BEFORE PRATEEK JAIN,
MOTOR ACCIDENT CLAIMS TRIBUNAL, PALWAL.
(UID No.HR0301)

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I

HRPL010045992021

MACP No.	:	65 of 2021
Presented on	:	18.08.2021
Registered on	:	18.08.2021
Decided on	:	06.07.2026

CIS No. MACP/272/2021
CNR No.HRPL010045992021

1. Smt. Nisha Devi widow of late Kapil Aggarwal, aged about 32 years, Aadhar No. 3047464152127, A/c No.3398101009423 with Canara Bank Branch Hodal, Tehsil Hodal, District Palwal.

2. Vivek Garg son of late Kapil Aggarwal, aged about 06 years, Aadhar No. 235037491720, A/c No.110005421220 with Canara Bank Branch Hodal.

3. Mohit Garg son of late Kapil Aggarwal, aged about 04 years , Aadhar No. 24464159093, A/c No.110005656240 with Canara Bank Branch Hodal,

All residents of Near Kapil Vatika Hodal, Tehsil Hodal, District Palwal. The minors petitioners no.2 and 3 through their real mother/natural guardian Smt. Nisha Devi.

....Claimants.

Versus

1. Hardik Kalra sonof Sh. Dharam Pal Kalra resident of H. No. 284, W. No. 3 Hodal, Tehsil Hodal, District Palwal
(Driver of the offending vehicle/motor-cycle No. HR-50-G-8222).

2. Yash Pal Kalra son of Sh. Jugal Kishor resident of W. No.3 Hodal, Tehsil Hodal, District Palwal
(Owner of the offending vehicle/motor-cycle No. HR-50-G-8222).

3. Acko General Insurance Limited, 301/302, 3rd floor, F Wing Lotus Corporate Park Gurgaon (East) Mumbai-400063, through its Divisional Manager, Policy No.BPCR00000074111/00, valid from 09.04.2019 to 08.04.2024
(The Insurer of the offending vehicle/motor-cycle No. HR-50-G-8222).

...Respondents.

II

MACP No.	:	101 of 2021
Presented on	:	13.10.2021
Registered on	:	13.10.2021
Decided on	:	06.07.2026

CIS No. MACP/357/2021
CNR No.HRPL010060532021

1. Maya Devi wife of Subhash, aged about 58 years and her bank account No. MSB65306230121 in SBI.

2. Subhash son of Nathi, aged about 64 years and his bank account No. 3398101001921 in Canara Bank Hodal.
3. Bharti daughter of Subhash, aged about 23 years,

All residents of Ward No.8, New Jain Mandir, Adrash Colony Hodal, Tehsil Hodal, District Palwal.

....Claimants.

Versus

1. Hardik Kalra sonof Sh. Dharam Pal Kalra resident of H. No. 284, W. No. 3 Hodal, Tehsil Hodal, District Palwal
(Driver of the offending vehicle/motor-cycle bearing its No. HR-50-G-8222).

2. Yashpal Kalra son of Sh. Jugal Kishor resident of W. No.3 Hodal, Opposite Old Post Office, Near Masjid, Hodal, Tehsil Hodal, District Palwal
(Owner of the offending vehicle/motor-cycle bearing its No. HR-50-G-8222).

3. Acko General Insurance Limited registered office at Unit No. 301& 302, 3rd floor, F Wing, Lotus Corporate Park Gurgaon (East) Mumbai-400063, through its M.D./Director.
Divisional Manager, Policy No.
(The Insurer of the offending vehicle/motor-cycle bearing its No. HR-50-G-8222 vide its Policy Number BPCR00000074111/00, valid from 09.04.2019 to 08.04.2024).

...Respondents.

4. Nisha wife of late Kapil,

5. Vivek Garg minor son of late Kapil,

6. Mohit Garg minor son of Late Kapil, minor through their mother and natural guardian namely Smt. Nisha wife of Late Kapil,

All residents of Lahukhand Colony, Hodal, Tehsil Hodal, District Palwal.

… Performa Respondents.

Claim petitions under Section 166 of Motor Vehicles Act, 1988.

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Present: Shri K.K. Gupta and Sh. Harish Gupta, Advocates for the claimants in the petition (I) & (II) respectively.
Shri J.S. Sorout, Advocate for respondents no.1 and 2.
Shri Rakesh Dabass, Advocate for respondent No.3.

CONSOLIDATED AWARD:

In Claim Petition having CIS No. 272 of 2021 titled as *'Nisha Devi Versus Hardik Kalra and others' and* claim petition having CIS No. 357 of 2021 titled as *' Maya Devi and others Versus Hardik and others'* were consolidated by this tribunal vide order dated 23.11.2023 and further proceedings were ordered to be conducted in claim petition having CIS No.

272 of 2021 titled as *'Nisha Devi Versus Hardik and others'* to be read in the above mentioned connected two claim petitions'.

2. Claimants of the two claim petitions have sought compensation on account of deaths of Kapil Aggarwal son of Sh. Subhash in case CIS No. 272 of 2021 and CIS No. 357 of 2021 due to injuries suffered in a motor vehicular accident.

3. Brief facts of the case, as narrated in the FIR, got lodged by Nisha Devi wife of Late Sh. Kapil Aggarwal resident of Near Kapil Vatika Hodal Tehsil Hodal District Palwal are that on 30.05.2021 at about 07:15 p.m. she alongwith her husband Kapil Aggarwal, alongwith Shyam Sunder (son of Prakash Chand), Sarvdev (son of Amar Singh), and Harichand, all residents near Kapil Vatika, Hodal, were returnining home on foot after visiting the market. As they reached near Tyagi Petrol Pump, Hodal, a motorcycle rider came from behind at a high speed, driving rashly and negligently, and hit her husband. Due to the impact, he fell on the road and suffered serious injuries. Before they could stop him, the motor-cycle rider fled from the spot with the motor-cycle. She noted the motor-cycle registration number as HR50G8222. Two persons were riding the motor-cycle, and they can identify them if they are produced before them. Her husband was first taken to Life Care Hospital, Hodal, where the doctors referred him to Faridabad because of his serious condition. He is presently undergoing treatment at Metro Hospital, Faridabad and his condition remains critical and prayed for taking action against the accused. On the

basis of aforesaid complaint, case under sections 279, 336 and 427 of IPC was registered on 31.05.2021 at police station Hodal in District Palwal against unknown driver vide FIR No.174.

4. In claim petition having CIS No. 272 of 2021 titled ' Nisha Devi and others Versus Hardik and others', it was pleaded that Kapil Aggarwal son of Subhash (deceased) was hale, healthy and young person of 37 years of age and his tragic death has caused a hammer blow to the petitioners and brought gloom in their life, smashed their dreams and shattered them badly. The deceased was Photographer & Videographer and earned ₹37,141/- per month. The things are really become bad for them because they were not expecting such a early demise of their earning hands because he was only bread earner in the family of the petitioners and all the petitioners were fully dependent upon the income of deceased. The family of the deceased have been draged to the point of starvation and it is difficult for them to meet the both ends. They have also lost the love and affection towards the deceased and their life have become harden, dry and devoid of joy, hapiness. Beside this the petitioners have also suffered pecuniary loss, loss of love and affection, loss of income, loss of future prospects, mental pain and suffering. They have no source of income. Claimants, being widow, minors children of the deceased Kapil Aggarwal, have laid a claim of ₹1,00,00,000/- along with interest @ 18% per annum on account of death of Kapil Aggarwal son of Subhash.

5. In claim petition having CIS No.357 of 2021, titled as 'Maya Devi and others Versus Hardik and others', claimants Maya Devi etc. pleaded that Kapil, since deceased was a energetic man of about 38 years of age and he was having a very good health and physique and he was doing work as Photographer and was earning of ₹50,000/- per month and he used to contribute his entire income upon the maintenance of the petitioners and performa respondents and the all petitioners and performa respondents were fully dependents upon the income of deceased Kapil, but due to the sudden and untimely death of deceased in the said accident in question, they have been deprived off from their only source of income and they have also left with no source of their income. They have also suffered a great mental pain and agony and they have no hope of their future. They are unable to earn anything and earning themselves and whole family going starvation due to the untimely death of Kapil. They have no source of income. Claimants, being parents and sister of the deceased Kapil, have laid a claim of Rs.50,00,000/- along with interest @ 18% per annum on account of death of Kapil son of Subhash.

6. The petitions were contested by all the private respondents.

Respondents no.1 & 2 appeared and filed joint written statements, wherein preliminary objections with regard to maintainability, cause of action, non-joinder of necessary parties, estoppel, concealment of true and material facts etc. were taken. On merits, it was submitted that the FIR was lodged by the police of P.S. Hodal, District Palwal, in collusion with the petitioners in order to help the petitioners in claiming false and compensation from the respondents by falsely implicating the respondent no.1 and the motor-cycle No. HR-50G-8222. It is further submitted to the extent that the registration number of the motor-cycle is HR-50G-8222, but it is categorically denied that the motor-cycle is the offending vehicle or was involved in the accident.

Respondent no.3 appeared and filed written statements in two petitions, wherein preliminary objections with regard to maintainability, cause of action, mis-joinder and non-joinder of necessary parties etc. were taken. On merits, it was submitted that the petitioners should be put to strict proof of their each and every contentions by way of cogent, reliable, documentary and sustainable evidence in this behalf. It is further submitted that FIR No. 174 dated 31.05.2021 under Section 279/336/337 IPC, P.S. Hodal, Palwal has been procured by the petitioners in connivance with the respondent No.1, insured, interested persons and police as well as in order to lodge the present false and unsustainable claim to fleece the compensation amount, if any, against the respondent No.3 being a Private Sector undertaking. It is further submitted that as per record of the respondent No.3, Bajaj Platina 100 bearing Engine No. 16030 and Chasis No. 36902 is insured with the respondent No.3 in the name of Yashpal Kalra resident of W. No.3, Hodal, Haryana-121106 vide Insurance Policy No. BBCR00000074111/00 valid for the period 09.04.2019 to 08.04.2024. It is further submitted that in case the petitioners have been able to prove their contentions, with cogent, reliable, documentary and sustainable evidence to the effect that alleged accident had taken place and this Hon'ble Tribunal also comes to such a conclusion, then the same had taken place due to the sole negligence of the deceased himself by walking carelessly in a negligent manner and without observing traffice rules and norms on the road. It is further submitted that if this Hon'ble Tribunal comes to a conclusion that the driver of Motor-cycle No. HR-50G-8222, if found to be insured, was also negligent alongwith the deceased and held contributory negligent then in that case, the amount of compensation, if any, is to be apportioned in proportion to their respective negligence, which is to be calculated and reduced to be extent of their contributory negligence and the established principles.

7. No rejoinder was filed. From the pleadings of the parties, following consolidated issues were framed by this tribunal vide order dated 17.11.2022:

1. *Whether the petitioners are entitled to the compensation under Section 167 of the Motor Vehicle Act, 1988 from the respondents, as prayed for ?OPP*
2. *If issue no.1 is proved, what would be the extent of said compensation and which respondent would be liable to pay the same? OPP*
3. *Whether the present petition is maintainable, as per the provision of law?OPR*
4. *Relief.*

8. To prove their case, claimant examined (CIS No.272 of 2021) **Nisha Devi widow of Kapil Aggarwal as PW-1,** who tendered her affidavit Ex.PW1/A in her evidence which has been prepared on her instructions which may be read into her evidence and FIR Ex.P1 also be read in her evidence.

PW-2 Subhash father of deceased Kapil has tendered duly sworn affidavit Ex.PW-2/A reiterating the facts as stated in the claim petition.

PW-3 Chanderveer Criminal Ahlmad has deposed that he had brought the summoned case file title as ***State Vs. Hardik, FIR No. 174/31.05.2021, under Section 279, 336, 337 & 304-A IPC, P.S. Hodal,*** which is fixed for PWs for 20-07-2024. The charge has been framed against Hardik Kalra vide order dated 13.10.2021 and offending vehicle was released on superdari to its registered owner vide order dated 15.06.2021. He has seen and compared the copy of DL and copy of RC and insurance policy which are correct copies as per summoned file which are Ex.P2 to Ex.P4 respectively.

PW-4 Subhash Chander, Inspector, Income Tax Office, Faridabad deposed that he had brought the summoned record of income tax returns of Kapil Aggarwal for the assessment year 2019-20, 2020-2021 and 2021-2022 which are Ex.P5 to Ex.P7 respectively which are certified and signed by Sh. Rajesh Bhatia, Income Tax Officer, Faridabad.

PW5 Akash, Record Keeper, Metro Hospital, Sector-16, Faridabad deposed that he had brought the summoned record of bills pertaining to Kapil Aggarwal and he remained admitted in their hospital from 30.05.2021 till his death on 09.06.2021 and their hospital issued the bills and receipts for the amount charged for his treatment and the bills are Ex.P8 to Ex.P10 and receipts were also issued in favour of the patient which are Ex.P11 to Ex.P12 and the MLR of Kapil as well as death summary of Kapil Aggarwal are also Ex.P13 and Ex.P14 which are correct as per record broguht by him.

Thereafter, learned counsel for petitioner Nisha has closed the oral evidence on behalf of petitioner Nisha Devi etc. vide separately recorded statement on 29.02.2024. Learned counsel for the petitioner Maya Devi has closed the evidence after tendering the documents i.e. Ex.P15 to Ex.P18 vide separately recorded statement on 14.03.2024. Learned counsel for petitioner has closed the evidence after tendering the document Ex.P19 vide his separately recorded statement on 04.04.2024.

9. On the other hand, learned counsel for respondents No.1 and 2 has closed the evidence after tendering the document i.e. Ex.R1 to Ex.R3 vide separately recorded statement on 22.08.2024. Learned counsel for respondent no.3 has closed the evidence after tendering the document insurance police Ex.RX vide his separately recorded statement on 14.11.2024.

10. No evidence in rebuttal was produced by claimants of either of the three consolidated petitions.

11. Learned counsel for the parties made their respective submissions.

12. I have heard the submissions and have perused the record. My issue-wise findings with reasons thereof are as under:-

Issue No.1:

13. It has been argued by learned counsels for the claimants that the evidence brought on record is sufficient to prove that the deaths of Kapil Aggarwal son of Sh. Subhash had occurred due to sustaining of injuries in the accident, caused by respondent no.1 on 30.05.2021 due to his rash and negligent driving of the offending vehicle bearing registration No. HR-50G-8222,.

14. It is well settled proposition of law that in the claim cases pertaining to road accidents, the strict principles of proof in a criminal case are not attracted and claimants are merely to establish their case on the touchstone of preponderance of probabilities. Reliance in this regard could be upon ratio of law as laid down by Hon'ble Apex Court in case titled as ***Parmeshwari Devi Versus Amir Chand and others, 2011 (2) RCR (Civil) 153*** and Hon'ble Punjab and Haryana High Court in ***Virender Jeet Singh Versus Tejender Singh and others, 2008(1) RCR (Civil) 67*** whereby it was held that Tribunal cannot act as criminal court and demand proof of accident beyond any shadow of reasonable doubt. The proceedings under

the Act are summary in nature and strict rules of evidence are not applicable. The job of the Tribunal is to ascertain that the accident has occurred due to the use of the vehicle and due to negligence on the part of the driver of said motor vehicle.

15. Record reveals that to prove the factum of accident, claimants examined PW-1 Nisha Devi, eye-witness to the accident, who tendered in evidence her duly sworn affidavit Ex.PW-1/A and deposed about eye witnessing the factum of accident and lodging of FIR Ex.P1. Copy of challan Ex.P19 submitted by the police in the FIR No. 174 dated 31.05.2021 shows that challan has been presented against present respondent No.1 under Sections 279, 336, 337, 304-A IPC. The FIR has been lodged by the complainant on next day i.e. on 31.05.2021 while the accident took place on 30.05.2021.

16. Now, it is to be seem whether respondents No.1 was negligent is driving or not.

Perusal of Ex.P19 challan filed by police in above FIR Ex.P1 shows that police has found, respondent No.1 negligent in driving the offending vehicle.

Moreover, after the incident deceased was injured Kapil got admitted in Life Care Hospital, Hodal from where he was referred to Faridabad and he was being treated and Metro Hospital, Faridabad on the day when FIR was got registered. Thereafter, during treatment on 10.06.2021 injured Kapil Aggarwal has succumbed to injuries. Death summary Ex.P14 shows that deceased has died on 09.06.2021 at 1:00 p.m. Perusal of challan Ex.P19 clearly proves that respondent No.1 was driver of the offending vehicle who was driving in rash and negligent manner thereby caused incident in which Kapil Aggarwal had died on account of sustained injuries.The rash and negligent act is also substantiate by PW-1 Nisha in her testimony.

17. Moreso, the respondent no.1 has not come forward to rebut the above discussed evidence of the claimants. It is also well settled that where the driver of the offending vehicle does not come forward to deny his negligence, there is presumption that version of the claimant is correct. Reliance in this regard can be placed upon ***Raju and others Versus Sukhvinder Singh and others 2006(4) RCR (Civil) 82,*** wherein it has been held that if the driver of the offending vehicle does not come forward to deny his negligence, then an inference has to be drawn in favour of the claimant and the driver is to be presumed as negligent.

18. It is well settled that where the driver is facing criminal trial for causing the accident, it is always safe to conclude that he was negligent. Reliance in this regard can be placed upon authority cited as ***Girdhari Lal Versus Radhey Shyam, 1993 (2) RCR 109,*** where similar observations were made.

19. Learned counsel for the respondent No.3 has argued that there is 1 day delay in lodging FIR therefore, the present case is planted one. Perusal of FIR Ex.P-1 reveals that the accident in question took place on

30.05.2021, whereas the FIR was lodged on 31.05.2021. It also contains the detail that the victims sustained serious injuries in the accident, who, during treatment was declared dead by the doctor at Metro Hospital, Faridabad.

In ***National Insurance Co. Ltd. Versus Neelam and others, FAO-29-2023 (O&M)*** *plea of insurance company was that delay in registering FIR proves that present case is a false case. In this case, it was held that cases under Motor Vehicle Act are to be decided on touchstone of probabilities. Factum of accident has proved. Once factum of accident has duly been proved, merely because there was a delay in lodging FIR, petition cannot be rejected. Petition allowed.*

It is well settled proposition of law that in cases of road side accidents, priority is always given to provide best treatment to the injured instead of running to the police to lodge a report. The Hon'ble Apex Court in case titled as ***Ravi Badrinarayan and others 2011(2) RCR (Civil) 190*** has observed as under:-

> *"The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactorily and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able*

> *to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."*

In view of discussion made above, it can safely be inferred that there is no intentional delay on the part of the claimants in lodging the FIR.

Hence, this issue is decided in favour of the claimants and against the respondents.

Issues no.2 and 3:

20. Both these issues are inter-linked, therefore, are taken up together for disposal.

21. Since, it has been held that the deceased Kapil died on account of injuries suffered by him in the accident, which took place due to rash and negligent driving of respondent no.1, now it is to be seen to what extent, the claimants being widow, children, parents and sister being unmarried respectively of the deceased are entitled for compensation.

Age of deceased:

22. Aged of deceased is an important factor in assessing compensation, to be awarded to the dependents of deceased. So, the age of Kapil Aggarwal, since deceased, is to be determined.

In the petition, age of the deceased is mentioned as 37 years. Perusal of Ex.P15, which is certificate issued by Principal Arya Uchh Vidhyalaya, Hodal, shows that deceased Kapil Aggarwal has passed his 10th

Class from above school and his date of birth is 15.10.1983. The accident took place on 30.05.2021 thus, the deceased was 36 years 7 months 15 days old i.e. in the age-group of 36-40 years, on the date of his accidental death.

Compensation on account of loss of dependency:

23. Learned counsel for the claimants has relied upon income-tax returns for the assessment years 2019-20, 2020-21 and 2021-22 (Ex.P-5, Ex.P6 and Ex.P-7) and on the basis of the same, has contended that the deceased was having professional income of ₹37,141/- per month. It is also contended that the deceased was photographer and videographer by profession and was earning handsomely.

In the assessment year 2019-2020 (Ex.P5), he filed the income-tax return showing annual income of ₹3,61,900/- and in the next income-tax return (Ex.P6) the same was mentioned as ₹4,02,930/- and in next Income Tax Returns for the assessment year 2021-2022 (Ex.P7), the same was mentioned ₹4,90,980/-. This return was filed on 28th March 2022 for the deceased assessee Kapil Aggarwal by Nisha Devi, claimant.

24. Perusal of Ex. P7 shows that same was submitted on 28th March 2022 by Nisha Devi, present claimant. So, this income tax return has been filed after the death of deceased Kapil Aggarwal. Moreover, the present claim petition has been filed on 18.08.2021, while above ITR Ex.P7 has been filed on 28.03.2022, after filing of present claim petition. So, this ITR cannot be taken into consideration for assessing the income of deceased Kapil Aggarwal.

However, the last income tax returns which could be considered for assessing the income of deceased is Ex.P6. This Ex.P6 has been duly proved by PW-4 Subhash Inspector Income Tax Officer, Faridabad. Perusal of this ITR of deceased Kapil Aggarwal shows that income from business and provisions was ₹4,45,700/- per annum and after deduction under Section 80-C and Section 80-D, taxable income was found to be ₹4,02,930/-.

25. Learned counsel for the respondent no.3 has contended that in the absence of any other document, income-tax returns cannot become the basis to infer the definite income of the deceased and as per Ex.P6 the deceased claimed exemption under Section 80-C and Section 80-D of Income Tax Act as such , the amount is liable to be deducted.

From the respective contentions raised and perusal of income-tax returns, it is apparent that the deceased was an income-tax assessee and his last admissible return Ex.P-6 reflects his annual income ₹4,45,700/- (₹37,141/- per month). Once the deceased notified his income through income-tax returns, there leaves no scope to doubt the same. Filing of income-tax returns is the best evidence showing the income of the person concerned. Pertinently, it is the case where the claimants are claiming income of the deceased on the basis of documents. Meaning thereby he was earning ₹37,141/- per month prior to his death.

The contention raised for the respondent no.3 that the deceased claimed deduction under Section 80-C and Section 80-D of the Income Tax

Act and as such, his income is liable to be reduced is of no help for the reasons that the statutory deductions are given in the shape of benefits given to an Income Tax Assessee for the purpose of tax benefits. It does not mean that after deduction, his income will stand reduced. As such, in the totality, the income of the deceased is taken as ₹37,141/- per month.

It is relevant to discuss here that apart from the income-tax returns, no other document including bank pass book etc. has been placed on record to show the regular savings of the deceased, who was photographer and videographer by profession. It can easily be presumed that a person who is earning ₹37,141/- per month and photographer and videographer by profession, must be having some office and vehicle being essential for his profession. This fact is further clarified from testimony of PW1, who in her cross-examination deposed that Kapil was running a Photo Studio in the name of Aggarwal Photo Studio in rented premises. In such a scenario, some expenses must be required to maintain the same. In order to earn ₹37,141/- per month, he must be spending some amount to run his shop of Photo Studio. In the circumstances, by presuming that he must be spending at least ₹10,000/- per month for maintaining his Photo Studio including rent, electricity transport, and equipments; same is liable to be deducted from the aforesaid total monthly income of the deceased, which after deduction of ₹10,000/-, comes to ₹27,141/- per month i.e. ₹3,25,692/- per annum (₹27,141/- x 12).

26. The deceased at the time of his accidental death was in the age-group of 36-40 years of age. Therefore, in view of proposition of law, as settled down by Hon'ble Supreme Court of India in case titled ***National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, future increase of 40% is to be made in the income of the deceased, which comes to be ***Rs.1,30,276.8/-***. In this way, total income of the deceased comes to ***₹4,55,968.8/- (₹3,25,692/- + ₹1,30,276.8/-) per annum.***

27. So far as dependency of the claimants are concerned, there are Nisha Devi widow of deceased Kapil Aggarwal, two minor sons namely Vivek Garg and Mohit Garg. There are other claimants namely Maya Devi and Subhash who are parents of deceased Kapil Aggarwal and Bharti aged 23 years sister of deceased Kapil Aggarwal. In the claim petition filed by Maya Devi including Bharti it has been mentioned that Bharti is sister of Kapil Aggarwal. During the course of arguments learned counsel for the claimants have submitted that Bharti is unmarried.

In Indian society, it is duty of brother to get married his sister as well as to responsibiliy take care of his unmarried sister. Though, there are parents of deceased as well as two other brothers but still unmarried sister cannot be said to be not dependent on deceased brother in the presence of parents. Therefore, there is no reason to consider that claimant Bharti is not dependent upon deceased Kapil Aggarwal being unmarried sister. So, in view of above discussion, it has become clear that there are six dependents upon the deceased. Accordingly keeping in view the law laid down in ***Smt. Sarla Verma and Others Versus Delhi Transport Corporation and Another, 2009 (3) Recent Civil Reports (Civil) 77***, where the numbers of dependent family members are six, the deduction should be 1/4th. Thus, after deducting 1/4th amount, the loss of dependency of the claimants comes to ***₹3,41,976.6/- (₹4,55,968.8/- –₹1,13,992.2/-)***.

28. As held above, the loss of annual dependency of the claimants upon the deceased was ₹3,41,976.6/-, therefore, keeping in view the age of the deceased at the time of his death and the law laid down by Hon'ble Supreme Court in ***Smt. Sarla Verma's case (supra),*** multiplier of "15" is applied and on calculation, the amount of compensation comes to ₹3,41,976/- x 15 = ₹51,29,649/-. Therefore, an amount of ₹51,29,649/- is awarded to the claimants as just compensation on account of loss of dependency.

Loss of consortium etc.:

29. As per law laid down by the Hon'ble Supreme Court of India in ***'New India Assurance Company Limited Versus Smt.Somwati and others', Civil Appeal No.3093 of 2020 arising out of SLP (C) No.23478 of 2019*** whereby the law laid down in ***'Magma General Insurance Company Limited Versus Nanu Ram alias Chuhru Ram and others', Civil Appeal No.9581/2018, decided on 18.9.2018*** has been further elaborated, loss of consortium to the extent of ***Rs.40,000/-*** to each of the dependents of the deceased is awarded, besides awarding of ***Rs.15,000/-*** towards loss of

funeral expenses and ***Rs.15,000/-*** towards loss of estate to the claimants in view of law as laid down by Hon'ble Apex court in ***National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.*** However, this above amount is to be increased by 10% in every three years since 2017. The incident pertains to year 2021. Therefore, there would be 10% increase in above amount of compensation, accordingly it comes to (44,000x6)+ 16500+16500 =2,97,000/-.

30. So far as the expenses incurred on the treatment of deceased prior to his death is concerned, claimants have examined PW-5 Akash, Record Keeper Metro Hospital Faridabad, who while testifying on oath about admission of Kapil Aggarwal, since deceased in the said hospital from 30.05.2021 till his death on 09.06.2021, proved bills Ex.P8 to Ex.P12. Final bill i.e. Ex.P8 shows that net bill amount was ₹2,86,528.5/-. PW5 in his cross-examination deposed that patient had deposited ₹13,300/- only however, the remaining amount of ₹2,73,229/-was received by the hospital from Max Bupa Health Insurance Under Medical Claim Policy.

31. At this stage, it is important to note that, learned counsel for respondent No.3 emphatically argued that as per bill Ex.P8, only ₹13,300/- was paid by family of deceased and remaining amount had been paid directly to Metro Hospital, Faridabad by TPA M/s Max Bupa Health Insurance Company Ltd., hence, respondent No.3/Insurance Company should not be held liable to pay this amount.

This submission of learned counsel for respondent No.3 holds no water for the simple reason that despite the amount of ₹2,73,229/- had been paid straightway to Metro Hospital, Faridabad by M/s Max Bupa Health Insurance Company Ltd. at the behest of injured Kapil Aggarwal (since deceased) where he remained admitted and died during treatment on 09.06.2021 but this fact cannot be lost sight of and it is also a matter of fact that deceased Kapil Aggarwal had purchased the medical claim policy by paying premium thereof. Therefore, the amount received under medical insurance policy by the concerned hospital on the behalf of injured/patient cannot be deducted from the compensation amount to be awarded to the injured. It has been held in a catena of cases that "the medical claim policy is taken to cover the medical coverage for particular period on account of ailment one may suffer with certain conditions. A Mediclaim policy is not a pure accidental coverage. It is for the ailment of a person or for a disease of a person on payment of certain premium". Moreover in case titled as ***The New Assurance Company Limited Vs. Dolly Satish Gandhi & Anr,*** Hon'ble Supreme Court of India held 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 consequences of an accident or death in a motor vehicle accident.

In view of above factual and legal discussion, this Tribunal is of the considered view that petitioners are entitled to entire amount raised vide bill Ex.P8 by Metro Hospital, Faridabad for his hospitalization and treatment.

32. In this way, claimants are awarded a total compensation of **₹57,13,177.58/- *(₹51,29,649/-.+ ₹2,86,528.5/-+₹2,97,000/-).***

33. So far as the liability to pay the amount of compensation is concerned, it has come on record that the respondent no.1 was the driver of the offending motor-cycle bearing registration no. HR-50-G-8222 at the time of accident in question. Copy of his driving licence Ex.P-2 is also placed on record, but no fault with it could be pointed out by respondent no.3-insurance company. Perusal of RC Ex.P3 shows that respondent No.2 is owner of offending vehicle.

34. Perusal of insurance Ex.P4 shows that offending vehicle was insured with respondent No.3 and this insurance policy was valid from 09.04.2019 to 08.04.2024. Therefore, respondents No.3 is liable to indemnify the claimants and present petition is maintainable. Accordingly these issues are decided against the respondent No.3 and in favour of the claimants.

Relief:

35. As a sequel to my findings on the above issues, two claim petitions are partly allowed with costs.

36. Claimants are awarded a sum of **₹57,13,177.58/-***(Rupees fifty seven lacs thirteen thousand one hundred seventy seven point fifty eight only)*, as compensation on account of death of Kapil Aggarwal in the road side accident.

On realization of the compensation amount, 35% of the awarded amount shall be paid to claimant No.1 (Nisha Devi) in case titled as 'Nisha Devi and others Vs. Hardik Kalra and others' being widow in cash and 25% each awarded amount shall be paid to claimant No.2 and 3 namely Vivek Garg and Mohit Garg being minor children. However, the entire share of minor claimants no.2 and 3 shall be deposited in a nationalized bank in their names in fixed deposit till they attain age of majority.

It is further made clear that once minors (claimants no.2 and 3) attain the age of majority, a fresh assessment will be made by the tribunal to find out for what purpose the money is required, as it would not be in the interest of minors to immediately hand over the entire amount of their respective shares together with interest on their attaining majority because at that stage, minors may not be even knowing how to handle that amount. While assessing the need, circumstances regarding educational expenses, medical treatment, marriage and/or any other valid legal purpose would be ascertained before releasing the amount and if need be, fresh FDRs for certain payment may also be made.

37. On realization of the compensation amount, 5% each of the awarded amount shall be paid to claimant no.1 (Maya Devi) and 2 (Subhash) being parents of deceased Kapil Aggarwal and 5% of the compensation amount shall be paid to claimant No.3 Bharti sister of deceased Kapil Aggarwal in case titled as " Maya Devi and others Vs. Hardik Kalra and others" in cash.

38. The claimants in all the two petitions are also held entitled to interest on the amount of compensation at the rate of 7.5% per annum from the date of filing of the claim petitions till realization of the awarded amount in them. Respondent No.3 being insurer of the offending vehicle is held liable to pay the amount of compensation to the claimants.

In order to facilitate the easy release of the amounts to the claimants, it is ordered that respondent- insurance company will deposit the extent of amounts to be released in cash in each of the claim petitions directly in the names of the claimants either by way of account payee cheques or demand drafts in the Tribunal, same shall be released to them on an application for release of cheques/drafts along with payment order in the name of concerned Bank Manager with directions to disburse the amount as per Award and the details mentioned in payment order by Nazir, who shall submit a compliance report, which should be made part of the main file.

They may also transfer the said amounts directly in the accounts of all respective claimants by way of RTGS/ NIFT or any other such mode, as permitted by the Bank. Claimants will submit the details of their bank accounts (if different from mentioned in head-note) directly to the respondent no.3 under intimation to this Tribunal.

So far as for the remaining amounts to be kept in FDRs, separate account payee cheques etc. be deposited by respondent no.3 in the account of this tribunal so that the needful may be done to convert the said amounts in the shape of FDRs in the names of respective claimants.

Counsel fee is assessed at Rs.3300/- in each petition. Memo of costs in all the two petitions be pared accordingly. A copy of this award be placed on the record of each connected file. Files of all the three petitions be consigned to records, after due compliance.

Pronounced in open court.
6th July 2026

(Prateek Jain)
Motor Accident Claims Tribunal,
Palwal (UID No. HR 0301)

Bhavna Rani, SG.I

BHAVNA RANI
"I attest to the accuracy and authenticity of this document."
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(Prateek Jain),
MACT, Palwal,
UID No. HR0301
06.07.2026