



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

FAO (MVA) No. 284 and 329 of
2016

Reserved on: 16.5.2025

Date of decision: 24.7.2025

1. FAO No. 284 of 2016

United INdia Insurance Company.

....Appellant.

Versus

Sita Devi & others.

....Respondents.

2. FAO No. 329 of 2016

United India Insurance Company.

...Appellant.

Versus

Joginder Singh & others.

....Respondents.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes

For the Appellant (s):

Mr.Ashwani K. Sharma, Senior Advocate, with Ms.Nisha Nalot, Advocate, vice Mr.Ishan Sharma, Advocate, in both appeals.

For the Respondent(s):

Mr.Pankaj Sawant, Advocate, vice Mr.Sunil Kumar, Advocate, for respondents No. 1 and 2, in both appeals.

Mr.Raju Ram Rahi, Advocate, for respondent No. 3 in both appeals.

Vivek Singh Thakur, Judge

These appeals, arising out of claim petition related to one and the same accident, for involvement of common question of law and

¹*Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

based on similar facts and evidence, are being decided by this common judgment.

2. Motor accident in reference in present matter had occurred on 31.3.2012 near Tutikandi, Shimla when Tata Indigo Car bearing registration No. HP-1A-5344, owned by Bimla Devi (respondent No. 3 in both appeals) being driven by driver engaged by owner, in rash and negligent manner, met with an accident leading to death of driver, Ajay son of Sita Devi and Ramesh Kumar (respondents No. 1 and 2 in FAO No. 284 of 2016 and Raju son of Joginder Singh and Thanki alias Kamlesh (respondents No. 1 and 2 in FAO No. 329 of 2016).

3. For death of Ajay and Raju, their parents preferred Claim Petition bearing No. 56-S/2 of 2013, titled as Sita Devi and Another Vs. Bimla Devi and Another; and Claim Petition No. 55-S/2 of 2013, titled as Joginder Singh and Another Vs. Bimla Devi and Another before Motor Accident Claims Tribunal (MACT), which were decided by separate even dated awards on 10.3.2016 by MACT-III Shimla.

4. Appellant herein is Insurer Company of the vehicle.

5. In both Claim Petitions, PW-1 are respective fathers of deceased, whereas PWs-2 to 5 are common witnesses.

6. Respondents have also examined 5 witnesses, who are common in both appeals.

7. Except difference with respect to occupation of deceased, other facts, if not identical, are almost similar in nature.

8. Accident in reference, deaths of the occupants of the Car, and vehicle registration and fitness of the vehicle with valid insurance are not in dispute.

9. On behalf of Insurance Company, two objections were taken in the reply.

(1) that vehicle was being driven by driver not authorized to drive the transport vehicle, whereas Car involved in the accident was a Taxi and thus a transport vehicle. However, driver of the vehicle was having license authorized to drive LMV non-transport vehicle, but without endorsement of authorization to drive transport vehicle.

(2) that taxi was having seating capacity of 5 occupants including driver (1+4), whereas admittedly 6 persons were traveling in the Car and, therefore, there is breach with respect to seating capacity of the vehicle involved in the accident. It was stand of the Insurance Company that owner of the vehicle had violated the basic and fundamental condition of the driver clause, permit and provisions of Motor Vehicles Act and as the vehicle was overloaded, death and injuries of persons traveling in the vehicle are not

covered under the contract of insurance and, therefore, there is no liability of the Insurance Company.

10. As per claimants 19 years old Ajay and 21 years old Raju were working as Mechanic and Painter, respectively in Himachal Auto Rohru and were getting salary of ₹5,000/- per month plus ₹100/- as over time.

11. Taking into consideration material on record, MACT has assessed the compensation payable to the claimants amounting to ₹9,72,000/- in each case. In addition ₹1,00,000/- and ₹25,000/- are held payable to the claimants in each case for loss of consortium and funeral expenses, respectively and in total compensation has been determined as ₹10,97,000/- plus interest thereon @ 7.5% per annum in each case from the date of petition(s) till date of realization of entire amount. In both cases, respective father of deceased has been held entitled for claim of ₹3,97,000/-, whereas respective mother has been held entitled for ₹7,00,000/-.

12. Being aggrieved by impugned awards, Insurance Company has preferred FAO No. 284 of 2016 in MAC Petition No. 56-S/2 of 2013 and FAO No. 329 of 2016 in MAC Petition No. 55-S/2 of 2013.

13. Learned counsel for the appellant/Insurance Company has submitted that in addition to the objections taken by the Insurance Company before the MACT, these appeals have also been preferred

assailing correctness of quantum of compensation as the MACT has awarded huge compensation contrary to the settled principles of law holding the field in the subject matter. It has been submitted that apart from ignoring driving the vehicle by unauthorised person having no valid driving license and overloading of one passenger in the taxi involved in the accident. It has been contended on behalf of appellant-Insurance Company that MACT has also awarded huge amount on the basis of guess work by presuming that at the relevant point of time minimum wages of a manual labour were ₹6,000/- per month, whereas vide Notification dated 19th May, 2012, per month minimum wages of unskilled worker, semi skilled worker and skilled workers were notified by the Labour and Employment Department of Himachal Pradesh as ₹3,900/-, ₹4,290/- and ₹4,914/- respectively. According to him, once Motor Accident Claims Tribunal had decided to determine the compensation on the basis of minimum wages of manual labour at relevant time, the minimum wages notified by the Government of Himachal Pradesh become relevant and thus determining monthly income by considering minimum wages @ 6,000/- of a manual labour, but ignoring the notified minimum wages, is an error committed by the MACT, because as per notification it would have been @ ₹3,900/- per month.

14. It has been further submitted by learned counsel for the appellant-Insurance Company that for future prospects 50% future

enhancement has been added by the MACT, which is again contrary to the law of land.

15. Further that loss of consortium ₹1,00,000/- each in both cases has also been awarded contrary to the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, (2017) 16 SCC 680.***

16. It has been contended on behalf appellant that there is no document on record to establish monthly income/salary of the deceased persons in both cases. It has been contended that on the basis of oral assertion or deposition which has not been accepted by the Insurance Company, amount of compensation cannot be determined as calculated by the MACT. It has been submitted that MACT had rightly rejected evidence lead by claimants in this regard, but thereafter by ignoring the minimum wages of manual labour, semi skilled worker and skilled worker notified by the Government, MACT has committed a mistake and error of law.

17. Learned counsel for the appellant(s) has also produced copy of Notification dated 19th May, 2012 published in Rajpatra of Himachal Pradesh on 23rd May, 2012 with submission that Court can take cognizance of this notification being a public document notified by the competent authority, whereby minimum wages of workers have been determined.

18. Learned counsel for the respondents/claimants has submitted that PW-1 respective fathers of deceased in both cases and PW-3 Dinesh Kumar employer of deceased in both cases have categorically deposed with respect to the income of the deceased persons. PW-1 Ramesh Kumar father of deceased Ajay (in FAO No. 284 of 2016) has deposed that deceased was earning ₹7,000-₹8,000/- per month and was giving ₹4,000-₹5,000/- to claimants and PW-1 Joginder Singh father of deceased Raju (in FAO No. 329 of 2016) has deposed that deceased was earning ₹8,000-₹9,000/- per month and was giving ₹4,000-₹5,000/- to the claimants, whereas PW-3 Dinesh Kumar employer of deceased persons, in both cases, has stated that he was paying salary of ₹5,000/- plus ₹100/- overtime. Learned counsel has further submitted that there are pleadings, deposition of witnesses and no cross-examination with respect to amount of salary being paid to the deceased persons and, therefore, monthly income of deceased was to be taken about ₹8,000/- per month and, thus, it has been contended that by ignoring pleadings and oral evidence, MACT has committed a mistake by considering the deceased persons as manual labour and determining the compensation on the basis of such earning of daily waged labour.

19. It has been contended on behalf of claimants that being a beneficial legislature it is duty of the Court to ensure payment of just and fair compensation to the claimants and, therefore, claimants are entitled

to raise issues for enhancement of compensation on the basis of monthly salary as proved by placing on record documents and depositions of witnesses before MACT. It has been also contended that instead of 50% future prospects, 40% future prospects are to be added in the income for determining just and fair compensation.

20. Learned counsel for the respondents/claimants has placed reliance upon the judgment dated 24.2.2021 passed in **FAO No. 379 of 2015**, titled as **Shriram General Insurance Company Ltd. Vs. Vijay Laxmi and others** and judgment dated 26.4.2023 passed in **FAO No. 143 of 2014 and connected matter**, titled as **Nirmala Devi Vs. Kuldeep Kumar and Another** as well as judgment passed by the Supreme Court in **Laxmibai (dead) through LRs. and Another Vs. Bhagwantbuva (dead) through LRs. and others, (2013) 4 SCC 97; Chandra alias Chanda alias Chandraram; Another Vs. Mukesh Kumar Yadav and others, (2022) 1 SCC 198; and Mohammed Siddique and Another Vs. National Insurance Company Limited and others, (2020) 3 SCC 57**.

21. Learned counsel for the appellant-Insurance Company has contended that when there is no document on record to substantiate the claimed monthly income of deceased persons, the Court should determine the amount of compensation by taking into consideration monthly wages notified by the Government of Himachal Pradesh as

minimum wages with respect to category of deceased. It has been submitted that as the MACT has considered the deceased manual labourers, the amount of compensation cannot be determined on the basis of claim of the parents of deceased persons and statement of PW-3 Dinesh Kumar on the basis of occupation of deceased as Mechanic and Painter, respectively, but amount of compensation payable to claimants is to be determined on the basis of minimum wages, i.e. ₹3,900/- per month.

22. No doubt in absence of any evidence on record, to determine the amount of compensation, minimum wages notified by the Government can also be taken into consideration for determining the compensation amount. However when there is material on record in pleadings of claim petition, oral deposition of witnesses and the same remains unrebutted, the determination of amount of compensation on the basis of lowest level of minimum wages to compute the monthly income, is not justifiable.

23 In present case, in para 6 of both claim petitions, monthly income of deceased have been claimed as ₹5,000/- per month plus ₹100/- overtime.

24. PW-3 Dinesh Kumar has corroborated the said pleadings in his deposition. In cross-examination to this witness, nowhere it was suggested that he was not paying ₹5,000/- per month plus ₹100/-

overtime. Entire cross-examination is concentrated on the issue that employer had not produced the register, receipt or account statement before the MACT, reflecting and corroborating the wages being paid by employer to and received by the deceased persons. There is nothing on record to impeach the credibility of PW-3 Dinesh Kumar. When there is unimpeached deposition of witness, corroborating the claim made in the petition is on record, then there is no occasion for adverting to the minimum wages notified by the Government.

25. The Supreme Court in **Laxmibai (dead) through LRs. and Another Vs. Bhagwantbuva (dead) through LRs. and others, (2013) 4 SCC 97** has held as under:-

“40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by

him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See: *Khem Chand v. State of H.P.*, 1994 Supp (1) SCC 7; *State of U.P. v. Nahar Singh*, 1998 (3) SCC 561; *Rajinder Pershad v. Darshana Devi*, (2001) 7 SCC 69; and *Sunil Kumar v. State of Rajasthan*, (2005) 9 SCC 283)."

26. It, however, is relevant to note that there is no pleading or deposition with respect to frequency of payment of ₹100/- as overtime. There is nothing on record to show or establish that ₹100/- for overtime were payable throughout the month. There is no material either in pleadings or in oral deposition of the witnesses to show that ₹100/- was being paid to the deceased regularly on every working day, much less on the holidays. Therefore, averments and assertions with respect to payment of ₹100/- overtime, cannot be taken as payment of ₹100/- on every day of the month and thus payment of ₹100/- as overtime cannot be taken into consideration as regular monthly income for determination of compensation by treating the same as a part of monthly income.

27. It is noteworthy that in Notification dated 19th May, 2012 published by Labour and Employment Department of Himachal Pradesh, painter and workshop mechanic have been included in semi-skilled workers. Monthly minimum wages of this category is ₹4,290/- per month. The said amount is also nearer to ₹5,000/-, the salary claimed being paid

to the deceased persons, as claimed by the employer. For nature of evidence on record monthly income of deceased can be safely considered as ₹4,500/- per month.

28. In FAO Nos. 143 of 2014 and 379 of 2015, after referring judgments of the Apex Court, it has been held that compensation can be determined on the basis of oral evidence of the claimants establishing wages of deceased to the preponderance of probability.

29. It is also a settled law of land that deposition made in examination-in-chief, not specifically disputed, questioned or put to the witness in cross-examination, amounts to admission of the said fact. Admitted facts need not to be proved.

30. Therefore, on the basis of material on record, I am of the considered opinion that payment of salary of ₹4,500/- per moth by the employer to each deceased can be taken into consideration for determination of compensation.

31. Following paras of judgment of the Apex Court in **Pranay Sethi's** case are relevant for determining the quantum of compensation:-

“37. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units

indicated in Trilok Chandra⁴, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

.....

42. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

.....

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.

59.8 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.”

32. The Apex Court in ***Megma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130*** has held as under:-

“24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under “loss of consortium” as laid down in *Pranay Sethi*. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of filial consortium.”

33. The Apex Court in a recent judgment, in ***Mohammed Siddique and another vs. National Insurance Company Limited and others*** reported in **(2020) 3 SCC 57** has held as under:-

“14. The second issue on which the High Court reversed the finding of the Tribunal, related to the employment of the deceased and the monthly income earned by him. According to the claimants, the deceased was aged 23 years at the time of the accident and he was not even a matriculate. But he was stated to have been employed in a proprietary concern named M/s Chandra Apparels on a monthly salary of Rs.9600/-. The sole proprietor of the concern was examined as PW2 and the salary certificate was marked as Ext.PW1/8. The Tribunal which had the benefit of recording the evidence and which consequently had the benefit of observing the demeanour of the witness, specifically recorded a finding that there was no reason to discard the testimony of PW2.

15. But unfortunately the High Court through that the employer should have produced salary vouchers and other records including income tax returns, to substantiate the nature of employment and monthly income. On the ground that in the absence of other records, the salary certificate and the oral testimony of the employer could not be accepted, the High Court proceeded to take the minimum wages paid for the unskilled workers at the relevant point of time as the benchmark.

16. But we do not think that the approach adopted by the High Court could be approved. To a specific question in cross examination, calling upon PW2 to produce the salary vouchers, he seems to have replied that his business establishment had been wound up and that the

records are not available. This cannot be a ground for the High Court to hold that the testimony of PW2 is unacceptable.

17. The High Court ought to have appreciated that the court of first instance was in a better position to appreciate the oral testimony. So long as the oral testimony of PW2 remained unshaken and hence believed by the Court of first instance, the High Court ought not to have rejected his evidence. After all, there was no allegation that PW2 was set up for the purposes of this case. There were also no contradictions in his testimony. As against the testimony of an employer supported by a certificate issued by him, the High Court ought not to have chosen a theoretical presumption relating to the minimum wages fixed for unskilled employment. Therefore, the interference made by the High Court with the findings of the Tribunal with regard to the monthly income of deceased, was uncalled for.”

34. The Apex Court in **Chandra alias Chanda alias Chandraram and Another Vs. Mukesh Kumar Yadav and others, (2022)1 SCC 198** has held that:-

“9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. 1 (2021) 2 SCC 166 C.A.@S.L.P.(C)No.6466 of 2019 Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be

totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/-per month.”

35. In present case vehicle involved, though a Transport vehicle, but admittedly was a light motor vehicle, having unladen weight of 1115 Kgs and Laden weight of 1515, but gross weight of the vehicle does not exceed 7500 Kgs.

36. The Constitution Bench of the Supreme Court in its recent judgment in ***Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and others, (2025) 3 SCC 95*** has held that driver holding a license for light motor vehicle (LMV) class, permitted to operate a “transport vehicle” with a gross vehicle weight under 7500 kg, without requirement of additional authorization under Section 10(2)(e) of MV Act, specifically for the “transport vehicle” class, with observation that licensing purposes, LMVs and transport vehicles are not entirely separate classes and an overlap exists between the two. Therefore, plea of Insurance Company in this case is not sustainable and rejected accordingly.

37. Though it has been alleged by the Insurance Company that there was fundamental breach of the policy, but accept the fact that 6 persons were sitting in the car, no other breach, much less fundamental

breach, of the terms of the policy has been established on record. So far as overloading of one extra person is concerned, it is not a violation or fundamental breach of the terms of the policy having consequences of absolving Insurance Company from indemnifying the owner to pay the compensation in an accident, particularly when overloading of one person is not related to cause of the accident.

38. The Apex Court in **National Insurance Co. Ltd. Vs. Swaran Singh & others, (2004) 3 SCC 297** has held as under:-

“49. Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.”

39. Therefore, plea of the Insurance Company to absolve it from paying the compensation on account of overloading of one person in the Car is also not sustainable.

40. In the aforesaid facts and circumstances, claimants in both cases shall be entitled for compensation in following terms:-

Income Taken	₹4,500/- Per Month.
1/2 deduction towards living expenses.	₹4,500-₹2,500=₹2,250/-
Future Prospects (in terms of para 59.4 of judgment rendered in Pranay Sethi's case @ 40%	₹900/-
Total Income	₹2,250/-+₹900/-=₹3,150/-
Multiplier (age between 19 to 21)	18
Loss of Dependency	₹3,150/-x12x18=₹6,80,400/-
Loss of Estate	₹15,000/-

Funeral expenses	₹15,000/-
Loss of consortium	₹40,000/-+₹40,000/-=₹80,000/-
Total	₹6,80,400/-+₹1,10,000/-=₹7,90,400/-

41. Keeping in view that income of deceased was not attracting levy of income tax, no deduction towards income tax is required to be made. However, rate of interest is reduced from 7.5% to 6% per annum.

42. Amount of compensation is modified in aforesaid terms. Accordingly, claimants in each appeal are entitled for a sum of ₹7,90,400/- along with interest at the rate of 6% per annum from the date of filing of claim petition till realization of whole amount with interest from appellant/Insurance Company as held by MACT. This amount of compensation is inclusive of any amount paid under Section 140 of MV Act.

43. In the aforesaid compensation, amount shall be paid in the proportion i.e. ₹4,90,400/- to mother in each appeal and ₹3,00,000/- to father in each appeal.

The appeals stand disposed of.

24th July, 2025
(Keshav)

(Vivek Singh Thakur),
Judge.