

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 56 of 2017.

Decided on : 26th November, 2025.

Oriental Insurance Company Ltd.

.... Appellant.

Versus

Master Sahil and Ors.

....Respondents.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

*Whether approved for reporting?*¹

For the Appellant:

Dr. Lalit K. Sharma, Advocate.

For the respondents:

Mr. Dheeraj K. Vashista, Advocate, for
respondents No.1 to 3.

None for respondents No. 4 to 8.

Satyen Vaidya, Judge (Oral).

The instant appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") by the appellant/insurer against the award dated 30.09.2016 passed by the learned Motor Accidents Claims Tribunal (III), Una in M.A.C. Petition No. 21 of 2012.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. Respondents No.1 to 3 herein (claimants) preferred a Claim Petition No. 21 of 2012 for compensation under Section 163 of the Act on account of death of Jagtar Singh in a motor vehicle accident involving Truck Nos. PB-07V-1529 and HR-58-9787.

3. It was alleged that Jagtar Singh was employed as a driver on truck No. PB-07V-1529. On 11.01.2012 at about 5.30 A.M., he was driving the aforesaid truck towards Samrala in slow speed. The conductor of the truck was also in the vehicle. At place near Village More Urna, truck No. HR-58-9787 came from the opposite side being driven in rash and negligent manner and hit the truck No. PB-07V-9787, resulting in death of Jagtar Singh as also the driver of truck No. HR-58-9787.

4. The cause of accident was attributed to the rash and negligent driving of truck No. HR-58-9787.

5. The claimants had alleged that the age of deceased was 26 years and he was being paid Rs.15,000/- per month as salary by the employer. In this backdrop, compensation to the tune of Rs.30,00,000/- was sought.

6. The truck No. HR-58-9787 was owned by deceased Manohar Lal, who was driving the said truck at the time of accident. Since, said Manohar Lal had died, his legal representatives were impleaded as respondents No.1(a) to 1(e) in the claim petition before the learned Tribunal (respondents No. 4 to 8 herein). The offending truck at the time of accident was insured with the appellant/insurer, Oriental Insurance Company Ltd.

7. The legal representatives of deceased Manohar Lal had contested the petition by alleging that FIR had wrongly been lodged against deceased Manohar Lal. The cause of accident was attributed to the rash and negligent driving of Jagtar Singh. The legal representatives of Manohar Lal also claimed to have filed a claim petition arising out of the same accident.

8. Appellant/insurer had also filed its separate reply. It was alleged that the driver of vehicle No. HR-58-9787 was not possessing a valid and effective driving licence at the time of accident. Objection as to the violation of terms of the policy was also taken. It was alleged that the offending vehicle was being

plied at the relevant time without any valid registration certification, fitness certificate, route permit etc. The petition was also alleged to be bad for non joinder of necessary parties.

9. The learned Tribunal had framed the following issues:-

1. Whether on 11.01.2012 at about 5.30AM in the area of village Mour Urna, on Samrala-Ludhiana road, respondent No.1 Manohar Lal being owner-cum-driver was driving Truck No.HR-58-9787 on public way in a rash and negligent manner and due to negligent driving collided with truck No.PB-07V-1529 being driven by deceased Jagtar Singh and due to accident Jagtar Singh died on the spot? OPP.
2. If issue No.1 is proved in affirmative, whether the petitioners are entitled for compensation. If so, to what amount and from whom? OPP.
3. Whether the accident had taken place due to rash and negligent driving of truck No.PB-07V-1529 by the deceased Jagtar Singh? OPR.
4. Whether the petition is counter blast to the petition filed by the LRs of deceased Manohar Lal before MACT Jagadhari? OPR.
- 4A Whether at the time of accident driver of vehicle bearing No.HR-58-9787 was not holding any

effective or valid driving licence, as alleged and if so, its effect, as alleged? OPR-2.

4B. Whether at the time of alleged accident the vehicle in question was being plied without any valid registration certificate, fitness certificate permit etc., as alleged and whether same wa being being used for the purpose other tha permitted under the registration and terms policy as alleged and if so, its effect? OPR-2

4C. Whether the petition is bad for non joinder of necessary parties, as alleged?OPR-2.

4D. Whether vehicle bearing No. HR-58-9787 was not involved in the accident, as alleged?OPR-2.

5. Relief.

10. Issues No.1 and 2 were answered in the affirmative, whereas, all other issues were answered in negative. Claim petition was allowed. The claimants have been awarded compensation to the tune of Rs.23,65,000/- along with interest @9% per annum from the date of filing of the petition till realization.

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

12.. Dr. Lalit Sharma, Advocate, learned counsel for the appellant-insurer has taken exception to the impugned award primarily on two grounds. Firstly, that the accident had not been proved in terms of the allegations made in the claim petition. He submits that there was no clear evidence to suggest the hypothesis that the accident had taken place due to the rash and negligent driving of Manohar Lal, driver-cum-owner of truck No. HR-58-9787. Secondly, the quantum of compensation assessed by the learned Tribunal has been alleged to be excessive.

13. Coming to the first argument of Dr. Sharma, it does not appear to have sound basis. It was nowhere disputed that PW-4 Jang Bahadur was the conductor employed on truck No. PB-07V-1529 and was an occupant of the vehicle besides deceased Jagtar Singh, at the time of accident. While appearing as a witness, PW-4 Jung Bahadur has categorically narrated the manner in which the accident had taken place. He was also the author of FIR Ex.PW3/A. Though, this witness had been cross-examined by all the respondents separately, but his testimony has not been shattered. On the other hand, the respondents have

led no evidence to disprove the fact. In light of the evidence on record, the view formed by the learned Tribunal cannot be faulted with.

14. As regards, the amount of compensation awarded by the learned Tribunal, it can be seen that the monthly income of the deceased has been assessed at Rs.15,000/-. The fact that deceased Jagtar Singh was a professional driver, driving heavy vehicle, has duly been established on record. It is also true that the income of deceased Jagtar Singh could not be proved by any document. It was only by way of oral testimonies of PW-2 Ms. Sunita (wife of the deceased) and PW-5 Surjeet Bonsra, owner of truck No. PB-07V-1529 that the monthly income of the deceased was sought to be proved as Rs.15,000/-. Learned Tribunal has also based its findings on the aforesaid testimonies. In addition, the statement of PW-4 Jung Bahadur, who was conductor in the truck has also been taken into consideration as the appellant-insurer while cross-examining the said witness had suggested that his salary was Rs.7000/- per month. Thus, the learned Tribunal came to the conclusion that the salary of driver would not

be less than Rs.15,000/-, if the salary of the conductor was admitted to be Rs.7000/- per month.

15. Dr. Lalit Sharma, Advocate has contended that the method adopted by the learned Tribunal was not correct. He would contend that where the income of victim of motor vehicle accident was not documented, as per the mandate of the Hon'ble Supreme Court, reliance has to be placed on the minimum wages fixed by the State Government under the provisions of Minimum Wages Act. He has placed on record a copy of notification issued by the Government of Himachal Pradesh (Labour and Employment Department) on 18.09.2012. According to which the minimum wages of a driver in the year 2012 were fixed at Rs.186.70 per day i.e. Rs.5601/- per month. On the basis of aforesaid notification, it has been argued that the wages or income of the deceased Jagtar Singh could not be assessed more than Rs.5601/- per month as the accident had also taken place in the year 2012.

16. It is more than settled that in cases where the income of the victim of motor vehicle accident is not documented, the Tribunal or Court is permitted to advert to some amount of guess

work, however, the assessment on guess work has to be based on realistic parameters. In view of the availability of evidence to the effect that the conductor of the truck was being paid monthly wages @ Rs.7000/-, the assessment of the monthly wages of the driver in terms of the notification relied upon by the learned counsel for the appellant/insurer will not be justified. It is common knowledge that a driver gets higher wages than the conductor due to the nature of the job. Still, to assess the income of driver of heavy vehicle in the year 2012 at Rs.15,000/-, as done by the learned Tribunal, some realistic base was required. It cannot be ignored that the claimants will always try to prove the income of the deceased on higher side and that is why, it has been established as a principle that where only oral evidence is available, the Tribunal or the Court has to make its assessment on objective considerations.

17. The wages of driver under Minimum Wages Act in the year 2012 were fixed at Rs.5601/- per month. It does not mean that a driver, driving heavy vehicle for private transporter will also get the same salary. The reason is obvious, the minimum wages

are fixed for limited hours, whereas, a privately engaged employee usually works overtime and for such reason is paid higher. Corroboration to this hypothesis can be obtained from the fact that even a conductor was being paid Rs.7000/- per month. Thus, it will be reasonable to hold that the driver of a heavy vehicle in the year 2012 driving a private vehicle would be justifiably getting Rs.10,000/- per month as salary.

18. In terms of the Constitutional Bench judgment passed in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors., (2017) 16 SCC 680***, an addition on account of loss of future prospects was required to be made, which has not been done in the instant case. Learned Tribunal has held the age of deceased to be 30 years and hence in terms of *Pranay Sethi (supra)*, an addition of 40% was required to be made and in this manner, the monthly wages of the deceased would be taken at Rs.14,000/-.

19. The deceased had left behind three dependents and thus a sum equivalent to 1/3rd of the income of the deceased was liable to be deducted on account of his persons expenses.

20. Learned Tribunal by making computations has calculated the monthly loss of dependency at Rs.10,000/- whereas, by strict computation on the basis of income as assessed by this Court, the monthly dependency would be Rs.9,333/-. Since, there is only a marginal difference in both the calculations, this Court does not deem it necessary to interfere with the monthly dependency calculated by the learned Tribunal.

21. The impugned award further reveals that the learned Tribunal has awarded Rs.1,00,000/- on account of loss of consortium to the wife of the deceased and further Rs.1,00,000/- each on account of love and affection to the children and Rs. 1,00,000/- towards loss of estate. Addition of Rs.25,000/- has been made by the learned Tribunal towards funeral expenses. Apparently, the assessment of compensation made by the learned Tribunal under the conventional heads is not in tune with the judgment passed by the Hon'ble Supreme Court in *Pranay Sethi (supra)* and thereafter in ***Magma General Insurance Company Ltd. vs. Nanu Ram & Ors., (2018) 18 SCC 130.*** Accordingly, the assessment of compensation under the conventional heads is

required to be reviewed. Each of the dependents of deceased Jagtar Singh will be entitled for sum of Rs.40,000/- under the head "loss of consortium". Further, Rs.15,000/- each will be payable as compensation under the heads "loss of estate" and "funeral expenses". Addition of 10% after every three years is also liable to be made on the amount of compensation under the conventional heads in terms of the judgment passed in *Pranay Sethi (supra)*.

22. Thus, on recalculation of the amount of compensation, the claimants shall be entitled to the total compensation as under:-

1.	Compensation on account of loss of dependency	Rs.20,40,000/-
2.	Compensation on account of loss of consortium	Rs.1,20,000/-
3.	Compensation on account of loss of estate	Rs.15,000/-
4.	Compensation on account of funeral charges	Rs.15,000/-
5.	Addition of 10% on compensation granted under conventional heads after every three years	Rs.30,000/-
6.	Total	Rs. 22,20,000/- (Rs.Twenty two lakh and twenty thousand only).

23. The aforesaid compensation amount will carry interest @ 9% per annum from the date of filing of petition till actual realization as awarded by the learned Tribunal.

24. The apportionment as made by learned Tribunal shall also remain undisturbed.

25. In result, the appeal is disposed of and the impugned award dated 30.09.2016 passed by the learned Motor Accident Claims Tribunal-III, Una in Claim Petition No. 21 of 2012 is modified to the extent as detailed hereinabove.

26. The appeal shall stand disposed of accordingly so also the pending miscellaneous application(s), if any.

27. Records be sent back forthwith.

CMP No. 23817 of 2025.

28. The application is allowed for the reasons stated therein. The amount of award falling to the share of the applicant/respondent No.1 in FAO No. 56 of 2017, namely, Master Sahil is ordered to be released in favour of the applicant along with proportionate interest accrued thereon, by remitting the same to his bank account as detailed in Annexure A-2 at page 43

of the paper book, after due verification. Application stands disposed of.

(Satyen Vaidya)
Judge

26th November, 2025.
(jai)