<u>IN THE COURT OF DR. ABHILASH MALHOTRA</u>
<u>PRESIDING OFFICER: MOTOR ACCIDENT CLAIMS</u>
<u>TRIBUNAL-02, PATIALA HOUSE COURTS, NEW DELHI</u>

<u>In the matter of:</u>
<u>NILMANI @ NEELMANI CHAUHAN</u>
Vs.
<u>RAMESH & ORS.</u>
<u>MACT NO. 38/2021</u>

1. **Sh. Nilmani @ Neelmani Chauhan**
S/o Sh. Manoj Kumar
R/o Plot No. 601, Jai Bhagwan Complex,
Rangpuri Road Near BJP Office,
Malik Pur Khoi @ Rang Puri,
Mahipalpur, Delhi -110037 ... Petitioner

Versus

1. **Ramesh**
S/o Sh. Talfi
R/o Village & Post - Anangpur,
Faridabad, Haryana …. **Driver**
Respondent no.1

2. **Mr. Deepak**
S/o Sh. Sunder
R/o Achheja Amroli
Distt. Palwal, Haryana - 121102
…. **Owner/**
Respondent no. 2

3. **M/s IFFCO Tokyo General Insurance Co. Ltd.**
4th Floor, 416-421, Narain Manjil
23, Barakhamba Road, New Delhi ….**Insurance Company**
Respondent no. 3

Date of accident	30.12.2020
Date of filing of petition	12.02.2021
Date of framing of issues	12.04.2023
Date of concluding arguments	30.07.2026
Date of decision	12.08.2026

AWARD

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I. BRIEF FACTS

1. In the present case, the accident had occurred out of Delhi and claim petition was filed in New Delhi District as the office of the Insurance Company is located within the territorial limits of this Tribunal.
2. The issue regarding the jurisdiction was raised by the Insurance Company. The office of the Insurance Company is stated to be within the jurisdiction of this Tribunal and in view of the judgment passed by Hon'ble Supreme Court of India in the case titled as ***Malati Sardar v. National Insurance Company Limited and Ors.*** *(2016) 3 SCC 43*, the issue of jurisdiction is no more in dispute.
3. In present case, Mr. Nilmani @ Neelmani Chauhan received grievous injuries in a road accident and FIR bearing No. 09/2021 under Section 279/337/338/427 IPC was registered at PS Dabua, Distt. Faridabad, Haryana.
4. Claim petition was filed in this Tribunal on 12.02.2021.
5. As per Claim petition, the accident occurred on 30.12.2020 at about 2:30 p.m. near Village Bhakri, Faridabad, Haryana. It is stated that injured Mr. Nilmani @ Neelmani Chauhan received serious injuries and suffered 88% permanent disability in regard to both lower limbs.
6. R-1 driver and R-2 registered owner filed their written statement and contested the matter.

7. R-3 Insurance company also filed their written statement and contested the matter
8. Issues were framed vide order dated 12.04.2023. Financial statement of legal representatives of deceased was recorded on 22.10.2024.

II. FRAMING OF ISSUES

9. Vide order dated 12.04.2023, following issues were framed for adjudication of this case :-

> "1. Whether the injured Sh. Nilmani @ Neelmani Chauhan sustained grievous injuries in the accident which occurred on 30.12.2020 at about 2:30 p.m nearby Village Bhakri, Faridabad, Haryana caused by rash and negligent driving of vehicle No. HR-30W-3243 being driven by respondent no. 1, owned by respondent no. 2 and insured with respondent no. 3? OPP.
> 2.Whether the injured is entitled for compensation? If so, to what amount and from whom?OPP
> 3. Relief."

III. RECORDING OF EVIDENCE:

10.**PW-1 was Mr. Nilmani @ Neelmani Chauhan.** He tendered his affidavit by way of evidence as Ex. PW 1/1. He proved on record the following documents:

S.N.	Documents Details	Exhibits
1	Discharge Summary issued by hospital	Ex. PW 1/1
2.	Copy of OPD cards and medical bills	Ex. PW 1/ 2
3.	Copy of Aadhar Card	Ex. PW 1/ 3

4.	Copy of Education Certificate	Ex. PW 1/ 4
5.	Copy of I card issued by employer	Ex. PW 1/ 5
6.	Copy of salary slip issued by employer	Ex. PW 1/ 6
7.	Copy of disability certificate issued by Vardhman Mahavir Medical College, Safdarjung Hospital, Delhi	Ex. PW 1/ 7
8.	Copy of criminal record field by police	Ex. PW 1/ 8

11. PW-1 in his testimony stated that on 30.12.2020 at about 2:30 p.m, he was going to Prithla Faridabad Haryana from Mahipal Pur Delhi by motorcycle bearing registration No. DL-9SBV-9116 which was being driven by him at a normal speed and on correct side of the road. When he reached near Village Bhakri Faridabad Haryana a Car bearing registration No. HR-30W-3243 (Alto) which was driven by its driver/ R-1 at very high speed in rash manner, hit the motor cycle with a great force due to which he fell down on the road and he sustained multiple grievous injuries. He was immediately taken to Santosh Multi-speciality Hospital, Faridabad Haryana and thereafter taken to AIIMS Hospital New Delhi where he was hospitalized from 31.12.2020 to 13.01.2021.
12. PW-1 stated that his treatment is still continuing as an outdoor patient. He stated that he had incurred a sum of Rs.10,00,000/-lakh (approx) on my medical treatment, Rs.1,50,000/-on special diet and Rs.2,00,000/- on conveyance, and 5,00,000/- on attendant charges as he need full time attendant. He stated that he suffered

mental pain and shock besides financial avenues. He stated that he is not be able to stand on his legs and will require escort by a person during his whole life. He stated that due to critical nature of injuries he cannot survive even for a single day without medicines.

13. PW-1 stated that at the time of accident he was 32 years old and working as a Executive Marketing (North India) with M/s Sylvac Metrology (India) Pvt. Ltd., Precision House 98-A/17, Hadapsar Industrial Estate, Hadapsar Pune Maharashtra-411013 and was getting salary of Rs.54,000/- per month. He stated that he suffered 88% permanent disability in regard to both lower limbs due to which he will not able to continue said work in future.

14. In his cross examination, PW-1 stated that he was having driving license and driving his motorcycle at the time of accident. He stated that the offending vehicle bearing registration no. HR-30W-3243 (white in colour) stuck against his motorcycle from left side. He stated that at the spot of accident, there was a single road with no divider on it. He reiterated that the offending vehicle had come from his left side and struck against his motorcycle at the time of accident due to which he fell down on his left side and his helmet struck against the wind shield and motorcycle got struck with offending vehicle.

15. PW-1 stated that he was driving his motorcycle at the speed of 30-35 KMPH while the offending vehicle was driven at the speed of 80 KMPH. He stated that he had seen the offending vehicle in his

rear view mirror just before the accident but he could not avoid the collusion with the offending vehicle as it came suddenly from his left side. He stated that he is not aware as to how he reached the hospital since he lost his consciousness after the accident.

16. PW-1 admitted that he was having medi-claim policy and Insurance Company had paid the entire amount directly to the hospital.

17. PW-1 admitted that the hospital had received a sum of Rs.2,00,000/- on 1st March, 2021 and Rs.2,00,000/- on 7th May, 2021 under medi-claim policy from M/s TATA AIG General Insurance Company. He further admitted that hospital had also received an amount of Rs.2,14,253/- under sponsor; Family Health Plan Limited (EHPL) as per Ex. PW 1/2.

18. PW-1 stated that he was working with M/s Sylvac Metrology Pvt. Ltd. as a Sales Executive (North Region) and apart from his salary slip and identity card he has not filed any other documents such as appointment letter, service record, ITR, TDS, bank statement etc. He admitted that he has not filed any record to show that he had either resigned from his job or his employer had terminated him from employment.

19. **PW-2 was Dr. Sandeep Shaina, from VMMC & Safdarjang Hospital, New Delhi.** In his testimony he stated that he is a summoned witness and proved the disability certificate of injured Sh. Nilmani. He stated that injured has suffered 88% permanent disability and the disability certificate is issued by the Disability

Board bearing his signature at Point 'A'. He stated that the disability is Traumatic Spinal Cord Injury with Paraplegia with Neurogenic Bladder and the effects of the above said disability causes inability to stand and walk on own. He stated that the disability causes difficulty in passing urine. He stated that the above said disability had occurred due to road accident.

20. In his cross examination, PW-2 admitted that the disability of the injured was not examined on the orders of the Court. He admitted that the discharge summary and MLC are not part of the file brought by him from VMMC & Safdarjung Hospital. He admitted that he was not aware of the condition of the injured prior to the accident.

21. PW-2 stated that he cannot say with certainty that the injured was not having any disability prior to the accident. He stated that injured can do activities involving the upper limb and capable of doing desk jobs which involves the usage of the upper limbs i.e, his hands.

22. PW-2 stated that the injured is having Traumatic Spinal Cord Injury with Paraplegia with Neurogenic Bladder which requires self-intermittent catheterization to pass urine which means he has to insert a catheter/pipe into his urethra every 2-3 hours to empty his bladder since he cannot perceive his bladder fullness.

23. PW-2 reiterated that the injured will still be capable of doing the desk job which involves the usage of the upper limbs i.e, his

hands, despite having Traumatic Spinal Cord Injury with Paraplegia with Neurogenic Bladder.

24.**PW-3 was Sh. Vikrant R. Wadekar, from M/s Sylvac Metrology India Pvt. Ltd., Pune**. In his testimony he stated that he is a summoned witness and proved on record following documents:-

S.N.	Documents Details	Exhibits
1	Authority Letter	Ex. PW 3/1
2.	Appointment Letter	Ex. PW 3/2
3.	Salary Proof/Bank Statement	Ex. PW 3/3
4.	Bank Statement of the Company	Ex. PW 3/4

25.He stated that injured Sh. Neelmani Chauhan was working with their company from 01/04/2020 till the date of accident and was paid 13 months full salary during his medical treatment. He stated that their company is paying injured Rs. 33,000/-pm on the humanitarian ground and will continue to pay the same till the final disposal of his claim case.

26.PW-3 stated that at the time of joining their company, the injured was having gross salary of Rs. 54,400/-p.m. He further stated that if the injured would have been working with their company, he would have been drawing gross salary of Rs 80,000 to 90,000/-pm approx.

27.In his cross examination, PW-3 admitted that he has not brought any board resolution authorizing the Director to issue the

Authority Letter dt. 27/09/2023 and the authority letter does not state that he is the authorized person to depose on behalf of the company. He admitted that the increment is based only on the performance of the employee and in case of the poor performance of the employee there would be no question of increment.

28. PW-3 admitted that they do not have any document to show that their company paid the injured on humanitarian ground 13 months salary and thereafter Rs 30,000/- till march 2023 and Rs 33,000/- since April 2023 per month. He stated that their company has given a Laptop/Computer to the injured for backend office work i.e. to make some customers query, preparing quote for the customers and injured does this work occasionally. He admitted that Ex. PW-3/4 is a document pertaining to the injured and has been given to them on their inquiry. He admitted that their company had also given the mediclaim facility to the injured.

29. **PW-4 was Sh. Sahil Sonkar S/o Sh. Sohan Lal, R/o 10/1, Chander Puri, Near Depo Holder, Machhonda, Kuldeep Nagar, Ambala, Haryana-133004**. In his testimony PW-4 stated that he is a summoned witness in this case. He stated that he was working with Sh. Nilmani @ Neelmani as an attendant as injured had suffered injury in a road accident. He proved on record his Aadhar card which is Ex PW 4/1 and has brought his bank statement which is Ex PW 4/2. He stated that he is currently paid Rs 15,500/- per month via bank transfer or in cash and at the time of the accident he was paid Rs 12,500/- per month in cash. He stated

that he used to reach the residence of the injured at about 10:00 a.m. and left at about 7:00 p.m. He stated that he used to take the injured for physiotherapy and assist whenever injured needs to get up and get down.

30. In his cross examination, PW-4 stated that he has not brought any proof of his residence in Delhi. He admitted that he has not obtained any type of training to provide the services to the injured. He admitted that he has not placed on record any receipt to show that he received payments in cash from the injured. He admitted that he is not having any proof to show that he had provided the attendant services to the injured. He admitted that he is not belonging to any organization for providing attendant services to injured persons.

31. PW- 4 admitted that he is having record only for the period 07/03/2023 to 07/09/2023 showing the credit of money. He admitted that he is not having any medical prescription given to him either by injured or any other medical professional advising him to provide the services to the injured.

32. R-1 driver and R-2 registered owner did not lead any evidence.

33. **R3W1 Ms. Snigdha Chauhan D/o Sh. Yashwant Singh from the office of M/s Iffco-Tokio General Insurance Company Ltd., having office at 2nd floor, FAI House, 10, Shaheed Jeet Singh Marg, Qutub Institutional Area, New Delhi-110067.** In her testimony she tendered her affidavit by way of evidence as Ex. R3W1/A. She proved on record the following documents:

S.N.	Documents Details	Exhibits
1	Authority Letter	Ex. R3W1/1
2.	Insurance policy	Ex. R3W1/2
3.	Investigation report	Ex. R3W1/3

34. R3W1 in her testimony stated that she was legal executive from Insurance company. She admitted the fact of insurance on the date of accident. She stated that they had appointed M/s Panther Group (India) to investigate the present case and in their report it was informed that as per statement of injured, the offending vehicle was driven by a boy at the time of accident but later on his father-in-law was planted as a driver. It is stated that the statement of the injured was also recorded by the investigator which is part of report.
35. In her cross examination, R3W1 stated that she was working with the insurance company as legal executive since February 2022. She admitted that she is not having any personal knowledge of this case and deposing only on the basis of the records. She admitted that no name of the person who took the statement of the claimant is mentioned in the investigation report and no date or time is mentioned in the said report which is Ex. R3W1.

IV. ARGUMENTS

36. Ld. Counsel for the injured submitted that from the investigation done by police it is clear that the accident was done by the offending vehicle which was driven by respondent/driver in rash manner.

37. He submitted that PW-1 injured in his testimony stated that his motorcycle hit by the offending vehicle from behind due to which he fell down and received grievous injuries. He submitted that R-1 and R-2 in their reply have taken vague defence and stated that accident occurred due to negligence on the part of the injured himself. He submitted that no evidence was led by R-1 driver and R-2 registered owner to show what kind of negligence was attributed on the part of injured and their plea remained not proved.

38. He submitted that Insurance company has examined R3W1 Ms. Snigdha Chauhan and has taken a plea that the driver of the offending vehicle is a planted but Insurance company had failed to lead any concrete evidence to prove this plea.

39. Ld. counsel for injured submitted that injured was earning Rs.54,400/- per month at the time of accident and the employment record in this regard is proved by them. He submitted that the injured has suffered 88% permanent disability in respect of both lower limbs and the same be also considered for the purposes of calculating functional disability.

40. It is submitted that injured has suffered permanent disability of 88% in regard to both lower limbs. The injured was working as Executive Marketing (North India) with M/s Sylvac Metrology India Pvt. Ltd. Due to the injury the injured is not able to perform daily chores and job properly and therefore functional disability be considered as 88% in this case.

41. He submitted that though injured has claimed Rs. 10 lakhs in respect of the medical expenses but the injured is limiting his claim to the extent of verification report submitted by the Insurance company on 26.05.2026 i.e. Rs.5,63,123/-. He submitted that injured earlier filed Form VI-B giving calculations of compensation which was erroneous and the Form-VI B filed by the injured on 30.07.2026 be considered for grant of compensation.

42. R-1 and R-2 failed to appear and address any arguments.

43. Ld. counsel for R-3 Insurance Company submitted that there is a delay of 05 days in registration of FIR. He submitted that accident occurred due to negligent driving of injured himself. He submitted that the injured was driving without helmet which also corroborates his negligence. He argued that injured was beneficiary to medi-claim policy and the amount received by him under medi-claim cannot be claimed as compensation in this case. He argued that disability of injured was not assessed by the hospital pursuant to directions of this Tribunal and therefore, disability assessment report cannot be considered. He submitted

that injured is presently employed and did not suffer any loss of future income. He submitted that as per the Investigator Report, the driver in this case is planted and the case is not maintainable.

V. ISSUE WISE ANALYSIS

A Issue No.1:

"1. Whether the injured Sh. Nilmani @ Neelmani Chauhan sustained grievous injuries in the accident which occurred on 30.12.2020 at about 2:30 p.m nearby Village Bhakri, Faridabad, Haryana caused by rash and negligent driving of vehicle No. HR-30W-3243 being driven by respondent no. 1, owned by respondent no. 2 and insured with respondent no. 3? OPP."

i. Presumption

44. Rule 21 of Annexure XIII of The Central Motor Vehicles Rules, 1989 mandates as follows:-

> **21. Claims Tribunal shall treat Dar as a claim petition for compensation under Sub-Section (4) of Section 166 of the Motor Vehicles Act, 1988** (1) The Claims Tribunal shall treat the DAR filed by the Investigating Officer as a claim petition under Section (4) of Section 166 of the Motor Vehicles Act, 1988. However, where the Investigating Officer is unable to produce the claimant(s) on the first date of hearing the Claims Tribunal shall register the DAR as a claim petition after the appearance of the claimant(s).
> (2) where the claimant(s) have filed a separate claim petition, the DAR may be tagged along with the claim petition.
> (3) If the Report under Section 173 of the Code of Criminal Procedure, 1973 (2) of 1974 has not been filed at the time of filing of the DAR, the Claims Tribunal may either wait till filing of the Report under Section 173 of the said Code of Criminal Procedure or record the statement of the eye witness(es) to satisfy itself with respect to the negligence before passing the award.

(4) The Claims Tribunal shall register the FAR as a Miscellaneous application and the IAR as well as DAR shall be taken on record in the same Miscellaneous application.

45. In **Bajaj Allianz General Insurance Company Ltd. Vs. Meera Devi & Ors** decided on 16.02.2021, 2021 LawSuit (Del) 858 it was held :

> 8. ….. In view of Delhi Motor Accident Claim Tribunal Rules, 2008, contents of DAR had to be presumed to be correct and read in evidence without formal proof of the same unless proof to the contrary was produced……..".

46. In a recent order dated 25.02.2025, passed in **Ranjeet & Anr v Abdul Nayem Keb & Anr** in SLP (C) 10351/2019, it was held in trenchant terms as thus:

> "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. <u>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>"

47. Rule 25 of the Central Motor Vehicle Rules, 1989 mandates that:

> **25. Duration of a licence and renewal thereof**.—A licence granted in Form 11 shall be in force for a period of five years and may be renewed on an application in Form 13 made to the licensing authority which granted the licence not less than sixty days before the date of its expiry:
>
> [Provided that the validity of the said licence shall be subject to fulfilling the criteria as prescribed by the State Government, which shall be certified by the licensing authority or any other authority as may be prescribed for the purpose by the State Government on an annual basis.]

ii. Adverse inference

48. The driver of the offending vehicle steered clear of the witness box and did not lead any controvertible evidence to negate or refute the allegations of rash and negligent driving. It may further be noted that in **Cholamandlam insurance company Ltd. Vs. Kamlesh**, 2009 (3) AD Delhi 310*,* it was held that if driver of offending vehicle does not enter the witness box, an adverse inference can be drawn against him. In the present case also, since the driver exercised his volition to not enter into the witness box to controvert the claim of petitioner or even to explain circumstances of accident, an adverse inference ought to be drawn against him.

iii. Preponderance of probabilities:

49. It is trite law that in a proceeding before the Claims Tribunal, the claimant does not have to establish negligence on the part of the driver respondent beyond reasonable doubt. The standards of establishing negligence is predicated on preponderance of probabilities. In the present case too, negligence has been established on this principle.

50. In this context, it would be useful to peruse **Mathew Alexander v. Mohd. Shafi**, (2023) 13 SCC 510 wherein it was observed as thus:

> "In this context, we could refer to the judgments of this Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457 : 1980 SCC (Cri) 774] , wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under

Section 304-AIPC is more drastic than negligence under the law of torts to create liability. Similarly, in Bimla Devi v. Himachal RTC [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC (2009) 13 SCC 530."

iv. Findings

51. R-1 driver, R-2 registered owner as well as R-3 Insurance company in their written statement have taken a defence that accident occurred due to negligent driving of injured. Neither Insurance company nor the driver and owner in their reply specified as to what was the negligent act on the part of the injured. PW-1 injured in his evidence categorically stated that his motorcycle was hit by offending vehicle from behind due to which he fell down. He reiterated the said fact in his cross examination

and stated that his motor cycle was hit from left side. In the charge sheet also, Investigating Officer had came to the same conclusions that the accident had occurred due to rash driving of offending vehicle and R-1 driver was charge sheeted for the offence punishable under Section 279/337/338/427 IPC.

52. No evidence has been led by R-1 driver and R-2 owner to rebut the findings arrived by the police in the investigation. The witness examined by the Insurance company was not present at the spot of accident. In these circumstances, there is nothing on record to discard the testimony of PW-1 / injured.

53. It is also argued by Ld. counsel for Insurance company that there was delay in registration of FIR. It is settled legal position that FIR is not a complete code in itself. The final report records that accident had occurred on 30.12.2020 and upon receipt of information police reached the spot. Victim was rescued to the hospital. His MLC was prepared on the same date i.e. 30.12.2020 and in the MLC it is stated that the victim has suffered road traffic accident from a four wheeler. PW-1 in his testimony clarified that due to the injury suffered by him, he was not able to give his statement. Final report filed by the police also records that it was the father of the victim who came to the Police Station on 04.01.2021 and informed the police about the details of accident and thereafter doctors declared victim fit for his statement and his statement was recorded and the case was registered. In these

circumstances, the delay in registration of FIR stands clearly explained and no ambiguity is found in this regard.

54. Insurance company has taken a defence that the injured was negligent and he was not wearing any helmet. Merely, because injured was not wearing helmet, the same cannot be said to be ground for contributory negligence. A violation of traffic law cannot be said to be contributory negligence without any evidence in support showing that the violation has led to the accident. Reference in this regard can be made in the judgment passed by Hon'ble Supreme Court of India in the case titled as **Mohd. Siddique Vs. National Insurance Co. Ltd., (2020) 3 SCC 57 observed as under::**

> 12. But the above reason, in our view, is flawed. *The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence*. At the most, it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C, inserted by Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. <u>Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim</u>. *There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim*. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been

> no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. *It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked.* It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.
>
> 13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.

55. From the aforesaid judgment, it is clear that to attract the contributory negligent, the rashness or negligent on the part of the victim needs to be proved. Non-wearing of helmet may be an offence under the motor vehicle act, but cannot be termed as rash or negligent act which led to accident. No evidence has been led by the insurance company or R-1 driver and R-2 owner to show any kind of rashness or negligence on the part of motorcycle

driver. Therefore, the contention of the Insurance is without any merit and rejected.

56. Insurance company has taken another plea that disability of injured was assessed by the hospital without any order of the Tribunal. As per MLC injured was taken to Jai Prakash Apex Trauma Centre AIIMS. Thereafter, the disability was assessed by a government hospital. The disability certificate Ex. PW 1/7 is proved on record by PW-2 Dr. Sandeep Shaina from Safdarjung Hospital, Delhi. He confirmed disability certificate issued by the Medical Board and stated that injured had suffered 88% permanent disability in regard to both lower limbs.

57. From the evidence on record, it is clear that disability of the injured was assessed by a competent medical board of a government hospital in furtherance of treatment when the injured was admitted there. Merely because there is no order of the Tribunal, it does not eclipse independent examination of the victim by the competent medical board. The findings of the medical board are duly proved on record by PW-2 Dr. Sandeep Shaina. In these circumstances, the plea of the Insurance company in this regard is also rejected.

58. Insurance company has also taken a defence that driver of the offending vehicle is planted in this case. R3W1 Ms. Snigdha Chauhan in her testimony stated that as per the Investigator Report, the vehicle was driven by some boy. She stated that the said fact is also stated in the hand written statement which was

signed by the victim before the Investigator of Insurance company. PW-1 injured denied the said statement.

59. The plea of the insurance company in this regard is belated. Rule 25 Annexure XIII CMVR mandates that in case the insurance company apprehends that there is fake accident case, the company is at liberty to ventilate its grievances to the office of DCP concerned. Despite having investigator report, the Insurance company did not bother to file any complaint with the DCP concerned. In case insurance company would have filed complaint at the right time, the apprehension of insurance company could have been investigated and truth could have been unearthed. Insurance company choose to stay mum at that juncture and has raised this plea belatedly at the stage of the inquiry. This plea goes to the root of the investigation and there is nothing on record to distrust the investigation and the findings of the IO, especially in circumstances when the insurance company did not file any complaint or protest petition before the concerned Ld. JMFC. Therefore, the plea of the insurance company in this regard is also rejected.

60. In view of foregoing discussion, it stands proved on the touchstone of preponderance of probabilities that the aforesaid accident took place due to rash driving of the insured/offending vehicle bearing registration no. HR-30W-3243 and the said vehicle at that time was driven by respondent no. 1 and insured with respondent no.3.

61. Hence, issue no. 1 is decided in favor of the injured and against the respondents.

62. It is clarified that the findings given are limited for the purposes of this inquiry and shall not impact the trial of the criminal case.

B Issue No.2

"2.Whether the injured is entitled for compensation? If so, to what amount and from whom?OPP"

i. Extent of disability:

63. A perusal of Ex. PW1/7 i.e. disability assessment certificate issued by Vardhman Mahavir Medical College, Safdarjung Hospital, Delhi shows that injured has suffered 88% permanent disability in relations to both lower limbs. Ld. Counsel submitted that due to the accident the injured suffered Traumatic Spinal Cord Injury with Paraplegia with Neurogenic Bladder which requires self-intermittent catheterization to pass urine which means he has to insert a catheter/pipe into his urethra every 2-3 hours to empty his bladder since he cannot perceive his bladder fullness, due to which injured is not able to perform daily chores and severely impacted his work efficiency. He argued that the functional disability may be considered as 88% in this case.

64. It is argued by the Insurance company that disability certificate was issued without any orders by the Tribunal and the injured is not entitled to any future income as he is already working.

*65.*Before proceeding further to analyze the aspect of functional disability, it would be prudent to refer to the case law laid down by the higher Courts. It is trite that the test to determine the functional disability has been laid down in **Raj Kumar Vs. Ajay Kumar** (2011) 1 SCC 343:

> *"Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity."*

*66.*It would be apposite to peruse the following directions for assessment of functional disability as laid down vide order dated 09.03.2018 in **Rajesh Tyagi & Ors Vs. Jaiveer Singh & Ors***,* FAO No. 842/2003 dated 09.03.2018:

> **6. Directions for assessment of functional disability by the Claims Tribunal**
>
> "6.1. All injuries or permanent disability arising from injuries do not result in loss of earning capacity.
> 6.2. The percentage of permanent disability with reference to the whole body of a person should not be mechanically assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
> 6.3. The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence of his medical opinion with regard to the extent of permanent disability. However, the loss of earning capacity is something to be assessed by the Claims Tribunal with reference to the evidence in its entirety.
> 6.4. The same permanent disability may result in different percentages of loss of earning capacity in different persons,

depending upon the nature of profession, occupation or job, age, education and other factors.

6.5. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps:

(i) The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life).

(ii) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.

(iii) The third step is to find out whether :

a) The claimant is totally disabled from earning any kind of livelihood, or

b) Whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or

c) Whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. "

67. In **Sarnam Singh Vs. Shriram General Insurance Company Ltd.,** Civil Appeal No. 3900/2023 dated 04.07.2023 (SC), 2023 INSC 597 the Hon'ble Supreme Court has further elucidated upon the concept of functional disability as follows:

"9. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this court in Mohan Soni vs Ram Avtar Tomar and Others. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of the income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of

> the work being performed by the person who suffered disability. The same injury sufferd by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%."

68. The plea of the Insurance company in respect of the disability certificate being issued without any order by the Tribunal is already rejected. So far as question of functional disability is concerned, PW-2 Dr. Sandeep Shaina in his testimony stated that injured suffered permanent disability of 88% in regard to both lower limbs. He stated that disability is Traumatic Spinal Cord Injury with Paraplegia and causes inability to walk by himself and difficult in passing urine. He clarified that injured can do activities with upper limbs and can perform desk job with usage of upper limbs.

69. In his cross examination PW-2 also clarified that due to Traumatic Spinal Cord Injury with Paraplegia with Neurogenic Bladder, requires self-intermittent catheterization to pass urine which means he has to insert a catheter/pipe into his urethra every 2-3 hours to empty his bladder since he cannot perceive his bladder fullness.

70. PW-1 injured in his testimony stated that he was working as Marketing Executive and due to the injuries he is not able to perform his job. He stated that his company is providing

sustenance allowance on *pro-bono* basis till the present claim petition is decided so that he can survive and manage his health.

71. PW-3 Mr. Vikrant R. Wadekar, representative from employer of injured also clarified that the injured is continuing with their company on humanitarian ground and they will pay him Rs.33,000/- per month till the final decision of this case.

72. In Form VI-B, the injured has claimed 88% functional disability for the purposes of calculation of his future income. From the medical evidence on record, it is clear that the injured has suffered 88% permanent disability in relation to his both lower limbs due to which he is not able to function with his lower part of the body. As per testimony of Dr. Sandeep Shaina, injured is facing serious problems and has to pass urine by inserting a catheter/pipe into his urethra every 2-3 hours to empty his bladder since he cannot perceive his bladder fullness. In such a situation, it is clear that injured is not in a position to walk, drive, manage his daily chores on his own. The injured was performing the work of marketing executive which involves considerable travel and meeting various people to procure business. Due to nature of injuries, injured will not be able to perform his job and is restricted to the desk job, that too subject to medical limitations and support of a full time attendant.

73. In the case of **Jakir Hussein Vs. Sabir & Ors,** 2015 LawSuit (SC) 147 dated 18.02.2015, the Hon'ble Supreme Court of India

appreciated the aspect of functional disability and the relevant extract is reproduced below:-

> In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of Raj Kumar v. Ajay Kumar, this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in the case of Sarla Verma & Ors. v. Delhi Transport Corporation & Anr: 2009 6 SCC 121 the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-.

74. The injured has claimed 88% permanent disability in this case. It is already proved on record that the lower body of the injured has become dysfunctional. He is dependent upon attendant for passing urine as he cannot feel the same. The employer of the injured stated that they are providing him salary on humanitarian

ground till the time this case is decided. It is clear from the nature of injuries that injured will never able to perform the job of marketing executive which involves considerable movement. The desk job of the injured will be also dependent upon the services of full time attendant and continuing in good health. Admittedly, injured is already on medication for sustaining good health. In these circumstances, it is amply clear that the injured will not be able to perform the job he was doing at the time of accident and accordingly, functional disability as prayed by the injured @ 100% is considered for the purpose of calculating of future income.

ii. Principles qua assessment of compensation:

75. Before adverting to the submissions of the counsels in this regard, it would be apposite to refer to the law of the land qua this aspect. The law has been laid down by Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar & Anr.** (2011) 1 SCC 343**, Sarla Verma & Ors. v. Delhi Transport Corporation & Ors.** (2003) 6SCC 121 **and National Insurance Company Limited v. Pranay Sethi & Ors.** (2017) 16 SCC 680. The gist of the law is that the object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of

disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

76. In **Raj Kumar v Ajay Kumar & Anr.** (2011) 1 SCC 343 the heads under which compensation is to be calculated was expounded as thus :

> "5.The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64 : AIR 1970 SC 376] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)] .]"
>
> "6.The heads under which compensation is awarded in personal injury cases are the following:
>
> Pecuniary damages (Special damages)

> (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
>
> (a) Loss of earning during the period of treatment;
>
> (b) Loss of future earnings on account of permanent disability.
>
> (iii) Future medical expenses.
>
> Non-pecuniary damages (General damages)
>
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
>
> (v) Loss of amenities (and/or loss of prospects of marriage).
>
> (vi) Loss of expectation of life (shortening of normal longevity).
>
> In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

77. The claimant filed prescribed of the Scheme for Motor Accident Claims qua the above heads pertaining to pecuniary and non pecuniary damages.

78. Though the judgment of **Raj Kumar (supra)** deals with cases of fatality, it is no longer *res integra* that the above principles apply to cases of injury also. Recourse can be had to **Yadava Kumar v National Insurance Co Ltd.** (2010) 10 SCC 341 wherein it has been ordained as thus:

> "9.The Second Schedule under Section 163-A of the Motor Vehicles Act, 1988 gives a structured formula for the calculation of compensation in accident cases. Note 5 of the Schedule deals with disability in non-fatal accidents and reads as follows:
>
> 5. Disability in non-fatal accidents

> The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:
>
> Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.
>
> PLUS either of the following—
>
> (a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or
>
> (b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under Item (a) above.
>
> Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."
>
> **Thus, the multiplier method is to be applied in cases of injuries also and it has been applied in a number of accident cases by the High Courts and this Court**.
>
> 10. This Court in Sunil Kumar v. Ram Singh Gaud [(2007) 14 SCC 61 : (2009) 1 SCC (Cri) 771 : (2008) 1 ACJ 9] , awarded compensation in case of injury for loss of future earnings and applied the multiplier method for calculation of the same. The same principle was recognised by this Court in Priya Vasant Kalgutkar v. Murad Shaikh [(2009) 15 SCC 54 : (2010) 2 SCC (Cri) 266 : AIR 2010 SC 40]"

79. An essential ingredient of the award is the loss of the future earnings. To calculate the same, the multiplier method is used in terms of the mandate of **Sarla Verma (supra)** wherein it was laid down as thus:

> *"42 We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie) which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years,) reduced by one unit for every years that is M-17 for 26 to 30 years, M-16 for 31 to 35 years , M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M -13 for 46 to 50 years, then reduced by two units for every five years, that is,*

M-11 for 51-55 years, M-9 for 56 to 60 years ,M-7 for 61 to 65 years and M- 5 for 66 to 70 years."

80. The assessment of pecuniary as well as non-pecuniary damages is discussed in the succeeding paragraphs.

iii. Monthly Income

81. PW -1 in his testimony stated that at the time of accident, he was employed with M/s Sylvac metrology India Pvt. Ltd. and was earning Rs. 54,400/- per month. PW-3 Mr. Vikrant R. Wadekar, representative of the employer also confirmed the same and stated that the gross salary of the injured was Rs.54,400/- per month. Though he stated that after the accident, injured is restricted to desk job and company is paying him Rs.33,000/- per month on humanitarian grounds till final disposal of this case.

82. Ld. counsel for Insurance company submitted that the salary which is currently paid to the injured should be considered. He submitted that the Income Tax needs to be deducted.

83. PW-3 has placed on record the employment record of the injured. It is settled legal position that income of the injured at the time of accident needs to be considered. The salary of the injured at the time of accident was Rs.54,400/- per month as per Ex. PW-1/6. The income tax of Rs.5,000/- was being deducted. To calculate the net salary documents in respect of the income of the deceased have unequivocal proof on record and has remained undisputed.

84. **Thus, the monthly income of the injured is quantified as Rs. 49,500/- p.m.**

iv. Future prospects:

85. The injury sustained by the claimant has a bearing on his future prospects to eke out a living in the same manner as he would have prior to the accident. To factor into account future prospects, several guidelines have been laid down.

86. In this context, it would be apt to refer to **National Insurance Co Ltd v Pranay Sethi & Ors.** (2017) 16 SCC 680 wherein it was laid down as thus*:*

> "59. In view of the aforesaid analysis, we proceed to record our conclusions:
> 59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
> 59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
> 59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which we have reproduced hereinbefore.
> 59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of that judgment

> 59.7 The age of the deceased should be the basis for applying the multiplier.
> 59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

*87.*Even though the above judgment deals with cases of fatality, it is no longer *res integra* that the above principles apply to cases of injury also. Reliance is placed on **Pappu De Deo Yadav v. Naresh Kumar** (2022) 13 SCC 790 wherein it was held as follows:

> **"**7 Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-Judge Bench decision in Jagdish [Jagdish v. Mohan, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in Anant [Anant v. Pratap, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases — and admits such possibility of future prospects, in case of the victim's death."

88. The documents on record show date of birth of injured as 07.02.1988. The injured was 32 years 10 months old on the date of death. Injured had permanently employed and the future prospects applicable to injured in terms of judgment of **Pranay Sethi (Supra)** is 50% i.e. 49,500 x 50% = **Rs.24,750/-.**

PECUNIARY HEADS

v. Expenditure on Treatment

89. The bills placed on record were verified by the insurance company and they submitted their report before the Tribunal on 26.05.2026. The injured conceded to the verification report of the insurance company and stated that medical expenses to the tune of Rs.5,63,123/- as verified by the insurance company be only provided. In Form- VI-B filed on 30.07.2026 the injured restricted the claim to the said amount only.

90. The Insurance company has taken a plea that injured in his cross examination admitted the receipt of medi-claim towards expenditure on treatment. The aforesaid plea taken by Insurance company is not maintainable in view of the law settled by the Hon'ble Supreme Court of India in the case of **New India Assurance Company Limited Vs. Dolly Satish Gandhi and Another**, 2026 SCC OnLine SC 861 held that:

> 15. In fine, we hold that the amount received as part of Mediclaim/medical insurance is not deductible from compensation as calculated by the concerned Tribunal, adjudicating a claim for compensation under the MVA which may also include compensation under the head of medical expenses, if claimed. These two stand on a different footing - one is statutory while the other is contractual and the latter is only a sequitur of premiums having been paid in the past while the other is an entitlement as a consequence of an accident or death in a motor vehicle accident.

91. Accordingly, **the expenditure on medical treatment is hereby quantified as Rs.5,63,123/-.**

vi. Expenditure on Conveyance & Special Diet (Pecuniary):

92. A sum of Rs.2,00,000/- is claimed towards Conveyance and Rs.1,50,000/- is claimed towards Special Diet. The Insurance company has opposed the same.

93. Record shows that the treatment of the petitioner had taken place at hospital and petitioner had to travel a considerable distance for treatment. The petitioner has suffered serious injuries and must be requiring special diet. Accordingly, in view of the aforesaid, **the expenditure on conveyance and Special Diet is hereby quantified as Rs. 1,00,000/- (each) totalling Rs. 2,00,000/-.**

vii. Expenditure on Attendant (Pecuniary):

94. A sum of Rs. 72,18,048/-is claimed under this head. Ld. Counsel for the Insurance company opposed the same.

95. As per the medical evidence on record, the injured suffered 88% permanent disability in respect of both lower limbs. PW-2 Dr. Sandeep Shaina in his testimony confirmed the same and stated that only the upper limbs of the injured will be working. He clarified that for passing urine, injured will require to insert a catheter/pipe into his urethra every 2-3 hours to empty his bladder since he cannot perceive his bladder fullness.

96. In these circumstances, it is clear that injured will not perform daily chores through his life without the help of an attendant.

97. In Form VI-B filed on 30.07.2026 injured has claimed compensation for 02 attendant charges. However, no concrete evidence has been brought on record by the injured to show requirement of two attendant. Accordingly, only one attendant is considered and allowed under this head.

98. In the case of **Kajal Vs. Jagdish Chand & Ors.** Civil Appeal No. 735 of 2020 arising out of Special Leave Petition (C) no. 15504 of 2019 dated 05.02.2020 of Hon'ble Supreme Court of India and **Jyoti Singh Vs. Nand Kishore & Ors.** MAC. APP. 870/2011 dated 11.04.2023 of Hon'ble High Court of Delhi, it was held that minimum wages for skilled worker needs to be considered for the purposes of an attendant. the minimum wages prevalent at the time of accident as per Circular No. F. No. 12(142)/02/MW/VII/Partfile/3786-3809 dated 07.12.2020 issued by the office of Addl. Labour Commissioner, Labour Department, Government of NCT of Delhi was Rs. 18,797/-. The multiplier

applicable to the injured is 16. Accordingly, the **expenditure towards pre-nursing attendant is quantified as** Rs. 18,797 x 12 x 16 x 1 = **Rs. 36,09,024/-**

viii. Cost of Artificial Limb

99. No claim is made under this head.

ix. Loss of earning capacity

100. As discussed above the the loss of his earning capacity is hereby quantified at 100**%.**

x. Loss of Income (During Treatment)

101. PW-3 in his testimony stated that 13 months salary was paid to the injured during his treatment. In Form VI-_B submitted on 30.07.2026, the injured has not claimed any compensation under this head. Accordingly, loss of income is treated as NIL.

xi. Any other loss which may require special treatment or aid to the injured for the rest of life

102. No amount is claimed under this head.

xii. Loss of Future Earnings

103. The income of injured is already assessed as Rs. 49,500/- Per month. Future prospects of 50% are applicable in this case. Multiplier of 16 is applicable. The functional disability is already assessed as 100 %. The loss of future income is tabulated below:

Monthly Income	49,500/-
Add Future Prospects (50%)	24,750/-
Total Monthly Income	74,750/-
Annual Income	8,91,000/-
Income after Multiplier (16)	1,42,56,000/-
Functional Disability percentage	100%
Loss of Future Income	**1,42,56,000/-**

NON- PECUNIARY HEADS

xiii. Compensation for Mental & Physical Shock, Pain & Suffering and Loss of Amenities

104. As stated above, the claimant had suffered grievous injuries and permanent disability in the accident. This Tribunal is conscious of the fact that no amount of money can erase the trauma and grief that the victim has suffered, or the dignity and confidence that was shattered. No amount of money can compensate the agony that the victim has undergone, but it is hoped that some compensation can go a long way in alleviating a bit of the suffering that he has endured. An earnest effort has to be made to compensate him for the same in a just and reasonable manner.

105. The petitioner has claimed a sum of Rs.2,00,000/- (each) towards mental and psychological shock; pain and suffering, and towards loss of amenities in life. The injured has suffered grievous injuries and 88% percentage disability in regard to both lower limbs.

106. Hence, keeping in view the extent and nature of the injuries suffered by the claimant and duration of the treatment taken by him etc., an amount of Rs.1,00,000/- is being awarded to him towards Pain and suffering and Rs.50,000/- (each) is awarded to injured towards Loss of amenities and mental and physical shock undergone by him. Thus, **compensation for Mental & Physical shock, Pain & Suffering and Loss of amenities in life is hereby quantified as Rs. 2,00,000/- under this head.**

xiv. Loss of Marriage Prospects

107. No amount is claimed under this head.

xv. Disfiguration

108. A sum of Rs.2,00,000/- is claimed under this head. PW-2 Dr. Sandeep Shaina stated that injured had suffered grievances injuries and had suffered 88% permanent disability in relation to both lower limbs. Accordingly, keeping in view of the whole facts and circumstances a sum of **Rs.2,00,000/-** is granted under this head.

xvi. Loss of earnings, inconvenience, hardships, disappointment, frustration, mental stress and unhappiness in future life etc.

109. A sum of Rs. 10,00,000/- is claimed under this head. Keeping in view of the overall facts and circumstances, the claim is quantified as **Rs. 5,00,000/-** under this head.

xvii. Total Compensation

110. Thus, the total amount awarded under Pecuniary and Non-Pecuniary heads of compensation is:

Sr. No.	Heads	Amount
1.	Expenditure on treatment	5,63,123/-
2.	Expenditure on Conveyance	1,00,000/-
3.	Expenditure on Special Diet	1,00,000/-
4.	Expenditure on Attendant	36,09,024/-
5.	Cost of Artificial Limb	NIL
6.	Loss of earning during period of treatment	NIL
7.	Any other loss which may require any special treatment or aid to the injured for the rest of his life	NIL
8.	Loss of Future Income & loss of income	1,42,56,000/-
9.	Compensation for Mental &	50,000/-

	Physical shock	
10	Pain & Suffering	1,00,000/-
11	Loss of Amenities of Life	50,000/-
12	Disfiguration	2,00,000/-
13	Loss of Marriage Prospectus	NIL
14	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress and unhappiness in future life.	5,00,000/-
	TOTAL	**1,95,28,147/-**

C Issue No.3

"Relief"

v. Amount of Award:

111. A sum of **Rs. 1,95,28,147/-** (Pecuniary plus Non-pecuniary) along with interest from the date of filing of claim petition till date of payment.

vi. Rate of Interest:

112. It is contended by counsel for the claimant that the respondents including the insurance company have contested the matter without any concrete defence in order to delay the

proceedings and maximum interest be provided to act as a deterrent and to sufficiently compensate the claimants.

113. In order to adjudicate these rival claims, recourse can be had to **Erudhaya Priya v State Transport Corporation,** 2020 SCC OnLine SC 601 wherein the aspect of rate of interest was categorically enunciated as thus:

> (c) The third and the last aspect is the interest rate claimed as 12%
> "15.In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court"

114. Ergo, the amount of compensation/award amount will be payable by the respondent insurance company with simple interest @ 9% p.a from the date of filing of the claim petition till actual realization. The interest quantification is as follows:

Date of filing	12.02.2021
Date of decision	12.08.2026
Period	66 months
Simple Interest	96,66,432/-
Award Amount	1,95,28,147/-
Award Amount including Interest	**Rs. 2,91,94,579/-**

115. It is also clarified that in case the interest of petitioner was stopped or excluded during the present inquiry proceedings, same is liable to be adjusted from the total interest calculated on the Award amount. Similarly, amount awarded and released as interim Award, if any, during pendency of the case, be deducted from the total compensation.

D Liability

116. R-1, R-2 and R-3 are held jointly and severally liable to pay the compensation amount.

117. The Insurance Company has failed to prove any statutory defence in this case.

118. Accordingly, R-3 Insurance company is directed to pay award amount to the Injured.

119. The respondent no. 3 / Insurance company shall inform the injured and his counsel that the awarded amount has been deposited so as to facilitate them to collect the same.

E Release of Award

120. **Rs.11,94,579/- out of the the award amount** be released directly in bank account of the injured immediately and remaining awarded amount be invested and deposited in 180 monthly fixed deposits receipts (FDR) of equal amounts for a period of 180 months as per Motor Accident Claims Annuity Deposits Scheme.

121. The Nodal officer of the bank shall ensure disbursement of the award within 3 weeks of receipt thereof by email or otherwise.

122. The disbursement to the claimant is, however, subject to the addition of future interest till deposit proportionately and also deduction of proportionate tax on the interest amount or amount of interim award, if any, to/from his share.

F Release of Award

vii. Deposit of Award:

123. In terms of the mandate of order dated 08.01.2021 in **Rajesh Tyagi (supra)** the respondent / insurance shall deposit the award amount in the bank account of the Motor Accident Claims Tribunal maintained with UCO Bank, Patiala House Courts within 30 days of this award.

124. The respondent depositing the award amount shall mention the details of case i.e case title, case number and CNR number to enable the bank to maintain proper record.

125. The respondent(s) held liable to pay compensation by the Claims Tribunal shall give notice of deposit of the compensation amount to the claimant(s) and file a compliance report with the Claims Tribunal with respect to the deposit of the compensation amount along with interest within 15 days of deposit.

126. In case even after lapse of 90 days from today, respondent no. 3 fails to deposit this compensation with interest, in that event, in light of judgment of the Hon'ble High Court of Delhi passed in the case of **New India Assurance Company Limited Vs. Kashmiri Lal**, 2007 ACJ 688 the compensation awarded including interest

shall be recovered by attaching the bank account of respondent no. 3 with a cost of Rs.5,000/-.

viii. Disbursement of the award amount & protection thereof:

127. The amount of award shall be disbursed through the Motor Accident Claims Tribunal Annuity Deposit (MACAD) Scheme formulated vide order dated 01.05.2018 passed in **Rajesh Tyagi(supra)**. 21 banks, including UCO Bank, is implementing the MACAD scheme.

128. Further, to protect the award amount, the entire amount of compensation is not being released forthwith to the claimant, and part of the compensation amount has been directed to be kept in fixed deposits in a phased manner. Further, the following conditions are hereby reiterated and being imposed upon the concerned bank with respect to the fixed deposits:

(a) The bank shall not permit any joint names to be added in the savings bank account or MACAD scheme account of claimant i.e. the bank account of claimant shall be individual account and not a joint account.

(b) The original fixed deposits shall be retained by the UCO Bank, PHC, New Delhi in safe custody. However, the statement containing FDR numbers, amounts, dates of maturity and maturity amounts shall be furnished by the said bank to the claimant and the above amount shall be released in account of claimant by the Manager, UCO Bank, PHC, ND through RTGS/NEFT/or any other electronic mode.

(c) The monthly interest be credited by Electronic Clearing System (ECS) in the saving bank account of the claimant near the place of his residence.

(d) The maturity amount of the FDR(s) on monthly basis net of TDS be credited by Electronic Clearing System (ECS) in the above account of the claimant.

(e) No loan, advance or withdrawal or pre-mature discharge be allowed on the MACAD without permission of the Court.

(f) The concerned bank shall not issue any cheque book and/or debit card to claimant(s). However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall debit card(s) freeze the account of the claimant(s) so that no debit card be issued in respect of the account of the claimant(s) from any other branch of the bank.

(g) The bank shall make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Court and claimant(s) shall produce the passbook with the necessary endorsement before the Court on the next date fixed for compliance.

(h) It is clarified that the endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s) of the claimant(s) is sufficient compliance of clause above.

G Summary of Computation of Award

129. Since this is a case pertaining to **injury**, particulars of Form-XVI of the ***Scheme For Motor Accidents Claims Formulated by the Delhi High Court*** in terms of order dated 08.01.2021 in ***Rajesh Tyagi (supra)*** are as under:

1.	Date of accident	:	30.12.2020
2.	Name of the injured	:	Sh. Nilmani @ Neelmani Chauhan
3.	Age of the injured	:	32 years 10 months
4.	Occupation of the injured	:	Private job
5.	Income of the injured	:	49,500/-
6.	Nature of injury	:	Grievous
7.	Medical treatment taken by the injured	:	As per record.
8.	Period of hospitalization	:	As per record
9.	Whether any permanent disability?	:	Yes. 88% Permanent disability.
10.	**Computation of Compensation**		
Sr.No.	**Heads**		
11.	**Pecuniary Loss**		
(i)	Expenditure on treatment		5,63,123/-
(ii)	Expenditure on conveyance		1,00,000/-
(iii)	Expenditure on special diet		1,00,000/-
(iv)	Cost of nursing/attendant		
(v)	Cost of artificial limb		NIl
(vi)	Loss of earning capacity		100%

(vii)	Loss of Income		NIL
(viii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life.		NIL
(ix)	Attendant		36,09,024/-
12.	**Non-pecuniary Loss:**		
(i)	Compensation for mental and physical shock		50,000/-
(ii)	Pain and suffering		1,00,000/-
(iii)	Loss of amenities of life		50,000/-
(iv)	Disfiguration		2,00,000/-
(v)	Loss of marriage prospects		NIL
(vi)	Loss of earning, inconvenience, hardships, disappointment,frustration, mental stress, dejectment and unhappiness in future life etc.		5,00,000/-
13.	**Disability resulting in loss of earning capacity**		100%
(i)	Percentage of disability assessed and nature of disability as permanent or temporary		88%
(ii)	Loss of amenities or loss of expectation of life span on account of disability.		NIL
(iii)	Percentage of loss of earning relation to disability		100%
(iv)	Loss of future income & earning capacity		1,42,56,000/-
14.	**Total Compensation**		**1,95,28,147/-**

15.	Interest amount up to the date of award (**66** Months)		**96,66,432/-**
16.	Total amount including interest		**Rs. 2,91,94,579/-**
17.	Award amount released		**11,94,579/-**
18.	Award amount kept in the **FDRs/ Motor Accident Claims Annuity Deposit (MACAD)**		The remaining awarded amount be invested and deposited in 180 monthly fixed deposits receipts (FDR) of equal amounts for a period of 180 months as per Motor Accident Claims Annuity Deposits Schemes.
19.	Mode of disbursement of the award amount to the petitioner (s)		ECS
20.	Next date for compliance of the award		**15.09.2026**

H Compliance

130. The particulars of Form XVII of the ***Scheme For Motor Accidents Claims Formulated by the Delhi High Court***, in terms of order dated 08.01.2021 in ***Rajesh Tyagi (supra)*** are as hereunder:

1.	Date of the accident	30.10.2020
2.	Date of filing of ***Form I- First Accident Report (FAR)***	N.A.
3.	Date of delivery of ***Form-II*** to the victim(s)	N.A.
4.	Date of receipt of ***Form-III*** from the Driver	N.A.
5.	Date of receipt of ***Form-IV*** from the owner	N.A.

6.	Date of filing of the ***Form-V-Interim Accident Report (IAR)***	N.A.
7.	Date of receipt of ***Form-VIA*** *and* ***Form VIB*** from the Victim (s)	N.A.
8.	Date of filing of ***Form-VII-Detailed Accident Report (DAR)***	N.A.
9.	Whether there was any delay or deficiency on the part of the Investigating Officer? If so, whether any action/direction warranted?	No.
10.	Date of appointment of the Designated Officer by the Insurance Company.	
11.	Whether the Designated Officer of the Insurance Company submitted his report within 30 days of the DAR?	No.
12.	Whether there was any delay or deficiencies on the part of the Designated Officer of the Insurance Company? If so, whether any action/direction warranted?	No
13.	Date of response of the petitioner(s) of the offer of the Insurance Company.	NA
14.	Date of the Award	12.08.2026
15.	Whether the petitioner(s) were directed to open savings bank account(s) near their place of residence?	Yes.
16.	Date of order by which petitioner(s) were directed to open savings bank account(s) near his place of residence	22.02.2021

	and produce PAN Card and Adhaar Card and the direction to the bank not issue any cheque book/debit card to the petitioner (s) and make an endorsement to this effect on the passbook(s).	
17.	Date on which the petitioner(s) produced the passbook of their savings bank account near the place of their residence along with the endorsement, PAN Card and Adhaar Card?	NA
18.	Permanent Residential Address of the petitioner(s)	As mentioned above.
19.	Whether the petitioner(s) savings bank account(s) is near his place of residence?	NA
20.	Whether the petitioner(s) were examined at the time of passing of the award to ascertain his/their financial condition?	No

131. Further, in terms of the directions given vide order dated 08.01.2021 in **Rajesh Tyagi (supra)**, the Ahlmad shall send a certified copy of this award to the concerned Criminal Court and to the Delhi State Legal Services Authority through e-mail. Copy of the award be also sent to the bank concerned. The Nazir is directed to maintain the record in Form XVIII as per the directions given in the above case.

132. File be consigned to record room after completion of necessary formalities. Separate file be prepared for compliance report and be put up on **15.09.2026.**

Abhilash Malhotra

Digitally signed by Abhilash Malhotra
Date: 2026.08.12 16:07:32 +0530

Announced in the open court
on 12.08.2026.

(**Dr. Abhilash Malhotra**)
Judge/PO, MACT-02,
New Delhi/ 12.08.2026

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