

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**FAOs No.250 & 545 of 2016****Reserved on: 08.07.2026****Decided on: 12 .08.2026****Date of uploading on Website: 12.08.2026**

(1) FAO No.250 of 2016

Nand Kishore Sharma & another

.....Appellants

Versus

Nirmala Devi & others

.....Respondents

(2) FAO No.545 of 2016

Nirmala Devi

.....Appellant

Versus

Nand Kishore Sharma and others

.....Respondents

*Coram***Hon'ble Mr. Justice Sushil Kukreja, Judge**¹ *Whether approved for reporting?*

FAO No.250 of 2016

For the appellants:

Mr. Ajay Sharma, Senior Advocate,
with Mr. Tarun K. Brakta, Advocate.

For the respondents:

Mr. Nimish Gupta, Advocate, for
respondents No.1 & 2.Mr. B.M. Chauhan, Senior Advocate,
with Ms. Kamakshi Tarlokta,
Advocate, for respondent No.3.

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

FAO No.545 of 2016

For the appellant: Mr. Nimish Gupta, Advocate.

For the respondents: Mr. Ajay Sharma, Senior Advocate,
with Mr. Tarun K. Brakta, Advocate.,
for respondents No.1 & 2.

Mr. B.M. Chauhan, Senior Advocate,
with Ms. Kamakshi Tarlokta,
Advocate, for respondent No.3.

None for proforma respondent No.4.

Sushil Kukreja, Judge

Since both these appeals are the offshoot of impugned award dated 21.05.2015, passed by learned Motor Accident Claims Tribunal-IV, Kangra at Dharamshala, District Kangra, HP, in MACP No.157-P/II/13/06, they are being taken up together for disposal. The parties shall be referred to as they were before the learned Tribunal below.

2. The appeal, being FAO No.250 of 2016 is maintained by respondents No.1 & 2, i.e. owner and driver of the offending vehicle, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'MV Act'), with the prayer that the impugned award may be quashed and set-aside, the claim petition be dismissed or in the alternative, the amount of compensation, as awarded by the learned Tribunal below, be ordered to be indemnified by the insurer, i.e.

respondent No.3.

3. Similarly, the appeal, being FAO No.545 of 2016, is maintained by petitioner No.1-Nirmala Devi, under Section 173 of MV Act for enhancement of the amount of compensation to the tune of Rs.8,00,000/- alongwith @ 18% interest from the date of filing of the claim petition.

4. Briefly stated the facts, giving rise to these appeals, are that the petitioners, namely, Nirmala Devi and Shahil Thakur, filed a claim petition under Section 166 of MV Act, seeking compensation to the tune of Rs.8,00,000/- on account of death of one Ravi Kumar, who was son of petitioner No.1-Nirmala Devi and father of petitioner No.2-Shahil Thakur. It was averred in the claim petition that Ravi Kumar was working as conductor/helper in the Tipper bearing registration No.HP-24-2666, which was owned by respondent No.1-Nand Kishore. On 16.05.2003, said Ravi Kumar was traveling in the vehicle in question from Shivnagar to Malong and at about 5:00 PM, the vehicle was having some starting problem, therefore, its driver, i.e. respondent No.2-Madan Lal, parked the vehicle on the side of the road and put a stone as stopper. Thereafter, when he was checking the mechanical defect, the vehicle suddenly rolled down crossing over the stopper and

conduct/helper Ravi Kumar came under the tyres, due to which, he received multiple injuries and subsequently died. The accident had occurred due to the mechanical failure of the aforesaid vehicle and thereby caused the death of deceased on account of the negligent act of its driver.

5. As per the petitioners, at the time of his death, deceased Ravi Kumar was 39 years of age, he was working as conductor/helper in the offending vehicle and was earning Rs.5,000/- per month from his profession. Besides this, he was also earning Rs.2,000/- per month by selling milk of his cow.

6. Respondents No.1 & 2/owner and driver of the vehicle contested the petition and filed joint a reply, wherein preliminary objection qua maintainability was taken. On merits, it was averred that the deceased was not earning Rs.7,000/- per month as respondent No.1 was paying him Rs.70/- per day whenever he used to come to attend his duty. It was also averred that respondent No.2 after parking the Tipper on one side of the road, went to bring a mechanic and the deceased was tightening the nut bolt under the head of the Tipper, then suddenly the tipper moved and the deceased came under it and sustained number of injuries on his person. The accident had occurred on account of the fault

of deceased himself.

7. In the reply filed on behalf of respondent No.3- Insurance Company, it took preliminary objections that the driver of the vehicle was not holding a valid and effective driving licence, the vehicle was being plied in violation of the terms and conditions of the insurance policy and the owner was not having valid and effective certificate of registration and fitness certificate. On merits, it was averred that no accident had taken place due to the rash and negligent driving of respondent No.2 and the deceased had died on account of his own negligence.

8. On the pleadings of the parties, the learned Tribunal below framed the following issues on 19.03.2020:-

- “1. Whether the death of the deceased Balak Ram had taken place due to the negligence of respondent NO.2 with the offending vehicle HP-24-2666 owned by respondent No.1 on 16.05.2003 at Malak within jurisdiction of Palampur? ...OPP***
- 2. If issue No.1 is proved in affirmative to what amount of compensation the petitioners being legal heirs of the deceased are entitled to and from whom? OPP***
- 3. Whether the petition is not maintainable in the present form, as alleged? ...OPP***
- 4. Whether the accident had taken place due to the fault of the deceased, as alleged? If so its effect? OPR 1& 2***
- 5. Whether the respondent No.2 was not having valid and effective diving licence to drive the vehicle and had plied the offending vehicle against the terms and conditions of insurance, as alleged? ...OPR-3***

6. Whether the respondent NO.1 being owner of the offending vehicle had been plying the offending vehicle without valid documents such as RC, fitness certificate etc. If so, its effect? OPR-3

7. Relief.”

9. The parties led their evidence and after hearing learned counsel for the parties, the claim petition was allowed with costs and petitioner No.1-Nirmala Devi was held entitled to compensation of Rs.4,35,000/- from respondents No.1 and 2 jointly and severally with 7.5% simple interest from the date of award i.e. 21.05.2015 till deposit of the compensation amount. Respondent No.3, being the insurer of the vehicle, was directed to deposit the amount of compensation and it was held entitled to recover the same from respondents No.1 and 2.

10. Feeling aggrieved and dissatisfied, respondents No.1 & 2/owner and driver of the offending vehicle, preferred *FAO No.250 of 2016*, with the prayer that the impugned award may be quashed and set-aside and the claim petition be dismissed. Similarly, petitioner No.1-Nirmala Devi also preferred the appeal (*FAO No.545 of 2016*) for enhancement of the amount of compensation.

11. Learned Senior Counsel for the appellants, i.e. owner and driver of the offending vehicle, contended that the learned

Tribunal below has wrongly and illegally held that the driver of the offending vehicle was not holding a valid and effective driving licence and thus wrongly held respondents No.1 & 2 liable to indemnify the award jointly and severally, whereas the directions ought to have been issued to respondent No.3-Insurance Company to indemnify the impugned award. He further contended that the compensation awarded is on higher side as such the same is liable to be reduced

12. On the other hand, learned Senior Counsel for respondent No.3-Insurance Company supported the award passed by the learned Tribunal below and contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective, hence, prayed for dismissal of the instant appeals.

13. Learned counsel for the appellant/petitioner-Nirmala Devi contended that the learned Tribunal below had granted inadequate compensation, which deserves to be enhanced and had also erred in awarding interest from the date of passing of award, whereas, the interest ought to have been awarded from the date of presentation of the claim petition till its realization.

14. I have heard learned Senior Counsel for the appellants/owner and driver of the offending vehicle as well as learned counsel for appellant-petitioner and learned Senior Counsel for the Insurance Company and also carefully examined the entire record.

15. The first question which arises for consideration is whether the driver was not having a valid and effective driving licence to drive the vehicle in question. The onus to prove that respondent No.2 i.e. the driver was not having a valid and effective driving licence to drive the vehicle in question and he had plied the offending vehicle against the terms and conditions of insurance policy was upon respondent No.3-insurance company. Respondent No.1-Nand Kishore, the owner of the vehicle, while appearing in the witness-box as RW-1, tendered in evidence his affidavit Ext.RW1/A, wherein he stated that he was owner of the offending vehicle, in which, respondent No.2-Madan Lal Banyal was kept as driver. He further deposed that respondent No.2 was possessing a driving licence to drive heavy goods vehicle.

16. Admittedly, the vehicle in question was a heavy goods vehicle. Perusal of the record reveals that an application under Order 26, Rule 4, CPC, read with Order 11, Rule 1 and Section

151 of CPC was filed by respondent No.1-Owner of the offending vehicle before the learned Tribunal below during the pendency of the claim petition on 26.07.2012 for issuance of interrogatories for the examination of witness, i.e. Licensing Clerk, office of District Transport Officer, Hazaribagh (Jharkhand), which are reproduced as under:-

- “1. For what class of vehicle the Driving License No.:14951/84/Pro dated 30.11.1984 issued by Licensing Authority, DTO Hazaribagh (Jharkhand) and thereafter it was endorsed for driving Heavy Goods Vehicles by the District Transport Office, Giridih, vide No.:D/LN.2034/Prof allow to drive Heavy Good Vehicle w.e.f., 16.05.1985 by Shri Madan Lal Baniyal, son of Punnu Ram.*
- 2. On which date the above Driving License has been endorsed for driving HGV and up to what period it was valid or the same was renewed or transferred for renewal for other State/DTO.”*

17. In reply to the said application, respondent No.3-Insurance Company, averred that in case the Court would send the questionnaires to the Licensing Authority, DTO, Giridih (Jharkhand), then the questionnaires of respondent No.3 may also be sent to the said Licensing Authority in cross-examination on behalf of respondent No.3-Insurance Company, which are also reproduced as under:-

- 1. For which period/periods the Driving License No.14951/Pro/84 dated 30.11.1984 of Madan Lal, son of Sh. Punu Ram, has been renewed by DTO, Giridih (Jharkhand) alongwith the class of vehicles authorized to drive.*

2. *Whether the Driving License No.14951/Pro/84 dated 30.11.1984 of Madan Lal Son of Sh. Punu Ram was renewed by DTO Gindih (Jharkhand) for the period covering the date 16.05.2003? If, yes, then the class of vehicles authorized to drive under the License for that period."*

18. Perusal of answer to the interrogatories Ext.RA, issued by CJM, Hazaribag (Jharkhand), reveals that the endorsement on the driving licence issued in favour of respondent No.2 Madan Lal, for driving heavy motor vehicle (HMV) was made by District Transport Officer (DTO), Hazari Bag on 12.08.2003, which was valid upto 31.07.2006, which fact is also corroborated by the extract of driving licence register Ext. RB. The perusal of the verification certificate Ext.RC, issued by District Transport Officer, Hazari Bag (Jharkhand) in respect of DL No.14951/84 of respondent No.2-Madan Lal Banyal shows that the licence holder was authorized to drive HMV from 12.08.2003 and the licence was valid upto 31.07.2006 The accident in question had taken place on 16.05.2003. Hence, it is proved on record that at the time of the accident, respondent No.2 was not possessing a valid and effective driving licence to drive the vehicle in question. Therefore, in view of the entire evidence on record, the learned Tribunal below has rightly held that respondent No.2 was not having valid and effective driving licence to drive the vehicle in

question and the same was being plied by him against the terms and conditions of the insurance policy.

19. Now the next question, which arises for consideration before this Court, is whether the learned Tribunal below had not awarded adequate compensation in favour of the petitioner. In ***National Insurance Company Limited*** Versus ***Pranay Sethi & others, (2017) 16 SCC 680***, a Constitution Bench of the Hon'ble Apex Court held that the compensation has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. Para-55 of the judgment is reproduced as under:-

"55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants

cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

20. To prove the income of the deceased, Balak Ram, father of the deceased, stepped into the witness-box as PW-3 and deposed that the deceased was working as conductor/helper on the truck bearing registration No. HP-24-2666, which was owned by respondent No.1-Nand Kishore and he used to earn Rs.5,000/- per month. Besides this, he also used to sell milk and thereby was

earning Rs.2,000/- per month. Respondent No.1-Nand Kishore, while appearing in the witness-box as RW-1 deposed that he had kept deceased Ravi Kumar as cleaner on 16.05.2003, who used to clean the vehicle on daily wages @ Rs.70/-. Respondent No.2-Madan Lal appeared in the witness-box as RW-2 and tendered in evidence his affidavit Ext.RW2/A, wherein he stated that deceased Ravi Kumar was working as cleaner with him in the vehicle in question. During his cross-examination, he admitted the suggestion that deceased Ravi Kumar was getting Rs.70/- as daily alongwith diet of Rs.35/-. However, no documentary evidence has been led by the petitioner in order to prove the income of the deceased. Therefore, in the absence of any documentary evidence, in the opinion of this Court, considering the year of accident and the avocation of the deceased, his notional monthly income of Rs.3,000/-, as assessed by the learned Tribunal below, appears to be appropriate in the facts and circumstances of the instant case.

21. It has further been held in ***Pranay Sethi's*** case (supra) 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:-

“59.3 .While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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.”

22. In the instant case, at the time of accident, the deceased was aged about 39 years of age and 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.

23. 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. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the

family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

24. 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 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.'

25. In the case on hand, the deceased was a bachelor and only his mother was his dependent family member as such, 50% of the amount from the total income has to be deducted towards personal and living expenses of the deceased. Since the deceased was 39 years of age at the time of his death, therefore, as per the judgment of the Hon'ble Supreme Court in **Sarla Verma's** case (supra), the appropriate multiplier would be '15',

which has rightly been applied by the learned Tribunal below.

26. Thus, after fixing the notional monthly income of the deceased at Rs.3,000/- and by adding 40% of the monthly income towards future prospects, the amount comes to Rs.4,200/- (3,000+1,200) and after deducting 50% share from the income of the deceased for his own use, the total dependency comes to Rs.2,100/- per month. By applying the multiplier of '15' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs.3,78,000/- (2100/- x 12 x 15).

27. 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 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 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."

28. 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., Civil Appeal No.9538 of 2025***, decided on July 17, 2025, 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."

29. 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, appellant-petitioner Nirmala Devi is entitled to loss of estate @ Rs.19,965/-, funeral expenses @ Rs.19,965/- and she being the mother of the deceased is also entitled to filial consortium of Rs.53,240/-. Accordingly, the total amount of compensation comes out as under:-

<u>Head</u>	<u>Amount</u>
(i) Loss of dependency	Rs.3,78,000/-
(ii) Funeral expenses	Rs.19,965/-
(iii) Loss of estate	Rs.19,965/-
(iv) Filial consortium	Rs.53,240/-

Total compensation awarded is Rs.4,71,170/-.

30. Perusal of the impugned award dated 21.05.2015 reveals that the learned Tribunal below has erroneously awarded interest from the date of award, i.e. 21.05.2015 till the compensation amount is deposited, whereas it should be awarded

from the date of filing of the claim petition till the date of its realization.

31. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal, being FAO No.250 of 2016 preferred by the owner and driver of the offending vehicle is dismissed, whereas, the appeal, being FAO No.545 of 2016 filed by petitioner No.1-Nirmala Devi is partly allowed and the impugned award dated 21.05.2015, passed by learned Tribunal below is modified to the extent that appellant/ petitioner No.1-Nirmala Devi is entitled to compensation to the tune of Rs.4,71,170/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till the date of its realization. Rest of the terms of the impugned award need no interference.

The instant appeals are disposed of accordingly, so also the pending applications.

(Sushil Kukreja)
Judge

August 12, 2026
(V. Himalvi)