



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

Reserved on: 03rd August 2026.

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CNR No. DLHC011772792016

+ **MAC.APP. 585/2016 & CM APPL. 27416/2016 CM APPL. 5271/2019**

ICICI LOMBARD GENERAL INSURANCE CO LTD

.....Appellant

Through: Mr. Ishaan Chhaya, Adv.

versus

SATISH CHANDRA GUPTA & ORS

.....Respondents

Through: Mr. Naresh Gupta and Mr. Rachit Gumber, Advs. for LR's of R-1.

Mr. Rahul Bakshi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

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JUDGMENT

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ANISH DAYAL, J.

1. This appeal deals with an interesting question of law, whether the driver of a vehicle shall be held liable for negligence, where an accident occurred due to the sudden appearance of a stray animal on the road and the driver being faced with a dilemma due to the ‘*agony of the moment*’.

2. This appeal has been filed challenging the impugned award dated 26th May 2016 passed by the Motor Accidents Claims Tribunal [‘*MACT/Tribunal*’], Patiala House Courts, New Delhi in MACP No.44/2015 awarding compensation of Rs.1,70,86,530/- along with 12% interest in relation to an accident that occurred on 28th May 2014.

The Accident

3. *Sh. Satish Chandra Gupta* (hereinafter, ‘*injured claimant*’), was travelling home to *Chhattarpur* from *Dwarka* and was seated on the rear



seat of vehicle bearing registration no. DL-1TAP-5773 (hereinafter, '**offending vehicle**'), driven by respondent no.2/*Sanjay Bhati* ('**driver**'), allegedly in a negligent manner. When they reached *Vasant Kunj*, near *Chhattarpur* Metro station the driver lost control of the offending vehicle and dashed into a divider, due to which the injured claimant sustained grievous injuries. The vehicle was owned by respondent no.3/*M/s Centrodorstroy India Pvt. Ltd.* ('**owner**').

4. The injured claimant suffered grievous injuries and was in Coma since the date of his accident, till his passing away on 22nd August 2020. *Dr. Akhilesh Singh*, Physician, Consultant General Medicine and Critical Care Medicine ('**PW9**') stated that the injured claimant was a case of severe *hypoxic ischemic encephalopathy GCS E1M1 VT*.

Submissions on behalf of appellant/Insurance Company

5. *Mr. Ishaan Chhaya*, counsel appears for appellant/Insurance Company and challenges the award on the grounds of negligence and compensation awarded. These are elaborated as under:

Vehicle being driven by injured claimant

6. Case summary of the hospital dated 13th June 2014, recorded that the injured claimant, "*was driving the car and suddenly hit a roadside pole*" and there was no mention of the driver's name in the FIR. Moreover, if the injured claimant had been driving, he was doing so without a driving license, therefore, principles enunciated in *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297 would apply.



No cover under the Insurance Policy

7. The Insurance policy, which was a Package Policy in this case, was valid from 24th May 2014 to 25th May 2015 and was governed by the Indian Motor Tariff, 2002. The schedule records basic third-party premium and IMT 28 cover (*for paid driver*). IMT 29 alone covers employees travelling or driving in an employer's car on premium being paid, which had not been taken.

8. Reliance has been placed upon the decision of Madras High Court in ***United India Insurance Co. Ltd. v. R. Krishnan***, 2020 SCC OnLine Mad 28835, which concerned an employee travelling in the employer company's vehicle, being driven by the driver. In that case, insurer was exonerated and the whole liability was placed on the employer for want of IMT-29 premium. Reliance has also been placed on Insurance Regulatory and Development Authority ('***IRDA***') circulars of 2009, which stated that such policies do not cover employee-occupants and there was a specific exclusion.

9. Since, the injured claimant was the director of respondent no.3/owner (*insured*), and respondent no.2/driver had been assigned by Manager of the Company, therefore, the injured claimant would fall within the bracket of employees, since he was commuting in an employer-provided transport within the course of employment. Reliance has been placed on ***Daivshala v. Oriental Insurance Co. Ltd.***, 2025 SCC OnLine SC 1534 and ***General Manager, BEST Undertaking, Bombay v. Mrs. Agnes*** AIR 1964 SC 193.



10. *Mr. Chhaya*, submitted that an occupant of private car is not a statutory third party and if, he had been driving or was in control, he would step in shoes of the owner. Reliance in this regard was placed on *Ningamma & Anr. vs United India Insurance Co. Ltd* (2009) 13 SCC 710 and *Manjusha v. United India Assurance Company Limited*, 2025:INSC:896. The Insurance Regulatory and Development Authority of India (*‘IRDAI’*) circular dated 18th October 2023, issued pursuant to the directions of Madras High Court in *United India Insurance Co. Ltd vs Ilakkiyamathi* CMA 2166/2019 provided that compulsory cover of IMT-29 shall be provided as an inbuilt coverage in the package policy.

Agony of the moment

11. *Mr. Chhaya*, states that the injured claimant was unable to prove rash and negligent driving of respondent no.2/driver, which is essential for a claim filed under Section 166 of Motor Vehicles, Act, 1988 (*‘MV Act’*). There were no eyewitnesses to the accident and it had been admitted by *PW1*, *PW3* and *PW8* that they had not witnessed the accident.

12. No evidence had been placed on record with reference to the speed, skid or mechanical condition of the offending vehicle. Both respondent no.2/driver and *PW3* testified that a dog had suddenly come in front of the car, which then dashed against the divider while trying to save the dog. It was submitted that having faced the *‘sudden danger’*, not of his own making and having acted as a prudent person, it was not his negligence.



13. Reliance in this regard has been placed on decision of Supreme Court in *Manjusha* (*supra*) where, in case of a tyre bust, the driver was held to not be negligent. Further reliance has been placed on *Syed Akbar v. State of Karnataka* (1980) 1 SCC 30, where, the vehicle had swerved in order to avoid collision with a child. Reliance has been placed on *Municipal Corporation of Greater Bombay v. Lakshman Iyer & Anr.* (2003) 8 SCC, 731 to state that negligence is the want of care demanded by the circumstances.

14. It was submitted that, respondent no.2/driver would not be considered rash and negligent, if the plea of the accident having taken place due to the dog is accepted. Further, preponderance of probability does not dispense with evidence, therefore, filing of charge-sheet will not prove the manner of accident. Reliance has been placed on *Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530 and *National Insurance Co. Ltd. v. Pushpa Rana*, 2007 SCC OnLine Del 1700.

Quantum of compensation

15. *Mr. Chhaya*, submitted that attendant charges had been awarded twice; and the Tribunal in *paragraph 44* of the impugned award had noted that an amount of Rs. 33,00,000/- towards future medical treatment and attendant charges for 6 months with effect from 1st March 2016, was directed to be refunded, in case, the injured claimant expired during the said period. Further, the affidavit of the wife of injured claimant/*Smt. Neena Chandra Gupta* as regards the amounts withdrawn by her was contrary to the testimony given as *PW8*.



Submissions made on behalf of respondent no.1/injured claimant

16. *Mr. Naresh Gupta*, counsel appears on behalf of respondent no.1/injured claimant, countered the submissions made by *Mr. Chhaya*. These are elaborated as under:

Vehicle not being driven by injured claimant

17. *Mr. Gupta*, contends that the plea raised by appellant/insurance company that the offending vehicle was being driven by the injured claimant and not by driver, is self-assumed and pure imagination, contrary to record.

18. *Vinay Tiwari* (**'PW3'**), an independent witness, was driver of the ambulance, who had discovered the injured claimant at the scene of accident and had taken him to the hospital. He had stated that the injured claimant was lying unconscious in rear seat of the car and had been taken out of the car and transferred to the ambulance. Respondent no.2/driver-*Sanjay Bhati* (**'RIWI'**) had stated that he was the driver of offending vehicle, which also resonates with the Detailed Accident Report (**'DAR'**) filed by the Investigating Officer (**'IO'**), confirming the same.

19. *Naveen Kumar* (**'R3W3'**), witness of appellant/Insurance Company, stated that the injured claimant had been taken to hospital in a PCR Van, however, the same had been falsified by evidence on record.

20. The statement of *Surinder Singh Yadav*, Manager of respondent no.3/Company, was recorded by the police and filed along with DAR, noted that the offending vehicle was under use and control of respondent



no.2/driver- *Sanjay Bhati*. For assessment on preponderance of probabilities, MACT relied upon testimonies of *PW3*, *RIWI* and *PW1*.

Injured claimant travelling as an occupant

21. The Insurance policy in question is a ‘*Comprehensive/Package Policy*’ and not an ‘*Act Only Policy*’ and therefore, covered the injured claimant who was travelling as an occupant in the car. No evidence was filed by appellant/Insurance Company that respondent no.1/injured claimant was an employee of respondent no.3/owner. The testimony of Manager, Insurance Company (‘*R3W2*’), in this regard, could easily be ignored since no relationship of employer and employee has been established between respondent no.3/owner and respondent no.1/injured claimant.

22. Appellant/Insurance company failed to rebut the statement of *PW3* and *RIWI* and the theory that respondent no.1/injured claimant was driving the car was highly improbable, particularly, since there was a driver in the car.

Analysis

23. The issues which have been raised by appellant/Insurance Company can primarily be categorized as: *firstly*, whether respondent no.1/injured claimant was travelling as a passenger in the backseat or driving the car; *secondly*, if he was travelling in the backseat as an occupant, will he be considered as a third party, and therefore, be covered under third-party liability; *thirdly*, if he was travelling as an



occupant, but was a *director* of respondent no.3/Company who owned the car, then would he come within the ambit of being an *employee*, and therefore be excluded in the Comprehensive/Package Policy; *fourthly*, whether negligence at all can be established of the alleged driver of the vehicle, taking into account that the accident occurred due to the driver's attempt to save a dog, which was crossing the road.

24. These issues can only be examined on the basis of evidence on record.

Claimant travelling as an occupant

25. The claim petition filed before the MACT notes at *serial no.11*, that the injured claimant was sitting in the backseat of the offending vehicle and was travelling to his home in *Chhattapur*, Delhi from *Dwarka*, Delhi. It further notes that respondent no.2/driver-*Sanjay Bhati* was driving the said vehicle.

26. Assistant Sub-Inspector (*ASI*) *Rohtash Singh*, P.S. Vasant Kunj (South) (*'PW1'*), who was the Investigating Officer (*IO*) in the matter, stated that he had prepared the site plan and seized the offending vehicle. Driver of the offending vehicle was respondent no.2/*Sanjay Bhati* and he had been arrested and released on bail. He denied the suggestion that respondent no.2/*Sanjay Bhati* was not the driver of offending vehicle, or that he had falsely implicated the driver in order to help respondent no.1/injured claimant get compensation.

27. *Roop Chand* (*'PW2'*) was a summoned witness from Medical Record Office, Max Health Centre, who testified as regards discharge summary of injured claimant, which had been exhibited as *PW 2/2*.



28. *Vinay Tiwari* (**'PW3'**) was driver of the ambulance, who stated that he was coming back after dropping a patient at *Vasant Kunj* and when he reached *Andheriya Mor*, 2 to 3 persons standing nearby waved at him to stop the vehicle. He saw one *Mercedes* car standing there in an accidental condition and an injured person was lying unconscious at "*rear seat of the car*". He stated that he took the injured person out and transferred him to the ambulance and got him admitted. Respondent no.2/*Sanjay Bhati* also accompanied him to the hospital and stated that he was the driver of the offending vehicle. He further stated that he was driving the car and in order to save a dog, he swerved the car, which struck against a divider and respondent no.1/*Satish Chandra* sustained injuries.

29. DAR which had been filed also noted at *serial no. 6* that the driver of offending vehicle was respondent no.2/*Sanjay Bhati* and noted at *serial no.10* that the victim was respondent no.1/*Satish Chandra*. Respondent no.2/*Sanjay Bhati* (**'RIWI'**) himself, in his evidence by way of affidavit, stated that he was driving the offending vehicle, though, with care and due caution and the accident occurred only because a dog came in front of the car and swerved the car into the divider in order to save the dog. There is nothing in the cross-examination to suggest otherwise or to suggest anything contrary to the above.

30. Appellant/Insurance Company relied upon the hospital discharge summary prepared by Max Healthcare [*Ex. PW2/2 (Colly)*], which recorded that it was evident that before the incident, injured claimant was driving the car that suddenly hit the roadside pole after which he became unconscious.



31. A perusal of the MLC dated 28th May 2014, which noted the arrival of injured claimant at 17:15 hours, time of accident at 16:30 hours, notes the accompanying person as ‘Sanjay’, with the mobile number ‘9810004100’. It further notes that the patient was found in an unconscious state by a passing ambulance.

32. This corroborates with the testimony of PW3, driver of the ambulance, who had stated that he had stopped his ambulance when he saw one *Mercedes* car standing in an accidental condition and the injured claimant was lying unconscious in the *rear seat* of the car. He took the injured claimant in the ambulance and got him admitted in Max Hospital, Saket. Further, another person named ‘Sanjay Bhati’ had also accompanied him to the hospital, who stated that he was the driver. MLC in question, to which, counsel for respondent no.1/injured claimant has drawn attention to, would therefore corroborate that the patient was found unconscious by a passing ambulance and the person who had accompanied him was ‘Sanjay’ having the same address and phone number.

33. Counsel for appellant/Insurance Company, submitted that *Sanjay Bhati* had disowned the mobile number provided in the MLC, as he stated that mobile number was ‘9910167383’ and he did not know as to whom, the mobile number ‘981000400’ belonged. Appellant/Insurance Company’s case, therefore, rests merely on the discrepancy of the phone number which cannot be determinative considering that it should be a recording error by the hospital staff. Rest of the details of *Sanjay Bhati* as recorded in the MLC, *i.e.* the injured claimant being brought in an ambulance, testimony of PW3, RIWI are otherwise aligned.



34. Considering that this is being examined in the rubric of preponderance of probability, the Court has no reason to reject the injured claimant's version that he was sitting in the rear seat of the car and respondent no.2/*Sanjay Bhati* was driving the vehicle.

35. In light of the above testimonies on record and DAR, the plea of appellant/Insurance Company that since there were no eyewitnesses who saw him driving the vehicle, it cannot be presumed that respondent no.2/*Sanjay Bhati* was indeed driving a vehicle, is hereby rejected.

Cover under the Insurance Policy

36. On the *second* issue of whether he would classify as a third party and would not be excluded on account of being director of the company, nature of the Insurance Policy will have to be considered.

37. A perusal of the Insurance Policy shows that Company is the insurer and covers third-party liability and paid driver (*IMT 28*), as also unnamed personal accident (*'PA'*) cover for seven persons of Rs.1,50,000/- each. Appellant/Insurance Company has sought to assert that, since he was an *employee* of the Company, the insurance policy ought to have included an additional cover under *IMT 29*. The said clause is extracted as under:

"IMT. 29. Legal liability to employees of the insured other than paid driver and/or conductor and/or cleaner who may be travelling or driving in the employer's car

{Private Cars only/Motorised two wheelers (not for hire or reward)}

In consideration of the payment of an additional premium @ Rs.25/- per employee insured



*notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at **Common Law and Statutory Liability under the Fatal Accidents Act, 1855** for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.*

Provided that in the event of an accident whilst the vehicle insured is carrying more than employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured.*

Subject otherwise to the terms, conditions limitations and exceptions of this Policy.

*NB. * To insert the number of employees for which the premium has been paid."*

(emphasis added)

38. MACT has covered this issue in *paragraph 49* of impugned award. It had been contended by the claimant that he was merely an Independent Director and not a whole-time Director, nor was he drawing salary from the Company.

39. In the claim petition, it has been mentioned that he was drawing a monthly salary of Rs.20,000/- from *M/s. O.P. Gupta and Sons Private Ltd.* MACT had noted that no evidence had been led by appellant/Insurance Company to the effect that the injured claimant was drawing salary from respondent no.3/Company or that he was engaged as a full-time Director of the Company. Injured claimant also showed *Form 32*, which showed the date of appointment as an additional director



on 3rd December 2009. Considering that there was no evidence by appellant/Insurance Company, in this regard, to show that he was an *employee* of the Company, MACT's view in rejecting the plea is therefore not amiss and the Court approves of the same.

40. Counsel for respondent no.1/injured claimant, further pointed out to the statement given by *Surendra Singh Yadav*, Manager (Administration) of the Company, who in a statement given on 28th August 2014, stated that he was doing the work of assigning various company cars and that the offending vehicle was being driven by *Sanjay Bhati* and he was assigned to drive the School Chairman *Satish Chandra* from school to his residence at *Chhattarpur*.

41. Therefore, there is nothing on record to show that the injured claimant was an employee of the company. Moreover, respondent no.1/injured claimant submitted that *Rule 7 of the Delhi Motor Accident Claims Tribunal Rules, 2008* provides that there is a presumption about DAR, until the contrary is proved, since no witness was produced by appellant/Insurance Company to rebut the presumption.

42. Therefore, considering that respondent no.1/injured claimant was not an *employee* and was an occupant of the car, he would be covered by the Comprehensive/Package Policy. This aspect has now been settled by ***National Insurance Company v. Smt. Thungala Dhana Laxmi & Ors.*** 2026:INSC:793, where the Supreme Court held that the scope of *Comprehensive/Package Insurance Policy* covers liability, injury, death or damage to the property of occupants of the vehicles, including, those travelling in the rear seat of two wheelers and four wheelers. Relevant finding of the Court is extracted as under:



“1. In the present appeal, this Court had proceeded on primarily two issues, which arose for consideration. The first being, the lack of compliance of Section 146 of the Motor Vehicles Act, 19881 which requires all vehicles to have a valid insurance policy covering third-parties. Secondly, whether there should be a uniform motor-vehicle policy structure covering all occupants of a vehicle, in addition to the statutorily mandated coverage of third-party risks.

...

13. The various insurance companies before us have submitted that insurance policies can broadly be categorized as follows:

...

ii. Comprehensive Insurance Policy: This type of insurance covers liability for injury, death, or damage to the property of occupants of both vehicles concerned. For instance, pillion riders of two-wheelers and other occupants of a four-wheeler are also covered under this insurance.

34. It is well settled that in matters concerning motor accident claims, Courts should not adopt a hyper-technical approach. As rightly submitted by the claimant respondents, in accordance with the circular of the IRDA dated 16.11.2009, insurance companies are liable to compensate for any occupant in the vehicle under a comprehensive/package policy. Consequently, we find no reason to disagree with the reasoning adopted by the High Court. The present Civil Appeal is dismissed to that extent.”

(emphasis added)

43. Reliance may also be placed upon the decision of Supreme Court in ***National Insurance Company Ltd. v. Balakrishnan & Anr.*** (2013) 1 SCC 731, where distinction was made between a *Comprehensive/Package Policy* and an *Act Only Policy*. The claimant was the Managing Director of the Company and was travelling in the



Company owned vehicle when it met with an accident. While, MACT granted compensation to injured by treating him as a third party and holding the Insurance Company liable, High Court treated owner of the vehicle to be liable and held that, since injured was only an occupant of the car, Insurance Company was liable to indemnify.

44. Reference was made to decision of this Court in ***Yashpal Luthra v. United India Insurance Co. Ltd.***, 2009 SCC OnLine Del 4291, which recorded evidence of the competent authority of Tariff Advisory Committee ('TAC') and Insurance Regulatory and Development Authority ('IRDA') in the context of circular dated 16th November 2009 issued to all Insurance Companies. The circular was issued with respect to liability of Insurance Companies of a pillion rider on a two-wheeler and occupants in a private car under the "*Comprehensive/Package Policy*". The circular stated that liability of an insurer with respect to an occupant travelling in a private car and as a pillion rider on a two-wheeler was covered under the Standard Motor Package Policy. IRDA stated before the High Court that TAC had issued instructions to all Insurance Companies to cover the pillion rider of a two-wheeler under *Comprehensive/Package Policy*. It was also admitted that *Comprehensive Policy* is presently called *Package Policy*. Observations of this Court in ***Yashpal Luthra*** (*supra*) were extracted by the Supreme Court as under:

"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive / package policy.



there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

(emphasis added)

45. The Supreme Court in **Balakrishnan** (*supra*), concluded that there was no doubt that a 'Comprehensive/Package Policy' would cover the liability of insurer for payment of compensation for an occupant in a car. But an 'Act Only Policy' stands on a different footing, as it will not cover third-party risk of an occupant in a car. Therefore, decision of the High Court was set aside and the matter was remitted back to Tribunal to scrutinize the insurance policy from a proper perspective and for re-adjudication of the matter.

46. Accordingly, this Court is inclined to accept the submission of respondent no.1/injured claimant, that he was travelling as an occupant in the offending vehicle and would therefore, be entitled to compensation by appellant/Insurance Company.

Agony of the Moment

47. Another issue was raised by *Mr. Chhaya*, counsel for appellant/Insurance Company, as to whether the accident occurred due to the negligence of respondent no.2/driver on account of the dog passing by in front of the car.

48. Respondent no.2/driver testified that a dog had suddenly come in



the front of the car and, therefore, he swerved and dashed against the divider in an attempt to save the dog. *Mr. Chhaya*, therefore, pleaded that this would amount to a '*sudden danger*' which when confronted with, the driver was left with no option but to take action to save them as any prudent person would act and therefore, the accident took place in the '*agony of the moment*' and not due to negligence of the driver.

49. '*Agony of the Moment*' or '*sudden danger*' are phrases which have been used by Courts across the world to broadly describe situations a driver may suddenly be faced with, triggering a dilemma and thus, forced to take avoidance measures, which may lead to an accident.

50. Certain decisions have been rendered by the Supreme Court and other High Courts, that are being referred to which have dealt with the issue of similar situations involving the driver being put in a dilemma, due to the '*agony of the moment*.'

(i) An early decision of the Kings Bench in England in ***Jones v. Boyce*** [1816] 171 ER 540 was a case where the plaintiff who had been travelling as a passenger had jumped out of a carriage, anticipating that the carriage would overturn due to defective reins. Even though the carriage did not overturn, the defendant was held to be liable on the basis that the plaintiff was placed in a '*reasonable degree of alarm*' that necessitated this reaction for the purpose of self-preservation and if the act was prudent and sufficient to prove the defendant's fault which forced the plaintiff into a perilous choice.

(ii) ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak & Ors.***, (2002) 6 SCC 455. In this case, the appellant



(*therein*) had been driving a car when a truck came to the central portion of a 22 feet wide road from the opposite side at an excessive speed. The car driven by appellant collided with the right-side wheels of the truck. High Court held the appellant liable for contradictory negligence and reduced the compensation by 30%. In appeal, the Supreme Court noted that the question of contributory negligence has to be decided on the same principle as that of defendant's negligence, *i.e.* the standard of reasonable man.

What is reasonable care, depends on the circumstances of the case and as also upon the nature of duty that has to be performed by the defendant. Contributory negligence focuses on the conduct of plaintiff and duty owed by the defendant is one of the main factors to be weighed in. Therefore, accepting the principle that if one party places another in a situation of danger which compels them to act quickly in order to extricate themselves, the same does not amount to contributory negligence.

Relying upon the opinion penned by *Lord Viscount Hailsham* in the decision of House of Lords in ***Swadling v. Cooper*** 1931 AC 1, the Supreme Court held there was no contributory negligence at all and noted as under:

“the truck driven by the second respondent, almost came to the centre of the road and the appellant must have been put in a dilemma and in the agony of that moment, the appellant's failure to swerve to the extreme left of the road, did not amount to negligence.”

The opinion of *Lord Viscount Hailsham*, which was relied upon



by the Supreme Court is extracted as under:

“Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence: the plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances.”

(emphasis added)

(iii) In ***K. J. Jestine v. Prasad K.*** 2013 SCC OnLine Ker 24255, the Court was dealing with a case where the appellant suffered injuries on account of being hit by another motorcycle which came from behind. The injury was sustained due to falling from the bike by skidding, after being intercepted by another motorcycle. Kerala High Court expostulated on the ‘Bywell Castle Rule’ which emanates from the decision of the Court of Appeal in ***London Steamboat Company v. Bywell Castle (Owners Of)***, (1878) 9 Probate Division 219, wherein, it was held that if due to wrong manoeuvres, one ship has placed another ship in a position of extreme danger, that other ship will not be held liable, if it has done something wrong and not manoeuvred with perfect skill and presence of mind. The ‘Bywell Castle Rule’ was expressed by the Kerala High Court as, “*where a person is put in sudden danger, he cannot be expected to exercise the due care, skill, coolness and wisdom which a man of ordinary prudence would have taken. The person or the plaintiff is perplexed or agitated by the act of the defendant. What is done*



or omitted to be done, in the agony of the moment, cannot fairly be treated as negligence.” Interception of the motorcycle causing the appellant to skid his vehicle, could be seen as a justified manoeuvre in order to save himself and, therefore, does not constitute negligence.

(iv) **Satish Kumar v. Bysakh P.** 2017 SCC OnLine Ker 16826 was a case where the appellant therein had been riding a motorcycle, when he sustained injuries after being hit by a jeep. The Tribunal arrived at the conclusion that the appellant therein could have avoided the accident, if he was diligent and attributed contradictory negligence. The Kerala High Court relied upon the decisions in **Pramodkumar** (*supra*) and **K. J. Jestine** (*supra*) and stated that the appellant was put in a fear of sudden danger and in a perplexed and agitated mood and further due to its agony, did or omitted to do something that he cannot be held to be negligent.

51. While the decisions noted above deal with situations arising from a sudden danger caused due to the act of defendant driving a vehicle, and therefore the element of contributory negligence has been considered by the Courts. However, these decisions do not deal with situations where the sudden danger is caused by a completely unconnected factor *i.e.* a natural cause or an animal. Reliance may be placed upon the following decisions that deal with such situations.

(i) The factual matrix in **State of MP v. Davi**, 1980 SCC OnLine MP 83, was such that the deceased was travelling in a government jeep and the jeep had overturned due to the sudden appearance of *goats*. The question before the Court was whether



the driver was negligent in driving the vehicle, as a result of which it overturned. It was held that the driver was negligent in not slowing down the vehicle, which could have avoided the sudden application of brakes and overturning of the vehicle. It was held that caution has to be more, since its common experience that behaviour of animals on the road is uncertain. Relevant finding of the Court is extracted as under:

“3....Having regard to the facts stated above, it cannot be said that the speed of 30 to 40 Kms. at which the jeep was being driven at the relevant time, was a reasonable speed. It is not the case of the driver that the goats were not visible from a distance. A reasonable driver would have foreseen the possibility of the goats straying on the road on the approach of the vehicle and would have considerably reduced the speed. In our opinion, the driver was clearly negligent in not slowing down the vehicle which would have avoided sudden application of brakes and the overturning of the vehicle.”

(emphasis added)

(ii) In **Chaman Lal v. Anil Kumar** 2006 SCC OnLine P&H 1255, a cow had appeared in front of a jeep due to which the jeep hit a scooter which was being driven on the side and the claim petition had been filed by the pillion rider of the scooter. It was held that the jeep driver was negligent, as mere appearance of a cow would not absolve them of liability. The driver ought to have stopped if he was driving at a normal speed. Relevant paragraph is extracted as under:

“12. On the basis of the judgment of the



Hon'ble Supreme Court the contention of the learned counsel for the appellant was that merely because a cow had appeared all of a sudden which was the cause of the accident and the deceased had made a statement to this effect, it could not absolve the jeep driver of his liability. In the present case, it would be seen that in case the jeep driver was at a normal speed, then he ought to have stopped the jeep rather than to go on the wrong side of the road and hit the scooter. This act of the jeep driver clearly shows that the jeep was being driven rashly and negligently."

(emphasis added)

(iii) The Kerala High Court in ***Babu Cherian v. K.P. Varghese*** 2008:KER:43199, was dealing with a matter, where the vehicle had hit against a concrete wall while trying to save a *dog* which had been standing on the road. It was held that the vehicle would not have gone off the road and out of control, if it was not being driven at a high speed, therefore, there is 'intrinsic' negligence on the part of the driver. Relevant paragraph is extracted as under:

"...Even though the car was swerved to save a animal which is a spontaneous and reflex action it will lead to ouster from the road and hit a roadside wall at high speed unless the driver could not control the vehicle. Going by the damages caused to the vehicle as recorded in the report of the A.M.I, it is obvious that the vehicle at the time of the accident was driven at a high speed and hence he could not control the vehicle or otherwise the vehicle would not go out of the road. In any case the impact of the accident itself proves high speed while driving in the middle of



the night and therefore there is intrinsic negligence of the driver is self-evident.”

(emphasis added)

(iv) The facts before the Uttarakhand High Court in ***Oriental Insurance Company Ltd. v. Pankaj Singh Jantwal & Ors.*** 2011 SCC OnLine Utt 411, involved *cattle* which had suddenly appeared in front of a tractor. As a result, the tractor overturned and hit the claimant who had been standing on the side. The Court held that the claimant was not liable for contradictory negligence and, the tractor was held liable. Relevant discussion of the Court is extracted hereunder:

“The question what is a negligent act, was also considered by Hon'ble Supreme Court in the case of Municipal Corporation of Greater Bombay v. Shri Laxman Iyer, [2004 (1) T.A.C. 3 (S.C.)]. It has been held by the Apex Court that—

‘Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or



objectively careless conduct.'

Lastly reliance was placed by the claimants on a judgment dated 6-12-2004, passed by Division Bench of this Court in A.O. No. 170 of 2002, United India Insurance Company v. Sarafat Khan. The fact of case was almost similar to that of case at hand. In that case also wild animals appeared on the road and in process to save the vehicle dashed against a tree. The appeal of insurance company was dismissed, following the judgment of Municipal Corporation of Greater Bombay v. Shri Laxman Iyer [2004 (1) T.A.C. e (S.C.)].

In the instant case it is admitted case of parties that at the place of accident a cow had come in front of offending tractor and the driver of the tractor tried to save the cow and in this process the tractor overturned and hit the claimant and he sustained grievous injuries. It is not the case of the opposite party that the claimant himself was also negligent in the accident. The driver opposite party No. 3 in his written statement has alleged that when the accident took place the claimant was standing by the side of the road. Thus, it is proved that the claimant himself did not contribute the negligence and he sustained injuries in the accident arising out of use of motor vehicle."

(emphasis added)

(v) The matter before the Punjab and Haryana High Court in ***Harmesh Kumar v. Inderjit Singh***, FAO 4522/2012. involved a collision between two cars due to *cattle* crossing the road. The High Court held that negligence cannot be attributed to any person other than a human agency. The situation would be different in case of a mechanical failure or nature's intervention.



Relevant discussion of the Court is extracted as under:

“2. ... All accidents have a latent quality of want of care in some way. Negligence cannot be attributed to any person other than a human agency. A driver or passenger cannot say that an animal was negligent for it is illogical and does not come within the realm of legal reasoning. The reasoning is that any person that drives must factor his own driving skills and not looking for excuses of how another agency that is not human has created a situation that had diminished his own driving skills. Mechanical failure or nature's intervention are different and wherever such factors raised, they must be pleaded and proved. That is how we must approach an issue where a cattle crosses the road. No driver can ever come to court to say that he carefully dashed against yet another vehicle. It is tautological. Careful driving of both drivers and collision do not marry, one annihilates the other. Therefore, if there was any statement by any of the parties that both the drivers were careful but it was an animal which was not careful and therefore, accident was caused, we must take that such statement lacks any sense and we cannot give a legal approbation to such a statement to deny a claim. The best that could be said is that there was no criminal negligence.”

(emphasis added)

(vi) In ***SBI General Insurance v. Anju Bala***, 2025:PHHC:108510, the Punjab and Haryana High Court was adjudicating a matter where the car had overturned, collided with a tree and fell into a ditch, when *stray cattle* had appeared before it. The court opined that drivers cannot evade liability by taking



the excuse of stray animals or sudden obstructions. They have a duty to anticipate foreseeable hazards and exercise control and vigilance.

“13. Judicial precedents have consistently held that a driver cannot take refuge in the excuse of stray animals or sudden obstructions to evade liability. Every driver is under a bounden duty to anticipate foreseeable hazards on the road and to exercise due control and vigilance. The very fact that the vehicle overturned, veered off the road into the fields and struck a tree, resulting in the death of Ashish Goyal, is by itself demonstrative of culpable rashness and conscious disregard of the duty of care incumbent upon respondent No.3. The doctrine of res ipsa loquitur squarely applies, for the nature of the accident itself speaks volumes of the lack of reasonable care and skill in the operation of the vehicle.”

(emphasis added)

52. Analysing these decisions and the views taken by the Courts, the picture which emerges is quite clear. The issue of contributory negligence if pleaded against the plaintiff, in a situation of sudden danger caused due to the act of defendant, may not succeed. *Firstly*, there is a duty of care on the defendant to have taken reasonable care to not trigger a perilous situation and; *secondly*, the prudent conduct of the plaintiff being unable to avoid such a perilous situation and an attempt to mitigate the situation.

53. The other set of situations arise where there is no defendant, in that, the accident has been caused due to a stray animal, an intervening natural cause, which triggers a perilous situation. In such cases, the



Courts have taken a view that it is for the drivers to expect such situations to happen and therefore, to exercise reasonable care in order to ensure that they do not cause any injury or harm to a bystander or to the occupants of the car.

54. The case at hand relates to the second situation, where it has been pleaded that a dog had crossed the road and in trying to avoid the dog the driver dashed against the divider ultimately resulting in the death of the occupant in the rear seat. The ‘*agony of the moment*’ or the ‘*sudden danger*’ is present in both situations, however, in the former set it is caused by a human agency, whereas, in the latter set it is caused by a stray animal or a natural cause.

55. It would not be inapposite to observe that traffic on the roads in India can be particularly unpredictable. Road users have a propensity not to follow road discipline or to adhere strictly to traffic regulations. This naturally triggers myriad unpredictable situations, which road users in India are often faced with. To avoid mishaps, this naturally requires faster reflexes, consistent alertness and presence of mind. The country is beset with a huge number of motor accidents occurring due to various causes, be it careless pedestrians, stray animals, aggressive drivers, overspeeding, drunken driving, lane indiscipline, etc.

56. The range of issues which trigger accidents has recently been documented through statistical data by the Minister of Road Transport and Highways in response to the *Unstarred Question no. 1939*, answered on 30th July 2026, which provided details of road accidents, fatalities and injuries reported in the last 5 years, with the data for 2026 available upto 27th July 2026. The response also provided category-wise details of



accidents resulting out of over-speeding, drunk driving, distracted driving, along with other causes. Relevant paragraphs are extracted as under:

“(a) Government publishes report on “Road Accidents in India” based on data received from States/ UTs. Based on the data available with the Government, the State-wise details of total number of road accidents and fatalities on all categories of roads in the country, during the year 2021 to 2025 and 2026 (upto 27.07.2026) is at Annexure-I. The details of fatalities and injuries caused to pedestrians during 2021 to 2025 and 2026 (upto 27.07.2026) is at Annexure-II.

(b) As per the data, road accidents are multi-causal phenomenon and are the result of interplay of various factors. These can broadly be categorized into (i) human error, (ii) road condition/environment and (iii) vehicular condition.

The details of road accidents classified according to major causes (Traffic rule violations) including over-speeding, drunk driving and other causes is given below as Table 1 and the no. of accident attributed to potholes during 2021 to 2025 and 2026 is given as Table 2.

Table 1:

Road Accidents Classified According to Traffic Rule Violations in India

Category	2021	2022	2023	2024	2025*	2026*
Overspeeding	2,95,522	3,33,323	3,28,727	3,45,024	82,124	46,075
Drunken driving/consu mption of alcohol & drug	9,150	10,080	9,143	8,270	2,589	1,443



Category	2021	2022	2023	2024	2025*	2026*
Driving on wrong side/Lane indiscipline	21,491	22,586	25,242	22,530	4,089	2,397
Jumping red light	2,203	4,021	2,440	1,559	276	193
Use of mobile phone	6,530	7,558	7,122	4,935	136	84
Others	77,536	83,744	1,07,909	1,05,389	4,28,075	2,33,552
All India	4,12,432	4,61,312	4,80,583	4,87,707	5,19,314	2,85,770

** Data for year 2025 and 2026 (upto 27.07.2026) are as per e-DAR.*

Table 2:

No. of road accidents attributed to

Year	Potholes	Distraction to Driver	Accident due to Road condition
2022	289	47,049	22,647
2023	294	1,23,322	39,388
2024	229	1,46,025	37,865
2025	294	2,03,897	46,898
2026- up to 27.07.2026	100	1,51,526	29,628



***Note: 1** The given data sets (Distraction to Driver, Accident due to Road condition) are entered by State police officials on e-DAR portal.*

***Note: 2** The given Potholes data sets are entered by State Highways officials on e-DAR portal.”*

57. Road users in India have a propensity to take sudden unpredictable deviations while travelling on the road, triggering alarming situations which a road user may be faced with.

58. For example, while crossing a semi-urban or a rural road, driver of any vehicle ought to be alert to the possibility of stray animals crossing the road. The same unfortunately would be the case in crowded, congested urban areas as well.

59. At all times, a driver on the road has to be alert with complete visual focus, the road space in front of him and traffic at the rear. Aside from this, the driver has to be in complete control of the vehicle which, due to its mass and velocity has a high momentum and, therefore, needs to be effectively controlled through steering and braking systems. A quick response time may be required in certain situations and one cannot simply absolve drivers on the roads from that duty of care.

60. The view which has been taken and the various decisions cited above also echo the same sentiment. In *Harmesh Kumar (supra)* the Punjab and Haryana High Court noted that a driver cannot resort to saying that an animal was negligent for its illogical act and the driver must factor their own driving skills. The Court had opined that drivers cannot evade liability by taking such an excuse and therefore, have a duty to anticipate possible hazards and exercise control and vigilance.



61. The concept has been pithily put by the Supreme Court in ***Laxman Iyer*** (*supra*) where, it was noted that, “*the idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct.*”

62. One cannot simply exonerate the driver from such liability, since it would otherwise open a Pandora’s box of excuses being made for negligent conduct. A driver's conduct could be negligent on various fronts, such as, driving at a speed where they could not control the vehicle, or not paying enough attention to the road, or not having visual focus to be able to anticipate the danger much earlier. All these factors could contribute to lack of reasonable care.

63. *Mr. Chhaya*, counsel for appellant/Insurance Company, has relied upon the decisions in ***Syed Akbar*** (*supra*) and ***Manjusha*** (*supra*) in his support, however, the same shall not be applicable to the present case. The Supreme Court in ***Syed Akbar*** (*supra*) dealt with a Criminal Appeal preferred by a bus driver who had swerved the bus to the right side in order to save a child who had been crossing the road, therefore, the finding on negligence in a criminal case cannot be equated with principle of preponderance of probabilities that is followed in MACT proceedings. ***Manjusha*** (*supra*) on the other hand, was an appeal by claimants travelling in a car where the accident occurred due to a mechanical intervention *i.e.* a tyre burst. Compensation had been granted due to the nature of the insurance policy being a ‘*Comprehensive/Package Policy*’, therefore, the same can be distinguished on facts.

64. Therefore, in this view, the Court is not inclined to accept the appellant/Insurance Company’s plea on the driver not being negligent,



due to the ‘*agony of the moment*’.

Quantum of compensation

65. *Mr. Chhaya*, counsel for appellant/Insurance Company, challenged the quantum of compensation on essentially three grounds, which are noted as under:

(i) *Firstly*, he submitted that attendant charges have been awarded twice by the MACT. Once under the standalone head at *Rs.21,35,000/-* and also awarding *Rs.33,00,000/-* towards future medical expenses, which was inclusive of medicines and attendant charges.

(ii) *Secondly*, *Rs.33,00,000/-* (*Rs.5,50,000/-* for six months with effect from 1st March 2016) awarded towards future medical expenses carried a pre-condition that the same may be refunded to the Insurance Company in case the injured claimant expired during the said period considering that he had been in coma since the date of accident. Since the injured claimant passed away on 22nd August 2020, this amount should be refunded.

(iii) *Thirdly*, he contended that the expenses incurred by the wife of injured claimant/*Smt. Neena Chandra Gupta* which were withdrawn by her amounted to *Rs. 79 lakhs*, however, the same is contrary to her testimony given as *PW8*.

66. As regards the *first* contention for payment of attendant charges, the Court has perused through the testimony of *Ms. Divya Jyoti Dungdung* (*‘PW6’*), who was the injured claimant’s nursing attendant and was charging *Rs. 42,000/-* per month. In support of her testimony,



she has provided the original payment receipts, which has been exhibited as *Ex. PW 6/5 (Colly)*. The said receipts have been perused by the Court, along with the statement of *Dr. Akhilesh Singh*, MD, Physician, M/s Super Speciality Hospital (*'PW9'*).

67. *PW9* stated that, from the date of accident till the date when he last visited the injured claimant on 16th December 2015, he was in coma/unconscious state. He further stated that the patient cannot be left alone without an attendant and had advised the family of injured claimant to arrange for a qualified medical/nursing attendant for 24 hours. Even if the injured claimant regains consciousness in the future, he will not be able to perform his day-to-day activities and will remain bed ridden.

68. Accordingly, considering the nature of his injuries, the Court is not inclined to displace the finding of MACT as regards the compensation awarded for attendant charges, as also the compensation awarded for future medical expenses.

69. As regards the *second* contention, injured claimant had subsequently passed away on 22nd August 2020, as noted in the death certificate annexed to the appeal. Therefore, appellant/Insurance Company's submission in this regard shall also not be sustainable, since the period for refund of the amount towards medical expenses was for 6 months *w.e.f.* from 1st March 2016.

70. As regards the *third* contention, the Court is inclined to consider the detailed testimony of the wife of injured claimant (*PW8*) who has tendered the receipts of medical expenses incurred for treatment. *Ex. PW 8/3* is a list of dates and fees charged by *Dr. Akhilesh Singh*. *Ex. PW8/4*



is the payment receipt issued by *Ms. Dolma Tsering* for November 2014 and January 2015 to May 2015. *Ex. PW 8/5* is the original receipt issued by *Sh. Tsering Dawa* for October 2014, December 2014, February 2015 to October 2015. *Ex. PW 8/6* is the receipt issued by *Sh. Rakesh R* for October 2014 to December 2014. *Ex. PW 8/7* is the payment receipt of Rs. 37,200/- issued by *Dr. Akram Khan*. *Ex. PW8/8* is the payment receipt of Rs.32,500/- issued by *Dr. Manish Gupta*. Original medical bills of Rs.15,70,405.44/- and Rs.1,57,405/- have also been exhibited as *Ex. PW 8/9* and *Ex. PW 8/10*. Further bills of Rs.1,88,200/- issued by *Dr. Akram Khan*, have been exhibited as *Ex. PW8/11*.

71. The contention raised by *Mr. Chhaya*, that the testimony given by the wife of injured claimant in terms of affidavit pursuant to order dated 25th August 2017, may not sustain, considering that a breakup of the payments made through cash and cheque mode, along with amount received in insurance and paid through credit card has been provided. Considering that the accident occurred on 28th May 2014 and the injured claimant was in coma till the date of his death on 22nd August 2020, MACT has correctly awarded the amount towards medical expenses.

Conclusion

72. Therefore, in view of the above, the appeal of Insurance Company lacks merit and is accordingly, dismissed.

73. By order dated 6th September 2016, the Court had directed the Insurance Company to deposit 50% of the compensation along with up-to-date interest before the Registrar General and the said amount was kept in FDRs to be released to the injured claimant through his wife.



74. Considering that the appeal of Insurance Company has been dismissed, the balance 50% amount, along with accrued interest, shall be deposited before the Registrar General and shall be released as lumpsum, considering that the injured claimant has since passed away.

75. Statutory deposit, if any, shall be refunded to the Insurance Company, only if the order of deposit has been complied with.

76. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

OCTOBER 05, 2026/sm/rk/sp