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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC.APP. 815/2025, CM APPL. 81463/2025**

NEW INDIA ASSURANCE CO. LTD.

.....Appellant

Through: Ms. Awantika Manohar, Ms. Parul
Dhurvey, Advocates.

versus

SHAMBHU KUMAR & ORS.

.....Respondents

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **08.01.2026**

CM APPL. 81462/2025 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 81464/2025 (Exemption from filing official translation)

1. Subject to filing the official translation within a period of four weeks, exemption is allowed.
2. Application stands disposed of.

MAC.APP. 815/2025

1. This appeal has been filed by Insurance Company assailing impugned Judgment and Award dated 31st October 2025 passed by Motor Accident Claims Tribunal-01 hereinafter, "***Tribunal***"), North District, Rohini Courts Delhi in MACT No.141/2024. By the said award, compensation of Rs.31,59,000/- (including interest till passing of award) along with future interest, was awarded against insurer holding that the accident occurred due to rash and negligent driving of the insured vehicle.
2. Parents of deceased/*Subham* are arrayed as respondent nos. 1 & 2.



Respondent no.3 is the driver of offending vehicle and respondent no.4 is owner of the offending vehicle.

3. *Ms. Avantika Manohar*, counsel for appellant contends that the Investigating Officer recorded the statement of eye-witness namely *Nitesh Kumar* under Section 161 of Code of Criminal Procedure, 1973, who was the pillion rider, in the following terms:

“On 08.09.2023, at around 4:30 a.m., I asked Subham @Anmol to drop me home, so he took me on his motorcycle. When we reached Mukrawa Chowk, he took the motorcycle from the wrong side of the road towards the flyover. Just then a speeding truck was coming from the front. The truck driver tried to save us, but due to the high speed, he couldn't, and our motorcycle collided with the rear of the truck, and we both fell onto the road along with the motorcycle. The truck driver got off the truck and ran away and I saw him. The ambulance; then took us both to BJRM Hospital. I wasn't in a condition to give a statement. My friend Anmol was seriously injured and was referred to LNJP Hospital. I went home with my mother after receiving treatment from the hospital that day. The Tata 709 driver, Amir Khan has caused the accident by driving the Tata 709 at high speed and carelessly. Legal action should be taken against the driver Amir Khan”

(emphasis added)

4. On this basis, she states that there was clearly some evidence before the Tribunal that deceased/*Subham* entered highway from the wrong side and, therefore, offending vehicle *i.e.* truck driver could not have avoided the collision. She further states that driver and owner in joint written statement took a preliminary objection that the accident occurred due to negligence on part of the deceased/*Subham*, who was driving the motorcycle on wrong side.



5. She contends that this issue was not taken into account while deciding issue no.1 by the Tribunal which ought to have been done, considering that contributory negligence forms a subset of the decision on rash and negligent driving of offending vehicle. For this, she relies upon two decisions of Supreme Court in particular paragraph nos.6 & 7 of ***T.O. Anthony v. Karvarnan & Ors.*** (2008) 3 SCC 748 and paragraph 6 of ***Municipal Corporation of Greater Bombay v. Laxman Iyer & Anr.*** (2003) 8 SCC 731.

6. Relying on these decisions, she states that if the driver of offending vehicle had raised the issue regarding contributory negligence of deceased, the Tribunal ought to have gone into this assessment and possibly apportioned loss between driver and owner on one hand and deceased/testator on the other. This aspect was not gone into while determining *Issue no.1* by the Tribunal, as is evident from *paragraph 8* of impugned judgment and award.

7. Accordingly, issue notice to respondents on steps being taken by appellant through all permissible modes including e-mail, etc.

8. In the meantime, full amount of compensation awarded along with accrued interest shall be deposited by appellant before the Tribunal within a period of three weeks from today, and from the said compensation, 50% amount shall be released in favour of claimants/*respondent nos.1 & 2 i.e.* parents of deceased/*Subham* within a period of three weeks thereafter, in accordance with disbursement scheme provided in the MACT's impugned judgment and award.

9. There shall be a stay on the enforcement of the impugned judgment and award subject to appellant depositing the awarded amount.



10. TCR be requisitioned and placed on record. Digital copy of the same may be provided to respective counsels by Registry at their request.
11. Returnable on 30th April 2026.
12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 8, 2026/ak/sp