

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

FAO(MV) No.326 of 2014
Reserved on: 23.09.2026
Date of decision: 30.09.2026
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30.09.2026

Shri Ram General Insurance Company Ltd.

.....Appellant.

Versus

Vidya Devi & others

.....Respondents.

Coram

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

¹*Whether approved for reporting?*

For the appellant:

Mr. Ashwani Kaundal Advocate.

For respondents No. 1 to 4:

Mr. R.K. Sharma, Sr. Advocate,
with Mr. Arun Kumar, Advocate.

None for respondents No. 5 & 6.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant-Shri Ram General Insurance company Ltd., who was respondent No. 1 before the learned Tribunal below (hereinafter referred to as the appellant/Insurance Company) under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') against impugned award, dated 29.11.2013, passed in MAC Petition No. 112/12, whereby learned Motor Accident

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

Claims Tribunal-II, Chamba, District Chamba, H.P. (hereinafter referred to as “the learned Tribunal below”), allowed the claim petition preferred by the petitioners/claimants (respondents No. 1 to 4 herein).

2. The facts giving rise to the instant appeal are that petitioners/claimants, i.e., Smt. Vidya Devi wife of Shri Hari Singh (deceased) and Shri Ashok Kumar, Shri Trilok and Shri Ishwar Kumar, sons of the deceased, preferred a claim petition under Section 166 of the Act, before the learned Tribunal below, on account of death of the deceased (Shri Hari Singh) in a motor vehicle accident. The petitioners/claimants averred that the deceased died in an accident, which took place on 20.10.2011, on Chamba-Bharmour Road involving vehicle bearing registration No. HP-15A-0842 (Canter), and the said vehicle was owned by ShriRam Partap (respondent No. 5 herein and respondent No. 2 before the learned Tribunal below). The aforesaid vehicle was being driven by Shri Sonu Kumar (respondent No. 6 herein and respondent No. 3 before the learned Tribunal below).

2(a). The petitioners/claimants averred that on 20.10.2011 the deceased was travelling in the aforesaid

vehicle alongwith goods, and he had boarded the vehicle at Rakh. The deceased had loaded maize grain in the vehicle for selling the same at Damtal. The accident took place around 11:00 p.m. at Rajera Mod and the accident occurred due to the rash and negligent driving of respondent No. 3- Sonu Kumar, as he could not negotiate the curve and lost control over the offending vehicle. Resultantly, the vehicle rolled down approximately 70-80 feet from the highway and the deceased suffered head injuries and ultimately succumbed to those injuries on the same day. The petitioner/claimants further averred that at the time of the accident, the deceased was 65 years old and his monthly income was Rs.10,000/- and prior to his death he was hale and hearty. The deceased was sole bread earner of his family, thus the family was dependent upon him. The untimely death of the deceased caused great financial and mental agony to the family.

3. Respondent No. 1-Insurance Company by filing reply to the claim petition contested the same. The replying respondent averred that the claim petition was not maintainable, as the driver of the offending vehicle was not having valid and effective driving licence and the vehicle was

being plied in breach of the terms and conditions of the insurance policy. The replying respondent further averred that the deceased was not travelling in the offending vehicle as owner of the goods and the vehicle was also not having valid registration certificate and fitness certificate. The amount of compensation claimed was highly excessive. The deceased was travelling in goods carrier vehicle, as a gratuitous passenger and it was being driven by his son Sonu Kumar (respondent No. 3).

4. Owner and driver of the offending vehicle, i.e., respondent No. 2-Ram Pratap and proforma respondent No. 3-Sonu Kumar, respectively, filed their joint reply, wherein they admitted the factum of accident and also that proforma respondent No. 3 was employed as driver. The replying respondents also admitted that the deceased was travelling in the offending vehicle, as he was going to sell his maize grain and he had loaded his goods at Rakh and he had to sell his grain at Damtal. As per the replying respondents, respondent no. 3 was not driving the vehicle in a rash and negligent manner and the accident occurred due to a mechanical defect. The offending vehicle was comprehensively insured with insurer-Insurance Company

(respondent No. 1) and the compensation amount claimed by the petitioners was excessive.

5. The petitioners/claimants filed rejoinder to the replies filed by the respondents, wherein they reiterated the averments made in the claim petition and denied the stand taken by the respondents.

6. On 01.05.2013 the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether the deceased Hari Singh had died on 20.10.2011 on account of accident of vehicle No. HP-15-A-0842 due to rash or negligent driving of driver i.e., respondent No. 3 Sonu Kumar after vehicle met with an accident on the aforesaid date around 11 p.m. at place Rajera Mod? 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 the respondents? OPP***
- 3. Whether the petition is not maintainable? OPR-1 to 3***
- 4. Whether the driver of the offending vehicle (respondent No. 3) was not having valid and effective driving licence at the time of accident as alleged? OPR-1***
- 5. Whether the offending vehicle was not having valid registration certificate, route permit and valid fitness certificate as alleged? OPR-1***
- 6. Whether the vehicle was being driven in violation of the provisions of Motor Vehicle Act and terms and conditions of Insurance Policy as alleged? OPR-1***
- 7. Whether the deceased was travelling n the ill***

fated vehicle in the capacity of a gratuitous passenger so, its effect? OPR-1

8. Relief.”

7. After the parties led their evidence and after hearing the learned counsel for the parties, the claim petition was allowed by the learned Tribunal below and petitioners/claimants (respondents No. 1 to 4 herein) were held entitled for compensation of Rs.7,15,000/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the deposit of the award amount.

8. Feeling aggrieved and dissatisfied, appellant-Insurance Company, preferred the instant appeal against the impugned award dated 29.11.2013, with a prayer to allow the instant appeal by quashing and setting-aside the impugned award and by exonerating the appellant from the liability of paying the compensation.

9. Learned Counsel for the appellant vehemently contended that the learned Tribunal below has erred in fastening the liability on the insurance company as on the relevant date, the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. He further contended that the learned Tribunal below had awarded

exorbitant and excessive amount of compensation which cannot be sustained in law, therefore, he submitted that the instant appeal be allowed and the impugned award be quashed and set-aside.

10. Per contra, the learned counsel for respondents No. 1 to 4 supported the impugned award and contended that the impugned award is the result of proper appreciation of both facts and law and the instant appeal, being devoid of merits, be dismissed.

11. I have heard the learned counsel for the appellant-Insurance Company, learned counsel for respondents No. 1 to 4 (petitioners/claimants) and carefully examined the entire records.

12. The case of the petitioners is that on 20.10.2011, deceased Hari Singh was travelling in vehicle No. HP15A-0842 (offending vehicle) alongwith his goods and the said vehicle rolled down the hill near Rajera Mod, resultantly, the deceased died on the same day. As per the petitioners, the offending vehicle was being driven by respondent No. 3- Sonu Kumar, son of the deceased and the vehicle was insured with appellant-Insurance Company. The learned Tribunal below has specifically given findings on issue No.1

that the accident had occurred due to the rash and negligent driving on the part of respondent No.3-Sonu Kumar. So far as the findings on issue No.1 qua negligence is concerned, neither the appellant/Insurance Company, nor the owner-cum-driver of the offending vehicle had assailed the said findings, as such, the same has attained finality.

13. Learned counsel for the appellant has vehemently contended that the learned Tribunal below has erred in fastening the liability on the insurance company as on the relevant date, the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. Now the question which arises for consideration, is as to whether the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. The burden to prove the breach of the terms of insurance policy rests squarely on the party which complains of such breach. The test which can be applied in such a situation would be that which party would fail if no evidence is led or the onus is not discharged. In the present case, the answer would be the appellant-Insurance Company. In this behalf, reference can be made to the judgment passed by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh,***

(2004) 3 SCC 297, wherein the Hon'ble Supreme Court has observed as under:

"110. The summary of our findings to the various issues as raised in this petition is as follows:

*((i) ******

*(ii) ******

*(iii) ******

(iv) The Insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case."

14. Applying the ratio of the law laid down by the Supreme Court, as referred to above, the onus to prove that the deceased was traveling as an unauthorized passenger was upon the insurance company. However, it has failed to lead any evidence in order to prove that the deceased was traveling as gratuitous passenger in the offending vehicle without any goods. As per the petitioners, the deceased was traveling in the offending vehicle alongwith his maize grain. The appellant-insurance company has not been able to discharge the onus placed upon it. In the absence of any evidence led by the insurance company, the version of the

claimants and the owner of the offending vehicle has to be believed. Therefore, in the absence of any evidence on record, it cannot be said that the deceased was traveling as an unauthorized passenger in the offending vehicle as such this contention raised by the learned Counsel for the Appellant is not tenable and is liable to be rejected outrightly.

15. The learned counsel for the appellant-Insurance Company next contended that while passing the impugned award the learned Tribunal below has arrived at a wrong conclusion that the income of the deceased was in the sum of Rs.10,000/- per month, as no documentary evidence has been placed on record by the petitioner to prove the income of the deceased.

16. Now, the next question which arises for consideration before this Court is as to what amount of compensation the petitioners are entitled and as to what income should be assessed in the absence of any documentary evidence on record.

17. PW-3 Shri Ishwar Kumar, one of the petitioners, while appearing in the witness-box, who was the son of the deceased-Hari Singh, deposed that the monthly income of

his deceased father was Rs.10,000/- per month from all sources and due to his untimely death, the entire family suffered a huge financial loss. This witness, in his cross-examination, stated that his father (deceased) used 29 bighas of land to cultivate and produce crop. The petitioner have also produced on record jamabandi for the year 2007-08, Ex.PW-3/B, the perusal of which shows that deceased-Hari singh was owner of 29 bighas of cultivable land in Mauza Gurad, Tehsil and District Chamba. Shri Daleep Singh, appeared in the witness-box as PW-4 and corroborated the statement of PW-3 by stating that the monthly income of the deceased from all sources was Rs.10,000/- and his entire family was dependent upon him. He further deposed that the deceased was running a shop in village and after his death the shop was being run by his son. However, no documentary evidence has been placed on record by the petitioners in order to prove the income of the deceased from all sources. In the opinion of this Court, the income of the deceased, i.e., Rs.10,000/- per month, as taken by the learned Tribunal below appears to be on higher side. Therefore, in the absence of any documentary evidence on record, the income of the deceased is taken as

Rs.7,000/- per month.

18. In the instant case, as per the extract of Pariwar Register, Ex. PW-3/C, which has not been disputed by the parties, the year of birth of the deceased was 1946. The accident took place on 20.10.2011, thus at the time of the accident, the deceased was 65 years old.

18. In ***Sarla Verma & others vs. 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 the instant case, since there were four family members who were dependent upon the income of the deceased at the time of accident, $1/4^{\text{th}}$ of his income is required to be deducted towards personal and living expenses, in view of the law laid down by the Hon'ble Supreme Court in **Sarla Verma's** case (supra).

18. Since the deceased was 65 years of age, no amount can be added to the established income of the deceased towards the future prospects. Thus, after the deduction of $1/4^{\text{th}}$ of the income towards the personal expenses of the deceased, his contribution to family comes out to **Rs.7000 – Rs.1750 = Rs.5250/-** per month and his annual contribution comes out to **Rs.63,000/- (5250/- x 12)**.

21. In **Sarla Verma's** case (supra), it has further been 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. The relevant portion of the aforesaid judgment is 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.'

22. Since the deceased was 65 years of age, as such by applying the multiplier of '7' as per the settled law, the compensation under the head, loss of dependency is re-fixed as **Rs.4,41,000/- (63,000/- x 7)**.

23. Now, coming to the last aspect, i.e., the amount under conventional heads. In **Pranay Sethi's** case (supra), the Hon'ble Supreme Court has held that for the conventional heads, namely, "Loss of Estate", "Loss of Consortium" and "Funeral Expenses" amount of compensation is fixed as Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively and the aforesaid figures quantified by the Apex Court have to be enhanced on percentage

basis, at the rate of 10%, in a span of every three years. The relevant portion of the aforesaid judgment is as under:

“52..... It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

24. In ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & others, reported in (2018) 18 Supreme Court Cases 130***, the Hon’ble Supreme Court has laid down that consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. The relevant portion of the aforesaid judgment reads 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 o 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.”

25. While placing reliance upon the judgment passed by the Hon'ble Apex Court in ***Pranay Sethi’s*** case (supra), the Hon'ble Supreme Court in ***Sunita & ors. vs. United India Insurance Co. Ltd. & ors., 2025 SCC Online SC 1464***, had enhanced the compensation under the conventional heads @ 10% after a span of every three years w.e.f. the year 2017 and 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.”*

26. 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 enhancing the compensation under the conventional heads @ 10%, after every three years from the year 2017, the petitioners are entitled to loss of estate at Rs.19,965/-, funeral expenses at Rs.19,965/-, petitioner No.1, being widow of the deceased, is entitled to spousal consortium of Rs.53,240/-, and petitioners No.2 to 4, being children (sons), are entitled to parental consortium of Rs.53,240/- each. Accordingly, the total amount of compensation comes out as under:

	<u>Head</u>	<u>Amount</u>
(i)	Loss of dependency	Rs.4,41,000/-
(ii)	Funeral expenses	Rs.19,965/-
(iii)	Loss of estate	Rs.19,965/-
(iv)	Spousal consortium	Rs. 53,240/- (payable to petitioner/ respondent No.1)
(v)	Parental consortium	Rs. 1,59,720/- (Rs.53,240/- each payable to petitioners No. 2 to 4/respondents No. 2 to 4)

Total compensation awarded Rs.6,93,690/-

27. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the impugned award stands modified. The petitioners are held entitled to compensation in the sum of Rs.6,93,690/- from the appellant-Insurance Company only. The remaining terms of the impugned award, including the

interest component as well as the apportionment amongst the claimants shall remain the same.

The appeal stands disposed of in the above terms, so also the pending application(s), if any.

(Sushil Kukreja)
Judge

30th September, 2026
(virender)