

27.03.2026

Present : Mr. Manoj Rai, Ld. Counsel for claimant.
None respondents no. 1 and 2.
Mr. Garud MV, Ld. Counsel for respondent
no.3/Insurance Company.

An application for summoning of respondent no. 1 as a witness is filed by Ld. Counsel for respondent no. 3. Copy is supplied.

It is submitted by the Ld. Counsel for the respondent no. 3 that since report of FSL which discloses the alcohol content in the blood sample of respondent no. 1 was received only on the last date of hearing, the respondent no. 3 is of the view that it is necessary to now examine respondent no. 1 as a witness so that the Tribunal is able to adjudicate whether there was negligence of respondent no. 1 or not.

Ld. Counsel for the claimant has opposed the application. He submits that application has been filed belatedly and respondent no. 3 has already closed its evidence.

He states that in the connected case, a finding regarding negligence has already been given and therefore, the issue of negligence cannot be reopened in the present case.

Arguments are heard and record is perused.

In the case of New India Assurance Co. Ltd. Vs. Hira Lal MAC APP. No.773/2010 decided by Hon'ble High Court of Delhi on

15.12.2011, it was held that traces of alcohol in the breath of the injured by itself is not sufficient to infer that the injured had contributed to the causing of motor accident. It was held negligence is a question of fact which has to be proved by leading supportive evidence.

It was also held that the driver had to lead positive evidence to establish negligence of the injured.

The Tribunal is of the view that it will only benefit from the evidence of respondent no. 1 while adjudicating the issue of negligence. No prejudice will be caused to the claimant if respondent no. 1 is summoned for leading of evidence.

A short date of hearing can be given so that evidence can be recorded at the earliest and case is decided expeditiously.

The Tribunal does not agree with the view that it is bound by the finding on negligence given in the connected case.

The present case is separate and parties should be permitted to lead separate evidence in the present case, in case they so desire.

Application of respondent no. 3 is allowed.

On filing of PF by the respondent no. 3, issue summons for service upon respondent no. 1 through the IO and concerned SHO for recording of testimony on next date of hearing.

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At the request of Ld. Counsel for respondent no. 3, it is directed that summons be also given dasti to him for effecting service upon the witness.

Diet money be paid by the respondent no. 3 on the spot.

To come up for recording testimony of respondent no. 1 on 25.04.2026.

(Shirish Aggarwal)
Judge/ PO, MACT-01
New Delhi, 27.03.2026