

DLNW010103192021



Presented on : 18-12-2021  
Registered on : 21-12-2021  
Decided on : 14-03-2026  
Duration : 4 years, 2 months,  
27 days

IN THE COURT OF  
ADJ1(NW)/MACT, NORTH WEST DISTRICT DELHI  
Presided Over by Sh. Vikram

MACT/493/21  
FIR No. 22/21, PS Sarund, Jaipur

*In the matter of : Sh. Surinder Kumar (Deceased)*

1. *Mithlesh Devi (Wife of deceased)*
2. *Master Adarsh Jasaiwal (Son of deceased)*
3. *Sapna Jasaiwal (Daughter of deceased)*

*All R/o Q-10/55, Mangolpuri,  
Delhi-110083.*

4. *Hari Singh (Father of deceased)  
R/o Q10/16, Mangolpuri,  
Delhi-110083.*

.....Petitioners

vs.

1. *Kamal Kumar Sharma  
S/o Sh. Chattar Bhuj  
R/o Village Sawup Sarai,  
P-8, Mandawar, District Alwar,  
Rajasthan.*

.....Driver/R1

2. *Hansraj*

*S/o Sh. Rati Ram  
R/o Village Majri Bhada,  
PS Mandawar, District Alwar,  
Rajasthan.*

*.....Owner/R2*

3. *National Insurance Co. Ltd.  
Office at: H-1/2, V K Complex,  
Near Laxmi Mandir, Sahakar Marg,  
Tonk Road, Jaipur, Rajasthan-302015.*

*.....Insurance  
Co./R3*

*Appearance (s) : Ms. Rachna and Sh. Sanjeev Solanki, Ld.  
Counsels for the petitioners.  
Sh. Sanjay Kumar, Ld. counsel for  
Insurance Co./respondent no. 3.*

### **JUDGMENT/AWARD**

1. Vide this judgment/award, I shall dispose off the claim petition bearing MACT no. 493/2021 filed in regard to death of Sh. Suriender Kumar (*in short, the deceased*), who died in a road vehicular accident on 15.01.2021.
2. The brief facts relevant for disposal of the present Claim Petition are that on 15.01.2021 deceased was travelling from Delhi to Jaipur in a car bearing registration no. DL 5CE 5936. There were three more persons in the car. When they stopped the car on the side of the road for breakfast/tea, one bus bearing registration no. RJ 32 PA 2892 (hereinafter referred to as offending vehicle), which was being drive by its driver/R1 rashly and negligently in high speed, hit the car from behind due to which deceased sustained injuries. Deceased was

rushed to BDM Hospital, Kotputli from where he was referred to NIMS Hospital and from NIMS Hospital deceased was referred to SMS Hospital, Jaipur where he expired during treatment on 16.01.2021. FIR no. 221/2021 was registered at PS Sarund, Jaipur for the offences punishable under Section 279/338/304A IPC. PM on the body of deceased was conducted vide PM report no. 62/PMR/2021.

3. As per claim petition and charge sheet filed on record, R1 was driving the offending vehicle in negligent manner which caused the accident. As such R1 was charge-sheeted for offences under section 279/337/338/304A IPC.
4. No WS/reply was filed on behalf of R1 & R2 despite opportunity.
5. WS/reply filed on behalf of R3 disputing the claim for want of knowledge and subject to statutory defence available.

**ISSUES:**

6. After completion of pleadings, following issues were framed by this Tribunal on 26.09.2023: -

***1. Whether deceased Sh Surinder Kumar, S/o Sh. Hari Singh expired due to injuries suffered in road traffic accident on 15.01.2021 at about 11:30 am, way of Delhi to Jaipur, Near Raghunathpura, Kotputli, District Jaipur, Rajasthan, in front of Prince Hospital due to rash and negligent driving of offending vehicle***

*bearing no. RJ 32 PA 2892 which was being driven by driver Sh. Kamal Kumar Sharma, S/o Sh. Chattar Bhuj on the said date, time and place? OPP.*

*2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP*

*3. Relief.*

**EVIDENCE:**

7. In evidence petitioners have examined Sh. Amninder Singh, Senior Tax Assistant as Pw-1 who proved ITR record of deceased for the assessment year 2015-16 to 2020-21 as Ex.Pw1/A to Ex.Pw1/E respectively.
8. Petitioners have examined Dr. S P Maurya, Surgeon at Government BDM Hospital, Kotputli as Pw-2 who proved the referral card as Ex.Pw2/A through which deceased was referred to Higher Centre (SMS Hospital, Jaipur).
9. Petitioner no. 1 examined herself as Pw-5 and filed her affidavit Ex.Pw5/A. She relied on copy of his aadhar card, ID proof of dependents of deceased, educational/professional qualification document/certificates, medical bills, treatment record, funeral expenses record, death certificate of deceased and charge sheet as Ex.Pw5/1 to Ex.Pw5/6.
10. During her cross examination, she denied that she has not spent a sum of Rs. 65,000/- on the treatment of deceased/her

husband. She deposed that she has not got any claim either from any medi claim insurance policy or any other life insurance policy. She also deposed that she has also not got any claim from any Bar Association also. She deposed that deceased use to give Rs. 50,000/- as household expenses.

11. Petitioners have also examined Sh. Suresh Kumar as Pw-6 who was also with the deceased at the time of accident. He deposed that their car was hit by a bus bearing registration no. RJ 32 PA 2892 from behind. During his cross examination, he denied that driver of the car was driving the car rashly and negligently or that accident was occurred due to sole negligence of driver of car. He also denied that R1 was not driving the offending vehicle rashly and negligently.
12. No evidence was led by respondents. Thereafter, the evidence was closed.

**ISSUE NO.1**

***1. Whether deceased Sh Surinder Kumar, S/o Sh. Hari Singh expired due to injuries suffered in road traffic accident on 15.01.2021 at about 11:30 am, way of Delhi to Jaipur, Near Raghunathpura, Kotputli, District Jaipur, Rajasthan, in front of Prince Hospital due to rash and negligent driving of offending vehicle bearing no. RJ 32 PA 2892 which was being driven by driver Sh. Kamal Kumar Sharma, S/o Sh. Chattar Bhuj on the said date, time and***

*place? OPP.*

13. It is well settled that the procedure followed for proceedings conducted by an accident tribunal is similar to that followed by a civil court and in civil matters the facts are required to be established by preponderance of probabilities only and not by strict rules of evidence or beyond reasonable doubts as are required in a criminal prosecution. The burden of proof in a civil case is never as heavy as that is required in a criminal case, but in a claim petition under the Motor Vehicles Act, this burden is infact even lesser than that in a civil case. Reference in this regard can be made to the propositions of law laid down by the Hon'ble Supreme Court in the case of **Bimla Devi and others Vs. Himachal Road Transport Corporation and others, reported in (2009) 13 SC 530**, which were reiterated in the subsequent judgment in the case of **Parmeshwari Vs. Amir Chand and others 2011 (1) SCR 1096 (Civil Appeal No.1082 of 2011)** and also in another case **Mangla Ram Vs. Oriental Insurance Co. Ltd. & Ors., 2018 Law Suit (SC) 303**.

14. In order to prove this issue, the petitioner has examined herself as Pw5 in this case and proved criminal proceedings documents of case FIR no. 22/2021. Petitioner has also examined Sh. Suresh Kumar as Pw-6, who was with the deceased in the car at the time of accident. He deposed that offending vehicle hit the car from behind due to which accident occurred. R1 & R2 have not contested the claim of petitioner. Therefore, from the evidence produced and charge

sheet of FIR no. 22/21, PS sarund, Jaipur, it is held that the rashness and negligence on the part of driver of the offending vehicle, was responsible not only for this accident, but also for everything that followed thereafter. Accordingly issue no.1 is decided in favour of the petitioner and against the respondents.

### **COMPENSATION**

15. Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. In this regard, though not quoted, reliance is placed upon, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121.*

16. It is claim of petitioner that deceased was an Advocate by profession and was earning more than what is show in the ITRs and deceased used to give Rs. 50,000/- towards household expenses. The accident occurred on 15.01.2021. As per ITR for the assessment year 2020-21, the total income of

deceased was Rs. 4,44,110/-. As per the ITR, the monthly income of the deceased is Rs. 37,010/- per month. As per the record proved, deceased was enrolled as an Advocate on 07.11.2001 with Bar Council of Delhi. He had a standing with the Bar for 20 years before the accident. He was also a member of Delhi High Court Bar Association. Alongwith written submission, ld. Counsel for petitioner has filed list of cases in which deceased was engaged as an advocate. However, the same is not proved on record in evidence nor any evidence or vakalatnama of those cases are filed alongwith the list. But considering that deceased was engaged in legal profession for 20 years before the accident, it cannot be contemplated that deceased was earning Rs. 37,010/- per month at the time of accident. Considering the period of deceased in legal profession, I am of the view that deceased was earning not less than a sum of Rs. 50,000/- per month at the time of accident as stated by the petitioner in her affidavit at para no. 2. Therefore, the monthly income of deceased is considered as Rs. 50,000/- per month at the time of accident.

17. The claimants/petitioners are wife, son, daughter and father of deceased. Monthly income of deceased has already been assessed above as Rs. 50,000/- per month. As per educational documents, deceased was about 49 years old on the date of accident.

18. Ld. Counsel for the petitioners further argued that future prospects should also be awarded to the petitioners as per law.

19. Accordingly, on the basis of aforementioned documents, age of the deceased is taken as **49 years** as on the date of accident. Hence, the multiplier of “13” would be applicable in view of pronouncement made in case titled as *Sarla Verma (supra)*.

20. Considering the fact that deceased was aged about 49 years at the time of accident, **future prospects @ 25 %** has to be awarded in favour of petitioners in view of recent pronouncement made by Constitutional Bench of Apex Court in the case titled as *National Insurance Company Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680*, as well as in view of recent decision of Hon'ble Delhi High Court in appeal *Bajaj Allianz General Insurance Company Ltd. Vs. Pooja & Ors, in MAC APP No. 798/2011*.

21. Claimants/petitioners are wife, son, daughter and father of deceased of deceased. Thus, there has to be deduction of “**one fourth (1/4th)**”, as per the mandate of *Sarla Verma (supra)*. Thus, total loss of dependency would come out as under:

22. Thus, total loss of dependency would come out as under:

	<b>Head</b>	<b>Amount (Rs.)</b>	<b>Remarks</b>
	Monthly Income of deceased <b>(A)</b>	<b>50,000</b>	
	<b>Less:</b> Personal expenses of deceased @ one fourth (1/4th) <b>(B)</b>	<b>12,500</b>	<b>(A)/4= (B)</b>

	Monthly loss of dependency (C)	37,500	[(A)- (B)]=(C)
	Annual Loss of dependency (D)	4,50,000	(C) x 12 = (D)
	Multiplier @ 13 (E)	58,50,000	(D) x 13 (multiplier) = (E)
	Add: Future Prospects @ 25% (E)	14,62,500	(E) X 25%
	<b>Total</b>	<b>73,12,500</b>	

### LOSS OF LOVE & AFFECTION

23. After the judgment passed in *National Insurance Company Ltd. v. Pranay Sethi & Ors. (supra)* and recent judgment titled as *New India Assurance Company Limited v. Somwati & Ors., Civil Appeal no. 3093 of 2020* the petitioners are not entitled to be compensated under this head. Further, Hon'ble Delhi High Court in appeal titled as *Bajaj Allianz General Insurance Company Ltd. Vs. Pooja & Ors, (supra)* has been pleased to observe in para 18 of the judgment that the Constitution Bench decision in *Pranay Sethi (supra)* does not recognize any other non-pecuniary head of damages. **Hence, no amount of compensation is being awarded under this head.**

### LOSS OF CONSORTIUM

24. In view of the judgment of Hon'ble Supreme Court in case titled as, “*Rojalini Nayak & Ors. Vs. Ajit Sahoo & Ors.*”, *Civil Appeal* dated 07.08.2024, I am of the considered opinion that LRs of deceased is entitled for payment of Rs. 1,93,600/- (Rs. 48,400/- x 4) towards loss of consortium. **Consequently, a sum of Rs. 1,93,600/- is awarded to the petitioner under this head.**

## LOSS OF ESTATE & FUNERAL EXPENSES

25. In view of the facts and circumstances of the present case and in view of decision of Hon'ble Apex Court in the case of “Rojalini Nayak & Ors. Vs. Ajit Sahoo & Ors.”, *Civil Appeal* dated 07.08.2024 mentioned supra, a sum of Rs, 18,150/- is awarded in favour of petitioner on account of loss of estate and a sum of Rs. 18,150/- is awarded in favour of petitioner towards funeral expenses.

### Medical or Treatment Expenses:

26. Petitioner no. 1 has claimed that she has spent a sum of Rs. 65,000/- on medical treatment of deceased. However, the medical bills proved on record are amounting to Rs. 16,555/- only. Therefore, a sum of Rs. 16,555/- is granted under this head.

27. Thus, the total compensation is assessed as under:

S. No.	Head	Amount (Rs.)
1	Loss of dependency	73,12,500/-
2	Loss of Consortium	1,93,600/-
3	Loss of Estate &Funeral Expenses	36,300/-
4	Medical or Treatment Expenses	16,555/-
	<b>TOTAL</b>	<b>75,58,955/-</b>

## LIABILITY

28. Now, the question which arises for determination is as to which of the respondents is liable to pay the compensation amount. Offending vehicle was insured with R3 at the time of accident and R3 has no statutory defence. As such R3 is directed

to pay the compensation in favour of petitioners.

29. **The parties are directed to download the digital copy of judgment online.** R3 is hereby directed to deposit the award amount within 30 days from the date of this Award by way of NEFT or RTGS mode in the account of this Tribunal maintained with SBI, Rohini Courts, Delhi under intimation to the petitioner/injured and this Tribunal in terms of the format for remittance of compensation as provided in **Divisional Manager Vs. Rajesh, 2016 SCC Online Mad. 1913 (and reiterated by Hon'ble Supreme Court in the orders dated 16.03.2021 and 16.11.2021 titled as Bajaj Allianz General Insurance Co. Pvt. Ltd. Vs. Union of India & Ors)** along with interest @ 9% per annum.

### **ISSUE NO.3: RELIEF**

30. In view of the aforesaid discussion, I award compensation of **Rs. 75,58,955/- (Rupees Seventy Five Lacs Fifty Eight Thousand Nine Hundred Fifty Five only)** alongwith interest @ 9% per annum w.e.f the date of filing of claim petition i.e. 21.12.2021 till compliance and @ 12% per annum thereafter. However, it is directed that the amount of interim award and interest for the suspended period, if any, during the course of this inquiry, shall be liable to be excluded from the above amount and calculations of compensation.

### **APPORTIONMENT**

31. Statement of petitioners under Clause 29 MCTAP have not been recorded. The award amount is apportioned as follows: Petitioner no. 1, 2 & 3 are awarded a sum of Rs. 28,00,000/- lac

each alongwith interest and petitioner no. 4 is awarded a sum of Rs. 6,21,455/- alongwith interest, out of award amount.

32. Concerned Manager, SBI, Rohini Court Branch shall transfer the disbursed amount immediately to the petitioners in their MACT/saving bank accounts, on completing necessary formalities as per rules.

33. Copy of this Award alongwith one photograph each, specimen signatures, copy of bank passbook and copy of residence proof of the petitioners, be sent to Nodal Officer of SBI, Rohini Court, Branch, Delhi for information and necessary compliance.

34. **Form V and IVB in terms of MCTAP are annexed herewith as Annexure-A.**

35. Nazir is directed to report before the Court after 30 days about the payment of award amount.

36. File be consigned to record room after due compliance.

**ANNOUNCED IN THE OPEN COURT  
ON 14<sup>th</sup> DAY OF MARCH, 2026**

**VIKRAM**  
DJ-1+MACT, NORTH WEST,  
ROHINI COURTS, DELHI