



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No.518/2009

c/w

MA No.519/2009

Reserved on: 06.02.2026

Pronounced on: 13.02.2026

Uploaded on: 13.02.2026

1. Deepak Gupta, age 51 years S/o Late Sh. Narinjan Dass Gupta (N.D.Gupta).
2. Anil Gupta, age 53 years S/o Late Sh. Narinjan dass Gupta (N.D.Gupta)
Both residents of Quarter No.149, Sarwal Colony, Jammu.

....Appellant(s)

Through:- Mr. Raghu Mehta, Advocate

Versus

1. The Oriental Insurance Co. Ltd., B.O. Canal Road, Jammu through its I/C Branch Manager (Insurer of Bus No.JK02X-1731).
2. Madan Lal S/o Sardari Lal Gupta R/o H.No.391 Gandhi Nagar, Jammu (Owner of the Bus No.JK02X-1731).
3. Kulvinder Singh S/o Santokh Singh S/o Sarore Adda, Samba, District Samba (owner of the Bus No.JK02X-1731).
4. Sukhvinder Singh alias Buntoo S/o Sh. Dhian singh Caste Labana Sikh R/o Sunjwan, Vijaypur, tehsil & District Samba (driver of the Bus No.JK02X-1731).
5. The New India Assurance Co. Ltd.
B.O. College Road, Kathua Through its I/C
Branch Manager (Insurer of Bus No.JK08-7129).
6. Ravinder Singh S/o Sh. Jagdev Singh R/o Billawar, Tehsil Billawar, District Kathua (Owner of the Bus No.Jk028-7129).
7. Nardev Singh S/o Sh. Isher Singh R/o Village Tilla, tehsil Billawar, District Kathua (Driver of Bus No.JK08-7129).

....Respondents

Through:- Mr. Amrit Sarin, Advocate for R-1

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE



JUDGMENT

1. These two civil miscellaneous appeals filed jointly by two brothers, namely, Deepak Gupta and Anil Gupta arise out of a common award dated 13th August, 2009 passed by the Motor Accident Claims Tribunal, Jammu [“the Tribunal”] in claim petition Nos.708/Claim titled Deepak Gupta and another v. The Oriental Insurance Company Ltd. & others and 709/Claim titled Deepak Gupta and another v. The Oriental Insurance Company Ltd and others, whereby the Tribunal has dismissed both the claim petitions on the ground that the claim petitioners had not arrayed their sisters as claimants.
2. Briefly stated, the facts leading to the filing of these appeals are that on 01.11.2007, at about 9 am, a motor accident took place at Berero Khad near Barian Camp Supwal in which a Maruti Van bearing Registration No.JK02M-0615 was hit and crushed by two offending Buses bearing Registration Nos. Nos.JK02X-1731 and JK028-7129. In the accident the parents of the petitioners, namely, Narinjan Dass Gupta and Smt. Sushil Gupta lost their lives.
3. The appellants, both major, filed claim petition before the Tribunal claiming a compensation of Rs.13.00 lac along with interest @ 12% p.a. from various persons including the Oriental Insurance Company Ltd on account of death of their father and



another claim petition seeking compensation of Rs.11.70 lac along with interest @ 12% p.a. on account of death of their mother in the accident in question.

4. It was claimed that the deceased father was a retired Assistant Education Officer from Himachal Pradesh Government and was receiving a monthly income of Rs.13,000/- per month. The claim was filed against both the Insurance Companies, with which these offending vehicles were insured with. The claim petition was contested by the Oriental Insurance Company Ltd.- the respondent No.1 herein. A similar claim petition was filed by the petitioner in respect of the death of their mother, who, they claimed was earning an income of Rs.10,000/- per month by doing the work of knitting, sewing and embroidery etc.
5. In light of the pleadings of the parties, the Tribunal framed the following issues in the petitions as well as in the club matters:-

- “1. Whether an accident occurred on 1.-11-2007 at Barero Khad near Baria Camp Supwal Tehsil and District Samba by involvement of two vehicles No.JK08 7129 and No.JK02X 1731 being driven in the hands of respective drivers in which deceased namely Anil Sharma, Neelam Gupta, N.D.Gupta and Sushil Gupta received fatal injuries? OPP
2. If issue No.1 is proved in affirmative, whether petitioners in each case are entitled to the compensation; if so to what amount and from whom? OPP
3. Whether drivers of both vehicles at the time of accident was not holding valid and effective driving license and drove the vehicles in contravention of terms and conditions of policy of insurance, RC, route permit and fitness? OPR 1 and 5



4. Whether accident has occurred by the contributory negligence by the drivers of both vehicles, if so how and what is its effect? OPR 1 & 5
5. Whether claim petition are bad for misjoinder of parties, if so how? OPR 5
6. Whether on the date of accident vehicle No.JK02X 1731 had been transferred by the erstwhile owner, if so how and what is its effect? OPR 1
7. Relief. O.P. Parties.”

6. With a view to substantiate their claim, the appellants got the statement of only Deepak Gupta, one of the claimants, recorded before the Tribunal. Deepak Gupta, in his deposition before the Tribunal, has stated that Late Narinjan Dass Gupta and Sushil Gupta were his parents, who died in a road traffic accident on 1st November, 2007 near Samba. His father was serving in Model Academy and had retired as Assistant Education Officer. He was getting Rs.10,000/- from pension. His mother was 76 years old at the time of accident and was also earning Rs.10,000/- per month by giving teaching classes in cutting, tailoring etc. It has also come in his testimony that he was an engineer but because of recession, he was unemployed for the last some years and that his father was 87 years old. He has further deposed that appellant No.2 lives in America and that he does not know how much he is earning there. He has further stated that daughter of his brother is studying in a medical college and both are in America. He, however, denied that his parents were income tax payee and were filing income tax returns. There is no evidence led by the



appellants herein to prove either income of the deceased or their own dependency.

7. It is true that it has not come either in the pleadings of the appellants or their evidence that the deceased were survived by legal heirs other than the appellants and, therefore, ought to have joined them either as party claimants or proforma respondents in the claim petition. I am in agreement with the learned counsel for the appellants that in the absence of any material on record, the Tribunal was not justified in dismissing the claim petition(s) only for non-joinder of parties. I am also in agreement with the learned counsel for the appellants that in such eventuality, the Tribunal ought to have given an opportunity to the appellants to array other legal heirs before proceeding in the claim petitions. Unfortunately, this has not happened in the instant case.
8. Be that as it may, the fact remains that the appellants have not led any cogent evidence, muchless a satisfactory one, to prove either income of the deceased or their dependency. Bald assertions made in the claim petition followed by statement of PW-Deepak Kumar are not supported by any documentary evidence. In the claim petition the appellants claimed that their father was a District Education Officer, retired from Himachal Pradesh without placing on record any pension papers. In the statement made before the Tribunal, appellant No.1 claimed that his father



was working in Model Academy and was Assistant Education Officer without placing on record any documents/pension payment certificate issued in favour of the deceased. It has also come amply on record that the appellants were more than 50 years old and fully self sufficient. There is no indication of any of the appellants being dependent upon their parents, who were in the advance age at the time of accident.

9. In such a situation, it is difficult for this Court to come to any conclusion about the loss of dependency suffered by the appellants, more particularly, when there is no such evidence worthy of credence led by the appellants.
10. This Court does not dispute the proposition of law that a major legal heir of a person who has died in a motor accident can maintain a claim petition under Section 166 of the Motor Vehicles Act. It can also be not disputed that even a legal heir, who may not be dependent and does not suffer any loss of dependency, can maintain a claim petition. However, in case of absence of loss of dependency, such claimant would only be entitled to the sums payable under conventional heads.
11. Without going much into the rival contentions and having regard to the fact that there is virtually no evidence on record led by the appellants, I propose to dispose of both these appeals by awarding compensation in the following manner:-

**MA No.518/2009**

<i>Loss of estate</i>	:	<i>Rs.15,00.00</i>
<i>Funeral expenses</i>	:	<i>Rs.15,000.00</i>
<i>Loss of consortium @ 40,000/- each:</i>		<i>Rs.80,000.00</i>
<i>Total</i>	:	<i>Rs.1,10,000.00</i>

MA 519/2009

<i>Loss of estate</i>	:	<i>Rs.15,00.00</i>
<i>Funeral expenses</i>	:	<i>Rs.15,000.00</i>
<i>Loss of consortium @ 40,000/- each:</i>		<i>Rs.80,000.00</i>
<i>Total</i>	:	<i>Rs.1,10,000.00</i>

Ordered accordingly.

The aforesaid amount minus the amount, if any, already received as interim award shall become payable to the appellants with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. Since it was a case of negligence by both the offending vehicles, as such, the insurer of both vehicles i.e. respondent No.1-The Oriental Insurance Company and respondent No.5-The New India Assurance Company shall satisfy the award in equal share and deposit the balance amount before the Registry of this Court. The Registry shall release the amount in terms of the modified award in favour of the claimant after verification and identification. Amount of compensation shall be apportioned between the appellants in equal shares.

Both the appeals shall stand disposed of in the above terms.

(Sanjeev Kumar)
Judge

JAMMU
13.02.2026
Vinod, Secy

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No