



**IN THE HIGH COURT OF HIMACHAL PRADESH.  
SHIMLA**

FAO No. 87 of 2015.

Decision reserved on: 19.4.2016.

Date of decision: May 3, 2016.

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New India Assurance Company Limited.

.Appellant/Non claimant No.1.

Vs.

Ms.Shivali Devi D/o Sh Vijay Kumar and others.

....Respondents/claimants.

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Coram:

**Hon'ble Mr. Justice P.S.Rana, Judge.**

Whether approved for reporting? Yes.

For appellant/  
Non claimant No.1: Mr.Ratish Sharma, Advocate.

For respondents/  
Claimants No. 1 to 4 Mr. Parveen Chauhan, Advocate.

For respondent/  
Non-claimant No.5. None.

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**P.S.Rana, Judge.**

**Decision:** Present appeal is filed under Section 173  
of Motor Vehicles Act 1988 against the award dated

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Whether reporters of the Local papers are allowed to see the judgment? yes.

22.11.2014 passed by Motor Accident Claims Tribunal Chamba in MAC Petition No. 49 of 2014 title Shivali Devi and others Vs. New India Assurance Company Ltd and another.

**Brief facts of the case:**

2. Petitioners Shivali Devi and others filed petition under Section 163-A of Motor Vehicles Act 1988 pleaded therein that on dated 30.4.2012 at about 6 AM deceased namely Vijay Kumar was driving vehicle No. HP-46-0492 in a very careful and cautious manner and when vehicle reached at a place known as 'Bharadi Mor Rajera' all of a sudden mechanical defect developed in the vehicle and vehicle went off the road and fell down 100 meters below at the side of river 'Ravi'. It is further pleaded that accident and death took place due to use of motor vehicle. It is further pleaded that the age of the deceased was 44 years at the time of death and occupation of deceased was driver. It is further pleaded that monthly income of deceased was 3300/- (Three thousand three hundred). It is further pleaded that Smt. Tripta Devi wife of Vijay Kumar resident of village and post office Dharwala, Tehsil and District Chamba HP was owner of vehicle at the time of accident. It is further pleaded that FIR No. 102 of 2012 registered in police station Chamba. It is

further pleaded that deceased died due to severe head injury. It is further pleaded that deceased died instantaneously at the spot. It is further pleaded that post mortem of deceased was conducted in medical civil hospital Chamba. It is further pleaded that income of deceased was Rs.3300/- per month. It is further pleaded that petitioners are children of deceased Vijay Kumar and they are legal heirs of deceased Vijay Kumar. It is further pleaded that deceased was sole earning member of the family and whole family was depended upon deceased. Vijay Kumar. It is further pleaded that untimely death of deceased placed petitioners on the verge of starvation. It is further pleaded that petition filed under Section 163-A of Motor Vehicle Act 1988 be allowed and compensation amount to the tune of Rs. 15,00,000/- (Fifteen lacs) along with interest @ 9% per annum from the date of filing of petition till its realization with costs be awarded.

3. Per contra response filed on behalf of co-respondent No.1 pleaded therein that claim petition in the present form is not maintainable. It is further pleaded that co-respondent No.1 is not liable to indemnify or pay any compensation to petitioners. It is further pleaded that a person cannot be claimant as well as owner of the vehicle

involved in the accident at the same time. It is further pleaded that claim petition under section 163-A of Motor Vehicle Act could be filed by a third party only. It is further pleaded that deceased Vijay Kumar was the husband of owner of vehicle No. HP-46-0492 and deceased Vijay Kumar could not be treated as third party. It is further pleaded that Motor Accident Claims Tribunal has no jurisdiction to try the claim petition and Employees Compensation Commissioner has jurisdiction to try claim petition. It is further pleaded that deceased Vijay Kumar himself was driving vehicle No. HP-46-0492 and petitioners are claiming compensation on account of death of Vijay Kumar under Section 163-A of Motor Vehicle Act. It is further pleaded that deceased Vijay Kumar was himself negligent and rash at the time of accident. It is further pleaded that negligence attributable to the driver of vehicle and co-respondent No.1 is not liable to pay any compensation amount. It is further pleaded that vehicle was plying in contravention of Motor Vehicle Act and in violation of terms and conditions of insurance policy. It is further pleaded that insurance company is not liable to indemnify or pay any compensation to petitioners. It is further pleaded that petition is barred and the risk of

deceased was not covered as per policy of vehicle No. HP-46-0492. It is further pleaded that even as per insurance policy no premium was paid for death of owner-cum-driver as per insurance policy. It is further pleaded that petitioners have not approached Motor Accident Claims Tribunal with clean hands and suppressed true and material facts from court. Prayer for dismissal of petition sought.

4. Per contra separate response filed by co-respondent No.2 and co-respondent No.2 admits contents of para Nos.1,2,4 to 10 and 14 to 17. Prayer for dismissal of petition sought. Petitioners filed rejoinder and re-asserted the allegations mentioned in the claim petition. As per pleadings of parties Motor Accident Claims Tribunal framed following issues.

1. Whether deceased died on 30.4.2012 at about 6 AM at place Bhardi Mor (Rajera) Tehsil and District Chamba in an accident arising out of use of vehicle bearing registration No. HP-46-0492 as alleged?. ...OPP.
2. If issue No.1 is proved in the affirmative as to what amount of compensation the petitioners are entitled to and from whom?. ...OPP.
3. Whether petition is not maintainable in present form?. ...OPR1

4. Whether Tribunal has no jurisdiction to try petition? ...OPR1

5. Whether vehicle in question was being driven in violation of terms and conditions of insurance policy? ..OPR1

6. Whether risk of deceased was not covered in insurance policy as alleged? ..OPR1

7. Whether petitioners have not come to Court with clean hands as alleged? ...OPR1

8 Relief.

5. Learned Motor Accident Claims Tribunal decided issues Nos. 1 and 2 in affirmative and learned Tribunal decided issues Nos. 3 to 7 in negative. Learned Motor Accident Claims Tribunal allowed petition filed under Section 163-A of Motor Vehicle Act and passed award to the tune of Rs.600000/- with interest @ 7.5% per annum from the date of petition w.e.f. 29.4.2014 till realization to be paid and deposited by co-respondent No.1 i.e. New India Assurance Company. Learned Motor Accident Claims Tribunal further held that amount of compensation is inclusive of interim compensation if any already received by petitioners. Learned Motor Accident Claims Tribunal directed that aforesaid amount of compensation shall be shared by all petitioners in equal shares which shall be kept in fixed deposits in their

names initially for a period of thirty six months so as to earn maximum interest thereon in nationalized bank. Learned Motor Accident Claims Tribunal further directed that amount of the share of minors shall further be invested in same manner till they attain the age of majority.

6. Feeling aggrieved against award passed by learned Motor Accident Claims Tribunal Chamba appellant filed present appeal.

7. Court heard learned Advocate appearing on behalf of appellant and learned Advocate appearing on behalf of respondents No. 1 to 4 and also perused entire record carefully.

8. Following points arise for determination in present appeal.

1. Whether award passed by learned Motor Accident Claims Tribunal is perverse based upon non appreciation of evidence as mentioned in memorandum of grounds of appeal?.

- 2 Relief.

**9. Findings on point No.1 with reasons.**

9.1 PW1 HC Kuldip Singh has stated that he was posted as investigating officer in police station Chamba and he brought summoned record. He has stated that FIR Ext PW1/A is correct as per original record. In cross-examination he has stated that he was not investigating officer of the present case and he did not investigate present case. He has admitted that FIR was not written and signed by him. Self stated that FIR is computerized.

9.2. PW2 Sh. Balak Ram has stated that he is Secretary gram panchayat Rajera since 2011 and he brought the summoned record. He has stated that death certificate of Vijay Kumar is correct as per original record. He has stated that death certificate was written and signed by him. He has stated that copy of death certificate is Ext PW2/A.

9.3 PW3 Shivali Devi has tendered in evidence affidavit Ext PW3/A. There is recital in affidavit that name of the father of deponent was Vijay Kumar. There is recital in affidavit that Vijay Kumar was driver of vehicle No.HP-46-0492. There is recital in affidavit that on dated 30.4.2012 deceased was driving vehicle having registration No. HP-46-0492 and when vehicle reached at place 'Bharadi Mor Rajera'

then mechanical fault occurred in the vehicle and accident took place. There is recital in affidavit that vehicle rolled down 100 meters into river 'Ravi'. There is further recital in affidavit that father of deponent died in the accident. There is further recital in affidavit that driver was not at fault at the time of accident and accident took place due to mechanical defect in the vehicle. There is further recital in affidavit that deceased used to take Rs.3300/- (Three thousand three hundred) per month as salary from the owner of vehicle. There is further recital in affidavit that claimants are children of deceased Vijay Kumar and were depended upon deceased at the time of death of deceased. There is recital in affidavit that compensation to the tune of Rs.1500000/- (Fifteen lac) be granted. PW3 Shivali Devi has admitted in cross examination that vehicle No. HP-46-0492 involved in the accident was owned by her mother namely Smt. Tripta Devi. PW3 Shivali Devi has admitted that RC of vehicle is in the name of her mother. She has denied suggestion that her father was not driver in the vehicle. She has admitted that vehicle involved in the accident falls in the category of commercial vehicle. She has denied suggestion that as per insurance policy risk of deceased was not covered. She has

denied suggestion that driver of vehicle was not holding valid and effective driving license at the time of accident. She has denied suggestion that vehicle was not driven in accordance with terms and conditions of insurance policy. She has denied suggestion that insurance company is not liable to indemnify the owner.

9.4 RW1 Vipin Kumar has stated that he is posted as clerk in the office of SDM Bharmour District Chamba since 2011 and he brought summoned record. He has stated that vehicle No. HP-46-0492 was registered in RLA office Bharmour. In cross examination he has admitted that vehicle involved in the accident was registered as goods vehicle. He has admitted that laden weight of the vehicle was 2750 KG and un-laden weight was 1625 Kg. He has admitted that vehicle involved in the accident is registered in the name of Tripta Devi widow of Vijay Kumar deceased.

10. Following documentaries evidence produced by the parties.(1) Ext. PW1/A is FIR No.102 dated 30.4.2012 registered under Sections 279 and 304A IPC. (2) Ext PW2/A is the death certificate of Vijay Kumar and as per death certificate Vijay Kumar died on 30.4.2012. (3) Ext P1 is the post mortem report of deceased Vijay Kumar aged 44 years

and as per post mortem report deceased Vijay Kumar had died as a result of head injury. (4) Ext RW1/A is the screen report of vehicle No. HP-46-0492. (5) Ext R1 is the copy of driving license of Vijay Kumar. (6) Ext.R1/A is the certificate of insurance policy. (7) Mark RX is the copy of family register.

11. Submission of learned Advocate appearing on behalf of appellant that deceased was not third party and was not paid driver and was husband of the owner of vehicle and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. There is no law which prohibits wife who is owner of registered vehicle to employ her husband as driver upon payment of salary. PW3 Shivali Devi has filed affidavit Ext PW3/A placed on record. There is recital in affidavit that deceased Vijay Kumar was driver of vehicle No. HP-46-0492 at the time of accident. There is recital in affidavit Ext PW3/A placed on record that salary of deceased was Rs.3300/- (Three thousand three hundred) per month. Affidavit Ext PW3/A filed by PW3 Shivali Devi remained un-rebutted on record. No official on behalf of insurance company personally appeared in witness box for the purpose of cross-examination. Affidavit filed by PW3 Shivali Devi is trust

worthy, reliable and inspires confidence of Court. There is no reason to disbelieve affidavit Ext PW3/A filed by Smt. Shivali Devi. Adverse inference under Section 114 (g) of Indian Evidence Act 1872 is drawn against employees of insurance company in present case for non appearance in court in person for purpose of cross examination. See AIR 1999 SC 1441 title Vidhyadhar Vs. Mankikrao and another. Also see AIR 1999 SC 1341 title Iswar Bhai C. Patel Vs. Harihar Behera and another.

12. Submission of learned Advocate appearing on behalf of appellant that claimants as well as owner of vehicle could not be same person and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. In the present case Tripta Devi owner of vehicle is not claimant in the petition but Smt. Tripta Devi owner of vehicle is co-respondent No.2. Tripta Devi co-respondent No.2 owner of vehicle has specifically pleaded in response filed by her that petition filed under Section 163-A of Motor Vehicle Act be dismissed. In the present case claimants are Shivali Devi daughter of Vijay Kumar, Anamika Devi daughter of Vijay Kumar, Akshay Kumar minor son of Vijay Kumar and Nagesh Kumar minor son of Vijay Kumar. It

is well settled law that widow and minor sons and daughters have different individual status as per law. In view of the fact that owner of the vehicle Smt. Tripta Devi is not claimant in present case, in view of the fact that claimants are daughters and sons of deceased Vijay Kumar and in view of the fact that claimants are legal heirs of deceased it is held that petition filed under Section 163-A of Motor Vehicle Act 1988 is maintainable on behalf of sons and daughters of deceased Vijay Kumar. See 2002 (1) SLC 204 title Smt. Kokla Devi Vs. Chet Ram and another.

13. Submission of learned Advocate appearing on behalf of appellant that deceased had died due to his own rash and negligent driving and petition filed under Section 163-A of Motor Vehicle Act 1988 is not maintainable is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that negligence is not relevant in petition filed under Section 163-A of Motor Vehicle Act. It is well settled law that Section 163-A has special provision for payment of compensation on structured formula basis and as per amendment in Section 163-A in the year 1994 claimants are dispensed with proof of negligence and compensation should be determined on the structured

formula basis. Under Section 163-A of Motor Vehicle Act 1988 following facts should be proved (1) Whether accident has occurred. (2) Whether accident occurred with motor vehicle. (3) Resultant consequence i.e. injury or death (4) Annual income should be below Rs.40,000/- Forty thousand (5) Negligence is irrelevant.

14. Submission of learned Advocate appearing on behalf of appellant that vehicle was driven in violation of terms and conditions of insurance policy and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Onus to prove that vehicle was driven in violation of terms and conditions of insurance policy was placed upon insurance company. No official on behalf of insurance company appeared in witness box in order to prove issue No.5. Hence adverse inference under Section 114 (g) of Indian Evidence Act 1872 is drawn against insurance company.

15. Submission of learned Advocate appearing on behalf of appellant that risk of deceased was not covered in insurance policy is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused insurance policy Ext R1 placed on record. As per

insurance policy the period of insurance was w.e.f. 19.1.2012 to 18.1.2013. As per insurance policy Ext R1 placed on record the liability of insurance company is basic TP cover and LL to persons employed for loading or un-loading and LL to paid driver, conductor and cleaner employed for operation. As per insurance policy Ext R1 placed on record insurance company has received premium to the tune of Rs. 12378/- (Twelve thousand three hundred seventy eight). It is held that as per insurance policy Ext R1 placed on record liability of paid driver of vehicle is covered. As per insurance policy insurance company is liable to indemnify upon the death of driver of vehicle. Even as per liability clause mentioned in certificate of insurance company is liable to indemnify up to Rs.750000/- (Seven lac fifty thousand) in respect of any one claim arising out of one event. It is proved on record that vehicle involved in accident was goods carrying vehicle as per insurance policy placed on record. It is proved on record that insurance company has received premium to the tune of Rs.12378/- (Twelve thousand three hundred seventy eight) from the owner of vehicle. It is proved on record that as per insurance policy owner of the vehicle was Smt. Tripta. In the present case Smt. Tripta is not one of the claimant but Smt.

Tripta is impleaded as co-respondent No.2. Hence present case is not a case where claimant and owner of vehicle is same person. On the contrary in the present case claimants are sons and daughters who are not owner of the vehicle. Hence it is held that insurance company is liable to indemnify the owner in present case. It is well settled law that status of widow and status of sons and daughters are two different status in the category of relationship.

16. Submission of learned Advocate appearing on behalf of appellant that deceased driver was not paid driver because driver of the vehicle was the husband of owner of vehicle and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Smt. Shivali Devi aged 20 years has filed affidavit Ext PW3/A placed on record and there is recital in affidavit that deceased Vijay Kumar used to take salary to the tune of Rs.3300/- (Three thousand three hundred) per month from the owner of vehicle. Affidavit filed by Smt. Shivali Devi remained un-rebutted on record. No official on behalf of insurance company personally appeared in witness box for the purpose of cross examination and insurance company did not adduce any oral and documentary evidence on record

in order to rebut affidavit Ext PW3/A placed on record.

Affidavit Ext PW3/A placed on record remained un-rebutted.

There is no reason to disbelieve affidavit Ext PW3/A filed by Shivali Devi in the present case. In view of un-rebutted evidence on record it is held that deceased was paid driver of owner of vehicle.

17. Submission of learned Advocate appearing on behalf of appellant that learned Motor Accident Claims Tribunal did not properly appreciate oral as well as documentary evidence placed on record is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that learned Motor Accident Claims Tribunal has properly appreciated oral as well as documentary evidence placed on record. It is held that as per Section 163-A of Motor Vehicle Act 1988 legal heirs of deceased are legally competent to file petition under Section 163-A of Motor Vehicle Act 1988. It is proved on record that Shivali Devi, Anamika Devi, Akshay Kumar and Nagesh Kumar claimants are the legal heirs of deceased Vijay Kumar. It is held that legal heirs of deceased are legally competent to file petition under Section 163-A of Motor Vehicle Act 1988 relating to goods vehicle involved in the accident wherein deceased

driver was paid driver of vehicle involved in accident. In view of above stated facts point No.1 is answered in negative. ◇

**Point No.2 (Relief).**

18. In view of findings upon point No.1 above appeal is dismissed. Award of learned Motor Accident Claims Tribunal is affirmed. No order as to costs. File of learned Motor Accident Claims Tribunal be sent back forthwith along with certified copy of decision. Appeal is disposed of. Pending application if any also disposed of.

**(P.S.Rana)  
Judge.**

May 3,2016(R)

High Court

High Court of H.P. ◊

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