

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 236 of 2017

Reserved on 27.3.2025

Date of decision : 10.04.2025.

United India Insurance Co. Ltd.

...Appellant

versus

Ram Lal& others

...Respondents.

*Coram:****The Hon'ble Mr. Justice Satyen Vaidya, Judge.****Whether approved for reporting?*¹Yes.

For the appellant : Mr. Vivek Negi, Advocate.

For the respondents : Mr. Bhupender Singh Kanwar,
Advocate, for respondents No. 1 to
3.Mr. Arvind Sharma, Advocate, for
respondent No.4.

Satyen Vaidya, Judge:

This appeal has been filed against the award dated 17.8.2016, passed by the Learned Motor Accident Claims Tribunal-IV, Shimla, H.P. in MAC Petition RBT No. 32-S/2 of 2013.

2. A Maruti Car bearing Registration No. HP-12B-0532, owned by Sh. Kamal Kishore (hereinafter referred to as the 'owner'), met with an accident near Tribal Bhawan,

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

Dhali, District Shimla on 8.7.2012. The vehicle went off the road and rolled down into about 150 feet deep gorge. At the time of accident, the said vehicle was occupied by four occupants including the driver named Vijay Thakur. The said Vijay Thakur (driver) and Amarjeet Singh (occupant of front passenger seat) died as result of accident. The other occupants of the vehicle survived.

3. The Driver Vijay Thakur was survived by his father Sh. Ram Lal, mother Smt. Nirmla Devi and wife Smt. Suman Devi (hereinafter referred to as the 'claimants'). A claim petition under Section 163-A of the Motor Vehicles Act, 1988 was filed on their behalf.

4. It was claimed that the deceased was an employee of the owner, who was paying salary of Rs. 3300/- per month to the deceased Vijay Thakur. The age of the deceased was stated to be 22 years at the time of death. The claimants claimed themselves to be totally dependent upon the deceased, having no other source of income.

5. The owner filed reply and claimed that the vehicle was insured with the insurer i.e. the appellant herein (hereinafter referred to as the 'insurer').

6. The insurer also filed a separate reply and raised objections that it was not liable to indemnify the insured, as the insured had purchased an "Act Only Policy", which did not cover the occupants of the vehicle. It was also contended that Vijay Thakur, driver of the vehicle was driving the vehicle in violation of Rule 3 of Central Motor Vehicles Rules (hereinafter referred to as the 'Rules'). All other averments in the petition were also denied generally.

7. Learned Tribunal framed following issues:-

- "i) Whether the petitioners are entitled for the compensation amount on account of death of Vijay Thakur in a Motor Vehicle accident, as alleged? OPP*
- ii) If issue No.1 is proved in affirmative, then what should be the quantum of compensation, and from whom? OPP*
- iii) Whether the petition is not maintainable? OPR*
- iv) Whether the deceased was driving the vehicle without possessing a valid and effective driving license, as alleged? OPR*

- v) *Whether there is serious breach of conditions on terms and policy of insurance, as alleged? OPR*
vi) *Relief.”*

8. Issues No. 1 and 2 were answered in affirmative and remaining issues were decided in negative. The learned Tribunal assessed the monthly income of the deceased at Rs. 2500/-. A total sum of Rs. 7,35,000/- has been awarded in favour of the claimants as under:-

1.	Loss of dependency	Rs. 5,10,000/-
2.	Loss of love and affection	Rs. 1,00,000/-
3.	Funeral charges	Rs. 25,000/-
4.	Loss of consortium	Rs. 1,00,000/-
5.	Total	Rs. 7,35,000/-

In addition, interest at the rate of 9% per annum has also been awarded from the date of filing of the petition till actual realization of the award amount. The liability has been fastened upon the insurer.

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. Mr. Vivek Negi, learned counsel for the insurer has contended that the insured had purchased 'Act Only Policy' and hence the driver was not entitled for coverage. It has also been contended that the driver Vijay Thakur was driving the vehicle in violation of the Central Motor Vehicle Rules. He further submitted that the learned Tribunal has erred in not awarding the compensation in accordance with Second Schedule, appended to the Motor Vehicles Act, 1988.

11. On the other hand, Mr. Bhupender Singh Kanwar, learned counsel for the claimants has submitted that the compensation awarded to the claimants is just and fair. The Second Schedule appended to the Act has been held to be redundant by the Hon'ble Supreme Court in ***Puttamma & others* vs. *K.L. Narayana Reddy & another, 2014 (1) ACJ 526***. He has also placed reliance of a judgment passed by this Court in ***New India Assurance Company Limited* vs. *Chanchal Devi & others Latest Himachal Law Judgments 2014 (1) 250***.

12. In order to appreciate the rival contentions of the parties, it will be relevant to notice that the insurer has

placed reliance on the policy of insurance Ext. RW1/B. A perusal of insurance policy Ext. RW3/A reveals that the insured had paid premium of Rs. 740/- towards Basic-TP (third party) and Rs. 100/- towards Compulsory PA(personal accident) owner-driver. Since the insurer has charged a premium of Rs. 100/- for personal accident of owner and driver, it cannot get itself absolved from indemnifying the insured.

13. It has next been contended on behalf of the insurer that the learned Tribunal has erred in not appreciating a clear violation of Rule 3 of the Rules. Learned counsel for the insurer would contend that the driver Vijay Thakur was having a learner license only and as per the conditions laid in Rule 3 (supra), he could drive the vehicle only when he was accompanied by another person, holding a valid driving license to instruct him and such person should also be seating in such a position so as to control or stop the vehicle.

14. Noticeably, the learned Tribunal has found as fact that the deceased Amar Jeet Singh was the occupant of front passenger seat. The driving license of deceased Amar

Jeet Singh has been placed on record. The insurer has not been able to prove that Ext. PW1/D was not a valid and genuine license.

15. Rule 3 of the Rules reads as under:-

“3. General.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:—

Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom: Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for

the purpose and in the manner referred to in clause (b).”

16. Once the deceased Amar Jeet Singh was found to be seated on the front passenger seat of a Maruti Car with a valid driving license, it cannot be said that there was violation of the aforesaid Rules. He was in the best position to control and stop the vehicle. Therefore, the second contention of insurer also deserves to be rejected for the reasons discussed above more particularly when it was not disputed that the driver possessed a learner's license at the time of accident.

17. Lastly, the contention of the insurer that the compensation was to be assessed in terms of Second Schedule appended to the Act needs to be upheld. In ***Puttamma (supra)***, the Hon'ble Supreme Court did not rule out the applicability of Second Schedule at all. It was required from the Union Government to amend the Second Schedule, which had been enacted w.e.f. 14.11.1994 and there had been no amendment since then despite the fact that the cost of living had gained many folds. In this backdrop, the Hon'ble Supreme Court has held as under: -

“53 In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

56. The Central Government was be-stowed with duties to amend the Second Schedule in view of section 163-A (3), but it failed to do so for 19 years in spite of repeated observations of this court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule Table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of section 163-A of the Act, 1988 or amendment is made by Parliament, we hold and direct that the children up to the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000 (rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs. 1,50,000 (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is

higher. Such amount is to be paid if any application is filed under section 163-A of the Act, 1988”

18. Similarly, in ***Chanchal Devi (supra)***, this Court had not held that the provisions of Section 163-A of the Act or Second Schedule would not apply in any case at all.

19. Thus, the claimants were entitled to be awarded the compensation in terms of the Second Schedule to the Act, which was there on the statute book on the date of accident as also on the date of filing of the claim petition. Section 163-A and Second Schedule to the Act stands omitted from the statute book w.e.f. 1.9.2019 on enforcement of the Motor Vehicles Amended Act, 2019.

20. As per the then Second Schedule to the Act, the claimants will be entitled to compensation of Rs. 6,84,000/-, as the income of the deceased was assessed at Rs. 2500/- per month. There was no equivalence in the Second Schedule for assessment of compensation in case of person having annual income of Rs. 30,000/-, the nearest available parameters i.e. the income of 36,000/- per month can be justifiable considered relevant and on its basis, the amount of Rs. 6,84,000/- will be payable as the

age of the deceased was proven as 22 years. In addition, the claimants will be entitled to funeral expenses of Rs. 2000/- and for loss of estate Rs. 2500/-. Further the wife being one of the claimants of deceased, she will also be entitled for loss of consortium to the tune of Rs. 5,000/-.

21. In view of the above analysis, the claimants are held entitled to the following amount: -

Sr. No.	Heads	Calculation
1.	Compensation	Rs. 6,84,000/-
2.	Funeral expenses	Rs. 2000/-
3.	Consortium	Rs. 5,000/-
4.	Loss of estate	Rs. 25,00/-
5.	Total	Rs. 6,93,500/-

22. The compensation shall be apportioned amongst the claimants as under: -

Claimant No.1 (father) : 20%
Claimant No. 2 (mother) : 30%
Claimant No.3 (wife) : 50%.

The claimants shall also be entitled to interest at the rate of 9% per annum from the date of filing of the

petition till actual realization of the award amount, as awarded by the learned Tribunal.

23. The appeal is accordingly disposed of. The impugned award dated 17.8.2016, passed by the Learned Motor Accident Claims Tribunal-IV, Shimla, H.P. in MAC Petition RBT No. 32-S/2 of 2013, shall stand modified to above extent. Pending application(s), if any, also stand disposed of. Record be sent back.

10th April, 2025
(kck)

(Satyen Vaidya)
Judge