IN THE COURT OF ANIL KUMAR, MOTOR ACCIDENT CLAIMS TRIBUNAL, KURUKSHETRA. UID No.HR0495

Case No.	**MACP 231 of 2017**
Case Code	**HRKU01-002280-2017**
Date of Institution	02.05.2017/08.04.2025
Date of Decision	**17.07.2026**
UID	**HR0495**

1. Kamini, aged about 55 years, widow of Deepak Bhatnagar son of Mukat Narayan Bhatnagar,
2. Himanshu Bhatnagar, aged about 21 years, son of Deepak Bhatnagar,
3. Anamika Bhatnagar, aged about 17 years, daughter of Deepak Bhatnagar,

   All residents of House No. 543/156, Ward No. 12, Deepak Hospital, Railway Road, Shahabad, Tehsil Shahabad, District Kurukshetra.

...... Claimants/Petitioners

Versus

1. Krishan Saluja son of Ram Narayan Saluja, resident of House No. 316, HUDA, Shahabad, District Kurukshetra **(Driver and owner of motorcycle bearing registration No.HR-07P-7750)**
2. The New India Assurance Company Limited, Railway Road, Kurukshetra through its Branch Manager, vide Policy No.36360331160100004926 valid from 22.09.2016 to 21.09.2017 **(Insurer of offending motorcycle bearing registration No.HR-07P-7750)**

.....**Respondents.**

Claim petition under Section 140, 141 and 166 of Motor Vehicles Act 1988.

Anil Kumar)
Motor Accident Claims Tribunal,
Kurukshetra. 17.07.2026

Argued by: Shri J.S. Deswal, Advocate for claimants/petitioners.
Shri Rajiv Bodla, Advocate for respondent no. 1.
Shri V.K. Garg, Advocate for respondent no. 2.

<u>THIS IS A DEATH CASE</u>

<u>FRESH AWARD AFTER REMAND:</u>

1. This claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 seeks just compensation for the **death of Deepak Bhatnagar** in a motor vehicular accident at about 8:00 p.m. on 15.02.2017 near Chawla Marble Shop, Gugga Mari Road, Shahabad. The deceased was travelling as a pillion rider on motorcycle No. HR-07P-7750 driven and owned by respondent No.1 and insured with respondent No.2.

2. The earlier award dated 22.05.2018 dismissing the petition was set aside by the Hon'ble Punjab and Haryana High Court in FAO-7252-2018 (O&M), Kamini and others v. Shri Krishan Saluja and others, decided on 18.03.2025. The matter was remanded for a decision afresh after two effective opportunities to both sides to lead evidence. The High Court specifically observed that the order dated 21.08.2019 of the District Consumer Disputes Redressal Forum, U.T. Chandigarh, founded upon verification by United India Insurance Company Limited, constituted a vital piece of evidence requiring consideration.

3. Upon restoration, the claimants tendered the investigator's report/letter dated 23.09.2017 as Ex.P7, the certified copy of Consumer Complaint No. CC/517/2018 and the order dated 21.08.2019 as Ex.P8, and the certificate of Dr. Bhaskar Gupta as Ex.P9. Respondent No.2

tendered a further copy of the insurance policy as Ex.R4. Both respondents elected not to lead oral evidence after remand.

PLEADINGS

4. The claimants plead that respondent No.1 was driving at an excessive speed and without due care. When a stray dog suddenly came onto the road, he lost control; the motorcycle skidded, and both occupants fell. Deepak Bhatnagar sustained serious, predominantly head, injuries and was taken to Gupta Medicare Hospital, Shahabad, where he was declared brought dead at 8:20 p.m. The occurrence was witnessed by Avtar Singh (PW2). DDE/DDR No.19/29 dated 16.02.2017 was recorded at Police Station Shahabad.

5. The deceased was stated to be about 57 years old, an advocate in regular practice, and earning approximately ₹80,000 per month. Claimant No.1 is his widow; claimants Nos.2 and 3 are his children. Compensation of ₹80,00,000 with interest @12% per annum from the date accident till realization was claimed.

6. Respondent No.1 admitted that he was driving the motorcycle, that the deceased was travelling with him, and that the motorcycle skidded when a dog suddenly appeared. He denied rashness, asserted that he was driving at a moderate speed, possessed a valid driving licence, and claimed indemnification under the policy.

7. Respondent No.2 denied the accident, negligence, causal nexus, income and dependency; alleged collusion; stressed the absence of

an FIR, MLR and post-mortem report; and pleaded breach of policy conditions and absence of a valid licence. It did not, however, examine any witness to prove fraud, collusion, breach, exclusion, or any alternative cause of death.

<u>ISSUES</u>

8. from the pleading of the parties, following issues were framed by learned predecessor vide order dated **15.02.2017: -**

1. Whether **Deepak Bhatnagar** died due to injuries suffered in the accident dated **15.02.2017** caused by rash and negligent driving of motorcycle bearing registration No.**HR-07P-7750** by respondent no. 1 as alleged? OPP

2. Whether the claimants in the present claim petition are entitled to compensation, if so, how much and from whom? OPP

3. Whether the respondent no. 1 was has violated the terms and conditions of the insurance policy, if so to what effect? OPR-2

4. Relief.

<u>EVIDENCE</u>

9. PW1 Kamini reiterated the claim and proved the status of the claimants, the profession and income of the deceased, and the immediate aftermath of his death. Her evidence on the manner of accident is derivative, but her evidence as to family status, profession, dependency and contemporaneous conduct is relevant.

10. PW2 Avtar Singh gave an eye-witness account that the motorcycle was being driven at high speed; a dog came in front;

respondent No.1 lost control; the vehicle skidded; and the deceased fell and sustained injuries. The fact that his name is absent from the DDE does not by itself efface sworn testimony, particularly when no cogent motive for false implication was elicited.

11. PW3 Ankush Sethi, Tax Assistant, supported the certified income-tax returns Ex.P1 to Ex.P3 for Assessment Years 2014-15, 2015-16 and 2016-17. These pre-accident statutory returns furnish a safer basis for income than mere oral estimation. Ex.P4 is the contemporaneous DDE/DDR; Ex.P5 and Ex.P9 are the medical certificates recording that the deceased was brought dead; and Ex.P6 is the death certificate.

12. Ex.P7 is the report dated 23.09.2017 of the investigator engaged by United India Insurance Company Limited under the Bar Council group personal accident policy. The investigator contacted the widow, respondent No.1, local residents, Dr. Bhaskar Gupta, the police station, the cremation society and the Registrar of Births and Deaths. He recorded that respondent No.1 confirmed the accident; Dr. Gupta confirmed examination and declaration of death; the police record and death certificate were verified; and the ultimate conclusion was that Deepak Bhatnagar met with a road-side accident on 15.02.2017 and expired the same day.

13. The copy of document Ex.P8 comprises the consumer proceedings culminating in the order dated 21.08.2019. The District Consumer Dispute Redressal Forum-1, U.T. Chandigarh treated the

insurer's own investigation as corroborative, found accidental death established, and directed payment of the assured sum. The order remained unchallenged and attained finality. It is not res judicata against respondent No.2, which was not a party; nevertheless, as held in the remand order, it is a vital corroborative circumstance and cannot be discarded as juridically irrelevant.

14. The Ex.R2 is the registration certificate of offending motorcycle bearing registration number HR07P-7750 issued in the name of Shri Krishan Saluja and Ex.R3 is his driving licence, which were tendered by respondent No.1. Ex.R1 and Ex.R4 are copies of the policy covering the offending motorcycle on the date of occurrence. Respondent No.2 produced no official from the licensing authority, no surveyor or investigator, and no witness to prove breach or exclusion.

<u>SUBMISSIONS:</u>

15. Learned counsel for the claimants argued that motor accident proceedings are summary and governed by preponderance of probabilities; that respondent No.1 substantially admitted the occurrence; that the eye-witness, DDE, medical certificate, death certificate, Ex.P7 and Ex.P8 form a coherent evidentiary chain; and that absence of post-mortem is not an inflexible rule of exclusion. while relying upon case titles as ***Aditya Ramchandra Patil and others Vs Yuvraj Bhivaji Patil and others decided by Hon'ble Bombay High Court arising out of First Appeal No. 1370 of 2019; date of decision 23.07.2025,*** it was argued that a

petition cannot be dismissed on ground that claimants have not proved rash and negligent driving of rider of motorcycle, as it is not necessary to have involvement of other vehicle to cause accident. It was further submitted that recording of FIR regarding accident is not essential for deciding the claim petition rather involvement of the vehicle is to be determined on basis of preponderance of probabilities. Learned counsel referred cases titled as ***National Insurance Co. Ltd. Vs Harkiran Kaur and others decided by Hon'ble Punjab and Haryana High Court on 18.11.2025 vide FAO 4561 of 2014 (O&M),*** and emphasized that the deposition of eyewitness would prevail even only a DDR was registered, in which it was stated that there was no fault of anyone in accident and no FIR was registered but eyewitness of accident made categoric statement in respect of rashness and negligence of driver of offending vehicle. It is argued after relying on case titled ***Sandeep Kumar and another Vs Bhajan Singh and another: (P&H), FAO No. 5726 of 2015 (O&M), decided on 10.08.2018*** that once respondents have taken a plea that no accident took place, it was incumbent for the driver of offending vehicle to appear in the court and face cross-examination and when the driver has not appeared, adverse inference has to be drawn against him for non-appearance. It is contended that absence of post-mortem examination is not fatal to claimant's case especially there is nothing on record to suggest that anything else intervened in order to substantiate contention of insurer that death was not due to injuries suffered by deceased in accident in question once he declared dead by the doctor. In this regard, learned counsel placed reliance upon decision of Hon'ble Punjab and Haryana High Court in case titled ***The New India Assurance Company Ltd. Vs Savitri Devi and others; (FAO No. 3475 of 2016, Decided on 16.08.2016).*** Learned counsel further relied upon ***Tripta Devi & Ors Vs Rakesh Kumar & Anr. Decided by Hon'ble Supreme Court on 28.07.2013 in Civil Appeal No. 5858 of 2013,*** and urged that investigation report which was called for by Insurance Company from its own Agency can be taken into consideration for proving death of the deceased in the accident. It is further argued that the motorcycle insured under package policy also covers the risk of pillion rider and further IRDA circulars provides that insurance company cannot be exempted from liability towards pillion rider who dies or suffers injuries in a motor accident as held in case of ***Oriental Insurance Co. Ltd. Vs Indro Devi and others: 2016 ACJ 1759.***

16. Learned counsel for respondent No.2 relied upon ***New India Assurance Co. Ltd. v. Anil and others, (2010-4) PLR 793 (P&H)***, affirmed in ***Anil and others v. New India Assurance Co. Ltd., (2018) 18 PLR 423 (SC), and upon Om Pal v. Jaibir Singh and others, FAO-5085-2015, decided on 26.11.2025,*** to contend that absence of post-mortem and medical evidence may be fatal where the alleged accident and causal nexus are doubtful.

<u>FINDINGS ON ISSUE NO.1</u>

*Whether **Deepak Bhatnagar** died due to injuries suffered in* *the accident dated **15.02.2017** caused by rash and negligent driving of motorcycle bearing registration No.**HR-07P-7750** by respondent no. 1 as alleged? OPP*

17. At the outset, it is necessary to bear in mind the nature and standard of proof applicable to proceedings under Section 166 of the Motor Vehicles Act, 1988. A claim petition before the Motor Accident Claims Tribunal is not a criminal prosecution in which the occurrence and culpability are required to be proved beyond reasonable doubt. The proceedings are essentially civil and summary in character. Therefore, the Tribunal is required to determine whether the version put forward by the claimants is more probable than the defence set up by the respondents. Such determination must be made upon a cumulative and holistic appraisal of the entire evidence on record. Minor discrepancies, omissions or imperfections cannot be examined in isolation or permitted to overshadow the broad probabilities emerging from the evidentiary record.

18. In the present case, the involvement of motorcycle bearing registration No. HR-07P-7750, as well as the presence of the deceased, Deepak Bhatnagar, as a pillion rider thereon, stands substantially admitted in the written statement filed by respondent No.1. The defence of respondent No.1 is not that the motorcycle was never involved in the occurrence or that the deceased was not travelling with him. On the contrary, his specific plea is that a stray dog suddenly came in front of the motorcycle and that, while attempting to avoid it, the motorcycle skidded.

This admission materially undermines the extreme plea raised by respondent No.2 that the accident was fabricated and that the insured vehicle had been falsely introduced into the claim.

19. Respondent No.1 was the driver of the motorcycle and, therefore, the person having the best and most direct knowledge regarding the speed at which the vehicle was being driven, the manner in which it was being controlled, the road conditions prevailing at the relevant time and the precise circumstances in which the motorcycle skidded. Despite possessing such special knowledge, respondent No.1 did not enter the witness box to substantiate his plea that the motorcycle was being driven at a moderate speed and with due care and caution. His plea in this regard has, therefore, remained untested by cross-examination. In these circumstances, an adverse inference is liable to be drawn that, had respondent No.1 appeared as a witness, his testimony would not have supported the exculpatory version pleaded by him.

20. The testimony of PW2, Avtar Singh, is natural, coherent and substantially consistent with the admitted mechanism of the occurrence. His evidence that the motorcycle was being driven at a high speed, that a dog suddenly entered the carriageway and that respondent No.1 thereafter lost control of the vehicle is compatible with the surrounding circumstances. The sudden appearance of a stray animal on the road did not absolve the driver of his pre-existing duty to regulate the speed of the motorcycle and to maintain such control over it as was reasonably

required by the road and traffic conditions. A prudent driver is expected to anticipate ordinary hazards that may arise on a public road and to drive at a speed which permits him to respond safely to such hazards. The fact that respondent No.1 was unable to stop or manoeuvre the motorcycle without losing balance and causing it to skid, when read in conjunction with the eye-witness account regarding excessive speed, establishes a failure to exercise reasonable care. On the touchstone of preponderance of probabilities, the manner in which the occurrence took place is more consistent with rash and negligent driving than with the exercise of due caution.

21. The DDE, Ex.P4, was recorded on the day following the occurrence. Thus there is one day delay in reporting the accident to the police. However, the delay is neither inordinate nor unexplained. The accident resulted in the sudden death of a family member and was followed by the immediate necessities relating to removal of the body, shock, funeral arrangements and cremation. In such circumstances, a delay of one day in reporting the occurrence to the police cannot be regarded as unnatural or as sufficient, by itself, to infer deliberation or concoction.

22. Likewise, the omission of the name of PW2 from the DDE also does not constitute a material contradiction. A daily diary entry is ordinarily meant to record the substance of the information received by the police and is not expected to contain an exhaustive recital of every

fact or the names of all persons who may subsequently be examined as witnesses. The evidentiary worth of PW2 must, therefore, be assessed on the basis of his testimony as a whole and not merely on account of the omission of his name from the initial police entry.

23. The absence of a post-mortem examination is undoubtedly a circumstance requiring the Tribunal to scrutinize the remaining evidence with greater care. It cannot, however, be elevated into an inflexible or statutory condition precedent for the maintainability or success of every claim arising out of a fatal motor accident. The question is whether, notwithstanding the absence of a post-mortem report, the claimants have established the occurrence and the causal connection between the accident and the death through other reliable evidence.

24. In the present case, the medical certificates Ex.P5 and Ex.P9 establish that the deceased was brought to Gupta Medicare Hospital at about 8:20 p.m. on the same evening and was declared brought dead. The death certificate Ex.P6 records the date of death as 15.02.2017. The investigation report Ex.P7 records verification of the hospital record, the police record and the civil death record. It further records that respondent No.1 confirmed the occurrence during the investigation. The order of the Consumer Forum, Ex.P8, shows that, after contest, another statutory adjudicatory forum accepted the accidental nature of the death on the basis of the investigation conducted at the instance of the insurer concerned. Significantly, respondent No.2 has not led any evidence to

show that the deceased was suffering from a prior ailment capable of causing sudden death, that any intervening event occurred between the accident and the death, or that the death was attributable to any other probable cause. The defence of an alternative cause of death has remained a bare suggestion unsupported by any medical, documentary or oral evidence.

25. Learned counsel for respondent No.2 has sought to rely upon the discrepancy regarding whether the deceased was taken to the Community Health Centre, Shahabad, or to Gupta Medicare Hospital. This discrepancy is peripheral and does not affect the substratum of the claim. The consistent and material part of the evidence is that the deceased fell from the motorcycle, was immediately removed for medical assistance and was declared dead on the same evening. A minor variation in the description of the medical facility cannot be permitted to outweigh the otherwise consistent account of the accident and its immediate aftermath, particularly when the medical certificates identify Gupta Medicare Hospital and record that the deceased was brought dead. Proceedings under the Motor Vehicles Act are intended to secure just compensation through a practical and justice-oriented assessment of the evidence. A mere error of nomenclature cannot be allowed to eclipse a consistent core of facts supported by independent documentary and circumstantial evidence.

26. There can be no quarrel with the propositions of law

emerging from the authorities relied upon by learned counsel for the Insurance Company. Those judgments serve as a salutary caution that a claim cannot be accepted merely because the Motor Vehicles Act is a beneficial legislation and that the claimants must still establish the accident and its causal connection with the death through cogent evidence. However, the said authorities do not lay down an absolute rule that every fatal accident claim must necessarily fail in the absence of a post-mortem examination. In **New India Assurance Co. Ltd. v. Anil and others (supra)**, the complaint regarding the alleged accident was lodged after a delay of nearly one month. The evidence was materially contradictory, and there was no dependable hospital record supporting the assertion that the death had resulted from the alleged accident. The surrounding circumstances in that case gave rise to a serious and well-founded doubt regarding the very involvement of the insured vehicle. Likewise, in **Om Pal v. Jaibir Singh and others (supra),** the deceased did not die immediately after the alleged accident. The death occurred approximately one month later, after the deceased had received treatment at different hospitals and had been discharged. No medical expert was examined to establish that the subsequent death was the result of the injuries allegedly suffered in the accident. The absence of a post-mortem and medical opinion was, therefore, crucial because of the considerable interval between the accident and the death.

27. The factual setting of the present case is materially different.

The death occurred on the same evening as the accident. Respondent No.1 admitted that the deceased was travelling on the motorcycle and that the motorcycle skidded. The hospital certificates record that the deceased was brought dead within a short time of the occurrence. The police entry was made on the following day, and an investigation conducted at the instance of another insurer verified both the accident and the same-day death. The decisions relied upon by respondent No.2 are, therefore, distinguishable on facts and do not govern the present case against the claimants.

28. On the other hand, the principles laid down in ***Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656; Sunita v. Rajasthan State Road Transport Corporation, (2020) 13 SCC 486; Mathew Alexander v. Mohammed Shafi, (2023) 13 SCC 510; and ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo, 2025 INSC 6***, are directly relevant to the manner in which evidence in a motor accident claim is to be appreciated. These decisions reiterate that the Tribunal must adopt a holistic approach and is not required to insist upon proof of the accident in the manner demanded in a criminal trial. The claimants are required to establish their case on the touchstone of preponderance of probabilities.

29. In ***Sunita v. Rajasthan State Road Transport Corporation (supra)***, it was further explained that the testimony of an eye-witness cannot be discarded merely because he did not himself lodge the complaint with the police. The identity and credibility of such a witness must be assessed from the substance of his testimony, its consistency with

the surrounding circumstances and the extent to which it withstands cross-examination.

30. Similarly, in ***ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo (supra),*** the Hon'ble Supreme Court reiterated that the Tribunal may legitimately take into consideration police records, including the FIR, investigation papers and other contemporaneous material, while determining negligence. Such material is not to be assessed by applying the rigorous standard of proof beyond reasonable doubt, but by examining whether it supports the claim on the balance of probabilities.

31. The decision in ***United India Insurance Co. Ltd. v. Suman Devi and others (supra)*** also underlines the beneficial character of proceedings under Section 166 of the Motor Vehicles Act and recognizes that an adverse inference may be drawn where the driver-owner, despite being the person best acquainted with the circumstances of the accident, abstains from entering the witness box. The observation in that decision that an investigator's report, standing alone, has no substantive evidentiary value does not mean that such a report is inadmissible or irrelevant for every purpose. In the present case, Ex.P7 is not being treated as the sole foundation of the finding regarding the accident. Nor is it being used as a substitute for primary evidence. It is being considered as corroborative material supporting the admission of respondent No.1, the ocular testimony of PW2, the contemporaneous police entry, the medical

certificates and the civil death record. Ex.P7 assumes additional significance because the Hon'ble High Court, while remanding the matter, expressly observed that the verification and the order founded thereon constituted vital evidence requiring consideration by the Tribunal.

32. When the evidence is appraised cumulatively, an unbroken and convincing chain of circumstances emerges. The journey of the deceased on the motorcycle and the skidding of the vehicle are admitted by respondent No.1. The eye-witness account regarding the manner of driving is credible and remains materially unimpeached. The death occurred immediately after the occurrence. The police entry was made on the following day. The hospital certificates and the death certificate support the fact of same-day death. The investigation conducted at the instance of an insurer verified the accident, the hospital record and the police record. The Consumer Forum subsequently accepted the accidental nature of the death. Neither the driver nor the insurer produced any substantive evidence in rebuttal. These circumstances, taken together, establish the claimants' version on the requisite civil standard. The absence of a post-mortem report and the minor discrepancies highlighted by respondent No.2 do not create such a break in the evidentiary chain as would justify rejection of the claim.

33. Consequently, Issue No.1 is decided in favour of the claimants and against the respondents. It is held that **Deepak Bhatnagar** sustained fatal injuries in the motor vehicular accident that occurred on

15.02.2017 and that the said accident was caused by the rash and negligent driving of motorcycle bearing registration No. HR-07P-7750 by respondent No.1.

FINDINGS ON ISSUE NO.2: QUANTUM

Whether the claimants in the present claim petition are entitled to compensation, if so, how much and from whom? OPP

34. Having decided the issue relating to the accident and negligence in favour of the claimants, the Tribunal is now required to determine the amount of just compensation payable to them. The object of compensation is restitutio in integrum, so far as money can achieve it. The award must be just, neither a windfall nor a pittance. In view of above, I proceed to determine the quantum of the compensation.

35. **Age and multiplier:** The pleaded and sworn age of the deceased was about 57 years. There is no dependable contrary proof and therefore the age of the deceased is taken as 57 years on the date of the accident. In terms of ***Sarla Verma v. DTC, (2009) 6 SCC 121***, the appropriate multiplier for the age bracket of 56-60 years is **9.**

36. **Income:** The claimants pleaded that the deceased was practicing as an advocate and earning approximately ₹80,000 per month, equivalent to ₹9,60,000 per annum. However, the oral assertion regarding income must be tested against the documentary evidence produced by the claimants themselves. PW3 Ankush Sethi, Tax Assistant, proved the

income-tax returns of the deceased for the three assessment years immediately preceding the accident. The returns have been exhibited as Ex.P1 to Ex.P3.

37. The Ex.P1 reflects the total annual income of the deceased as ₹2,05,310 for the year 2014-15. Ex.P2 records his annual income as ₹2,25,000 for the year 2015-16, whereas Ex.P3 reflects an annual income of ₹2,68,650 for the year 2016-17. These figures are plainly inconsistent with the pleaded income of ₹80,000 per month. Had the deceased actually been earning ₹9,60,000 per annum, the income disclosed in the statutory returns would ordinarily have reflected an amount reasonably corresponding to such earnings. No books of account, professional receipts, bank statements, fee registers, client ledgers or other contemporaneous financial records have been produced to explain the substantial disparity between the income pleaded and the income declared to the Income Tax Department.

38. The pleaded monthly income of ₹80,000, therefore, remains unsubstantiated and cannot form the basis of computation. Mere assertion in a claim petition or affidavit does not acquire evidentiary sanctity when it is contradicted by the claimant’s own statutory documents. At the same time, exaggeration of income does not result in dismissal of the claim. The duty of the Tribunal is to segregate the proved component from the exaggerated component and to award compensation on the basis of the income satisfactorily established on record.

39. Income-tax returns are statutory declarations made by the assessee and, when duly proved, constitute reliable evidence for assessment of income. The Supreme Court in a case titled as ***Nidhi Bhargava & Ors. V/s National Insurance Company Ltd. & Ors: 2025 INSC 526*** observed that *"the Income Tax Return is a legally admissible document on which the income assessment of the deceased could be made. This Court in* ***Malarvizhi v United India Insurance Co. Ltd., (2020) 4 SCC 228*** *affirmed that the determination of income must proceed on the basis of Income Tax Return(s), when available, being a statutory document."* In view of above, where such returns are available, the Tribunal ought ordinarily to determine income on their basis rather than resorting to hypothetical or notional estimates.

40. The next question is whether the Tribunal should take the average of all three returns or adopt the income disclosed in the latest return. Ex.P1 to Ex.P3 do not disclose erratic or fluctuating earnings. On the contrary, they reveal a consistent upward progression from ₹2,05,310 to ₹2,25,000 and thereafter to ₹2,68,650. The latest return was filed before the accident and is not a post-accident document prepared to inflate the claim. It is also the return closest in point of time to the death of the deceased on 15.02.2017.

41. In these circumstances, averaging the three returns would artificially depress the income despite an established and continuous upward trend. The latest proved annual income of ₹2,68,650 is a more

accurate reflection of the earning capacity of the deceased immediately before his death. **The annual income is, therefore, assessed at ₹2,68,650.**

42. **Future prospects:** The deceased was self-employed and between 50 and 60 years. Under ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680,*** 10% is to be added. Thus, enhance annual income becomes **₹2,95,515.**

43. **Personal expenses:** The deceased left behind his widow and two children. Claimant No.3 was a minor at the time of institution, while claimant No.2 was approximately 21 years old. There is no evidence establishing that either child was independently earning or financially self-sufficient at the relevant time. Having regard to the three members constituting the dependent family unit, one-third of the income is liable to be deducted towards the personal and living expenses of the deceased in accordance with the principles laid down in ***Sarla Verma v. Delhi Transport Corporation (supra)***. Thus:

Enhanced annual income: ₹2,95,515

Deduction of one-third towards personal expenses: ₹98,505

Annual contribution to the family: ₹1,97,010

44. As already noted, the deceased was about 57 years of age. The appropriate multiplier for the age group of 56 to 60 years is “9”. Accordingly, the loss of dependency is computed as ₹1,97,010 × 9 = ₹17,73,090/-.

45. **Conventional heads:** In terms of ***Pranay Sethi, read with***

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Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 and United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780, the claimants are entitled to compensation under the conventional heads. Claimant No.1, being the widow, is entitled to spousal consortium, whereas claimants Nos.2 and 3 are entitled to parental consortium. Applying the conventional amounts together with the permissible periodic enhancement, a sum of ₹48,400/- is awarded to each of the three claimants under the head of consortium. The compensation is accordingly calculated as under:

S.No.	Head of compensation	Amount
1.	Loss of dependency	₹17,73,090
2.	Spousal consortium to claimant No.1	₹48,400
3.	Parental consortium to claimant No.2	₹48,400
4.	Parental consortium to claimant No.3	₹48,400
5.	Loss of estate	₹18,150
6.	Funeral expenses	₹18,150
	Total compensation	**₹19,54,590**

46. The claimants are thus entitled to **₹19,54,590**, **(Rupees Nineteen Lakh Fifty Four Thousand Five Hundred Ninety only)**. Accordingly, issue no.2 is partly decided in favour of the claimants.

<u>**FINDINGS ON ISSUE NO.3: LIABILITY**</u>

Whether respondent No.1 violated the terms and conditions of the insurance policy; if so, to what effect? OPR-2

47. The onus of proving this issue was upon respondent No.2, the Insurance Company. The insurer sought to avoid its liability on two principal grounds: first, that respondent No.1 was not holding a valid and effective driving licence and had violated the terms and conditions of the policy; and second, that the deceased was travelling as a pillion rider and, being allegedly not a “third party”, his risk was not covered under the policy.

48. The defences available to an insurer in proceedings under the Motor Vehicles Act are required to be specifically pleaded and proved by cogent and admissible evidence. The burden of establishing a statutory defence under Section 149(2) of the Motor Vehicles Act, 1988 rests upon the insurer. It is not sufficient for the insurer merely to allege that the driver was not duly licensed or that the insured vehicle was being used in breach of the policy. The insurer must prove the particular breach and must further establish that the breach was conscious, willful and fundamental on the part of the insured.

49. The ownership of motorcycle bearing registration No. HR-07P-7750 stands established from the registration certificate Ex.R2, which shows respondent No.1 to be its registered owner at the relevant time. The driving licence Ex.R3 further shows that respondent No.1 was holding a driving licence effective from the year 1985 up to the year 2021. The accident occurred on 15.02.2017 and, therefore, the driving licence was valid and operative on the date of the occurrence.

50. Respondent No.2 did not examine any official from the concerned licensing authority to question the genuineness, validity or effectiveness of Ex.R3. No evidence was produced to show that the licence had been suspended, cancelled or was otherwise ineffective for the class of vehicle involved in the accident. In the absence of such evidence, the bare plea that respondent No.1 was not holding a valid driving licence cannot be accepted.

51. The Policy Schedule-cum-Certificate of Insurance Ex.R1 and Ex.R4 establishes that the offending motorcycle was insured with respondent No.2 for the period from 22.09.2016 to 21.09.2017. The policy was, therefore, valid and subsisting on 15.02.2017, the date of the accident. Significantly, the policy is expressly described as a “Two Wheeler Package Policy” and not merely as an “Act Only” or “Liability Only” policy.

52. Learned counsel for respondent No.2 has, however, contended that the deceased was travelling as a pillion rider and that a pillion rider does not fall within the expression “third party” under Section 147 of the Motor Vehicles Act. It has accordingly been argued that the insurer was not liable unless a separate premium had been paid specifically to cover the risk of the pillion rider.

53. There can be no dispute with the proposition that, under an Act-only policy, the statutory liability of the insurer does not ordinarily extend to a gratuitous pillion rider unless the risk is specifically covered.

The authorities relied upon by learned counsel for respondent No.2, including ***Oriental Insurance Co. Ltd. v. Sudhakaran K.V. (supra)***, were rendered in the context of an Act-only policy where no premium had been paid for covering the risk of the pillion rider. The said proposition, however, cannot be applied indiscriminately to a comprehensive or package policy. A material distinction exists between an Act-only policy, which satisfies the minimum statutory requirements under Section 147, and a package policy, under which the contractual coverage is wider. In ***National Insurance Co. Ltd. v. Balakrishnan (supra)***, the Hon'ble Supreme Court recognized that the risk of an occupant of a private vehicle or a pillion rider on a two-wheeler is covered under a standard comprehensive or package policy. Therefore, a decision relating to an Act-only policy cannot be mechanically invoked to avoid liability under a package policy.

54. In the present case, Ex.R1 and Ex.R4, produced by respondent No.2 itself, expressly describe the policy as a Two Wheeler Package Policy. The insurer has not produced the complete policy terms containing any clause excluding the risk of a pillion rider. No official of the Insurance Company has been examined to explain that, notwithstanding the express description of the policy as a package policy, the liability towards a pillion rider stood excluded. An exclusionary clause, being relied upon to defeat an otherwise valid claim of indemnification, must be specifically pleaded and proved by the insurer. The Tribunal cannot presume an exclusion merely because no separately

quantified premium for personal accident cover of an unnamed pillion rider is reflected in the policy schedule. Personal accident cover and third-party liability under a package policy operate in different fields. A personal accident cover is a fixed-benefit contractual cover, whereas the liability component indemnifies the insured against compensation which the insured becomes legally liable to pay on account of death or bodily injury arising from the use of the vehicle.

55. The absence of a separate personal accident premium for an unnamed pillion rider does not, by itself, establish that the pillion rider was excluded from the liability coverage under the package policy. What was required to be proved was a specific contractual exclusion applicable to the deceased. No such exclusion has been produced or proved.

56. The deceased was admittedly travelling as a pillion rider on a motorcycle designed and registered to carry the driver and one pillion rider. There is no allegation or evidence that the vehicle was carrying passengers beyond its sanctioned seating capacity, that it was being used for hire or reward, or that it was being employed for a purpose prohibited by the policy. The policy Ex.R1 and Ex.R4 remained valid on the date of the accident; the ownership stood proved through Ex.R2; and the driving licence of respondent No.1 stood proved through Ex.R3. Respondent No.2 has neither established any invalidity of the driving licence nor proved any violation relating to the use of the vehicle, its seating capacity, the purpose of use or any other express policy condition.

57. The contention of insurer that the deceased was not a third party and was, therefore, not covered proceeds on the assumption that the policy was an Act-only policy. That assumption is contrary to the policy schedule itself, which categorically describes the insurance contract as a Two Wheeler Package Policy. The authorities relied upon by respondent No.2 concerning an Act-only policy are consequently distinguishable on facts and on the nature of the insurance contract.

58. It is thus held that the deceased, while travelling as a pillion rider within the permitted seating capacity of the motorcycle, was covered under the liability component of the Two Wheeler Package Policy Ex.R1 and Ex.R4. Respondent No.2 has failed to establish any contractual exclusion or statutory defence entitling it to avoid its liability. Respondent No.2 has also failed to prove any willful or fundamental breach of the policy conditions on the part of respondent No.1. Mere pleadings, unaccompanied by supporting evidence, cannot discharge the burden cast upon the insurer under Section 149(2) of the Motor Vehicles Act.

59. Accordingly, Issue No.3 is decided against respondent No.2 and in favour of the claimants. Respondent No.1, being the driver-cum-owner of the offending motorcycle, is primarily liable to pay the compensation. Respondent No.2, being the insurer under a valid and subsisting Two Wheeler Package Policy, is contractually and statutorily bound to indemnify respondent No.1. Both respondents are, therefore, held jointly and severally liable to pay the awarded compensation, and

respondent No.2 is directed to satisfy the award in the first instance.

RELIEF

60. A sequel of aforesaid discussion is that the petition is **partly allowed with costs**. Compensation of **₹19,54,590**, **(Rupees Nineteen Lakh Fifty Four Thousand Five Hundred Ninety only)** is awarded in favour of the claimants and against the respondents jointly and severally.

61. The award shall carry interest at 7.5% per annum from the date of institution of the petition, i.e. 02.05.2017, until actual realization. If the insurer fails to deposit the amount within 45 days from receipt of a certified copy of this award, the amount shall thereafter carry interest at 9% per annum for the period of default.

62. Claimant No.1, widow, shall receive 50% of the award; claimants Nos.2 and 3 shall receive 25% each. Interest shall follow the principal in the same ratio.

63. Respondent No.2/ New India Assurance Company Limited is directed to remit the amount of compensation, as awarded to petitioners/claimants, directly in their Bank accounts under intimation to this Tribunal, or to deposit the amount of compensation awarded to petitioners, as detailed above, through RTGS or NEFT in the name of this Motor Accidents Claim Tribunal, Kurukshetra, as per the directions issued by Hon'ble Supreme Court vide order dated 16.03.2021 in WP(C) 534/2020 titled Bajaj Allianz General Insurance Co. Ltd. Vs. Union Bank of India and others.

Anil Kumar)
Motor Accident Claims Tribunal,
Kurukshetra. 17.07.2026

64. In compliance of order dated 16.03.2021 passed by the Hon'ble Supreme Court of India in Writ Petition No.534/2023 titled as 'Bajaj Allianz General Insurance Company Limited Vs. Union of India and others', If Respondent No.2 intend to deposit the amount awarded in the name of the Tribunal, then it shall be deposited directly in **SBI Bank Account No. 43407452946 IFSC: SBIN0006615, Branch Code: 6615 Motor Accidents Claims Tribunal, Kurukshetra,** by way of RTGS or NEFT.

65. A copy of this award be sent through email-ID i.e. mactkurukshetra@gmail.com to the email ID of the insurance company.

66. Counsel fee is assessed ₹2500/-. Memo of costs be prepared accordingly. File be consigned to the record room after due compliance.

Pronounced in open Court. (Anil Kumar),
Dated: 17.07.2026. Motor Accident Claims Tribunal,
Kurukshetra: (HR0495)

Note : All the **Twenty-Nine** pages of the Award have been checked and signed by me.

(Anil Kumar),
Motor Accident Claims Tribunal,
Kurukshetra: (HR0495)

Sanjay Kumar
Stenographer G-I.

Anil Kumar)
Motor Accident Claims Tribunal,
Kurukshetra. 17.07.2026