

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

**FAO(MV) No. 486 of 2016 with
FAO No. 232 of 2018**

Reserved on: 16.07.2026
Date of decision: 20.07.2026
**Date of uploading on website:
20.07.2026**

1. FAO(MV) No. 486 of 2016:

Iffico Tokio General Insurance Company Ltd.

.....Appellant.

Versus

Reshma & others

.....Respondents.

2. FAO(MV) No. 232 of 2018:

Reshma & others

.....Appellants.

Versus

Iffico Tokio General Insurance Company Ltd. & another

.....Respondents.

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

¹*Whether approved for reporting? Yes.*

1. FAO(MV) No. 486 of 2016:

For the appellant: Ms. Shilpa Sood, Advocate.

For respondents No. 1 to 3: Mr. Pankaj Samant, Advocate,
vice Mr. Sunil Kumar, Advocate.

2. FAO(MV) No. 232 of 2018:

For the appellants: Mr. Pankaj Samant, Advocate,
vice Mr. Sunil Kumar, Advocate.

For respondent No. 1: Ms. Shilpa Sood, Advocate.

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

Sushil Kukreja, Judge.

The instant appeals, being the offshoots of award dated 07.09.2015, passed by learned Motor Accidents Claims Tribunal-II, Shimla, H.P. (hereinafter referred to as “the learned Tribunal below”), are taken up together for consideration and disposal.

2. FAO(MV) No. 486 of 2016 has been preferred by appellant-Iffico Tokio general Insurance Company Limited (hereinafter referred to as “the appellant-Insurance Company”), who was respondent No. 1 before the learned Tribunal below, under Section 173 of the Motor Vehicles Act, 1988 (for short ‘The Act’) against impugned award, dated 07.09.2015, passed in MAC Petition No. 6-R/2 of 2012, passed by the learned Tribunal below, whereby the claim petition filed by the petitioners-claimants was allowed, with a prayer to set-aside the impugned award.

3. FAO(MV) No. 232 of 2018 has been preferred by appellants, who were petitioners/claimants before the learned Tribunal below (hereinafter referred to as “the petitioners/claimants”) under Section 173 of the Act, against the award dated 07.09.2015, with a prayer to enhance the

awarded amount of compensation.

4. The facts giving rise to the instant appeals are that on 05.07.2011 Shri Rajnish was driving car, having registration No. HP-10B-0650, which was owned by respondent No. 2-Shri Rajesh Kumar, and it was insured with respondent No. 1-Insurance Company. Around 05:45 p.m. when the aforesaid car reached near Karalash Kenchi, Halka Mod, Tehsil Rohru, due to mechanical defect, the vehicle rolled down the valley side road and Rajnish (deceased) sustained head injuries, which resulted into his death. The petitioners averred in their claim petition that the deceased was driving the aforesaid vehicle carefully and cautiously. The deceased was employed as driver by respondent No. 2 on monthly salary of Rs.3300/-. The petitioners, i.e., Reshma, Astha and Ishita, wife and daughters of the deceased, respectively, preferred the claim petition.

5. Respondent No. 1-Insurance Company by filing its reply contested the claim petition. The replying respondent raised preliminary objections qua maintainability of the petition, violation of the terms and conditions of the insurance policy, petition had been filed by the petitioner in collusion with respondent No 2 (owner of the offending

vehicle), suppression of material facts, estoppel and misjoinder of parties. It was averred that the deceased was never engaged by respondent No. 2, as paid driver and the story of the alleged occupation has been cooked up. It was further averred that petitioners and respondent No. 2 managed to get the FIR lodged in connivance with the police officials to save respondent No. 2 from liability. The stand of the replying respondent was that the accident took place due to rash and negligent driving of the driver and not due to the mechanical defect and the vehicle was being driven in violation of the terms and conditions of the insurance policy, thus the replying respondent is not liable to pay any compensation to the petitioners.

6. Respondent No. 2 (owner of the offending vehicle) filed his separate reply, wherein preliminary objection qua maintainability of the claim petition was raised. The replying respondent admitted that the deceased was employed by him as driver on the offending vehicle and he used to pay him Rs.3300/- per month. The replying respondent further averred that the deceased Rajnish was having valid and effective driving licence to drive the vehicle at the time of the accident and the vehicle was duly insured

with respondent No. 1-Insurance company.

7. On 19.09.2013 the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether deceased Rajnish died involving vehicle bearing No. HP-10B-0650 owned by respondent No. 2?***
- 2. If issue No. 1 is proved in affirmative, the petitioners are entitled for compensation, if so, what amount and from whom? OPP***
- 3. Whether the petition is not maintainable? OPR***
- 4. Whether the vehicle was being driven in breach of terms and conditions of insurance policy? OPR-1***
- 5. Whether the deceased was driving the vehicle at the time of accident being paid driver of respondent No. 2? OPP***
- 6. Whether petition is collusive between petitioners and respondent No. 2? OPR-1***
- 7. Whether the driver of above vehicle was not having valid and effective driving licence at the time of accident? OPR-1***
- 8. Relief.”***

8. 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 were held entitled for compensation in the sum of Rs.7,58,600/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the realization of the amount from respondent No. 1-Insurance Company.

9. Feeling aggrieved and dissatisfied, appellant-Insurance Company, preferred FAO(MV) No. 486 of 2016, against the impugned award dated 07.09.2015, with prayer to allow the appeal by setting-aside the impugned award. On the other hand, appellants (petitioners/claimants) also preferred FAO(MV) No. 232 of 2018, against the impugned award with a prayer to enhance the amount of compensation by allowing their appeal.

10. Learned counsel for the Insurance Company contended that the learned Tribunal below has erred in law in granting compensation to the petitioners/claimants under Section 166 of the Act despite the fact that the petitioners/claimants had sought compensation under specific provisions of Section 163A of the Act. She further contended that the learned Tribunal below ought to have granted compensation to the petitioners/claimants in accordance with Schedule-II under Section 163A of the Act.

11. Conversely, learned vice counsel for the petitioners/claimants contended that the petitioners/claimants have also filed an appeal for enhancement of compensation on the ground that the compensation amount, as awarded by the learned Tribunal below, is on the lower side and the

same is inadequate.

12. I have heard the learned Counsel for the Insurance Company, learned vice counsel for the petitioners/claimants and carefully examined the entire records.

13. The perusal of available material on record reveals that the petitioners had filed the claim petition under Section 163A of the Act for grant of compensation on account of death of Rajnish, who was the husband of petitioner No. 1-Smt. Reshma and father of petitioners No. 2 and 3, i.e., Ms Astha and Ms Ishita, respectively. However, the learned Tribunal below awarded the compensation in the sum of Rs.7,58,600/-, as if it was a petition under Section 166 of the Act.

14. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implement the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. Needless to state that section 163A of

the Act contains a special provision as to the payment of compensation on structured formula basis, as indicated in Schedule-II to the Act. As per Schedule-II under Section 163A of the Act, compensation has to be assessed on the basis of structured formula. Any claim made under Section 163A of the Motor Vehicles Act, 1988 exempts the claimant from proving the negligence on the part of the offending vehicle. It is a settled principle of law that even if the claimant is at fault; he can resort to Section 163 A of the Motor Vehicle Act, 1988. The basis on which the dependents of a deceased in case of his death, or the victim himself in case of permanent disability can be entitled to compensation under Section 166 of the Motor Vehicles Act are different from the requirements of section 163A of the Motor Vehicles Act, 1988. The principles of law settled by the court or a precedent in respect of an application under Section 166 of the Motor Vehicles Act cannot be used as a strait jacket formula in respect of a petition under Section 163A of the Motor Vehicles Act. Hence, this Court is of the considered view that the principles of law as enunciated in ***National Insurance Company Limited Versus Pranay Sethi & others, (2017) 16 SCC 680***, and ***Sarla Verma & others vs.***

Delhi Transport Corporation & another, (2009) 6 SCC 121

regarding adding additional amount towards future prospects in case of applications under section 166 of the Motor Vehicles Act, 1988, cannot as a general rule be applied in respect of an application filed under Section 163 A of the Motor Vehicles Act, 1988

15. In the case on hand, the petitioners have claimed that the deceased was earning Rs.3300/- per month and the learned Tribunal below had rightly assessed the income of the deceased @ Rs.3300/- per month at the time of his death. Since there were three family members who were dependent upon the income of the deceased at the time of accident, therefore, on the basis of structured formula, 1/3rd of his income is required to be deducted towards personal and living expenses. After deducting 1/3rd of the amount from the monthly income of the deceased, the loss of dependency comes to Rs.2200/- per month. Admittedly the age of the deceased was 31 years at the time of the accident. Thus, by applying the multiplier of 17, the compensation under the head loss of dependency is fixed at **Rs.4,48,800/- (2200/- x 12 x 17)**

16. In addition, the Tribunal has chosen to award

Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. In the opinion of this court, when a claim is made under Section 163-A, the conventional damages shall be in accordance with Schedule-II to the Act and the principles of law under general damages cannot be applied to an application under Section 163A of Motor Vehicle Act, 1988 because Section 163A of the Motor Vehicle Act in no uncertain manner envisages that as per clause 3(i), funeral expenses awardable shall be Rs.2,000/-, as per clause 3(ii), compensation for loss of consortium shall be Rs.5000/-. Clause 3(iii) states that a sum of Rs.2500/- shall be payable as compensation for loss of estate which the Tribunal has omitted to do. So this Court is of the considered view that under the conventional heads, the claimants are entitled to general damages of Rs.9,500/- only.

17. All the above aspects will go to show that the Tribunal has committed a grave error in passing the above said award in every respect. The award of the Tribunal is defective, infirm and unsustainable in law, which has got to be interfered with and corrected by this Court in exercise of its appellate powers.

18. Hence, in view of what has been discussed

hereinabove, the appeal filed by the Insurance Company (FAO(MV) 486 of 2016) is partly allowed and the appeal filed by the petitioners/claimants (FAO(MV) No. 232 of 2018) is dismissed. The petitioners (claimants) are held entitled to compensation in the sum of **Rs.4,58,300/- (4,48,800/- +9500/-)** from Iffico Tokio General Insurance Company Limited only. The remaining terms of the impugned award, including the interest component as well as the apportionment amongst the claimants, shall remain the same.

19. Both the appeals stand disposed of in the above terms, also the pending application(s), if any.

(Sushil Kukreja)
Judge

20th July, 2026
(virender)