IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (MV) No. 379 of 2017

Reserved on : 13.10.2026

Decided on : 31.10.2026

Uploaded on : 31.10.2026

United India Insurance Company Ltd. ...Appellant

Versus

Champa Devi & Others ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: **Mr. P.S. Chandel, Advocate.**

For the respondents: **Mr. Gaurav Sharma, Advocate, for respondent No. 1.**

None for remaining respondents.

Virender Singh, Judge

Appellant-United India Insurance Company Ltd. has filed the present appeal, under Section 173 of the Motor Vehicles Act (hereinafter referred to as 'the M.V. Act'), against the award dated 01.04.2017, passed by learned Motor

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

Accident Claims Tribunal, Una, District Una, H.P. (hereinafter referred to as 'the Tribunal'), in MAC Petition No. 41/2016, titled as 'Champa Devi Versus Pritika Autocost Ltd. & Others'.

2. By way of the award, dated 01.04.2017, the learned Tribunal has allowed the above titled claim petition filed by respondent No. 1 and awarded a sum of Rs. 10,68,000/-, along with interest at the rate of 9% per annum, from the date of filing of the petition, till the deposit of the awarded amount along with interest. The ultimate liability to pay the compensation has been fastened upon the appellant-Insurance Company.

3. For the sake of convenience, the parties to the present *lis*, are, hereinafter referred to, in the same manner, as were, referred to, by the learned Tribunal.

STAND OF THE PETITIONERS BEFORE LEARNED TRIBUNAL:

4. Brief facts, leading to filing of the present appeal, before this Court, as borne out from the record, may be summed up, as under:-

4.1 Petitioner-Champa Devi has filed the petition under Section 166 of M.V. Act, seeking compensation on

account of death of her son Gurbaksh Singh, in a motor vehicle accident, involving vehicle No. HP72-5426, (hereinafter referred to as 'the offending vehicle'), owned by respondent No. 1 Pritika Autocost Ltd., driven by respondent No. 2 Ashwani Kumar and insured with respondent No. 3 United India Insurance Company Ltd.

4.2 As per the petitioner, her son, at the time of his death was 26 years of age and he was driver by profession and as such, he was earning Rs. 12,000/- per month.

4.3 According to the petitioner, on 10.02.2016, at about 12:00 noon, her son was coming back to his home at Village Bathu, on his motorcycle, after visiting the petitioner, at village Badehar, District Una, H.P. When, he reached just ahead of Swan bridge on Santokhgarh Tahliwal Road, meanwhile, the offending vehicle, being driven by respondent No. 2, in a rash and negligent manner, came there and hit the motorcycle of the son of the petitioner. Consequently, he sustained fatal injuries and expired.

4.4 The information regarding the accident was given to the police of Police Station Haroli, and FIR No. 23/2016,

dated 10.02.2016, under Sections 279, 337, 304-A of IPC, was registered.

4.5 The postmortem examination of the dead body of Gurbaksh Singh was conducted by Doctors at R.H. Una, on 10.02.2016.

4.6 The petitioner has also pleaded about her bright past and bleak future. Since the accident has solely been attributed to rash and negligent driving of the driver of the offending vehicle, as such, the petitioner has sought amount of compensation of Rs. 12,00,000/-, from the respondents.

STAND OF THE RESPONDENTS BEFORE LEARNED TRIBUNAL:

5. When put to notice, the claim petition has been contested by the respondents.

5.1 Respondents No. 1 and 2 have filed their joint reply, by taking preliminary objections that the petition is not maintainable; and the claim petition is bad for non-joinder of necessary parties, as the insurer and registered owner of motorcycle have not been impleaded in the present case.

5.2 On merits, the factum of accident, as well as, the registration of FIR has not been disputed. However,

according to them, the accident in question had taken place, due to the negligence of Gurbaksh Singh himself, as he was riding the motorcycle in rash and negligent manner. The FIR in question is stated to have been lodged against respondent No. 2, in order to get the amount of compensation.

5.3 The Insurance Company-respondent No. 3 has filed its separate reply, taking preliminary objections, that the claim petition is not maintainable; respondent No. 2 was not having valid and effective driving licence to drive the offending vehicle, at the time of accident; the offending vehicle was being permitted to ply in violation of the terms and conditions of the insurance policy; and the petition is bad for non-joinder of the necessary parties, as the owner and insurer of the motorcycle, being driven by the deceased, have not been impleaded as parties.

5.4 On merits, the contents of the claim petition have been denied, mainly for want of knowledge.

6. As such, a prayer has been made to dismiss the petition.

PROCEEDINGS BEFORE LEARNED TRIBUNAL:

7. From the pleadings of the parties, the following issues were framed by the learned Tribunal on 13.06.2016:-

1. *Whether deceased Gurbaksh Singh died on account of rash and negligent driving on the part of respondent No. 2? OPP*

2. *If issue No. 1 above is proved, whether the petitioner is entitled for compensation and if so, to what amount ? OPP*

3. *Whether this petition is bad for non-joinder of necessary parties? OPR*

4. *Whether respondent No. 2 did not possess the valid and effective driving licence at the time of this accident? OPR-3*

5. *Whether the vehicle in question was being plied by respondents No. 1 and 2 in contravention of the terms and conditions of the insurance policy? OPR-3*

6. *Relief.*

8. Thereafter, the parties to the *lis* were directed to adduce evidence.

9. After the closure of evidence and hearing the learned counsel appearing for the parties, the learned Tribunal has allowed the petition, as referred to above.

STAND OF THE INSURANCE COMPANY BEFORE THIS COURT:

10. Feeling aggrieved from the award, the Insurance Company of the offending vehicle has preferred the present

appeal, before this Court, on the ground that the FIR in question has wrongly been registered and police, after investigation, filed the cancellation report. The award has also been assailed on the ground that the petitioner cannot take the benefit of rash and negligent driving of her son. In this regard, it has also been pleaded that the deceased himself was tortfeasor, as such, claim petition is not maintainable. The award has also been assailed on the ground that the learned Tribunal has wrongly taken the monthly income of the deceased, as Rs. 5,400/- per month, despite the fact that no evidence has been produced on the record. Another fact has also been highlighted in the grounds that as per the findings of the learned Tribunal, monthly income of deceased comes to Rs. 5,400/-, but, despite the said fact, his income has been taken as Rs. 6,000/- per month. Deceased was unmarried and his employment is not regular, as such, 50% increase for future prospect has wrongly been given to the income of the deceased. The learned counsel appearing for the Insurance Company has

also submitted that the deceased was working in unorganized sector.

10.1 Lastly, it has again been highlighted that the accident, in question, had taken place due to rash and negligent driving of deceased himself. As such, petitioner is not entitled for any amount of compensation.

10.2 On the basis of above facts, Mr. P.S. Chandel, Advocate, appearing for the appellant, has prayed that the appeal may kindly be allowed by exonerating the Insurance Company from indemnifying the owner of the offending vehicle. Similarly, the amount of compensation has also been sought to be reduced.

11. Per contra, Mr. Gaurav Sharma, Advocate, appearing for the petitioner, has supported the award passed by the learned Tribunal and prayed that the amount may kindly be enhanced, so that the same could fall within the definition of "just compensation".

DISCUSSION & ANALYSIS:

12. In order to decide the appeal preferred by the Insurance Company, it would be just and appropriate to

discuss the evidence, so adduced by the parties to the lis, before the learned Tribunal.

13. After framing of the issues, the petitioner has examined Dr. S.K. Bansal, M.O. R.H. Una, who has proved the copy of postmortem report of Gurbaksh Singh as Ext. PW1/A.

14. Petitioner-Champa Devi herself stepped into the witness box as PW-2 and filed her duly sworn-in affidavit Ext. PW2/A, which is based upon the assertions, as made in the claim petition. However, in the opening line of her cross-examination, she has admitted that the accident in question had not taken place in her presence. She also admitted that she had no proof with regard to the income of deceased. She admitted that her deceased son used to work as labourer. Rest she has denied all the suggestions, put to her.

15. The petitioner has also examined one Sanjeev Kumar, as an eye witness to the accident. According to him, on 10.02.2016, he along with Munish Kumar had gone to Santokhgarh. At about 12:00 in the noon, he and Munish Kumar were on the way back to their home. One

motorcyclist, on his motorcycle was ahead of them. Then, from Tahliwal side, offending vehicle came there, being driven by its driver in rash and negligent manner and hit the motorcycle. Consequently, the rider of the motorcycle sustained grievous injuries. Thereafter, this witness and Munish Kumar noticed that the rider of the motorcycle, who sustained injuries is Gurbaksh Singh, who is their co-villager. Gurbaksh Singh was taken to hospital, but, he has expired. Lastly, he has deposed that the accident, in question, had taken place due to the rash and negligent driving of the offending vehicle.

16. In the cross-examination, PW-3 has deposed that the accident, in question, had taken place, just ahead of Santokhgarh bridge. This witness was going to Tahliwal from Santokhgarh. He has denied that the rider of the motorcycle struck the motorcycle against the offending vehicle. Rest, he has denied the allegations, which has been suggested against the rider of the motorcycle (deceased). This witness was present at a distance on 20-25 meters from the place, where the accident, in question, had taken place.

17. PW-4 HHC Yash Pal, proved the copy of FIR Ext. PW4/A and he has deposed that the FIR has been registered against Ashwani Kumar and later on cancellation report was submitted on 06.05.2016.

18. To rebut this evidence, Smt. Shanti, Civil Ahlmad from the Court of JMFC, Court No. III, Una has been examined as RW-1, who proved the closure report, which was submitted on 06.05.2016, and the case is stated to be pending for 28.02.2017.

19. The driver of the offending vehicle appeared in the witness box as RW-2 and deposed that on 10.02.2016, he was driving the offending vehicle at a very slow speed and on his right direction. When, he reached near Swan bridge, Gurbaksh Singh (deceased) came there in a wrong side, while riding the motorcycle in very high speed, in a rash and negligent manner and struck against the offending vehicle. Thereafter, wrong FIR was registered against this witness, just to get the claim and later on, after investigation, the police submitted the cancellation report, by holding that the accident, in question, had taken place due to rash and

negligent driving of Gurbaksh Singh himself. The UTR, is pending in the Court of learned JMFC Court No. III Una.

20. In the cross-examination, this witness has denied the suggestion that he was not having a valid driving licence qua the offending vehicle. In the cross-examination by the learned counsel for the petitioner, he denied the suggestion that the owner of the vehicle was an influential person.

21. This is the entire oral evidence.

22. So far as the documentary evidence is concerned, Ext. PW1/A is the copy of postmortem report, Ext. PW4/A is the copy of FIR, Ext. R-1 is the copy of report under Section 173(2) Cr.P.C., Ext. R-2 is the report submitted by SDPO Haroli to learned CJM Una, Ext. R-3 is the copy of statement of Sanjeev Kumar, who has got his satisfaction recorded towards the investigation conducted by the police and thereafter, submitted the cancellation report, Ext. RW1/A is the copy of Registration Certificate, Ext. RW2/B is copy of driving licence of respondent No. 2, Ext. R-X is copy of insurance policy, and Mark X is the copy of legal heirs certificate.

23. Along with the appeal, before this Court, the appellant-Insurance Company has placed on record the copy of report under Section 173(2) of Cr.P.C., submitted by the police, by virtue of which, closure report, has been submitted.

24. This is the entire evidence.

25. The proceedings under the M.V. Act are summary in nature, where the liability of the tortfeasor is to be fixed on the basis of preponderance of probabilities. In this case, factum of accident has not been disputed. Admittedly, petitioner was not witness of the accident in question. However, the petitioner has examined one independent witness PW-3 Sh. Sanjeev Kumar, who not only deposed about the manner in which, the accident in question had taken place, but also withstood the lengthy cross-examination, however, nothing could be elicited from this witness by the respondents, including the Insurance Company about the fact that he was having any axe to grind against respondent No. 2. Merely, the police after the investigation has submitted the closure report, does not mean that the evidence of PW-3, on oath, is liable to be discarded.

26. Admittedly, the statements of witnesses, which had been relied by the police while submitting the cancellation report, were not recorded on oath. Moreover, PW-3 Sanjeev Kumar, is the person, who has also lodged the FIR and also appeared in the witness box. If the contents of FIR are seen, he has categorically leveled the allegations of rash and negligent driving against respondent No. 2. As such, his presence on the spot cannot be doubted.

27. So far as the submission of cancellation report is concerned, there is no evidence on the report to show, as to how the investigating officer has concluded the above fact. In the cancellation report, which is on the record as Ext. R-1, although, it has been concluded that during the investigation, it has been found that the accident in question had taken place due to the rash and negligent driving of the rider of the motorcycle, but, the evidence of the respondents is totally silent as to how the I.O. has come to the said conclusion and in whose statement this fact has transpired. Along with the cancellation report, apart from complainant Sanjeev Kumar, the police has mentioned the name of three persons, as

witnesses to the accident. The Insurance Company has not bothered to examine any of them to prove/probablize the fact that the accident in question had taken place due to the rash and negligent driving of the rider of motorcycle No. HP20E-1646.

28. So far as the statement of Sanjeev Kumar Ext. R-3, in which, he has recorded his satisfaction with the cancellation report, is concerned, considering the low legal literacy of the Indian masses, no adverse inference could be drawn against the statement of PW-3 Sanjeev Kumar. Moreover, the Insurance Company was having an occasion to confront PW-3 Sanjeev Kumar with his statement, which has been recorded before the Court of learned JMFC,Court No. III, Una, when the police has submitted the closure/cancellation report. When the document has not been put to the witness, when, he appeared in the witness box, then, no inference can be drawn that he has given his satisfaction about the investigation of the case.

29. The statement before the learned JMFC Court No. III, Una was recorded on 03.08.2016, whereas, this witness

appeared before the learned Tribunal on 02.08.2016. Even, the Insurance Company has not sought the indulgence of learned Tribunal to recall the said witness by confronting him with the said statement. The plea of rash and negligent driving by the rider of the motorcycle, has been taken by the respondents, as such, onus was upon them to prove/probablize that the evidence of Sanjeev Kumar is not liable to be taken into consideration to accept the contention of the petitioner.

30. Moreover, the statement before the learned JMFC Court No. III Una, has no relevance for the decision of the present case, as the eye witness to the accident, who has also lodged the FIR, categorically leveled the allegations of rash and negligent driving of the offending vehicle against respondent No. 2, when he appears before the learned Tribunal In such situation, the learned Tribunal has rightly held that the accident in question had taken place due to the rash and negligent driving of respondent No. 2, while driving the offending vehicle.

31. Consequently, the plea as taken by the Insurance Company in the appeal is liable to be rejected. Ordered accordingly.

32. It is no longer res integra that the endeavour of the Court/Tribunal is to grant 'just compensation'. In order to achieve the above legislative intent, now, this Court would consider the fact, whether the amount of compensation, which has been awarded to the petitioner, falls within the definition of 'just compensation' or not.

33. In the present case, the learned Tribunal has taken the age of deceased Gurbaksh Singh, at the time of his death, as 26 years. This has been done by the learned Tribunal on the basis of age as mentioned in the postmortem report Ext. PW1/A. In the absence of any evidence, contrary to the said age, no interference is required in the above findings.

34. So far as the earnings of deceased Gurbaksh Singh, during his life time, are concerned, the learned Tribunal has rightly taken the same as Rs. 6,000/- per month, by assuming Sh. Gurbaksh Singh as daily wager.

Merely because the learned Tribunal has taken the daily income as Rs. 170/-, as per the amount given to the MNREGA worker, does not mean that the conclusion so drawn is required to be interfered with. However, the learned Tribunal has fallen into error by giving 50% increase on future prospects, had he been alive, in view of the decision of Hon'ble Supreme Court in case titled "**National Insurance Company Ltd. Versus Pranay Sethi & Others, (2017) 16 Supreme Court Cases 680**". The relevant para 59.4 of the judgment, has been reproduced, as under:-

> *"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."*

35. 40% increase is liable to be made, on account of future prospects, as deceased Gurbaksh Singh was working in unorganized sector. Being guided by the above judgment, the monthly contribution of deceased towards his family comes to Rs. 6,000/- + 40% (Rs.2,400/-) = Rs. 8,400/-.

36. Admittedly deceased Gurbaksh Singh was bachelor, as such, 50% amount is liable to be deducted on account of personal expenses, had he been alive. Thus, his contribution comes to Rs. 8,400/- minus 50% = Rs. 4,200/-.

37. The learned Tribunal has applied the multiplier of '17', which, according to the judgment of Hon'ble Supreme Court in "**Sarla Verma *Vs Delhi Transport Corportation, 2009 (6) SCC 121***", is the appropriate multiplier, applied in the present case. Thus, the loss of contribution comes to Rs. 4,200/- x 12 x 17 = Rs. 8,56,800/-.

38. In this case, the learned Tribunal has awarded a sum of Rs. 1,00,000/-, on account of 'loss of love and affection', Rs. 50,000/-, on account of 'funeral expenses and cost of litigation', which are liable to be reduced, on account of **Pranay Sethi's** case (supra).

39. Under the conventional heads, as per the dictate of **Pranay Sethi's** case (supra), the petitioner is also held entitled for compensation to the tune of Rs. 15,000/-; Rs. 15,000/-; and Rs. 40,000/-, under the heads: 'loss of estate', 'funeral expenses', and 'loss of consortium' respectively.

40. Thus, the entitlement of the petitioners is thus adjudicated, as under:

1. Loss of income	=	*Rs. 8,56,800/-*
2. Loss of consortium	=	*Rs. 40,000/-*
3. Loss of estate	=	*Rs. 15,000/-*
4. Funeral Expenses	=	*Rs. 15,000/-*
Total	**=**	***Rs. 9,26,800/-.***

41. The learned Tribunal has awarded the rate of interest at the rate of 9% per annum, which, to the considered opinion of this Court, is liable to be reduced while keeping in view the prevalent rates of interest in the nationalized banks. Consequently, the same is reduced to 7.5% per annum.

42. No other point has been urged or argued.

43. Having glance of the above discussion, the appeal of the Insurance Company is partly allowed, by reducing the amount of compensation from Rs. 10,68,000/- to Rs. 9,26,800/-, and the rate of interest is also reduced from 9% to 7.5% per annum, from the date of filing of the petition, till the deposit of award amount. The ultimate liability to pay the

compensation is on the Insurance Company. The award passed by the learned Tribunal is modified accordingly.

44. Parties are left to bear their own costs.

45. Memo of costs be prepared accordingly.

46. Record be sent back.

(Virender Singh)
Judge

31st October, 2026
(Pramod Kumar)