

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**FAO (MVA) No.03 of 2025****Decided on: 18.08.2026**

Narender Singh

.....Appellant

Versus

Khewta Ram and others

....Respondents

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

For the appellant: Mr. Ashok K. Tyagi, Advocate.For the respondents: Mr. Suresh K. Saini, Advocate, for
respondents No.1 to 9.Proposed LRs No.10(a) to 10(c) *ex-parte*.

Sushil Kukreja, Judge (*oral*)

The instant appeal has been preferred by the appellant/respondent No.1 against award dated 29.06.2024, passed by learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, HP, in MAC Petition No.24-MAC/2 of 2020, with the prayer to set aside the impugned award.

2. During pendency of the present appeal, the appellant has filed application being CMP(M) No. 1800 of 2025, for bringing on record the legal heirs of respondent No.10-

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

Rajender Singh as well as application [CMP(M) No.1801 of 2025] for condonation of delay. Perusal of the aforesaid application [CMP(M) No.1800 of 2025], reveals that respondent No.10- Rajinder Singh, who was one of the legal heirs of deceased Phool Singh, i.e. registered owner of the offending vehicle, had died on 16.07.1996 and left behind his legal heirs, as mentioned in para-3 of the application. Perusal of the application further reveals that as per memo of parties of the impugned award dated 29.06.2024, deceased Rajender Singh is figuring as respondent No.2(a) and has been proceeded against *ex-parte*. Therefore, the impugned award admittedly is against the dead person, i.e., respondent No.10 herein. There is no quarrel so as to the fact that respondent No.10 had expired well before the institution of the claim petition before the learned Tribunal below. No doubt, applications, i.e. CMPs(M) No. 1800 & 1801 of 2025, for bringing on record the legal heirs of respondent No.10 after condoning the delay, have been filed in the present appeal, however, the question of substitution of his legal heirs is to be determined by the learned Tribunal below.

3. It is settled proposition of law that where a party dies in a pending suit/appeal and judgment/decreed is passed in ignorance to such death, the question of substitution of his/her legal heirs and setting aside the abatement, if any, can only be considered by the Court, before whom the suit/appeal was pending at that time.

4. In ***Jagan Nath and others*** versus ***Smt. Ishwari Devi***, 1988 (2) Shimla Law Cases 273, it has been held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party, the *lis* was pending. Para-6 of the aforesaid judgment reads as under:-

"6. The fact that one of the several defendant-appellants against whom an indivisible decree was passed by the trial Court, had died during the pendency of the appeal before the lower appellate court, and steps to bring his legal representatives on the record of the appeal had not been taken within the prescribed period, being undisputed, it must be held that the appeal had already abated prior to the decision of the lower appellate court dated April 9, 1987. The decree of the lower appellate court was thus a nullity as it had been passed also against a dead person. The legal position is not in dispute. What is the course which should normally be adopted in a situation like this, has been succinctly stated in the decision of the Calcutta High Court in Kanailal's case (supra). It was observed by the Division Bench, after noticing the decisions of various High Courts and the Supreme Court, that:

..... *In such circumstances, in our opinion the uniform procedure followed by the other High Courts as referred to hereinbefore should be accepted, namely, the ineffective decree passed by the court of appeal below should be set aside and the appeal should be remanded to the said court, keeping it open to the appellants to move the said court for an opportunity to have the abatement set aside if the appellants could satisfy the said court that they are so entitled in law.....*

I am in entire agreement with the aforesaid observations."

5. Further in ***Karam Chand and others*** versus ***Bakshi Ram and others***, **2002 (1) Shimla Law Cases 9**, it has again been held that as and when the questions with respect to substitution of legal heirs of deceased party and abatement of the suit or appeal for want of consequential steps, arise in relation to a suit or appeal, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party. Relevant paras of the aforesaid judgment read as under:-

"4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:

- (i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;*
- (ii) Whether the abatement should be set aside or not; and*
- (iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?*

5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at the first

instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place"

6. Similarly, the apex Court in ***Kishun @ Ram Kishun*** versus ***Bihari, AIR 2005 Supreme Court 3799***, has held that a judgment against or in favour of a dead person is nullity.

7. In the present case, respondent No.10-Rajender Singh died much before the institution of the claim petition before the learned Tribunal below. Accordingly, the impugned award dated 29.06.2024, passed by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, HP, is set aside having been passed against a dead person and the case is remanded back to the learned Tribunal below to dispose of the claim petition afresh strictly in accordance with law, after affording due opportunity of being heard to the parties. The parties through learned counsel representing them are directed to appear before learned Tribunal below on **16.09.2026**. Records be sent back forthwith.

8. Since the claim petition pertains to the year 2020, the learned Tribunal below is directed to decide the same on or before **31st December, 2026**.

The appeal, as also the pending application(s), if any, stands disposed of accordingly.

(Sushil Kukreja)
Judge

August 18, 2026
(V.Himalvi)