

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**FAOs No.167 & 179 of 2025****Reserved on: 24.08.2026****Decided on: 07.09.2026****Date of uploading on Website: 07.09.2026**

(1) FAO No.167 of 2025

Anjali Devi & others

.....Appellants

Versus

Tata AIG General Insurance & another

.....Respondents

(2) FAO No.179 of 2025

Tata AIG General Insurance Company Ltd.

.....Appellant

Versus

Anjali Devi and others

.....Respondents

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

FAO No.169 of 2025

For the appellants:

Mr. Naresh Sharma, Advocate.

For the respondents:

Mr. Jagdish Thakur, Advocate, for respondent No.1.

Mr. Dheeraj K. Verma, Advocate, for respondent No.2.

FAO No.179 of 2025

For the appellant:

Mr. Jagdish Thakur, Advocate.

For the respondents:

Mr. Naresh Sharma, Advocate, for respondents No.1 to 3.

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

Mr. Dheeraj K. Verma, Advocate, for
respondent No.4.

Sushil Kukreja, Judge (*Oral*)

Both these appeals have been preferred against order dated 22.08.2024, passed by the learned Commissioner under Workmen's Compensation Act, Anni, District Kullu, HP, whereby the petition under Section 22 of the Employees Compensation Act for grant of compensation filed by the appellants (in FAO No.167 of 2025), who were petitioners before the Commissioner below, was allowed. The parties shall be referred to as they were before the learned Commissioner below.

2. Briefly stated that facts of the case, as emerge from the record, are that Shri Ten Singh, who was husband of petitioner No.1, father of petitioner No.2 and son of petitioner No.3, was engaged/employed as driver by Anoop Ram on his vehicle (Alto car) bearing No.HP-35-2020 TR 6539, on monthly salary of Rs.10,000/-. On 20.01.2020, Ten Singh alongwith owner of the vehicle, Anoop Ram and one Ranjeet were going to Anni from their native village in the aforesaid vehicle and when they reached near Rumali at about 10:30 AM, the vehicle met with an accident, as a result of which, all the three occupants of the vehicle

sustained multiple injuries and driver Ten Singh as well as owner Anoop Ram died on the spot. As per the petitioners, at the time of accident, deceased Ten Singh was aged about 25 years and he died during the course of employment with Anoop Ram, who was son of respondent No.2. The vehicle in question was insured with respondent No.1/Insurance Company (appellant in FAO No.179 of 2025 herein).

3. On the pleadings of the parties and documents placed on record, the learned Commissioner below framed the following points for determination:-

- “1. Whether the deceased Ten Singh was employee of the respondent No.2, as alleged? ...OPP***
- 2. Whether the deceased has died during the course of employment, as alleged? ..OPP***
- 3. Whether the petitioners are entitled for the compensation alongwith interest? ...OPP***
- 4. Whether the present petition is not maintainable? ...OPD***
- 5. Relief.”***

4. After parties led their evidence, the petition was allowed and the petitioners were held entitled to compensation.

5. Feeling aggrieved/dissatisfied, the petitioners preferred appeal, being FAO No.167 of 2025, for enhancement of

the amount of compensation. The insurance company also filed appeal (FAO No.179 of 2025), with a prayer to quash and set-aside the impugned order/award dated 22.08.2024, passed by the learned Commissioner below.

6. While passing the impugned award dated 22.08.2024, the learned Commissioner below had assessed the income of the deceased as Rs.10,000/- per month and awarded the compensation as under:-

- “(i) Compensation Rs.5,000/2 x 216.91= Rs.5,42,275/-. Interest at the rate of 12% per annum w.e.f. 02.12.2020, i.e. one month after the date of accident, till the date of award.***
- (ii) Salary of Ten Singh Rs.10,000/- per month. Simple interest @ 12% per annum w.e.f. 20.11.2020 till the date of award i.e. 45 months amounting to Rs.4,50,000/-.***
- (iii) Penalty @ 50% of total amount= Rs.2,71,137.50.***
- (iv) Simple interest @ 12% per annum from the date of award till final payment of Rs.5,42,275/-.***

7. During the course of the arguments, learned counsel for the parties, in both the appeals, have arrived at a consensus for deciding the appeals at the admission stage and with the consent of the learned counsel for the parties, the income of the deceased is taken as Rs.8,000/- per month. Admittedly, the age of the deceased at the time of accident was about 25 years. Hence, the amount of compensation as per schedule 4(i)(a), is calculated,

as under:-

" (i) Amount of compensation	
Rs.8000/ 2 x 216.91	= Rs.8,67,640/-
(ii) Interest at the rate of 12% per annum w.e.f. 20.12.2020, i.e. one month after the date of accident, till the date of award is	= Rs.4,16,467/-
(ii) Interest at the rate of 12%, for 95 days, from the date of award till the date of deposit	= Rs.27,098/-
Total compensation	= <u>Rs.13,11,205/-</u>

8. Perusal of the impugned award dated 22.08.2024 reveals that the learned Commissioner below had directed the appellant/insurance company to pay 50% of the awarded amount as penalty, i.e., Rs.2,71,137.50/-. So far as the amount of penalty is concerned, it is a settled law that the penalty imposed on the insured on account of his/her failure to make payment of amount payable under the Act is not to be paid by the insurer. In ***Ved Prakash Garg vs. Premi Devi & others, (1997) 8 SCC 1***, the Hon'ble Apex Court observed that the insurance company is liable to pay not only the principal amount of compensation payable by insured employer but also interest thereon, if ordered by the Commissioner to be paid by the insured employer. On conjoint operation of Sections 3 and 4A (3)(a) of the Act, insurance company is liable to meet claim for compensation along with

interest as imposed on insured employer by the Act. It has, however, been held that it was the liability of the insured employer alone in respect of additional amount of compensation by way of penalty under Section 4-A(3)(b) of the Act. Para-19 of the aforesaid judgment reads as under:-

“19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation alongwith interest as imposed on the insured employer by the Workmen’s commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-Section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen’s Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

9. Hence, in view of the law laid down by the Hon’ble Apex Court, the appellant-Insurance Company could not have been made liable to pay the amount of penalty and the same has to be paid by the employer. Learned counsel for the employer/respondent No.2 contended that the penalty imposed by the learned Commissioner below is much on higher side, as such, the same may be reduced. Therefore, with the consent of learned counsel for the petitioners/claimants as well as learned counsel for employer/respondent No.2, employer- Kala Devi is liable to

pay the penalty to the extent of 20% of the awarded amount of compensation which comes to Rs.1,73,528/-.

10. In view of what has been discussed hereinabove, both the appeals are partly allowed. The impugned award dated 22.08.2024, passed by the learned Commissioner below is modified to the extent that the petitioners (appellants in FAO(MV) No.167 of 2025) herein) are held entitled to the total compensation in the sum of Rs.14,84,733/-. The entire awarded amount except the penalty amount shall be paid by the appellant-Insurance Company. The insurance company is exonerated from paying the amount of penalty, which shall be paid by employer/respondent No.2. The aforesaid amount of compensation shall be apportioned amongst the petitioners as follows:-

Petitioner Anjali Devi (wife) = 50%

Petitioner Master Shivaya (son) = 25%

Petitioner Sumitra Devi (mother) = 25%

11. In view of discussion hereinabove, both the appeals are disposed of accordingly, so also pending applications, if any.

September 07, 2026
(V.Himalvi)

(Sushil Kukreja)
Judge