negligence was accordingly assessed as 70:30.

b) ***Nishan Singh & Ors. v. Oriental Insurance Co. Ltd. & Ors.*** 2018 6 SCC 765:

The Supreme Court dealt with the issue of a moving vehicle in a rear-end collision. The decision of the Supreme Court's continues to holds the field with regard to rear-end collision. A *Maruti* car dashed against a truck moving ahead of it. Claimants alleged that the truck driver "*suddenly applied brakes*" being in the centre of the road but bringing it to the right side as a result of which the *Maruti* car collided. The Tribunal recorded the testimony of the driver of the car, who stated that he was at a distance of about 10 to 14 feet. In these circumstances, the issue arose as to whether the said distance was "***sufficient***" to avoid a collision in a case of sudden braking.

The Tribunal, and thereafter the High Court, held that the Maruti car had been driven in a rash and negligent manner, which was the cause of accident resulting in fatality. The Supreme Court emphasized on *Rule 23* of the *Rules of the Road Regulations 1989*, which obligates the vehicle following the truck to maintain a "*safe distance*". The Supreme Court noted that the expression "sufficient distance" has not been defined and therefore, the thumb rule would be '*at least a safe distance of 2 to 3 seconds gap in ideal conditions'*. This would allow the driver of the vehicle behind to respond and avert a collision. The distance of "*10 to 15 feet*" was held not to be a '*safe distance*'.

The Tribunal had also noted that there was no evidence to indicate that the driver of the truck suddenly applied brakes in the middle of the road, which was endorsed by the High Court. Though, the claim was dismissed, the Court proceeded to grant limited relief under *Section 140* of the MV Act.

c) ***S. Mohammed Hakkim v. National Insurance Company Ltd. & Ors.*** 2025 INSC 905:

The Supreme Court was dealing with an accident wherein a motorcycle carrying two occupants collided with the vehicle ahead, which had suddenly applied brakes, resulting in amputation of the left leg of one of the occupants. The

Tribunal as well as the High Court affirmed that the accident had occurred due to the sudden stoppage of the car and, relying on *Rule 23 of the Rules of the Road Regulations 1989*, imposed *contributory negligence* of **20%** for failure to maintain a "*safe distance*".

The Supreme Court noted that the root cause of the accident was the "*sudden braking*" by the car driver. It was the responsibility of the said driver to provide warning or signals to vehicles moving behind on the road. The percentage of contributory negligence was, therefore, increased.

d) ***Rouse v. Squires*** 1973 QB 889:

The Court of Appeal in England was dealing with a collision where a lorry skidded into a jack-knife position, obstructing the centre lane of a three-lane carriageway of a motorway. A motor car being driven in the centre lane collided with a lorry and came to a halt with its rear lights switched on. Another lorry driver, who had been following, parked with the hand brake engaged in the near side lane. Yet another lorry driver, who was approaching the spot, did not realise that the vehicles were stationary, and though he braked, could not avoid colliding with the parked lorry, resulting in a fatal accident. In relation to such chain reaction accidents, the Court of appeal relied on ***Harvey v. Road Haulage Executive*** [1952] 1 KB 120 and ***Barber v. British Road Services***, reported in the Times, November 18, 1964. The Court held:

> *"if a driver so negligently manages his vehicle so as to cause it to obstruct the highway and constitute a*

danger to other users including those who are driving fast and not keeping a proper lookout, but not those who deliberately or recklessly drive into the obstruction, then the first driver's negligence can be held to have contributed to the causation of an accident of which the immediate cause was the negligent driving of the vehicle is because of the presence of the obstruction collides with it or with some other vehicle or some other person."

(emphasis added)

The Court held that the lorry driver who ultimately collided had not initiated the dangerous situation but had failed to take adequate steps to cope with an already existing danger. Accordingly, **75%** of the blame was put on his shoulders as against **25%** to the third-party driver. The third-party driver was the first lorry which ended up across two lanes of the road way creating a risk. The Court held that:

"*where the party guilty of the prior negligence has created a dangerous situation and the danger is still continuing to a substantial degree at the time of the accident and the accident would not have happened but for this continuing danger, he is responsible for the accident as well as the party who was subsequently negligent.*"

(emphasis added)

The Court, therefore, effectively held that an initial negligent act creating a dangerous obstruction continues to attract liability so long as the danger remains an effective cause of the accident. A subsequent negligent act does not break the chain of causation unless it is wholly independent and unforeseeable.

e) ***Flynn v. Bus Átha Cliath*** [2012] IEHC 398:

The Irish High Court held that "*sudden braking*" is not negligent, where scientific evidence establishes an imminent danger requiring an immediate response. The victim was thrown to the ground when the bus driver braked sharply to avoid a child. Video evidence showed that, as the bus approached, two children were standing at a bus stop on the opposite side of the road and one of them attempted to cross the road in the path of the bus. Since, there had been no reason to anticipate such manoeuvre, even at the level of a bare possibility, but there arose an immediate necessity to react appropriately once it occurred, "*sudden braking*" was warranted. The Court held that:

> "*the courts cannot apply a counsel of perfection. The duty of care expected of a driver is a high standard, but it is still to be measured by the reactions and expectations of reasonable men and women' and observed that 'in making decisions in emergencies, the Court must bear in mind that detached reflection and the weighing of various options is not to be expected and certainly not required where a human life is to be saved.*"
>
> (emphasis added)

The Court ultimately held that the bus driver had reacted correctly to a potential hazard to life and, was, therefore, not responsible for the injuries suffered by the plaintiff.

f) ***Leslie O'Donnell v. Smith and Royal & Sun Alliance PLC*** [2018] SC EDIN 68:

In this decision of the Scotland Personal Injury Court rendered in December 2018, the matter related to a motorcyclist travelling on a highway with the respondent's car moving ahead. While attempting to overtake the car, the driver of the car slowed down and braked rather abruptly. The motorcyclist also braked hard but was unable to avoid a collision, resulting in injury. Submissions were advanced to the effect that there were no strict rules governing the distance to be maintained by a following vehicle, nor could negligence automatically be inferred merely because a vehicle collided with the rear side of another. *Contributory negligence* was urged by the respondent car driver. The Court noted that there was no evidence to suggest that the motorcyclist had been travelling too close to the car and, rather, had been maintaining a distance of approximately *50-60 metres*, which was considered reasonable. On the issue of *contributory negligence*, the Court held that the preponderance of blame would still lie upon the car driver. The Court found the car driver to be in breach of duty by abruptly stopping due to apprehension about the motorcycle overtaking the vehicle. There had been no justification for such *sharp braking*, and the manoeuvre was found to be inappropriate. The Highway Code advised steady driving without sudden changes in speed or direction and, accordingly, the primary negligence was attributed to the car driver. The assessment was based on the rule of "*stopping distances*" in the Highway Code. The apportionment resulted in a **20%** reduction in the award of damages. Effectively, the Court held that "*the duty of a following driver is to maintain a manner and position of driving enabling response to* *reasonably anticipated traffic exigencies*". However, where a reasonable distance is maintained and the lead vehicle performs an unexpected emergency stop, contr*ibutory negligence* cannot be presumed in the absence of evidence demonstrating that the following vehicle had been too close or driven imprudently.

g) ***Rules of the Road Regulations 1989***

Reference may also be made to both *Rules 23* and *24* of the *Rules of the Road Regulations 1989,* the former being a duty on the following vehicle to maintain "*sufficient distance*" and the latter being on the vehicle ahead to avoid "*abrupt braking*" unless for safety reasons. For ease of reference said rules are extracted as under:

> "***Rule 23***
> "*23. Distance from vehicles in front.-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*
>
> ***Rule 24***
> *"24. Abrupt brake.- No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons."*

Assessment in the present case

39. The issue requiring consideration is whether the finding of **20%** *contributory negligence* attributed to the deceased in the impugned award warrants interference.

40. At the outset, the evidentiary position assumes significance. **PW-1**/*wife of the deceased*, though admittedly not an eye witness, consistently deposed in her affidavit [**Exhibit PW1/A**] that the

offending tractor carrying bricks, while moving ahead of the deceased's vehicle, suddenly took a left turn and applied brakes without any indication, as a consequence of which the deceased had no sufficient time to react and collided with the offending vehicle from behind. The version of **PW-1**/*wife of the deceased* substantially derives corroboration from the testimony of **PW-3**/Vinod Chand Katiyar, who was treated by the Tribunal as the sole eye-witness.

41. **PW-3**/*eye-witness* specifically deposed that he had met the deceased at Dharuhera Bus Stand and was following him for some distance on his scooter when he witnessed the occurrence. His testimony records that the *tractor-trolley* laden with bricks was travelling ahead of the deceased's vehicle and suddenly applied brakes in order to take a turn, resulting in the deceased's vehicle colliding with the trolley from behind. Significantly, in cross-examination, **PW-3**/*eye-witness* denied the suggestion that the deceased was driving at a speed of *80–90 kmph*, and no contrary material was produced by the insurer [*appellant herein*] to substantiate excessive speed. Equally material is the fact that **PW-3**/*eye-witness* candidly stated that he could not say whether the tractor owner had signalled by hand before turning, which demonstrates absence of embellishment and lends credibility to his testimony.

42. The Tribunal itself accepted **PW-3**/*eye-witness* to be a reliable witness, specifically recording that his testimony remained free from contradiction, explained his presence at the site, and stood corroborated by the criminal record including the FIR and site plan. Consequently, the foundational factual finding regarding the

offending vehicle/*tractor-trolley* having suddenly slowed down or braked while negotiating a turn cannot be lightly displaced.

43. The site plan also depicts the place of occurrence on *NH-8* near the *HP Petrol Pump* and the turning point, and broadly corroborates that the accident occurred while both vehicles were moving in the same direction of travel. Importantly, the site plan does not indicate a case of a stationary or parked vehicle obstructing the carriageway. Therefore, the present case is distinguishable from those where a stationary vehicle was left negligently parked on the road without indicators. Rather, the facts indicate a moving *tractor-trolley* ahead and a moving car behind, where the collision occurred in the backdrop of a sudden attempt to turn.

44. In this factual setting, the principles governing rear-end collisions require cautious application. In ***Raj Pal & Ors. v. Dharampal & Ors.*** (*supra*), this Court held that a collision from behind cannot automatically result in an inference of sole negligence on the part of the following vehicle and that surrounding circumstances, including the conduct of the vehicle ahead, are required to be assessed. Thus, the mere fact that deceased's vehicle struck the *tractor-trolley* from behind cannot, by itself, conclude the issue of negligence. At the same time, ***Nishan Singh & Ors. v. Oriental Insurance Co. Ltd. & Ors*** (*supra*) recognizes the duty of a vehicle following another to maintain "*sufficient distance*" so as to account for foreseeable slowing down or stopping of the vehicle ahead. The principle underlying the judgment is that the following vehicle must retain "*sufficient control*" to avoid collision. However, the decision does not lay down an absolute rule that every rear-end

collision *ipso facto* establishes exclusive negligence of the rear vehicle irrespective of the conduct of the lead vehicle.

45. The present facts indicate competing obligations on both sides. On the one hand, the offending *tractor-trolley*, admittedly laden with bricks, is alleged to have suddenly applied brakes while attempting to turn, thereby attracting concern regarding abrupt braking and safe turning manoeuvre. On the other hand, the collision from behind also suggests that the deceased may not have maintained such distance or control as would have enabled him to avoid impact after the tractor slowed down.

46. The approach adopted by the Tribunal appears to reflect this balanced position. The Tribunal consciously considered both *Rule 23* of the *Rules of the Road Regulations*, 1989, concerning maintenance of "*sufficient* distance" by the vehicle behind, and *Rule 24*, which restrains abrupt braking except for safety reasons. Having accepted the claimant's version regarding sudden braking by the offending vehicle, the Tribunal nonetheless held that the deceased, being the following vehicle, was also expected to maintain "*sufficient reaction distance*". The finding of *contributory negligence* was thus not based merely on the factum of rear impact, but upon the combined circumstances surrounding the occurrence.

47. The Supreme Court in ***S. Mohammed Hakkim v. National Insurance Company Ltd.*** (*supra*) has reiterated that in road accidents involving sequential vehicular conduct, negligence may legitimately be apportioned where the conduct of both vehicles contributes to the occurrence. The Court recognized that "*sudden braking*" by one vehicle and inability of the vehicle behind to sufficiently react may

together justify attribution of *contributory negligence* rather than complete exoneration of either side. Tested on the anvil of the aforesaid principles, the impugned award does not appear to suffer from perversity in attributing **20%** *contributory negligence* to the deceased.

II. ***Tractor-Trolley***

48. There is definitional difference between '*tractor'* and a '*goods carriage*'. While *Section 2 (44)* of the MV Act defines '*tractor*' as:

> ***"Section 2(44)***
> *(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;"*

Section 2 (14) defines '*goods carriages*' as under:

> *"**Section 2(14)***
> *(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;"*

'*Trailer'* on the other hand is defined under *Section 2 (46)* as under:

> "***Section 2(46)***
> *(46) "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;"*

49. In the present case, the insurer has raised a defence that the insurance policy pertains only to a *tractor*, whereas the *trolley* attached to the *tactor*, and being laden with bricks, gives a valid defence to the insurance company for breach of policy conditions under *Section 147*

read with *Section 149 (2)(a)(i)(a)* of the MV Act. In this regard, it will be instructive to traverse through the decisions of the Supreme Court and this Court in a chronological manner, as under:

a) ***National Insurance Company Limited v. V. Chinnnama*** (2004) 8 SCC 697:

The Court was dealing with a deceased, who had purchased five bags of vegetables, loaded them in a trailer connected to a tractor and, upon seeing an oncoming bus, could not control his vehicle, fell down and suffered injuries. Insurance Company disputed its liability on the ground that the deceased was travelling in the said tractor as a paid passenger. In this context, the Court noted that the tractor was not even a *goods carriage* and, therefore, in context of *Section 147* of the MV Act, the provision applicable to a goods vehicle would not be triggered. Relevant paragraphs are extracted as under:

> "***15.*** *Furthermore, a tractor is not even a goods carriage. The expression "goods carriage" has been defined in Section 2(14) to mean*
>
> > *"any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods"*
>
> *(emphasis supplied)*
>
> *whereas "tractor" has been defined in Section 2(44) to mean*
>
> > *"a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller".*
>
> *"Trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle".*

16. <u>A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise</u>. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment."

(emphasis added)

The important aspect of this decision is that the Supreme Court notes that the *trailer* attached to the *tractor* is necessarily required to be used for '*agricultural purposes*', unless registered otherwise. Thus, while the *tractor* and *trailer* can be used for '*agricultural purposes*', they cannot be used for carriage of goods by another person for his business activities.

b) ***<u>Oriental Insurance Co. Ltd. v. Brij Mohan</u>*** <u>(2007) 7 SCC 56</u>:

The Supreme Court was dealing with a claimant, a labourer travelling on a *trolley* attached to the *tractor*. Earth dump was loaded on the *trolley* attached to the *tractor*, and claimant and other workers were returning to the brick mill. The *tractor* was allegedly driven rashly and negligently by the driver, and the claimant slipped from the *trolley*, came under the wheels, and suffered grievous injuries. The insurer's defence was that the *trolley* was not insured and that the *tractor* was insured only for the purpose of carrying of '*agricultural loads*'. The earth dug and stored in the *trailer* was for manufacturing bricks and could not amount to agricultural work. Relying on ***Chinnamma*** (*supra*), the Court noted that the claimant was merely a passenger travelling on the trolley. The Court, therefore, continued to endorse the award to the claimant, but recovery rights were granted to the insurer from the owner of the *tractor* and *trolley*.

c) ***<u>United India Insurance Co. Ltd., Kadapa District v. Koduru Bhagyamma & Ors.</u>***<u>, 2007 SCC OnLine AP 830</u>:

The Andhra Pradesh High Court was dealing with an issue of whether Insurance Company could be fastened with the liability in respect of a person who died while travelling in a *trailer* attached to a *tractor*, where the *trailer* was not separately insured. Upon analysing the provisions of the MV Act and earlier judgments, reliance was placed on the decision of the Andhra Pradesh High Court in ***Gunti Devaiah v. Vaka***

Peddi Reddy (2004) ACJ 1881, holding that the MV Act does not contemplate separate insurance for a *trailer* and that, when a *trailer* is attached to the *tractor*, it becomes part of the *tractor*. The reasoning was that the *trailer* by itself cannot be driven and has to be carried or towed with a motor vehicle namely a *tractor* or a *self-propelled vehicle*. Therefore, the question of driving the *trailer* in a rash and manner would not arise. It is only the prime mover or the motor vehicle which controls the movement, and the owner of the vehicle and its insurer can be made liable for compensation. The *trailer* therefore, when attached to the *tractor*, becomes a "*tractor-trailer*" and, there is no provision requiring the *trailer* to be separately insured to cover the third-party risk.

d) ***Fahim Ahmad and Others v. United India Insurance Co. Ltd. and Others*** (2014) 14 SCC 148:

In this case, the Supreme Court was dealing with collision involving a *tractor* and the deceased. The Insurance Company raised an objection that there was a breach of policy conditions because, at the time of the accident, the *tractor* was carrying sand. The Court held as under:

> *"**5.** A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose of construction of underground tank near the farm land for irrigation purpose(s). However, merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for*

commercial purpose(s) or purpose(s) other than agricultural purpose(s) i.e. for hire or reward, as contemplated under Section 149(2)(a)(i)(a) of the said Act.

***6.** Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor was any evidence led to prove the same. In our opinion, it was mandatory for Respondent 1 Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein.*

***7.** We may also notice that this Court in National Insurance Co. Ltd. v. V. Chinnamma [(2004) 8 SCC 697 : 2005 SCC (Cri) 378 : JT (2004) 7 SC 167] held that: (SCC p. 702, para 16)*

> *"16. ... carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities."*

Thus, a tractor fitted with a trailer may or may not answer the definition of "goods carriage" contained in Section 2(14) of the said Act."

(emphasis added)

The Supreme Court held that merely because the *tractor* was carrying sand would not mean that it was being used for a '*commercial purpose*' rather than '*agricultural purpose*'.

e) ***New India Assurance Co. Ltd. v. Sanjay Tyagi*** 2014 SCC OnLine Del 1339:

The Coordinate Bench of this Court, while dealing with an accident with a *tractor* carrying a *trolley* and the plea of the

Insurance Company that there was a breach of the policy, noted that the insurance policy was a comprehensive policy for '*agricultural purpose*' and that the *tractor*, without equipment, is actually of no use. The term '*agricultural purpose*' denotes a wide amplitude; it is not only the *tractor* simpliciter that is insured, rather it is insured for '*agricultural purposes*', which covers the *trolley* as well.

f) ***Dhondubai v. Hanmantappa Bandappa Gandigude*** 2023 SCC OnLine SC 2387:

The Supreme Court was dealing with a *tractor-trolley* collision and the Insurance Company's plea that only the *tractor* was insured. The Court noted in the following paragraphs as under:

> "**5.** *In a matter of the present nature, the law is well settled that when a tractor and trailer are involved, both the tractor as well as the trailer are required to be insured. Therefore, in a normal circumstance, when the appellant/claimant was travelling in the trailer which was not insured, the liability on the Insurance Company cannot be fastened and to that extent the High Court was justified.*
>
> **6.** *However, the question for consideration herein is as to whether in the peculiar facts and circumstances arising in this case, this Court is required to exercise the power under Article 142 of the Constitution of India to direct the Insurance Company to pay the amount and recover the same from the owner of the vehicle. In that regard, the position is no more res-integra in view of the consideration made by this Court in Oriental Insurance Co. Ltd. v. Brij Mohan*[2]. *This Court in a similar circumstance where the trailer did not have insurance, has exercised the power under Article 142 taking into consideration*

the difficult circumstances in which the claimant therein was placed.

***7.** If the said decision is taken note and the instant facts are taken into consideration, it is noticed that the claimant a lady who was working as a labourer and was travelling in the tractor attached to the trailer, was about 20 years old as on the date of the accident. Due to the injuries suffered in the accident she had also undergone amputation of her left lower limb above the knee joint. Therefore, apart from the disability being 100%, there is prejudice to the marriage prospects and to lead a normal life. In such circumstance, it would not be possible for the claimant to recover the amount from the owner. Therefore, in that circumstance, we direct that the respondent-Insurance Company shall pay the amount awarded by the High Court as compensation with the accrued interest and recover the same from the owner of the vehicle. The amount shall be deposited before the MACT within six weeks from the date of receipt of a copy of this judgment whereupon the amount shall be disbursed to the claimant.*"

(emphasis added)

The Supreme Court effectively noted that both the *tractor* and the *trailer* are required to be insured. Therefore, if the claimant was travelling in the *trailer* which was not insured, liability cannot be ordinarily fastened on the Insurance Company.

g) ***United India Insurance Co. Ltd. v. Rekha*** 2024 SCC OnLine Del 9019:

The challenge by Insurance Company was to the compensation awarded in a case involving a *tractor-trolley*, where the *tractor* was allegedly carrying *rohri,* which, according to the Insurance Company, showed that it was being used for '*commercial purpose*'. The Court held that the commercial use could not be established since there was no corroborative evidence to show that it was carrying *rohri*. Therefore, the Insurance Company was not entitled to recovery rights.

h) ***Royal Sundaram Alliance Insurance Co. Ltd. v. Honnamma*** 2025 SCC OnLine SC 1027:

The Supreme Court dealt with a case where the deceased was travelling in a *tractor* and *trailer* as a coolie for unloading soil. The High Court enhanced compensation while fastening liability upon the Insurance Company. Insurance company appealed, the Supreme Court noted that it was clear that the *tractor*, which was insured, was the cause of the accident and that the accident was not caused solely because of a stand-alone *trailer*. The principal cause of the accident was a *tractor* and, in sequence of events, the trailer overturned. The Court relied upon certain judgments to note that ultimately the root cause of the accident is the tractor, which was insured, and this fact could not be lost sight of. The Court further noted: "*Moreover, this Court is duty bound to be mindful of the ground realities of our nation and cannot let practicality be overshadowed by technicality*". The Court further noted as under:

> "*13. In **Dhondubai** (supra), the Court stated:*
> *'5. In a matter of the present nature, the law is well settled that when a tractor and trailer are involved, both the tractor as well as the trailer are required to be insured. Therefore, **in a normal circumstance**, when the appellant/claimant was travelling in the*

trailer which was not insured, the liability on the Insurance Company cannot be fastened and to that extent the High Court was justified.

14. *To our mind, the learned Judges in Dhondubhai (supra) did not lay down an absolute principle of law, but taking note of Oriental Insurance Co. Limited v. Brij Mohan, (2007) 7 SCC 56, it was ordered that the 'respondent-Insurance Company shall pay the amount awarded by the High Court as compensation with the accrued interest and recover the same from the owner of the vehicle.' A decision by a Division Bench of the Andhra Pradesh High Court in United India Insurance Co. Ltd., Kadapa District v. Koduru Bhagyamma, 2007 SCC OnLine AP 830 is relevant:*

> *'**1.** This case has come before this Court on a reference made by a learned Single Judge of this Court as it was contended before the learned Single Judge by the appellant that **as the trailer in which the deceased was travelling was not insured, although it was attached to the tractor which was insured, therefore no liability could be fastened upon the insurer.***
>
> *xxx*
>
> ***13.** Now on analysis of these judgments and the provisions of law which have been quoted above, **we feel that the law has been correctly appreciated by a learned Single Judge of this Court in** Gunti Devaiah v. Vaka Peddi Reddy **(supra) and the reasons given by him are sufficient to hold that under the Motor Vehicles Act no separate insurance is contemplated for a trailer and when the trailer is attached to the tractor which is insured, it becomes the part of the tractor. We reproduce the Para 26 of the said judgment** as under:*
>
> *"The word **"vehicle" mentioned in Section 147 is co-relatable to the word motor vehicles,***

which is stipulated in Section 146. Therefore, the expression vehicle wherever appearing in Chapter X(XI) has to be only read as motor vehicle. The principle of claim for compensation in accidents arising out of the use of the motor vehicle is based on tortuous liability and the negligence of the driver of the motor vehicle is a sine quo non for maintaining a claim under the provisions of the Act. Inasmuch as the trailer by itself cannot be driven and it has to be carried or towed with a motor vehicle namely a tractor or a like self-propelled vehicles. Therefore, the question of driving the trailer in a rash and negligent manner would not arise. It is only the prime mover or the motor vehicle which controls movement of the tractor and in case of the negligence driving of the trailer or the motor vehicle, the owner of the vehicle and its insurer alone will be made liable for payment of compensation. But, since the trailer is attached can it be said that trailer should also be independently insured so as to avoid the liability of compensation in case of rash and negligent driving by the driver. That contingency would not arise, as it is only a vehicle and not a motor vehicle. It may be for tax purposes, it is treated as a goods vehicle. But, under the provisions of the Motor Vehicles Act, no separate insurance is contemplated. When the trailer is attached to the tractor it becomes a tractor-trailer. There is no provision requiring the trailer to be separately insured to cover the third party risk. The reasons are obvious that it cannot be driven by the driver as in the case of motor vehicles or tractors. Thus, a separate distinction has been drawn between the motor vehicle and a vehicle i.e., visible in all the definitions and more especially in Chapter XI.

The same situation also persists in Chapter X in case of no fault liability wherein it has been stated that whether a death or a permanent disability of any person has been resulted from an accident arising out of the use of a motor vehicle or motor vehicles and there is no reference to vehicle as such. This aspect was never considered in any of the decisions relied on by the learned Standing Counsel for the Insurance Company and also for other side."
(underlined in original; emphasis supplied by us through the bold highlight)
(emphasis added)

The Court distinguished the decision in ***Dhondubai*** (*supra*) while observing that it did not lay down an absolute principle of law. In fact, the Andhra Pradesh High Court's decision in ***Kadapa District v Koduru Bhagyamma*** (*supra*) was relied upon.

i) ***New India Assurance Co. Ltd. v. Nirmla*** 2025 SCC OnLine Del 10698:
In this decision by a Coordinate Bench of this Court, which related to a *tractor* being driven by the owner along with a trolley carrying packets of *chana,* the Insurance Company pleaded that that the *trailer* was not covered under the policy. However, noting the decision of the Supreme Court in ***Honnamma*** (*supra*), the Court held that the limitation of liability under the insurance policy relates to the use of the *tractor* for drawing more *trailers* than permitted by law. Therefore, the Insurance Company was liable to compensate the claimants. The limitation of liability under insurance policy

in the present case that case is akin to the limitation considered in ***Honnamma*** (*supra*).

<u>Assessment in the present case</u>

50. After an assessment of all these decisions, in the opinion of this Court, relying upon the recent decision of the Supreme Court in ***Honnamma*** (*supra)*, which places the issue of causation of an accident upon the *tractor* itself, the aspect of the *trailer* stands separated, while observing that the *trailer* was no entity as a stand-alone motor vehicle. The focus was on the principal cause of the accident, namely, the *tractor* pulling/hauling/moving the *trailer*, and therefore, the accident is considered to have been caused by the *tractor*.

51. This Court, therefore, defers to the categorical opinion of the Supreme Court in this regard and, in fact, notes that this proposition had previously been considered in ***Kadapa District*** (*supra*) by the Andhra Pradesh High Court and in ***Sanjay Tyagi*** (*supra*) by this Court.

52. The fundamental issue requiring appreciation is that, admittedly, the *tractor* is insured. In the present case, there is nothing in the insurance policy placed on record to indicate that the *tractor* was insured only for '*agricultural purposes*'. However, for the sake of assessment, it shall be assumed that the insurance policy covers the *tractor* for '*agricultural purposes*'. The *moving vehicle* or *motor vehicle* is, therefore, the *tractor*, which is defined under *Section 2(44)* of the MV Act, and in fact states that the vehicle is "*not itself constructed to carry any load*".

> A *trailer*, to the contrary, as defined under *Section 2(46)* of the MV Act, is merely a '*vehicle'* and not a '*motor vehicle'*, which is "*drawn or intended to be drawn by a motor vehicle*".

53. The Supreme Court in ***Dhondubai*** (*supra*) states that, as a general rule, a *tractor* and *trailer* are both required to be insured; however, it restricts the same to "*normal circumstances*" where the trailer was not insured. In ***Honnamma*** (*supra*), the Supreme Court clearly noted that ***Dhondubai*** (*supra*) did not lay down an absolute principle of law. The driving on the road is by a motor vehicle, namely, the motorised vehicle which is in motion, and the accident is caused due to the alleged braking of that vehicle. Whether a *trailer* is attached to it or not, and whether it is separately insured or not, would not make any difference, in the opinion of this Court, since the negligence, if any, has to be attributed to the entire *tractor-trolley* unit being driven by a person and cannot be severed between the *tractor* and the *trailer*.

54. Essentially, the *trolley/trailer* not being separately insured cannot be held to be the cause of the accident. It so happens that the *trolley/trailer* is attached to a motorised vehicle which, due to its movement on the road, becomes the cause of an accident. The *trolley/trailer* has no independent identity as a motorised vehicle on the road unless it is left abandoned or detached from the motorised vehicle and is involved in a situation involving a rear-end collision with another vehicle. However, this is not a case of a stationary vehicle left abandoned, but rather of a moving vehicle, indeed a motor vehicle in the form of a '*tractor*', which is alleged to have caused the accident by '*abrupt braking*' and a '*sudden turn*'.

55. Insurance companies have often attempted to introduce the distinction between a *tractor* and *trolley/trailer* into the controversy. However, in the opinion of this Court, the Supreme Court has now

provided a determinative opinion, and the Courts henceforth would be expected to align with the said opinion, unless a different view is taken subsequently.

56. The fact that the *trolley* was carrying bricks or not would not be an issue in a case of "*sudden braking*". However, it could assume significance where *Section 147* of the MV Act comes into play with regard to the *tractor* being used for carrying goods and, therefore, the insurance not extending to a '*goods vehicle'*.

57. The principal cause of the accident is the movement of the *tractor* on the road, involved in '*abrupt braking*' and '*sudden turn*'. In the opinion of this Court, the carriage of the *trolley*, together with whatever contents it carried, would not fall within the scope of a successful insurance defence. Accordingly, the plea of the insurance company in this regard is not sustainable.

58. The issue of the *principal cause* is exemplified in the decision in ***Honnamma*** (*supra*), particularly in *paragraph 12*, as also in *chain-reaction collisions* as discussed in the English decision in ***Rouse v. Squires*** (*supra*). In fact, ***Rouse v. Squires*** (*supra*) was relied upon by the Supreme Court in ***Karnataka State Road Transport Corporation v. K.V. Sakeena***, (1996) 3 SCC 446.

III. ***Fake Driving Licence***

59. Further, appellant/Insurance Company prays for *recovery rights* against the respondent no.5/driver-cum-owner of offending vehicle, on the basis that he did not possess a valid and effective driving licence at the time of accident.

60. In response to aforesaid, respondent no.5/driver-cum-owner stated that said driving licence had been duly produced on record, and that appellant/Insurance Company neither took any specific plea as regards the license being *fake* in its written statement nor led any cogent evidence in this regard.

61. Appellant/Insurance Company's plea was based on the testimony of clerk from *Licensing Authority Farrukhabad, Uttar Pradesh* [**R3W1**], who stated that records pertaining to the driving licence produced by respondent no. 5/driver-cum-owner were not traceable and a FIR had been registered regarding said missing records. For ease of reference, statement of **R3W1** is extracted as under:

> "*The ARTO has given this letter to me and I do not know anything about the DL in question. The FIR is registered by Predecessor of present ARTO.*
> *xxxxx*
> *1 do not know whether the non availability of original record of DL is for the reason mentioned in the complaint given to the police.*"

62. Since driving license could not be verified by *Licensing Authority Farrukhabad, Uttar Pradesh*, appellant/Insurance Company contended that the driving licence produced by respondent no. 5/driver-cum-owner could not be considered genuine. Accordingly, what needs to be examined is whether mere non-availability of records with Licensing Authority would, by itself, lead to a conclusion that the driving license was '*fake*' or '*invalid*'.

63. The Tribunal, *vide* impugned award, concluded that Insurance Company had failed to substantiate its defence regarding breach of policy conditions on the ground that the driving license was *fake*.

64. With respect to *fake driving licenses* and defences available to appellant/Insurance Company on the said ground, reference may be made to certain decisions of the Supreme Court, as under:

a) ***Pepsu Road Transport Corporation v. National Insurance Company Ltd.***, (2013) 10 SCC 217:

The Supreme Court in the said case was dealing with an insurer's plea for exoneration under *Section 149(2)(a)(ii)* of the MV Act, relating to breach of conditions concerning the driving licence, on the allegation that the driver was holding a fake driving license. The Court relied upon the decisions made by the Supreme Court in ***United India Insurance Co. Ltd. v. Lehru***, 2003 3 SCC 338 and ***National Insurance Co. Ltd. v. Swaran Singh***, 2004 3 SCC 297, wherein it was held that "*mere absence of a valid driving license, possession of fake or invalid driving licence, or disqualification of driver, would not constitute valid defences available to Insurance Company against the insured or third parties*".

Insurance Company, in such cases, was required to establish that the insured was guilty of negligence. and had failed to exercise reasonable care in complying with the policy conditions relating to use of insured vehicle by a duly licensed driver. The Court, therefore, held as under:

> "*10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is*

the moot question. <u>As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver</u>. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297:2004 SCC (Cri) 733] . If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

(emphasis added)

On facts of the case, the Court held that driver had been engaged nearly six years prior to the accident, had been put to a driving test, and had also been imparted training. Therefore, in these circumstances, insured could not be considered at fault for having employed a person whose licence was subsequently proved to be fake.

Notably, the Supreme Court held, in the *paragraph* extracted above, that the position may be different, where, either at time of issuance of insurance policy or thereafter, Insurance Company requires the owner to have the driving license verified from Licensing Authority, or where insured/owner is informed that the driver's license is fake and yet it fails to take appropriate steps in that regard.

b) ***IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi*** (2024) 13 SCC 755:

The Supreme Court was dealing with an appeal preferred by Insurance Company against the denial of *recovery rights*. The Tribunal, initially recorded that driver of the tempo was holding a fake driving license and consequently, opined that Insurance Company would not be liable to pay compensation. The High Court, however, reversed the said finding and denied *recovery rights* to Insurance Company on the ground that it had neither been pleaded nor proved that the owner of the vehicle had failed to take adequate steps to verify the genuineness of the driving licence. Accordingly, it was held that breach of the terms and conditions of insurance policy could not be sufficiently established. Relevant *paragraphs* in this regard are extracted as under:

> "***8.*** *The argument with respect to the driving skill test does not merit acceptance as the insurance policy in question admittedly did not postulate that a driving skill test should compulsorily be taken before employing a chauffeur to drive the insured vehicle. The relevant condition in the insurance policy, titled "Driver Clause", reads as follows:*

"Any person including insured: provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence."

There is, thus, no mandate in the statutory provision or the above clause that a driving skill test should be undertaken without fail before employing a driver. Therefore, it is not open to the petitioner Insurance Company to cite the same as a breach of the terms and conditions of the policy. In fact, there was no such term or condition in the policy.

***9.** As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake licence, it may be noted that neither Section 149(2)(a)(ii) of the 1988 Act nor the "Driver Clause" in the subject insurance policy provide that the owner of the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the Transport Authorities concerned. <u>Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly competent authority, the validity of which has not expired. It would be wholly impracticable for every person employing a driver to expect the Transport Authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions. In fact, no such mandatory condition is provided in any car insurance policy and it is not open to the petitioner Insurance Company, which also did not prescribe such a stringent condition</u>, to cite the failure of the deceased vehicle owner to get Ujay Pal's driving licence checked with the RTO as a reason to disclaim liability under the insurance policy."*

(emphasis added)

65. Yet again, the Supreme Court, emphasised that insurance policy did not contain any stipulation requiring a compulsory driving test to be

conducted before employing a driver to drive the insured vehicle, while referring to the "*driver clause in the Insurance Policy*". Therefore, the contention raised by the Insurance Company that the vehicle owner did not conduct due diligence while employing the said person as a driver, by insisting upon a condition which was neither prescribed under the statute nor under the insurance policy, cannot be sustained. While adverting to ***Swaran Singh*** (*supra*) and ***Lehru*** (*supra*), the Court further held as under:

> "***15.*** *Further, in the context of cases where the driver's licence was found to be fake, the Bench in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733 : (2004) 118 Comp Cas 396] observed that the question would be whether the insurer could prove that the owner was guilty of wilful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru [United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338 : 2003 SCC (Cri) 614] was considered and the Bench in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733 : (2004) 118 Comp Cas 396] observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehru [United India Insurance Co. Ltd. v. Lehru,*

(2003) 3 SCC 338 : 2003 SCC (Cri) 614] meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

(emphasis added)

In the case of ***Lehru*** *(supra)*, the Supreme Court further elaborated upon the manner in which burden cast upon the insured could be discharged. In this regard, reference may be made to *paragraphs 16* and *19* of the judgement which have been extracted hereinbelow:

"***16.*** *The findings summed up by the Bench, to the extent presently relevant, are as under: (Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733 : (2004) 118 Comp Cas 396] , SCC pp. 341-42, para 110)*

"110. … (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

………

19. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying *out due diligence apropos such driving licence before employing that person to drive the vehicle.*"

(emphasis added)

66. The Supreme Court has, therefore, categorically laid down the legal position with respect to the defences available to Insurance Company in order to succeed on the ground that the driving license held by driver was *fake*. ***Firstly***, the burden lies upon Insurance Company to establish that the insured was guilty of negligence, and had failed to exercise reasonable care in complying with the condition of insurance policy relating to use of the vehicle by a duly licensed driver; ***secondly***, no hard and fast rule can be laid down as to manner in which such burden must be discharged, and the same will depend on the facts of each case; ***thirdly***, even if the breach is established or proved, the same must be so fundamental so as to have contributed to the cause of the accident; ***fourthly***, the question of whether owner had taken reasonable care to verify the driving licence, has to be determined on a case-to-case basis; ***fifthly***, as a matter of general principle, where a seemingly valid driving licence is produced, unless the same is demonstratably *fake* on the face of it, has expired or any other reason, or the employer has been intimated that license is *fake*, or is otherwise propelled by a specific clause of the insurance policy to have license verified, the burden would be upon Insurance Company to prove that insured failed in carrying out the due diligence process.

67. Accordingly, the factors which could be taken into consideration, as general guidelines, to apply in cases involving a plea of "*fake driving license*" can be formulated as under:

i. Whether the driving licence was demonstratably fake, on the face of it?

ii. Whether the license seemed, on the face of it, to have expired?

iii. Whether the driver had been engaged by the owner/employer for a substantial period of time, and, during said period had given any occasion to owner/employer to doubt his driving skills?

iv. Whether there existed an easily accessible manner by which employer could verify driving license of driver, including through online platforms such as *Parivahan Application* instituted by the *Ministry of Road Transport and Highways* (***MoRTH***)?

v. Whether the license was valid at the time the driver entered employment, but subsequently expired and was not renewed in time, and whether the owner/employer failed to insist upon such renewal before assigning driving duties to driver?

vi. Whether Insurance Company discharged its burden of proof by establishing that driving licence was fake on the basis of official records, and not merely by relying upon the absence or lack of verification by owner/employer arising out of administrative and processual deficiencies within transport authorities?

68. The aforesaid list of factors is merely illustrative and not exhaustive, and only indicates some of the situations that may arise where Insurance Company raises a defence on the basis of a fake driving license.

Assessment of the present case

69. In the present case, there is nothing on record to state that the driving licence produced by respondent no.5/ driver-cum-owner was "*fake*". Further, Insurance Company neither took any specific plea as regards the license being *fake* in its written statement nor led any cogent evidence in this regard. Contention of Insurance Company was therefore, solely based on testimony of **R3W1**, stating that he did not know anything about the driving license in question, which is not the same as stating that the said licence was fake or invalid. **R3W1**, further stated that ***FIR No. 334/2016*** had been registered under *Section 409* of IPC, pertaining to missing records of various driving licenses, not specific to the driving licence produced by respondent no.5/ driver-cum-owner. In fact, copy of driving license produced, clearly shows that it was valid from 16th April 2003 to 14th August 2020. In view of aforesaid and since the accident in question occurred on 15th August 2010, it can be said that the plea of appellant/Insurance Company of defence of breach of insurance policy, may not be merited.

Conclusion

70. Applying the aforesaid principles to the facts of the present case, appellant has failed to establish the contentions raised by it.

71. A plea was raised by counsel for the Insurance Company, with regard to the rate of interest. Reliance in this regard can be placed upon the judgment of the Supreme Court in ***Kaushnuma Begum (Smt.) & Ors. v. New India Assurance Co. Ltd. & Ors***., (2001) 2 SCC 9 wherein, while interpreting the powers of the Tribunal under *Section 171* of the MV Act to award simple interest on compensation from the date of institution of

the claim petition, it was observed that the rate of interest awarded by nationalised banks on fixed deposits ought to serve as the guiding factor while determining the rate of interest payable on compensation amounts.

72. In the facts of the present case, since the long-term fixed deposit rates offered by nationalised banks during the year 2010, i.e. the year of filing of the claim petition, were between 7% and 7.75% per annum, the interest awarded on the compensation granted in the impugned award is correct @ 7.5% per annum from the date of filing of the claim petition.

73. *Vide* order dated 23rd February 2015, the Court had directed deposit of 50% of the awarded amount along with proportionate interest to be deposited before the Tribunal and released to the claimants, as per disbursal directions contained in the impugned award

74. Accordingly, this Appeal stands dismissed.

75. In view of dismissal of appeal, balance amount shall also be disbursed as per directions passed by the Tribunal.

76. Pending applications (if any) are rendered as infructuous.

77. Statutory deposit, if any, be refunded to the appellant.

78. Judgement be uploaded to the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 29, 2026/tk/ya