

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 281 of 2025

Reserved on: 21.11.2025

Date of decision: 28.11.2025

Universal Sompo General Insurance Co. Ltd.

.....Appellant

Versus

Jagveer (deceased) through LRs & Ors.

.....Respondents

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellant:

Mr. Jagdish Thakur, Advocate.

For the respondents:

Mr. Shyam Singh, Advocate, for
respondents No. 1(a) & 2.

Ms. Divya Jyoti and Mr. Amir
Khan, Advocates, vice Mr. Vasu
Sood, Advocate, for
respondents No. 3 & 4.

Sushil Kukreja, Judge.

The present appeal is maintained by the appellant/Insurance Company, against the award passed by learned Motor Accidents Claims Tribunal-II, Sirmaur District at Nahan, H.P. (hereinafter referred to as “the learned Tribunal below”) in MACT Petition No. 7-N/2 of 2017,

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

decided on 16.01.2023.

2. The brief facts of the case are that on 17.11.2016, at about 9:30 p.m., Neeraj (since deceased) was going towards Taruwala on his motorcycle and when he reached at Badripur Chowk, a truck bearing registration No. HP-17B-3300, being driven by Kaka Ram (respondent No. 2 before the learned Tribunal below) came from Taruwala side in a rash and negligent manner and hit the motorcycle of Neeraj, due to which, he fell down on the road and died on the spot. Consequently, FIR No. 369, dated 17.11.2016, under Sections 279, 337 & 304-A IPC was registered at Police Station Paonta Sahib. As per the claimants, at the time of accident, age of the deceased was 23 years and was earning Rs. 12,000/- per month from labour/catering work and was contributing Rs. 10,000/- per month to them out of his income. He was only bread earner of the family and the claimants were dependent upon the income of the deceased. Hence, it was prayed that compensation of Rs. 20,00,000/- along with interest @ 12% per annum from the date of accident till the realisation of award, be awarded in favour of

the claimants.

3. Respondents No. 1 and 2, by filing reply to the petition, contested the claim of the claimants on the ground that the deceased was unemployed and was not doing anything and the amount of compensation, as claimed, is exaggerated. It has further been submitted that the accident took place due to the fault of the deceased, who was himself negligent and false case has been registered against respondent No. 2. It is denied that the accident took place due to rash and negligent driving by the respondent No. 2. It has also been submitted that in case the Court comes to the conclusion that any compensation is to be paid, the same shall be paid by the respondent No. 3, with whom the vehicle was duly insured. Lastly, a prayer for dismissal of the petition has been made.

4. The respondent No. 3/Insurance Company by filing reply to the petition took preliminary objections qua the maintainability of the petition and it has been stated that the driver of the offending truck was not having any valid and effective driving license and the vehicle was being plied

without any valid permit and the petition has been filed in collusion with respondents No. 1 & 2. On merits, it has been submitted that the accident did not take place in the way and manner, as has been alleged; and the report has been manipulated in order to get undue compensation. It has also been alleged that the petitioner was himself negligent while driving his motorcycle and met with the accident. Hence, it has been prayed that petition be dismissed.

5. On pleadings of the parties, the following issues were framed on 13.09.2019:-

"1. Whether on dated 17.11.2016 at about 9:15 p.m. at place near Badripur Chowk within the jurisdiction of Police Station Paonta Sahib deceased Neeraj died due to the rash and negligent driving of the respondent No. 2 with a vehicle No. HP17B-3300 when hit the motorcycle of the deceased, as alleged ? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for the grant of compensation, if so, to what amount and from which of respondents? OPP

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

4. Whether the driver of the offending vehicle was not having valid driving licence at the time of accident. OPR-3

5. Whether the offending vehicle was being driven in violation of the provisions of Motor Vehicles Act and terms and conditions of Insurance Policy, as alleged? OPR-3.

6. Relief.”

6. After the parties led evidence and after hearing the learned Counsel for the parties, the claim petition was allowed and the petitioners were held entitled to compensation of Rs. 19,44,472/- alongwith interest @ 7.5% per annum, from the date of filing of the petition till deposit/payment of aforesaid amount of compensation, against respondent No. 3-Insurance Company.

7. Feeling dissatisfied, respondent No. 3-Insurance Company preferred the instant appeal under Section 173 of the Act for quashing and setting aside the impugned award.

8. I have heard the learned counsel for the appellant, learned counsel for respondents No. 1(a) & 2, learned vice counsel for respondents No. 3 & 4 and carefully examined the entire record.

9. Learned counsel for the appellant has contended that the impugned award passed by learned Tribunal below is based upon surmises and conjectures and without appreciating the documents on record. He further contended

that the learned Tribunal below without there being any evidence regarding the income of the deceased, has taken the income of the deceased as Rs. 9,000/- per month that too by treating him as unskilled worker, whereas, in absence of any documentary proof with respect to the income of the deceased, the learned Tribunal below ought to have been taken the income on the basis of minimum wages, prevalent at the time of the accident, i.e. Rs. 6,000/-

10. On the other hand, learned counsel for respondents No. 1(a), 2, 3 & 4 have contended that the learned Tribunal below has rightly awarded the compensation and the present appeal deserves to be dismissed.

11. Petitioner No. 1, Jagbeer appeared in the witness box as PW-1 and tendered affidavit Ext. PW-1/A in his examination-in-chief, wherein, he reiterated the averments, as made in the petition. He deposed that his son Neeraj Kumar died in the road side accident on 17.11.2016 due to rash and negligent driving of respondent No. 2 and FIR No. 369, dated 17.11.2016, under Sections 279, 337 & 304-A

IPC was registered at Police Station Paonta Sahib. He further deposed that at the time of accident, the age of his son was 23 years and he was earning a sum of Rs. 12,000/- per month, out of which he used to contribute a sum of Rs. 10,000/- per month to him and his wife. He also deposed that the deceased was his only son and they were dependent upon his income. He has also tendered in evidence copy of FIR Ext. PW-1/B and postmortem report Ext. PW-1/C. In his cross-examination, he deposed that his son was working in a Company at Paonta Sahib. He denied that his son was driving the motorcycle under the influence of liquor. He also denied that this accident took place due to rash and negligent driving of his son. In his cross-examination by learned counsel for the respondent No. 3, he denied that his son was unemployed and was dependent upon his income. He stated that his son was working in a company at Paonta Sahib.

12. The contention of learned counsel for the appellant that in the absence of any documentary proof with respect to the income of the deceased, the learned Tribunal

below ought to have been taken the income of the deceased on the basis of minimum wages prevalent at the time of the accident, i.e. Rs. 6,000/- per month, is devoid of any force. In ***Chandra v. Mukesh Kumar Yadav, (2022) 1 SCC 198***, it has been held by the Hon'ble Supreme Court that in the absence of any documentary evidence on record, 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. Merely because the claimants were unable to produce documentary evidence to show the monthly income of the deceased, same does not justify adoption of lowest tier of minimum wage while computing the income. Relevant portion of the aforesaid judgement reads as under:

9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 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 the 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 15,000 per month."

13. Admittedly, in the case on hand, there is no evidence of income except the sole testimony of the father of the deceased. However, the learned Tribunal below rightly observed that as the deceased was 23 years of age working in a factory, his income could be safely taken to be Rs. 300/- per day or Rs. 9,000/- per month. Therefore, this court, does not find any infirmity in the impugned award so far taking the monthly income of the deceased at Rs. 9,000/- per month.

14. In ***National Insurance Company Limited*** Versus ***Pranay Sethi & others, (2017) 16 SCC 680***, it has been held that while determining the income, in case the deceased was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to the income of the deceased towards future

prospects should be made. Paras 59.3 and 59.4 of the said judgment read as follows:-

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."

15. In the instant case, at the time of accident, the deceased was aged about 23 years of age. In view of the law laid down by the Apex Court in ***Pranay Sethi's*** case (supra), an addition of 40% of the notional monthly income of the deceased, in this appeal, can be made towards future prospects, since the deceased was aged below 40 years.

16. In ***Sarla Verma and others*** Versus ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was

married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceeds 6. 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.

17. In **Sarla Verma's** case (supra), it has been further held by the Hon'ble Supreme Court 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. Para-42 of the judgment is

reproduced as under:-

'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.'

18. Thus, after fixing the notional monthly income of the deceased at Rs. 9,000/- and adding 40% of the monthly income towards future prospects, the amount comes to Rs. 12,600/- per month.(i.e. $9,000 + 3,600 = 12,600$). Since the deceased was a bachelor at the time of the accident, 50% of the amount has to be deducted towards his personal expenses. By deducting 50% towards the personal and living expenses of the deceased, the amount comes to Rs. 6,300/- per month.As the deceased was aged about 23 years of age, by applying the multiplier of '18' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs. 13,60,800/- ($6,300 \times 12 \times 18$).

19. In ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others***, reported in **(2018) 18 Supreme Court Cases 130**, the Hon'ble Supreme Court has held as under:-

"21. A Constitution Bench of this Court in *Pranay Sethi* dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is general defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded

to the parents is a compensation for loss of love, affection, care and companionship of the deceased child."

20. While placing reliance upon the judgment passed by the Hon'ble Apex Court in **Pranay Sethi's** case (supra), the Hon'ble Supreme Court had enhanced the compensation @ 10% in a span of three years after the year 2017 in respect of the conventional heads. In **Sunita & ors. Vs. United India Insurance Co. Ltd. & ors., Civil Appeal No. 9538 of 2025**, held as follows:-

"20. Regarding the monthly income of the deceased, we concur with the view taken by the Courts below in assessing the same to be Rs.12,000/- per month, for there being no error therein. Hence, in awarding compensation which is just and fair, we are inclined to increase the amount awarded under the conventional heads, namely, loss of estate, loss of consortium, and funeral expenses by 10% adverting to the settled principle of law laid down by this Court in National Insurance Co. Ltd. v. Pranay Sethi, that such amount should be revised every three years."

21. Accordingly in view of the law laid down by the Hon'ble Supreme Court in **Pranay Sethi's** as well as **Sunita's** cases (supra), by taking the increase @ 10%, after every three years from the year 2017 under the conventional heads, the petitioners are entitled to loss of estate of Rs. 18,150/-, funeral expenses of Rs. 18,150/-, filial consortium of Rs. 48,400/- (each). Accordingly, the total

amount of compensation comes out as under:-

<u>Head</u>	<u>Amount</u>
(i) Loss of dependency	: Rs.13,60,800/-
(ii) Filial Consortium	: Rs. 96,800/- (Rs.48,400/- to each claimant)
(iii) Funeral Expenses	: Rs. 18,150/-
(iv) Loss of Estate	: Rs.18,150/-
Total compensation awarded : <u>Rs. 14,93,900/-</u>	

22. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal is partly allowed and the impugned award dated 16.01.2023 passed by learned Tribunal below is modified to the aforesaid extent only. This Court, however, does not see any reason to interfere with the rate of interest awarded on the amount of compensation. Rest of the terms of the award also need no interference.

23. The present appeal is disposed of accordingly, so also the pending applications, if any.

(Sushil Kukreja)
Judge

28th November, 2025
(raman)