

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
FAO (MV) No. 255 of 2023
Reserved on: 24.09.2026
Date of decision: 29.09.2026
Date of uploading on Website: 29.09.2026

Kamla Devi

...Appellant

Versus

New India Insurance Company & another

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant:	Mr. Anshul Gandhi, Advocate, vice Mr. C.N. Singh, Advocate.
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For the respondents:	Mr. Raman Sethi, Advocate, for respondent No.1. Mr. Arush Matlotia, Advocate, for respondent No.2.
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Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-petitioner under Section 173 of the Motor Vehicles Act (for short "M.V. Act"), against award dated 08.08.2023, passed by the learned Motor Accident Claims Tribunal-II, Mandi District Mandi, HP, Camp at Karsog, in Claim Petition No.51 of 2016, with a prayer to quash and set aside the impugned award and to allow the claim petition preferred by her. The parties shall be referred to

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

as they were before the learned Tribunal below.

2. Briefly stated the facts of the case, giving rise to the present appeal, are that the petitioner filed a claim petition under Section 163-A of MV Act before the learned Tribunal below, whereby she sought compensation on account of death of her son, Pankaj Kumar. It was pleaded in the claim petition that on 11.09.2015 Pankaj Kumar was driving *Mahindra Thar Jeep* bearing registration No.HP-63C-1438 and when he was coming to Tattapani from Shimla, he met with an accident at place known as Bedva Nala, where the road was not in a good condition due to the construction of Kol Dam and the Bridge at the site, as a result of which, he died on the spot. As per the petitioner, at the time of his death, the deceased was about 32 years of age, he was working as driver with respondent No.2 for the last three-four years and was earning Rs.9,000/- per month/-.

3. In the reply filed by respondent No.1-Insurance Company, preliminary objections regarding maintainability of the petition, the accident occurred on account of rash and negligent driving of the deceased himself, the deceased not having a valid and effective driving licence and the vehicle was being plied in contravention of the terms and conditions of the insurance policy.

On merits, it was averred that the deceased himself was driving the vehicle in question in a rash and negligent manner and had caused the accident,

4. Respondent No.2/owner of the offending vehicle, in his reply, raised preliminary objections qua maintainability, jurisdiction and the petition being barred by limitation. On merits, it was admitted that the deceased was employed by respondent No.2 as driver and he was earning Rs.9,000/- per month. It was also admitted that the deceased died in a road accident due to his own negligence.

5. On the pleadings of the parties, the learned Tribunal below framed the following issues on 05.09.2018:-

- “1. Whether the deceased Pankaj Kumar died in a motor vehicle accident due to rash and negligence driving of vehicle bearing registration No.HP-63C-1438 (Mahindra Thar Jeep) by him, as driver on 11.09.2015, at place Bedva Nala, near Tattapani, situated within the jurisdiction of Police Station Sunni, District Shimla, HP, as alleged? OPP***
- 2. Whether the petitioner is entitled to the compensation, if so, from whom and what amount? OPP***
- 3. Whether the present petition is not legally maintainable, as alleged? ...OPR***
- 4. Whether the deceased Pankaj Kumar was himself driving the vehicle bearing No.HP-63C-1438 at the time of accident and was himself rash and negligent, as alleged? ...OPR***
- 5. Whether the deceased was driving the aforesaid Jeep bearing No.HP-63C-1438 without having any***

valid licence, as alleged? ..OPR-1

- 6. Whether the respondent No.2 was plying the aforesaid Jeep bearing No. HP-63C-1438 in violation of the terms and conditions of the insurance policy, as alleged. ? ...OPR-1***
- 7. Whether this Tribunal has not jurisdiction to try the present petition, as alleged? ...OPR-2***
- 8. Whether the petition is barred by limitation? ...OPR-2***
- 9. Relief.”***

6. After parties led their evidence, the claim petition was dismissed. Feeling aggrieved/dissatisfied, the appellant-petitioner preferred the instant appeal against the impugned award dated 08.08.2023 passed by the learned Tribunal below, with a prayer to quash and set aside the impugned award and to allow the claim petition thereby awarding a just and fair compensation in her favour.

7. Learned counsel for the appellant contended that the impugned award is perverse and contrary to the pleadings as well as the evidence on record. He further contended that the learned Tribunal below has failed to cast the burden qua the salary statement and engagement order upon the appellant as respondent No.2 had admitted the appointment of deceased as driver with him. He also contended that the learned Tribunal below has failed to appreciate the fact that the driver

engaged by the owner falls within the preview of third party. It is submitted that the claim petition was required to be decided on the basis of preponderance of probability and strict rule of evidence is not required to be applied in such cases.

8. On the other hand, learned counsel for respondents No.1 and 2 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 appeal.

9. I have heard the learned counsel for the appellant as well as learned counsel for respondents No.1 & 2 and also carefully examined the entire record.

10. The only issue to be considered by this Court is whether the Tribunal was justified in dismissing the claim petition filed under Section 163-A of MV Act, as being not maintainable on the ground that income of the deceased has been pleaded as Rs.9,000/- per month.

11. Section 163-A of MV Act contains special provisions as to payment of compensation on structured formula basis as

indicated in the Second Schedule of the Act. As per the Second Schedule of the Act, in order to invoke Section 163-A, the limitation of income is Rs.40,000/- per annum. At this stage, it would be relevant to reproduce Section 163-A of MV Act, which reads as under:-

“163A. Special provisions as to payment of compensation on structured formula basis

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation : For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

12. Thus, from perusal of Section 163-A and Second Schedule thereunder, it is seen that for filing a petition under the aforesaid Section, income of the person should not be more than Rs.40,000/- per annum, if a claim petition is to be filed under this section.

13. In **Deepal Girishbhai Soni & others Vs. United Insurance Company Ltd., Baroda, (2004) 5 SCC 385**, the Hon'ble Apex Court has held that if a person invokes the provisions of Section 163-A of MV Act, the annual income of Rs.40,000/- shall be treated as a cap. The relevant portion of the judgment reads as under:-

"51. The scheme envisaged under Section 163A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set-off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society."

14. In the case on hand, petitioner Kamla Devi, while appearing in the witness-box as PW-1, tendered in evidence her affidavit Ext. PW1/A, wherein she stated that the deceased was working as driver with respondent No.2 and was getting Rs.9,000/- per month as salary. Respondent No.2-Het Ram, who was the owner of the offending vehicle, appeared in the witness-box as RW-1 and deposed that the deceased was working as driver with him and he used to pay Rs.9,000/- per month to him, besides Rs.200/- as daily expenses. Thus, as

per petitioner herself, the monthly income of the deceased was Rs.9,000/-, as such, his annual income was Rs.1,08,000/-. Hence, considering the facts and circumstances of the case, the decision of the Hon'ble Supreme Court in ***Deepal Girishibhai Soni*** (*supra*) as also the object behind insertion of Section 163-A of MV Act, since the annual income of the deceased was more than Rs.40,000/-, this Court is of the opinion that the learned Tribunal below has not committed any illegality in dismissing the claim petition being not maintainable.

15. Therefore, in view of my aforesaid discussion, no interference is required in the impugned award dated 08.08.2023, passed by the learned Tribunal below. Consequently, the instant appeal, being devoid of merits, deserves dismissal and is accordingly dismissed.

Pending miscellaneous application(s), if any, shall stand disposed of.

(**Sushil Kukreja**)
Judge

September 29, 2026
(*V. Himalvi*)