

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**FAO No. 338 of 2019 along with
FAO Nos. 339 of 2019, 340 of 2019
and FAO No. 387 of 2019.**

Reserved on: 12th November, 2025.

Decided on : 25th November, 2025.

1. FAO No. 338 of 2019.

Future Generali India Insurance Company Ltd.

.... Appellant

Versus

Smt. Subhadra Devi & Ors.

....Respondents

2. FAO No. 339 of 2019

Future Generali India Insurance Company Ltd.

.... Appellant

Versus

Smt. Tikkma Devi & Ors.

....Respondents

3. FAO No. 340 of 2019

Future Generali India Insurance Company Ltd.

.... Appellant

Versus

Durga Devi & Ors.

....Respondents

4. FAO No. 387 of 2019

Future Generali India Insurance Company Ltd.

.... Appellant

Versus

Smt. Vijay Laxmi & Ors.

....Respondents

Coram:

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

*Whether approved for reporting?*¹ Yes.

For the Appellants: Mr. Chandan Goel, Advocate.

For the respondents: Mr. Subhash Mohan Snehi and Ms. Niranjana, Advocates, for respondents No.1 to 4 in FAO No.338 of 2019 and for respondents No.1 and 2 in FAO No. 339 of 2019, and for respondents No.1 to 3 in FAO No. 340 of 2019 and for respondents No.1 to 4 in FAO No. 387 of 2019.

Mr. Raj Kumar Negi, Advocate, for respondent -Anup Kumar (owner of the vehicle) in all appeals.

Satyen Vaidya, Judge

All these appeals were heard together and are being disposed of by a common judgment as common questions of facts and law arise.

2. Vehicle bearing No. HP-35-2744 (Bolero Camper) had met with an accident on 03.03.2015 while enroute from Jagatkhana to Village Chotu. The said vehicle had gone off the road and had plunged into river Satluj. At the time of accident, vehicle was occupied by five persons, namely Jai Ram, Rajesh, Tara

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

Chand, Sat Pal and Lucky. All of them had died as a result of injuries suffered in the accident.

3. The incident of FIR was reported to the police *vide* FIR No. 16 of 2015 dated 03.03.2015 registered at Police Station Brow, District Kullu, H.P.

4. The Legal representatives of deceased Jai Ram, Rajesh, Tara Chand and Sat Pal had filed separate claim petitions for grant of compensation under Section 166 of the Motor Vehicles Act. All the claim petitions were decided by the learned Motor Accidents Claims Tribunal-II, Kinnaur at Rampur Bushahar, H.P.

5. Claim Petition No. 97 of 2015, titled as Smt. Subhadra Devi & Ors. vs. Anup & Anr., was filed by the legal representatives of deceased Jai Ram. FAO No. 338 of 2019 has arisen from the award dated 24.04.2019 passed in Claim Petition No. 97 of 2015.

5.1 Claim Petition No. 98 of 2015, titled as Tikkma Devi & Anr. vs. Anup and Anr., was filed by the legal representatives of deceased Rajesh. FAO No. 339 of 2019 has arisen from the award dated 24.04.2019 passed in Claim Petition No. 98 of 2019.

5.2 Claim Petition No. 99 of 2015, titled as Smt. Durga Devi & Ors. vs. Anup & Anr., was filed by the legal representatives of deceased Tara Chand. FAO No. 340 of 2019 has arisen from the award dated 24.04.2019 passed in Claim Petition No. 99 of 2015.

5.3 Another claim petition No. 100 of 2015, titled as Smt. Vijay Laxmi vs. Anup & Anr., was filed by the legal representatives of deceased Sat Pal. FAO No. 387 of 2019 has arisen from the award dated 24.04.2019 passed in Claim Petition No. 100 of 2015.

6. Claimants in all the above noted claim petitions had alleged that deceased Jai Ram, Rajesh, Tara Chand and Sat Pal were travelling in the vehicle after hiring it for carriage of goods. It was averred that the vehicle at the time of accident was being driven by Lucky.

6.1 Separate claims were submitted, based on the respective occupation, income and age of the deceased persons.

7. In replies filed to the claim petitions by the owner of the vehicle Anup Kumar, it was admitted that deceased Lucky s/o Mahender Pal was driver of the vehicle. The owner had checked his driving licence before employing him as driver and after

satisfying himself deceased Lucky was engaged to drive the vehicle No. HP-35-2744. It was also averred that the driving licence of deceased Lucky was misplaced as a result of accident. The owner further disclosed that the vehicle was comprehensively insured with the appellant/insurer at the time of accident. Contents of para-24 of the petition, wherein the factum of hiring the vehicle by the deceased was mentioned, had been denied by the owner.

8. The appellant insurer *vide* its separate reply had raised objections as to the violations of terms and conditions of the policy of insurance. It was alleged that deceased persons were travelling in the vehicle as gratuitous passengers. The vehicle involved in the accident was a goods carrier. As per the appellant-insurer, the vehicle had been handed over by the owner to a person who was not possessing a valid driving licence. Allegation of collusion between the claimants and owner was also levelled.

9. For the sake of convenience issues framed by the learned Tribunal in Claim Petition No. 97 of 2025 are being reproduced and taken into consideration as in all the claim

petitions, the issues were substantial identical. The findings rendered by the learned Tribunal on common issues have also been identical on the basis of same set of evidence.

10. Issues as framed in Claim Petition No. 97 of 2015 are as under:-

- "1) *Whether deceased Jai Ram died on 3.3.2015 at about 9.45 P.M., at place Sambri Dhank, due to rash and negligent driving of deceased driver, who was driving vehicle bearing No. HP-35-2744 rashly and negligently?OPP.*
- 2) *If issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled and from whom?...OPP*
- 3) *Whether the petition is not maintainable?OPR-1& 2.*
- 4) *Whether the vehicle was plied in contravention of terms and conditions of insurance policy?OPR-2*
- 5) *Whether the driver of the offending vehicle was not having a valid and effective driving license at the time of accident?OPR-2.*
- 6) *Whether the deceased Jai Ram was traveling as gratuitous passenger in the offending vehicle? OPR-2.*
- 7) *Whether the petition is filed in collusion with the respondent No.1?OPR-2.*

8) Relief.”

11. Issue No.1 and 2 were answered in affirmative, whereas, all other issues were answered in negative. All the claim petitions have been allowed.

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

13. As noticed above, as per claimants and the owner, the vehicle at the time of accident was being driven by deceased Lucky.

14. In FIR No. 16 of 2015, dated 03.03.2015, registered at Police Station Brow, District Kullu, Ex.PW1/F, it was recorded that the vehicle at the time of accident was being driven by deceased Sat Pal. It was on the basis of the version recorded in FIR that the appellant-insurer had denied the factum of vehicle being driven by deceased Lucky at the time of accident. As per the appellant-insurer, deceased Sat Pal was the driver and he did not possess any driving licence.

15. Learned Tribunal has held that the vehicle was being driven by deceased Lucky. Reliance has been placed on the testimony of RW-6 Anup Kumar (owner of the vehicle), PW-2 Jai

Chand and PW-3 Kamal Kumar. PW-2 Jai Chand had deposed that he was running a store of daily needs items at Jagatkhana under the name and style of "Jamdagani Store". On 03.03.2015 deceased Jai Ram, Sat Pal, Rajesh and Tara Chand had purchased their respective goods from his store and thereafter had hired vehicle No. HP-35-2744 from driver lucky. According to this witness, after hiring vehicle all had left the spot.

16. PW-3 Kamal Kumar is the person at whose instance FIR Ex.PW1/F had been registered. Though, as per his version in the FIR on 03.03.2015 at about 8.25 P.M., he was sitting in a vegetable shop near his house, vehicle No. HP-35-2744 had stopped in front of the shop with deceased Sat Pal sitting on the driver seat. Besides Sat Pal another boy was sitting in the vehicle. Jai Ram, Tara Chand and Lucky were standing on the road, who also boarded the vehicle and the driver had driven the vehicle in high speed towards village Chotu. After two minutes, an information had been received that the vehicle had plunged into river Satluj at place "Shambri Dhank". He had reached the spot when lots of

people had gathered. The search was made with the help of torch light but neither the vehicle nor its occupants were visible.

17. On the other hand, while appearing as PW-3, the said Kamal Kumar had stated that the name of Sat Pal being driver of the vehicle was not disclosed by him to the police. The witness deposed that when the vehicle was stopped in front of the vegetable shop, it was occupied by driver Lucky. Sat Pal was sitting beside the driver alongwith another person. However, he could not notice that vehicle had been driven by driver Lucky. PW-3 was cross-examined. While being cross-examined on behalf of the owner, PW-3 had stated that he could not tell, who was the driver of the vehicle. He could not also tell that the vehicle was being driven by Lucky. While responding to cross-examination by the appellant-insurer, PW-3 admitted to have got recorded FIR Ex.PW1/F. He admitted that in the FIR name of driver is mentioned as Sat Pal, however, the witness volunteered that a large number of people had gathered and he did not know Sat Pal. He denied that while making statement to the police, he had disclosed the name of driver as Sat Pal. The witness further

admitted that statement was read over by the police to him but again volunteered that he was not aware about the name of driver and whatever was disclosed to the police was on the basis of version given by the public that had gathered on the spot.

18. The appellant-insurance company has examined RW-1 Sandeep Kumar, the official of the company, RW-2 Kuldeep Singh had produced the record with respect to cancellation of FIR Ex.PW1/F. RW-3 Harish Chand and RW-4 Karam Chand were police officials, who had carried investigation.

19. Learned Tribunal has held that the vehicle was being driven by deceased Lucky. Noticeably, the appellant-insurer had denied the factum of vehicle being driven by deceased Lucky on the basis of contents of FIR, Ex.PW1/F. It becomes evident from the statement of police officials RW-3 and RW-4 also that the investigating agency had also placed reliance on the version given by PW-3 Kamal Kumar by way of his statement under Section 154 of the Cr.P.C.

20. As noticed above, PW-3 Kamal Kumar had changed his stand while deposing before the learned Tribunal. He had stated

that the name of Sat Pal was not disclosed by him to the police as driver of the vehicle. He had further stated that he did not even know Sat Pal and that whatever was disclosed to the police was on the basis of version given by the public that had gathered on the spot.

21. Thus, in the absence of proof of contents of FIR Ex.PW1/F in accordance with law, learned Tribunal was not wrong in not giving much credence to such version. On the other hand, the version of claimants was supported by PW-2 Jai Chand. According to him, the vehicle had been driven by driver Lucky when it had left the shop of said witness. The owner of the vehicle had also categorically admitted that Lucky was employed by him as driver. To this effect was the statement made by owner of vehicle as RW-6, which despite cross-examination could not be shattered. In such circumstances, the findings recorded by the learned Tribunal need no interference.

22. At this stage, it will be relevant to notice that the dependents of deceased Lucky had filed claim petition under the provisions of Workmen Employees Compensation Act, in which it

was admitted that the owner Anup Kumar had paid a sum of Rs.25,000/- to such dependents immediately after the accident as interim relief. Though, the appeal (FAO) arising from the Award passed by the Employees Compensation Commissioner was also heard along with the above noted appeals but the same is being disposed of vide separate judgment keeping in view the dissimilarity in parameters required to deal with the matters under the Employees Compensation Act and Motor Vehicles Act and also being decided by the different forums.

23. Still the above factum has come to the notice of this Court while going through the records of claim petition filed by the dependents of deceased Lucky. This also strengthens the hypothesis that deceased Lucky was the driver employed by owner Anup Kumar otherwise there would have been no reason for Anup Kumar to have paid the dependents of deceased Lucky an amount of Rs.25,000/- towards interim relief.

24. The appellant-insurer had also contended that even deceased Lucky was not holding valid driving licence. In this regard, the appellant-insurer had examined RW-2 Kuldeep Singh,

who had produced the record of office of RTA Mewat (Haryana).

On the basis of register produced by the witness, it was stated that the register did not contain any entry with respect to driving licence possessed by deceased Lucky.

25. Learned Tribunal has discredited the above version and again the view formed by the learned Tribunal cannot be faulted. The appellant-insurer had tried to prove negative fact. It could not be said that the register produced by RW-2 was the only register containing entries of driving licence issued by them. More particularly, when in cross-examination the witness had admitted that there were two other licensing authorities, who were issuing licence to drive noncommercial vehicles. In the case at hand, the vehicle was Bolero Camper and it cannot be said that the said vehicle could not be driven by a person holding licence to drive non-commercial vehicle. Even otherwise, it was for the appellant-insurer to prove the violation of terms of policy by showing that the owner had allowed the vehicle to be driven by a person without licence, whereas, no such evidence was led by the appellant-insurer. To the contrary, the owner in his pleadings and

evidence had specifically stated that he had employed deceased Lucky as driver after checking his driving licence and driving skill.

26. As regards capacity of deceased persons travelling in the vehicle, they have been held to be the owners of the goods. In that behalf, the evidence of PW-2 Jai Chand had been taken into consideration. The version of PW-2 Jai Chand had nowhere been discredited despite cross-examination. Nothing was brought on record to suggest that PW-2 was not the owner of business being run under the name and style of "Jamdagani Store" at Jagatkhana. Simply because he had not issued bills for the purchases made by the deceased persons was not sufficient to disbelieve his version for the reason that such practice could be easily presumed in remote and rural areas of the State.

27. Learned counsel for the appellant-insurer has also assailed the impugned awards being excessive. In order to test the argument so raised, all the matters have to be assessed independently.

FAO No. 338 of 2019 (Claim Petition No. 97 of 2015)

28. In this case, deceased Jai Ram has been held to be 45 years old at the time of accident. He was stated to running a Dhaba at Indra Market, Rampur and earning Rs.15,000/- per month. Since, the learned Tribunal did not find any documentary proof to establish the income of deceased Jai Ram, it was assessed at Rs.8000/- per month at approximation. Addition of 25% was made on account of loss of future prospects and in this manner his monthly income was taken as Rs.10,000/-. Keeping in view the number of dependents being four, learned Tribunal deducted 1/4th of the income towards personal expenses and thereafter came to the conclusion that the loss of monthly dependency was Rs.7500/-. By applying the multiplier of 14, the total loss of dependency has been assessed at Rs.12,60,000/-. In addition, Rs.40,000/- has been allowed as compensation to claimant No.1 Smt. Subhadra on account of loss of consortium. Further Rs.15,000/- each has been awarded under the heads "loss of estate" and "funeral charges". In this manner, the total computation though was made at Rs.13,30,000/- but was rounded off to Rs.14,00,000/-.

29. The appellant-insurer has not been able to discredit the fact that the deceased was running a Dhaba. Thus, the assessment of Rs.8000/- per month as income of the deceased cannot be said to be excessive. Even if, the criteria of minimum wages for highly skilled persons was adopted, the figure arrived at by the learned Tribunal was not unreasonable. The additions and deductions made by the learned Tribunal were in conformity with the settled principles. Thus, the loss of total dependency has rightly been assessed. However, the award of Rs.40,000/- as loss of consortium to claimant No.1, wife of the deceased only requires interference for the reason that in ***Magma General Insurance Company Ltd. vs. Nanu Ram & Ors., (2018) 18 SCC 130***, it has been held that the loss of consortium shall be calculated @ Rs.40,000/- for each of the dependent. In light of the aforesaid mandate, the other three claimants are also held entitled to Rs.40,000/- each under the head "loss of consortium"

30. Thus, the claimants in FAO No. 338 of 2019 are held entitled to compensation as under: -

1.	Compensation on account of loss of dependency	Rs.12,60,000/-
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2.	Compensation on account of loss of consortium	Rs.1,60,000/-
3.	Compensation on account of loss of estate	Rs.15,000/-
4.	Compensation on account of funeral charges	Rs.15,000/-
	Total	Rs.14,50,000/- (Rs. Fourteen Lakh, fifty thousand only)

31. 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.

32. The apportionment made by the learned Tribunal shall stand modified only to the extent that instead of Rs.5,00,000/-, claimant No.1 Smt. Subhadra will get Rs.5,50,000/-.

FAO No. 339 of 2019 (Claim Petition No. 98 of 2015).

33. In this case, deceased Rajesh was 17 years and was unemployed. Learned Tribunal has assessed his monthly income notionally at Rs.3000/-, which again cannot be said to be unreasonable. In his case also addition of 40% on account of loss of future prospects was added and thus, the monthly income of the deceased was assessed at Rs.4,200/-.

34. Learned Tribunal has deducted 1/3rd of the income of the deceased towards personal expenses on the premise that he had left behind two legal representatives. However, such assessment cannot be said to be correct in light of what has been held by the Constitutional Bench in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors., (2017) 16 SCC 680***, wherein it has been held that if the deceased was a bachelor and the claimants were the parents, 50% of the monthly income was required to be deducted. In light of such mandate, a sum of Rs.2100/- was required to be deducted from the monthly income of the deceased as assessed by the learned Tribunal and thus, the loss of monthly dependency would have been Rs.2100/- only. The multiplier of 18 has rightly been applied. Accordingly, the total loss of dependency will be Rs.4,53,600/- instead of Rs.6,34,800/- as assessed by the learned Tribunal. The amount of Rs.15,000/- each under the heads "loss of estate" and "funeral charges" has rightly been awarded, however, nothing has been awarded under the head "loss of consortium". Again, in light of the judgment passed by the Hon'ble Supreme Court in ***Magma General Insurance***

Company Ltd. vs. Nanu Ram & Ors., (2018) 18 SCC 130, both the claimants will be entitled to the amount of compensation under the head “loss of consortium” @ Rs.40,000/- each.

35. Thus, the claimants in FAO No. 339 of 2019 are held entitled to compensation as under:-

1.	Compensation on account of loss of dependency	Rs.4,53,600/-
2.	Compensation on account of loss of consortium	Rs.80,000/-
3.	Compensation on account of loss of estate	Rs.15,000/-
4.	Compensation on account of funeral charges	Rs.15,000/-
	Total	Rs.5,63,600/- (Rs. Five lakh sixty three thousand and six hundred only)

36. 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.

37. The compensation shall be apportioned in equal proportion between both the claimants.

FAO No. 340 of 2019 (Claim Petition No. 99 of 2015)

38. In the instant case, deceased Tara Chand was 36 years old and was stated to be running a Dhaba. His income was also taken at Rs.8000/- per month notionally by the learned Tribunal, which is just and reasonable. Keeping in view the age of the deceased, learned Tribunal granted addition of 40% towards the loss of future prospects and thus, the monthly income of the deceased was calculated at Rs.11,200/-. Deduction on account of personal expenses has been made by 1/4th of the monthly income of the deceased. In this case, the deceased was married and had left behind his wife and two children, therefore, deduction should have been made at the rate of 1/3rd of the monthly income in terms of the mandate of the Constitutional Bench in Pranay Sethi (supra). Hence, the amount of Rs.3,733/- was required to be deducted from Rs.11,200/-, keeping remainder as Rs.7,467/-. Learned Tribunal has rightly applied the multiplier of 15. Thus, the total loss of dependency would be Rs.13,44,060/-. In this case also compensation under the head of loss of consortium is liable to be allowed in favour of all the three claimants besides the amount of

Rs.15,000/- each under the heads “loss of estate” and “funeral charges”.

39. Thus, the claimants in FAO No. 340 of 2019 are held entitled to compensation as under:-

1.	Compensation on account of loss of dependency	Rs.13,44,060/-/-
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/-
	Total	Rs.14,94,060/- (Rs. Fourteen Lakh, ninety four thousand and sixty only)

40. 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.

41. The compensation shall be apportioned in equal proportion between all the claimants.

FAO No. 387 of 2019 (Claim Petition No. 100 of 2015)

42. In this case, deceased Sat Pal was 25 years old and was stated to be driving a taxi. Learned Tribunal has assessed his

income at Rs.8000/- and further adding benefit of 40% on account of loss of future prospects, the income was assessed at Rs.11,200/-. Deduction of 1/4th on account of personal expenses was made from the monthly income of the deceased and thereafter keeping the remainder of Rs.8400/- which has been assessed as loss of monthly dependency. Applying the multiplier of 18 a sum of Rs.18,14,400/- has rightly been assessed by the learned Tribunal as total loss of dependency.

43. Compensation for loss of consortium was allowed in favour of claimant No.1 only, whereas, in light of the mandate of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. vs. Nanu Ram & Ors., (2018) 18 SCC 130***, each of the claimant was entitled for the same amount for loss of consortium.

44. Thus, the claimants in FAO No. 387 of 2019 are held entitled to compensation as under:-

1.	Compensation on account of loss of dependency	Rs.18,14,400/-
2.	Compensation on account of loss of consortium	Rs.2,00, 000/-
3.	Compensation on account of loss of estate	Rs.15,000/-
4.	Compensation on account of	Rs.15,000/-

	funeral charges	
	Total	Rs.20,44,400/- (Rs. Twenty Lakh, forty four thousand and four hundred only)

45. 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.

46. 80% of the awarded amount shall be apportioned between claimant No.1, 2 and 5 in equal shares and remaining 20% of the awarded amount shall be apportioned between claimants No.3 and 4, namely, Kanta Devi and Sham Lal equally.

47. All the appeals are accordingly disposed of. The impugned awards passed by the learned Tribunal in MACT Petition Nos. 97 of 2015, 98 of 2015, 99 of 2015 and 100 of 2015 shall stand modified to the extent as held above.

48. Pending miscellaneous application(s), if any, also stand disposed of.

49. Records be sent back forthwith.

25th November, 2025
(jai)

(Satyen Vaidya)
Judge