

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (MV) No. 135 of 2017

Reserved on : 6.5.2026

Decided on : 18.5.2025

Trilok Chand & anr.

.....Appellants

Versus

Narinder Kumar & ors.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ yes

For the appellants:

Mr. Sanjeev Kuthiala, Senior Advocate with Ms. Tamanna Sharma, Advocate.

For the respondents:

None for respondents No. 1 and 2.

Ms. Devyani Sharma, Senior Advocate with Ms. Soma Thakur, Advocate, for respondent No. 3.

Virender Singh, Judge

The appellants, being dis-satisfied with the award dated 2.1.2017, passed by the Court of learned Motor Accident Claims Tribunal, Una, H.P. (hereinafter referred to as 'the Tribunal'), in M.A.C.P. No. 6 of 2015, titled as, 'Tarlok

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

Chand versus Narinder Kumar & ors.', have preferred the present appeal.

2. By way of award dated 2.1.2017, the learned Tribunal has allowed the claim petition filed by the appellants by awarding a sum of Rs. 8,58,400/-, as compensation, along with interest @ 9% per annum, from the date of filing of the petition, till deposit. The ultimate liability has been fastened upon respondent No. 3, insurer of truck No. PB-03R-9439.

3. For the sake of convenience, the parties to the present *lis* are, hereinafter, referred to, in the same manner, as were, referred to, by the learned Tribunal.

4. Brief facts, leading to the filing of present appeal, before this Court, may be summed up, as under:-

The claimants, being unfortunate parents of Ajay Kumar, had filed the claim petition, under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the M.V. Act'), seeking compensation on account of death of Ajay Kumar, who expired in a roadside accident, involving vehicle No. PB-03R-9439, (hereinafter referred to as 'the offending vehicle'), on 25.10.2014, being owned by respondent No. 2 and driven by respondent No. 1, in a rash and negligent manner. The said vehicle was insured with respondent No. 3.

4.1 According to the claimants, deceased Ajay Kumar, at the time of accident, was 20 years of age and was earning Rs. 9000/- per month, as he was running a street vending cart at Laddowal, District Ludhiana, Punjab.

4.2 Elaborating their stand, it has been pleaded by the claimants that on 24.10.2014, their son deceased Ajay Kumar, alongwith one Manpreet Singh, was returning back on his motorcycle, bearing registration No. HP-12T-1991, after re-fueling the same at Laddowal Petrol Pump. When, he was moving towards his street vending cart, then, at about 10:30 p.m., the offending vehicle, being driven by respondent No. 1, in a rash and negligent manner, hit the motorcycle of the deceased. Consequently, Ajay Kumar and Manpreet Singh sustained injuries. Ajay Kumar was taken to L.M. Civil Hospital, Ludhiana, where he was declared to be brought dead. His post-mortem examination was conducted and information was given to Police of Police Station, Laddowal, District Ludhiana and FIR No. 181 of 2014, dated 25.10.2014, was registered under Sections 279, 337, 338, 304-A and 427 IPC, with Police Station, Laddowal, District Ludhiana, Pb. The accident in question has solely been attributed to rash and negligent driving of respondent No. 1.

4.3 The claimants have pleaded about their bright past and bleak future and sought compensation, as claimed in the petition.

5. When put to notice, the claim petition has been contested by the respondents, by filing reply(ies).

6. Respondent Nos. 1 and 2 have filed joint reply, in which, they have taken preliminary objections by pleading that the petition is bad for non-joinder of necessary parties, as the driver, owner and the insurer of Motorcycle No. HP-12T-1991 have not been impleaded as parties in the petition, and the accident in question had taken place due to rash and negligent driving of the deceased himself.

7. On merits, the contents of the claim petition have mainly been denied for want of knowledge, however, factum of accident has not been disputed, but the same has been attributed to negligence of the rider of the motorcycle.

8. The Insurance Company of the offending vehicle has filed its separate reply, by taking preliminary objections, qua the fact that the claim petition is not maintainable. According to the Insurance Company, the driver of the offending vehicle was not having valid and effective driving license, at the time of accident. As such, the vehicle is stated

to be driven, in violation of the terms and conditions of the Insurance Policy.

9. On merits, the contents of the claim petition have mainly been denied for want of knowledge. Thus, the respondents have prayed for dismissal of the claim petition.

10. On the basis of above facts, a prayer has been made by the respondents to dismiss the claim petition.

11. From the pleadings of the parties, the following issues were framed, by the learned Tribunal, vide order dated 5.2.2016:-

1. Whether deceased Ajay Kumar died due to accident dated 24.10.2014 because of rash and negligent driving by respondent No.1 of vehicle bearing registration No.PB-03R-9439, as alleged? OPP.

2. If issue No.1 is proved in affirmative whether the petitioners are entitled to compensation, if so, how much and from whom? OPP

3. Whether the petition is bad for non joinder of necessary parties, as alleged? OPR

4. Whether the claim petition is not maintainable? OPR-3

5. Whether the driver of vehicle bearing registration No. PB-03R-9439 was not holding valid and effective driving licence at the time of accident. If so its effect? OPR3

6. Whether vehicle bearing registration No. PB- 03R-9439 was being driven at the relevant time in violation of the terms and conditions of insurance policy and provisions of M.V. Act as alleged? OPR-3.

7. Relief

12. Thereafter, the parties to the *lis* were directed to adduce evidence and after hearing learned counsel for the parties, the claim petition was allowed, as referred to above.

13. In the present case, neither the owner nor driver, nor the Insurance Company has preferred the appeal. Only the claimants, being dis-satisfied with the award, have preferred the present appeal, with a prayer to enhance the amount of compensation on the ground that the learned Tribunal has wrongly taken the income of deceased Ajay Kumar, during his lifetime, as Rs. 6000/- per month, whereas, it has been proved that he was earning a sum of Rs. 9000/- per month, at the relevant time. In this regard, the claimants have relied upon the evidence of PW-3 Tarlok Chand and PW-4 Vipin Kumar.

14. According to the claimants, addition of 30% in the income of Ajay Kumar has not been given on account of future prospects and the fact that the deceased was the sole bread earner of his family, has not been considered by the learned Tribunal.

15. On the basis of above facts, Mr. Sanjeev Kuthiala, learned Senior Advocate, assisted by Ms. Tamanna Sharma, Advocate, has prayed that amount of compensation may kindly be enhanced.

16. The prayer, so made, has been opposed by Ms. Devyani Sharma, learned Senior Advocate, assisted by Ms.Soma Thakur, Advocate, appearing for respondent No. 3 (Insurance Company) on the ground that learned Tribunal has already awarded just compensation and the award passed by the learned Tribunal, does not require any interference, by this Court.

17. On the basis of above facts, a prayer has been made to dismiss the appeal.

18. In this case, neither owner, nor driver nor Insurance Company has assailed the award passed by the learned Tribunal. In such situation, the only question, which arises for determination, before this Court, is with regard to the fact as to whether amount of compensation, which has been awarded to the claimants, by the learned Tribunal, falls within the definition of 'just compensation' or not?

19. The Hon'ble Apex Court in *Oriental Insurance Company Limited vs. Mohd. Nasir and another, (2009) 2 SCC (Cri.) 987* has held that the provisions of M.V. Act are beneficial piece of legislation and the endeavour of the Court/Tribunal should be to provide "just compensation". The relevant paras 23 and 24 of the judgment are reproduced as under:-

“23. Both, the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the petitioners suffering permanent disability. The amount of compensation is to be determined in terms of the provisions of the respective Acts. Whereas in terms of the 1923 Act, the Commissioner who is a quasi judicial authority, is bound to apply the principles and the factors laid down in the Act for the purpose of determining the compensation, Section 168 of the 1988 Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just.

24. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles. Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract of Insurance. The statutes, therefore, deserve liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.”

(self emphasis supplied)

20. Similar view has also been taken by the Hon’ble Supreme Court in **Sushila & Others versus Sudhakar & Another, 2026 LiveLaw (SC) 343**. Relevant paragraphs 19 and 20 of the judgment, are reproduced, as under:-

“19. In our considered opinion, although the High Court had enhanced the compensation, it was on the lower side. The cardinal principle of awarding compensation in the cases of motor accidents is to provide a “just compensation” to the victim and/or the distressed dependents of the deceased. The term “just” implies that the compensation must be fair, reasonable, and equitable as per the applicable legal standards. The compensation should not be too meagre, nor should it be excessive. The sole foundation of providing monetary compensation is to make efforts to put the dependents of the deceased at the same financial position that they

were in, had the accident not occurred. [See also: Reshma Kumari and others vs. Madan Mohan and another, reported in (2013) 9 SCC 65; National Insurance Co. Ltd. vs. Indira Srivastava & Ors, reported in (2008) 2 SCC 763; and Divisional Controller, KSRTC vs. Mahadeva Shetty and another, reported in (2003) 7 SCC 197]

20) Thus, in the light of the settled principle that the Motor Vehicles Act, 1988 (hereinafter referred to as "M.V. Act") is a beneficial legislation and the compensation should be just and equitable, let us deal with the issues for determination in the present appeal."

21. Being guided by the above decisions of the Hon'ble Supreme Court, this Court would proceed further to determine as to whether the amount of compensation awarded by the learned MACT to the claimants falls within the definition of 'just compensation' or not?

22. As per the claim petition, age of deceased Ajay Kumar, at the time of death, was 20 years. Claimant No. 1 Tarlok Chand (father of Ajay Kumar), when, appeared in witness box, has also disclosed the age of his son as 20 years, at the relevant time. Even, in the post-mortem report, Ext. PW1/A, age of deceased Ajay Kumar has been mentioned as 20 years. In the absence of any evidence, contrary to the same with respect to the age of deceased Ajay Kumar, the learned Tribunal has rightly taken the age of Ajay Kumar as 20 years, at the time of his death.

23. Now, the question, which arises for determination before this Court, is with regard to income of Ajay Kumar at the time of his death, as his income has been pleaded to be Rs. 9000/- per month, at the relevant time.

24. Elaborating their stand, it has been pleaded by the claimants that the deceased was running a street vending cart at Laddowal, District Ludhiana, under the name and style 'Vipan Fast Food'.

25. In the cross-examination of PW-3, when, a suggestion was put to him that his son was not earning anything, he has voluntarily stated that his son was earning a sum of Rs. 9000/- per month.

26. PW-4 Vipan Kumar has also deposed on the similar lines. He has also deposed that he used to pay a sum of Rs. 9000/- per month to deceased Ajay Kumar, as salary.

27. The learned Tribunal has taken the income of deceased Ajay Kumar, during his lifetime, as Rs. 6000/- per month. Although, no documentary evidence has been adduced by the claimants to prove the income of deceased Ajay Kumar, during his lifetime, but, the oral evidence and lengthy cross-examination conducted by learned counsel for the respondents, cannot be ignored to conclude that deceased Ajay Kumar was earning only a sum of Rs. 6000/- per month,

during his lifetime. Thus, the learned Tribunal has fallen into error by deducting the income of Ajay Kumar as Rs. 6000/- per month, whereas, the same has been proved to be Rs. 9000/- per month, as law does not differentiate between the oral evidence and the documentary evidence.

28. The age of deceased Ajay Kumar has been proved to be 20 years at the time of his death. The Hon'ble Supreme Court in a case titled as '**National Insurance Company Limited versus Pranay Sethi and others**', reported in (2017) 16 Supreme Court Cases 680 has mandated that in case, the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be warranted where the deceased is below the age of 40 years. Relevant paragraphs 52, 59.3, 59.4, 59.5, 59.7 and 59.8 of the judgment are reproduced as under:

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable

foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

XXX

XXX

XXX

59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the

necessary method of computation. The established income means the income minus the tax component.

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

29. Being guided by the above decision, the next question for determination, before this Court, is about the addition, which is liable to be given on the income of deceased Ajay Kumar, on account of his future prospects. Admittedly, the deceased was self-employed, as such, 40% increase is liable to be added in the monthly income of deceased. Thus, his monthly income comes to Rs. 9000/-+ Rs. 3600/- i.e. 40% of Rs.9000/-= Rs. 12,600/- per month.

30. Deceased Ajay Kumar was bachelor at the time of his death, as such, 50% of the amount out of his established income, is liable to be deducted. Thus, his contribution towards the family comes to Rs. 6,300/-, i.e. Rs. 12,600-50% of 12,600/-.

31. The learned trial Court, in the present case, has wrongly applied the multiplier of '13'. The multiplier has been adopted by the learned Tribunal on the basis of age of the claimants. The learned Tribunal has fallen into an error, as age of the deceased should be the basis of applying the multiplier, as held in **Pranay Sethi's** case (supra).

32. In view of decision of Hon'ble Supreme Court in **Sarla Verma (Smt) and others versus Delhi Transport Corporation and another**, reported in (2009) 6 SCC 121, multiplier of 18 is required to be applied, in the present case.

33. The learned Tribunal, in the present case, has also awarded a sum of Rs. 50,000/- under the head 'Funeral and cost of litigation', a sum of Rs. 1,00,000/- under the head 'Loss of Estate' and a sum of Rs. 1,00,000/-, under the head of 'Loss of expectations of life'. The said findings are not sustainable in the eyes of law, in view of decision of Hon'ble Supreme Court in **Pranay Sethi's** case (supra), as the claimants are held entitled for a fixed amount of Rs. 15,000/- each, under the heads 'Loss of estate' and 'Funeral expenses' and a sum of Rs. 40,000/- under the head 'loss of consortium'. In the aforesaid judgment, it has been mandated that the amount under the aforesaid heads is liable to be enhanced @ 10% after every three years.

34. In view of the decision of Hon'ble Supreme Court in *Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, (2018) 18 SCC 130*, both the claimants are also entitled to the compensation, under the head 'loss of consortium'.

35. A feeble attempt has also been made by learned Senior counsel appearing for the claimants by pleading that apart from the claimants, deceased Ajay Kumar has one minor brother and two minor sisters. PW-3, when, appeared in witness box has deposed that his minor son is studying in 8th standard and daughter is studying in 10th standard, whereas, another daughter has attained majority. However, in the absence of any documentary proof, or any attempt made by the claimants to implead them as parties, in the present case, his bald statement cannot be accepted, as gospel truth.

36. In view of above, the entitlement of the claimants, for which, they are held entitled, is assessed, as under:-

1. Loss of contribution = Rs.6300 x 12x 18= Rs.
13,60,800/-
2. Loss of estate = Rs.15,000/- + Rs. 4500/- =Rs.
19,500/-
3. Funeral expenses = Rs.15,000/- + Rs. 4500/-
= Rs. 19,500/-
4. Loss of consortium = Rs.40,000x2=Rs.80,000/-
+ Rs. 24,000/- = Rs. 1,04,000/-

Total = Rs.13,60,800+19,500+19,500+
Rs.1,04,000 = Rs. 15,03,800/-.

37. In view of the above, the compensation awarded by the learned Tribunal is liable to be enhanced.

38. The learned Tribunal has awarded interest @ 9% per annum, which is liable to be reduced. As such, claimants are held entitled to interest @ 7.5%.

39. In view of above, the present appeal is allowed by enhancing the compensation amount. The claimants are held entitled for the amount of Rs. 15,03,800/-, along with interest @ 7.5%, from the date of filing of petition till the realization of amount. The award passed by the learned Tribunal is modified and enhanced, in the above terms. The amount of compensation is apportioned amongst the claimants, in equal shares. The liability has rightly been fastened upon the Insurance Company.

40. Memo of costs be prepared.

41. Pending application(s), if any, are also disposed of.

42. Record be sent back.

18.5.2026

(kalpana)

(Virender Singh)
Judge

