

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA****FAO No.301 of 2014****Reserved on: 10.09.2026****Date of decision: 21.09.2026****Date of uploading on Website: 21.09.2026**

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Bajaj Allianz General Insurance Company Limited.

.....Appellant

Versus

Uma Devi and others

.....Respondents

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*Coram***Hon'ble Mr. Justice Sushil Kukreja, Judge**<sup>1</sup> *Whether approved for reporting?* Yes

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For the appellant: Mr. Jagdish Thakur, Advocate.

For the respondents: Mr. Abhishek Verma, Advocate, for respondent No.1.

Mr. Ramesh Sharma, Advocate, for respondents No.2 & 3.

Mr. Vishal Bindra, Advocate, for respondents No.4 & 5.

Ms. Shilpa Sood, Advocate, for respondent No.6.

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**Sushil Kukreja, Judge**

The instant appeal is maintained by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act (for short "MV Act"), against the award dated 28.04.2014, passed by the learned Motor Accident Claims Tribunal-II, Sirmaur District

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

Sirmour at Nahan, H.P., H.P., in MAC Petition No.56-N/2 of 2009, with a prayer to quash and set aside the same. The parties shall be referred to as they were before the learned Tribunal below.

2. Briefly facts of the case, giving rise to present appeal, are that the petitioners (petitioner No.1 Sagar Singh now deceased) filed a claim petition under Section 166 of MV Act before the learned Tribunal below, whereby they sought compensation to the tune of Rs.10,00,000/- on account of death of their son, Sushil Thakur. It was averred by the petitioners that on 11.03.2009, Sushil Thakur was going towards Paonta Sahib on his motorcycle and when he reached near Village Bohlion at about 7:00 PM, a Car bearing registration No.DL-4CM-2604, owned by respondent No.4 and was being driven by respondent No.5 as well as another vehicle bearing registration No.CH-04B-8472, owned by respondent No.1 and was being driven by respondent No.2 came from the opposite side in a rash and negligent manner. The deceased Sushil Thakur tried to save himself from these vehicles, but the vehicle No.CH-04B-8472 dashed against his motorcycle, as a result of which, he suffered multiple injuries and died on the spot. As per the petitioners, at the time of his death, the deceased was about 20 years of age,

he was a mason by profession and was earning Rs.5,000/- per month.

3. Respondents No.1 & 2, in their joint reply, raised preliminary objection qua maintainability. On merits, it was averred that the deceased was driving the motorcycle in a rash and negligent manner and he himself struck against Car No.DL-4CM-2604. The accident was caused by the deceased himself. It was further averred that the deceased was an unemployed and he was not earning anything. It was also averred that the car was duly insured with respondent No.3.

4. In its reply, respondent No.3 took preliminary objection regarding maintainability, the driver of Car No.CH-04B-8472 was not possessing a valid and effective driving licence, the Car was being plied for hire and reward, in violation of the terms and conditions of the insurance policy, the petition was filed in collusion with respondents No.1 & 2. On merits, it was averred that the deceased was unemployed and had no income. It was also averred that the deceased was driving the motorcycle in a high speed and came on the wrong side, as a result of which, he met with the accident. The deceased was himself negligent in causing the alleged accident.

5. Respondents No.4 and 5, in their reply, averred that Car No.DL-4CM-2604 was not in any manner involved in the accident. It was also pleaded that the accident had occurred due to the rash and negligent driving of the deceased himself.

6. In the reply filed by respondent No.6, it raised preliminary objections qua maintainability, driver of Car No.DL-4CM-2604 did not possess valid and effective driving licence and the Car was being plied for hire and reward, in violation of terms and conditions of the policy and petition was filed in collusion with respondents No.4 & 5. On merits, it was pleaded that the deceased was driving the motorcycle in a rash and negligent manner and he came on the wrong side in a high speed, on account of which, he met with the accident. It was also pleaded that there was no involvement of Car No.DL-4CM-2604 in the alleged accident.

7. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 02.03.2010:-

***“1. Whether the accident took place due to the rash and negligent driving of respondent No.2 Jaswant Singh while driving vehicle No.CH-04B-8472 and respondent No.5 Prikshit Chauhan while driving Car No.DL-4CM-2604 and that due to the injuries sustained in the accident deceased Sushil Thakur***

*died in the same? ....OPP*

2. *If issue No.1 is proved, to what amount of compensation the petitioners are entitled to and from whom? ....OPP*
3. *Whether the present claim petition is not maintainable? .....OPR-1 to 3*
4. *Whether the driver of vehicle No.CH-04B-8472 did not possess a valid and effective driving licence at the time of accident? ....OPR-3*
5. *Whether the vehicle No.CH-04B-8472 was being plied in violation of the terms and conditions of the Insurance Policy? ...OPR-3*
6. *Whether the petition has been filed in collusion with respondents No.1 & 2? ...OPR-3*
7. *Whether the driver of the Car No.DL-4CM-2604 did not possess a valid and effective driving licence at the time of accident? ....OPR-6*
8. *Whether the Car No.DL-4CM-2604 was being plied for hire and reward in violation of the terms and conditions of the Insurance Policy? ...OPR-6*
9. *Whether the petition has been filed in collusion with respondents No.4 & 5.*

**10. Relief.”**

8. After parties led their evidence, the claim petition was partly allowed and the petitioners were held entitled to compensation in the sum of Rs.4,67,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit of amount and respondent No.3 was directed to deposit the amount within a period of two months.

9. Feeling aggrieved/dissatisfied, the appellant/ Bajaj Allianz Insurance Company preferred the instant appeal against award dated 28.04.2014, passed by the learned Tribunal below, with the prayer to quash set-aside the impugned award and to dismiss the claim petition filed by the petitioners.

10. Learned counsel for the appellant/Insurance Company contended that the learned Tribunal below has failed to appreciate the fact the accident had occurred on account of rash and negligent driving of deceased Sushil Thakur himself as he was under the influence of liquor, therefore, Insurance Company cannot be held liable to pay the compensation. He further contended that the learned Tribunal below had erred in taking monthly income of the deceased as Rs.3,000/- and also erred by giving addition of 50% of the salary towards his total income.

11. On the other hand, learned counsel for the respondents No.2 to 7 supported the award and contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its right and proper perspective.

12. I have heard learned counsel for the appellant as well as learned counsel for respondent No.1, respondents No.2 & 3,

respondents No.4 & 5 and respondent No.6 and also carefully examined the entire record.

13. The perusal of the material available on record reveals that on 11.03.2009, deceased Sushil Thakur was going towards Paonta Sahib on his motorcycle and when he reached near Village Bohlion at about 7:00 PM, Car bearing registration No.DL-4CM-2604 as well as another vehicle bearing registration No.CH-04B-8472, which were being driven in rash and negligent manner, came from the opposite side and Sushil Thakur tried to save himself from these vehicles, but the vehicle No.CH-04B-8472 dashed against his motorcycle, as a result of which, he suffered multiple injuries and died on the spot.

14. Learned counsel for the appellant has contended that during the course of investigation, it had come on record that the accident in question had occurred on account of rash and negligent driving of deceased Sushil Thakur himself, who was under the influence of liquor, hence, the insurance company is not liable to pay any compensation to the petitioner.

15. To the contrary, the learned counsel for the petitioner (respondent No.2 herein) contended that the appellant-insurance company never took the aforesaid ground before the learned

Tribunal below and now the appellant-insurance company is precluded from taking the above ground in the present appeal.

16. After going through the reply filed on behalf of the appellant-insurance company before the learned Tribunal below, it is revealed that the appellant-insurance company had not taken the aforesaid ground of drunken driving before the learned Tribunal below. In fact in the reply, no averments to this effect have been made by the appellant/Insurance Company before the learned Tribunal below. In ***Rajesh Kumar alias Raju vs. Yudhvir Singh & Another, (2008)7 SCC 305***, Hon'ble Supreme Court dealt with a similar circumstance and observed as follows:

*"11. ....It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time."*

17. In ***Modern Insulators Ltd. vs. Oriental Insurance Co. Ltd, (2000)2 SCC 734***, Hon'ble Supreme Court while again considering the fact of a new ground raised in appeal held as follows:

*"10. We may refer to the next ground on which the appeal has to be allowed. It is a settled position of law that in an appeal the parties cannot urge new facts."*

*From the pleadings of the respondent before the State Commission it is found that the respondent pleaded that the property damaged was not covered under the insurance policy. This plea was given a go- by before the National Commission and a new plea was taken up in the grounds of appeal that the terms and conditions of the insurance policy were violated by the appellant by using used kiln furniture. The National Commission accepted this new ground and allowed the appeal, which in our opinion is not sustainable in law."*

18. In view of the settled position of law as expounded by the Supreme Court hereinabove, it needs no reiteration that a new ground cannot be urged in appeal when it was not raised before the court of learned Tribunal below. Hence, the aforesaid contention of the learned counsel for the appellant-insurance company is not sustainable in the eyes of law and the same is accordingly rejected.

19. Now the question, which arises for consideration before this Court, is whether the learned Tribunal below had not correctly assessed the income of the deceased at Rs.3,000/- per month. To prove the income of the deceased, his mother, i.e. petitioner No.2-Uma Devi Gaha, stepped into the witness-box as PW-1 and tendered in evidence her affidavit Ext. PW1/A by way of examination-in-chief, wherein she stated that the deceased was a skilled mason and used to earn Rs.5,000/- per month. However, no documentary evidence has been produced by the petitioners in order to prove the income of the deceased.

20. The contention of learned counsel for the appellant that in the absence of any documentary proof with respect to the income of the deceased, the learned Tribunal below ought to have taken the income of the deceased on the basis of minimum wages prevalent at the time of the accident is devoid of any force. In ***Chandra v. Mukesh Kumar Yadav, (2022) 1 SCC 198***, it has been held by the Hon'ble Supreme Court that in the absence of any documentary evidence on record, the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. Merely because the claimants were unable to produce documentary evidence to show the monthly income of the deceased, same does not justify adoption of lowest tier of minimum wage while computing the income. Relevant portion of the aforesaid judgment reads as under:-

*"9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the*

*deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."*

21. 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."*

22. Now, the question which arises for consideration before this Court is as to what amount of compensation the petitioner would be entitled. As observed earlier, the learned Tribunal below had rightly assessed the notional income of the deceased as Rs.3,000/- per month considering the year of accident and the avocation of the deceased.

23. It has 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."*

24. In the instant case, the learned Tribunal Court has erroneously awarded 50% increase to the monthly income of the deceased as future prospects since the deceased was a self-employed. Admittedly, at the time of accident, the deceased was aged about 20 years of age, as is evident from copy of his Matriculation Examination Ext. PW1/B as well as copy of post mortem report Ext. PW1/D 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.

25. In ***Sarla Verma and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121***, it has 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. Para-42 of the judgment is reproduced 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."*

26. In ***Sarla Verma's case (supra)***, 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.

27. While granting the compensation, the learned Tribunal below had wrongly applied the multiplier of '16' after taking into consideration the age of the petitioners No. 1 and 2, whereas in view of the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** case (supra), the age of the deceased should have been made basis for applying the multiplier. Para 59.7 of the said judgment reads as as under:-

*“ 59.7.The age of the deceased should be the basis for applying the multiplier.”*

28. In the case on hand, since the deceased was a bachelor, therefore, 50% of the amount from the total income has to be deducted towards personal and living expenses of the deceased. 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/- and after deducting 50% from the income of the deceased for his own use, i.e. Rs.2,100/-, the total dependency comes to Rs.2,100- per month. By applying the multiplier of '18' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs.4,53,600/- (2,100 x 12 x 18).

29. 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 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."*

30. 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**, 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."*

31. 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, petitioner-Uma Devi is entitled to loss of estate at Rs.19,965/-, funeral expenses at Rs.19,965/- and she is entitled 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) <b><i>Loss of dependency</i></b>                      | <b><i>Rs.4,53,600/-</i></b> |
| (ii) <b><i>Funeral expenses</i></b>                       | <b><i>Rs.19,965/-</i></b>   |
| (iii) <b><i>Loss of estate</i></b>                        | <b><i>Rs.19,965/-</i></b>   |
| (iv) <b><i>Filial consortium</i></b>                      | <b><i>Rs.53,240/-</i></b>   |
| <b><u>Total compensation awarded is Rs.5,46,770/-</u></b> |                             |

32. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal is disposed of and the impugned award dated 25.05.2016 passed by learned Tribunal below is modified to the extent that the petitioner would be entitled to compensation in the sum of Rs.5,46,770/-. This Court, however, does not see any

reason to interfere with the rate of interest awarded on the amount of compensation. Rest of the terms of the impugned award also need no interference.

The present appeal is disposed of accordingly, so also the pending applications, if any. Interim directions, if any, are vacated.

**( Sushil Kukreja )**  
**Judge**

**September 21,2026**  
*(V.Himalvi)*