IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (MV) No. 469 of 2017

Reserved on : 09.10.2026

Decided on : 31.10.2026

Uploaded on : 31.10.2026

IFFCO TOKIO General Ins. Co. Ltd. ...Appellant

Versus

Asha Kumari & Others ...Respondents

Coram

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

Whether approved for reporting?[1]

For the appellant: **Mr. Jagdish Thakur, Advocate.**

For the respondents: **Mr. K.B. Khajuria, Advocate, for respondents No. 1 to 4.**

Mr. Vijay Chaudhary, Advocate, for respondents No. 5 and 6.

Virender Singh, Judge

Appellant-IFFCO TOKIO, General 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 07.06.2017, passed by learned

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

Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, H.P. (hereinafter referred to as 'the learned Tribunal'), in Claim Petition No. 26/2 of 2015, titled as 'Asha Kumari & Ors. Versus Mansu Ram & Ors.".

2. By way of the award, dated 07.06.2017, the learned Tribunal has allowed the above titled claim petition filed by respondents No. 1 to 4 and awarded a sum of Rs. 66,77,000/-, along with interest at the rate of 7.5% per annum, from the date of filing of the petition, till payment of the entire amount. The ultimate liability to pay the amount of compensation has been fastened upon the Insurance Company, who was arrayed as respondent No. 3, in the said claim petition.

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 No. 1 is wife, petitioner No. 2 is mother and petitioners No. 3 and 4 are sons of Sh. Ashok Kumar, who as per the claim petition, died in a motor vehicle accident, which had taken place on 22.06.2014, near Hill Highway Filling Station, Nauni, Post Office Kothipura, Tehsil Sadar, District Bilaspur, H.P. at about 8:45 am, involving the truck, bearing registration No. HP62-3211 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No. 2, owned by respondent No. 1 and insured with respondent No. 3.

4.2 According to the petitioners, Sh. Ashok Kumar was riding his motorcycle bearing registration No. HP24A-6581, and was on the way to Petrol Pump, for refueling his motorcycle. When, he reached near Petrol Pump at Nauni, respondent No. 2 came there, while driving the offending vehicle in a rash and negligent manner, from Swarghat side and hit the motorcycle of Sh. Ashok Kumar, due to which, he sustained injuries. Thereafter, the injured was taken to Regional Hospital Bilaspur, where the Doctors gave first aid to him and referred injured-Ashok Kumar to PGI Chandigarh,

for further management. However, while taking him to PGI Chandigarh, he breathed his last on the way. Thereafter, the postmortem examination of his dead body was conducted at R.H. Bilaspur.

4.3 The factum of accident was noted down by the police vide G.D. No. 20(A) in Police Station Sadar, District Bilaspur, H.P. According to the petitioners, the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No. 2.

4.4 According to the petitioners, deceased Ashok Kumar was serving as Music Teacher in Jawahar Navodaya Vidhalya Kothipura, District Bilaspur, H.P. and was earning Rs. 47,751/- per month as salary. The petitioners have also pleaded about their bright past and bleak future.

4.5 Since, the accident in question has solely been attributed due to rash and negligent driving of the offending vehicle by respondent No. 2, as such, the petitioners have sought the compensation, 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 Respondent No. 1 has filed the separate reply by taking preliminary objections that the claim petition is not maintainable; the learned Tribunal has no jurisdiction to try and decide the present claim petition; there is no locus standi; petition is bad for non-joinder and mis-joinder of necessary parties; and the offending vehicle was not involved in the accident.

5.2 On merits, the contents of the claim petition have been denied, however, it is admitted that G.D. No. 20(A), has been lodged, but, in connivance with the police, as allegations of rash and negligent driving against respondent No. 2, have also been denied.

5.3 Respondent No. 2 (driver of the offending vehicle) has filed his separate reply, by taking preliminary objections that the petition is not maintainable; the learned Tribunal has no jurisdiction to hear and decide the present petition; there is no locus standi to file the present petition; petition is bad for non-joinder and mis-joinder of necessary parties; and

the offending vehicle was not involved in the accident in question.

5.4 On merits, the contents of the claim petition have been denied, however, the contents of paras 8 and 9, including the recording of G.D. Entry, have not been disputed. He has also denied the allegations of rash and negligent driving, which have been levelled against him by the petitioners.

5.6 Insurance Company of the offending vehicle has also filed its reply, by taking preliminary objections that the claim petition is not maintainable, as no accident, as alleged, had taken place with the offending vehicle, on account of rash and negligent driving of respondent No. 2. According to the Insurance Company, deceased Ashok Kumar was rider of motorcycle bearing No. HP24A-6581 and while he was driving the motorcycle, it skidded on the boulders and sand lying on the road and he fell down and sustained injuries. According to the Insurance Company, deceased died due to his own rash and negligent driving. No accident had taken place with the offending vehicle. The petition is bad for non-joinder of

necessary parties. The offending vehicle was being driven in violation of the terms and conditions of the insurance policy. The driver of the offending vehicle was not having valid and effective driving licence.

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

5.8 Thus, the respondents have prayed for dismissal of the claim petition.

PROCEEDINGS BEFORE LEARNED TRIBUNAL:

6. From the pleadings of the parties, the following issues were framed by the learned Tribunal, on 04.08.2016:-

1. *Whether Sh. Ashok Kumar died due to rash and negligent driving of the truck bearing No. HP62-3211 by respondent No. 2, as alleged? OPP*

2. *If issue No. 1 is proved in affirmative, whether the petitioner is entitled to the compensation as claimed. If so, its quantum and from whom? OPP*

3. *Whether the petition is not maintainable in the present form, as alleged? OPRs*

4. *Whether this Tribunal has no jurisdiction to hear and decide the present petition? OPRs 1 & 2.*

5. *Whether the petitioners have no locus standi to file the present petition, as alleged? OPRs 1 & 2.*

6. *Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPRs*

7. *Whether the offending vehicle was being driven by an unauthorized person who had no valid and effective driving licence to drive the offending vehicle, as alleged. If so, its effect? OPR-3*

8. *Whether the offending vehicle was being plied without valid documents, as alleged? OPR-3*

9. *Whether the offending vehicle was being plied in violation of the terms and conditions of the insurance policy, as alleged. If so, its effect? OPR-3*

10. *Relief.*

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

8. 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, by fastening the liability to pay the amount of compensation, upon respondent No. 3-Insurance Company.

STAND OF THE INSURANCE COMPANY BEFORE THIS TRIBUNAL:

9. Being aggrieved from the said Award, Insurance Company has filed the present appeal before this Court, assailing the award, mainly on the ground that the award is based on surmises and conjectures, without appreciating the documents, relied upon by the appellant-Insurance Company.

According to the appellant-Insurance Company, the learned Tribunal has wrongly decided issue No. 1, in favour of the petitioners, as, the petitioners themselves have made the DDR Entry No. 20(A), registered with Police Station Sadar, Bilaspur, as basis for awarding the compensation, and as per the said document, no injury was caused to the deceased by the offending vehicle. The factum of skidding of the motorcycle has been recorded in the said DDR. All these facts have been highlighted to demonstrate that the sine qua non for claiming the amount of compensation i.e. rash and negligent driving, has not been proved by the petitioners.

9.1 In addition to this, it has also been highlighted that the DDR is not the substantive piece of evidence and learned Tribunal has ignored the statements given by the father of the deceased and brother of the deceased, to the police, which are Ext. RW4/A and Ext. RW4/B, along with the statement of deceased, which was recorded by the I.O., the perusal of which, clearly demonstrate that the accident in question had taken place due to skidding of the motorcycle on

the boulder and in this regard, Insurance Company has relied upon the statement of deceased as Ext. RW4/C.

9.2 According to Mr. Jagdish Thakur, Advocate, appearing for the appellant/Insurance Company, all these facts have not been considered properly by the learned Tribunal.

9.3 The award has further been assailed on the ground that the learned Tribunal has wrongly relied on the evidence of PW-2, who claims himself to be alleged eye witness, but the learned Tribunal has not considered the fact that PW-2 is not a summoned witness and as per the statement of PW-1, after the accident when she arrived on the spot, some persons were present there, who were not known to her and even one person accompanied with them to the hospital and PW-2 after getting the deceased admitted at Regional Hospital, left the hospital.

9.4 Highlighting the conduct of RW-2, the alleged eye witness, it is the stand of the appellant-Insurance Company that he had not lodged any complaint with the police nor made a complaint for lodging false DDR Ext. RW1/A. It has

been argued that his conduct is unlike that of a prudent person.

9.5 Highlighting the factum of recording of DDR, as well as, the statement of deceased, his father and his brother, recorded by the I.O., it has been prayed that the petitioners have miserably failed to prove the involvement of the offending vehicle in the accident in question.

9.6 Another fact has also been highlighted that when the deceased was referred to PGI Chandigarh from Regional Hospital Bilaspur, after giving first aid, instead of taking him to PGI Chandigarh, he was taken to Sehgal Hospital and by the evening, when the condition of the deceased further deteriorated, he was taken to PGI Chandigarh.

9.7 Reiterating the sine qua non for seeking compensation, which is based on tortfeasor liability, according to the appellant-Insurance Company, the petitioners have not proved the rashness and negligence on the part of respondent No. 2.

9.8 In view of the non filing of the objection against the inquest report conducted by SDM Sadar, under Section

174 of Cr.P.C., it has been highlighted that the petitioners, by way of their act and conduct, have failed to prove/probablize the material fact that the accident in question had taken place due to rash and negligent driving of respondent No. 2.

9.9 The quantum of compensation has also been challenged on the ground that the tax component has not been deducted, while assessing the amount of contribution. Similarly, addition of 30% given in the income of deceased, on account of future prospects has also been challenged.

9.10 On the basis of above facts, Mr. Jagdish Thakur, Advocate, appearing for the appellant has prayed that the present appeal may kindly be allowed by dismissing the claim petition, filed by the petitioners.

10. Per contra, Sh. K.B. Khajuria, Advocate, appearing for respondents No. 1 to 4, has opposed the said prayer by arguing that the proceedings under M.V. Act are summary in nature, where the liability of the tortfeasor is to be fixed on the touchstone of preponderance of probabilities, whereas, in the present case the alleged eye witness, not only deposed about the manner, in which, the accident in question had

taken place, alleging the fact against respondent No. 2, qua his rash and negligent driving, but according to him, said PW-2 has also withstood the lengthy cross-examination.

10.1 Mr. K.B. Khajuria, Advocate, appearing for the petitioners has also supported the award by arguing that the alleged statement of deceased, his father and his brother has not been proved, in accordance with law, as the I.O., at that time, was having no occasion to record their statements.

10.2 Moreover, the brother and father of deceased were under trauma and as such, no reliance can be placed on the alleged statement, so recorded by the I.O.

11. Mr. Vijay Chaudhary, Advocate, appearing for respondents No. 5 and 6 has also adopted the arguments, so advanced by learned counsel for the Insurance Company, as, according to him, in this case, involvement of the offending vehicle has not been proved, by the petitioners. As such, prayer has been made to allow the appeal.

DISCUSSION & ANALYSIS:

12. In order to decide the above grounds, upon which, the present appeal has been filed, by the Insurance Company,

to exonerate the Company from indemnifying the owner, it would be just and appropriate to discuss the evidence adduced by the parties to the lis.

13. After framing of the issues, petitioner No. 1 Asha Kumari, appeared in the witness box as PW-1 and filed her duly sworn-in affidavit, which is based upon the assertions, as made in the claim petition. However, in the cross-examination, she has admitted that the accident in question had not taken place in her presence. As such, she cannot disclose about the fault, due to which, the accident in question had taken place. Similarly, she has stated that she does not know, who was driving the offending vehicle. She had reached at the spot after about 10-15 minutes of the accident.

14. In her further cross-examination by the learned counsel for the Insurance Company, she has denied the suggestion that the offending vehicle was not involved in the accident in question. According to her, she had received a phone from Navodaya School that her husband had met with an accident. When she reached at the spot, number of

persons were present there, but she does not know their names. When her husband was taken to hospital, one person accompanied them. She denied that accident had taken place due to skidding of motorcycle, because of her husband. She further denied that her husband had made a statement to the police, disclosing therein, the reason of the accident, as skidding of the motorcycle on gravels. She feigned ignorance that the DDR entry was made by the police in this regard. When her husband was taken to PGI Chandigarh, on the way, he expired at about 4:00/5:00 pm. She feigned ignorance that her husband had expired in the midnight of 22/23 June, 2014. According to her, she at the time of recording her statement, was working as Clerk on contract basis, with Navodaya School, whereas, her father-in-law is working in QPF. Her mother-in-law is residing with her father-in-law.

15. Apart from this, the petitioners have examined PW-2 Sh. Ram Chand, as an eye witness to the accident in question. According to him, on 22.06.2014, he was coming to Bilaspur from his home. At about 8:45 am, truck bearing No. HP62-3211, being driven by its driver came from Swarghat

side and from the opposite direction, a bike was coming. The truck hit the bike and consequently, the rider of the bike fell in the drain. This witness identified the rider of the bike as Teacher of Navodaya School. Thereafter, he made a call to school. Injured suffered injuries over his head. His wife reached at the spot. Two other persons were with her. Thereafter, injured was taken to RH Bilaspur. This person accompanied them. The injured was unconscious and was not in a position to talk. He has further deposed that truck driver was driving the offending vehicle on the wrong side. The accident in question had taken place due to the mistake of driver.

16. In the cross-examination by learned counsel for respondents No. 1 and 2, he has stated that speed of the bike was about 20-25 kmph. Truck was empty, which was coming towards Bilaspur side. He denied that the speed of the truck was very slow, but voluntarily stated that the same was being driven by its driver in fast speed. He denied that the accident in question had taken place due to skidding of the bike on gravels, voluntarily stated that there were no gravels on the

spot. According to him, the place, where the accident had taken place, the road was plain. This witness remembered the number of Navodaya School as his daughter was studying there. No one was present there, who could identify Ashok Kumar. This witness had made efforts to call police, but no response was received. After 12 minutes from the accident, injured was taken to hospital. After admitting the injured in the hospital, he left the spot. He feigned ignorance about the fact that later on, Ashok Kumar regained consciousness and he got recorded the rapat to the police. His house is situated at a distance of 2 km from Kothipura. He denied that at the time of accident, he was riding the motorcycle; voluntarily stated that he was present on the spot with regard to complaint of his phone. Rest, he has denied all the suggestions.

17. PW-3 Manohar Singh, Superintendent, Jawahar Navodaya School, proved the fact that Ashok Kumar was working with the school as regular Music Teacher. His salary for the month of May, 2014 was Rs. 47,331/- and proved the

salary slip Ext. PW3/A. The salary slip Ext. PW3/A was issued by the Principal.

18. To rebut this evidence, the respondents have examined RW-1 HHC Hardev Singh, who has proved the GD Entry No. 20(A) dated 23.06.2014, registered with Police Station Sadar Bilaspur and proved the copy of GD Report as Ext. RW1/A. This witness has not entered the said G.D. Entry.

19. Sh. Mansa Ram, owner of the offending vehicle, has appeared in the witness box as RW-2 and filed his duly sworn-in affidavit Ext. RW2/A, which is based on the fact that he is owner of the offending vehicle and he employed Bani Lal son of Narain Singh, as driver over the said vehicle, after verifying his licence. Before hiring the services of Bani Lal, his driving test was got conducted by him and Dhani Ram. On 22.06.2014, truck was being driven by Bani Lal, but no accident had taken place with the said truck. In the cross-examination by the learned counsel for respondent No. 3, he has admitted the suggestion made by the learned counsel for the Insurance Company that the offending vehicle

was not involved in the accident, nor any case has been registered against the driver of the vehicle. However, in the cross-examination by the learned counsel for the petitioners, he admitted that at the time of accident, he was not present with the truck.

20. RW-3 Sanjeev Kumar, Assistant from the Office of SDM Bilaspur, proved the inquest report and has deposed that the inquest proceedings were conducted on account of death of Ashok Kumar.

21. RW-4 ASI Rajinder Singh deposed that he remained posted in Bilaspur from the year 2012 to 2015. Inquest report qua Ashok Kumar was prepared by him. On 22.06.2014, one unknown person informed the police regarding the accident having taken place near Nauni. The vehicle involved in the accident is stated to be motorcycle, upon which, he along with Constable Surinder Kumar, had gone to RH Bilaspur to verify the exact position in rapat No. 14. When they reached there, Ashok Kumar was given first aid in emergency. Thereafter, he was referred to PGI Chandigarh. He has further deposed that in the hospital,

Ashok Kumar had made a statement, disclosing therein, that motorcycle No. HP24D-6581 was not hit by any vehicle and the same had skidded off, on the gravels and consequently motorcycle had fallen down and due to the said fact, he sustained injuries. Ashok Kumar has also got recorded that he does not want any police action. On the same day, during night time, when he was taken to PGI Chandigarh, he succumbed to his injuries and expired. On 23.06.2014, postmortem examination of the dead body was conducted in R.H. Bilaspur and thereafter, dead body was handed over to the relatives for performing last rites. Apart from the statement of Ashok Kumar, statements of brother and father of Ashok Kumar were also recorded. According to this witness, he has recorded the statement of brother of Ashok Kumar, namely Sanjay Kaushal and proved the same as Ext. RW4/A and statement of father of Ashok Kumar as Ext. RW4/B. Thereafter, this witness has got recorded the DDR No. 20(A) Ext. RW1/A. Subsequently, inquest report under Section 174 Cr.P.C. was submitted to SDM Sadar, which has been proved as Ext. RW4/C. He proved the statement of

Ashok Kumar as Ext. RW4/D. According to this witness, at the time of recording the statement of Ashok Kumar, he was in senses.

22. In the cross-examination by the learned counsel for the petitioners, he has deposed that he has reached at hospital between 9:00 to 10:00 am. At that time, Ashok Kumar was in Emergency Ward and Doctors have referred him to PGI. His wife was also present there. This witness has not sought the opinion of Doctor about the fitness of Ashok Kumar to make the statement. Voluntarily stated that Ashok Kumar has apprised him that he does not want any police action. He has denied that when a person is admitted in a hospital, his statement, without the opinion of the Doctor, cannot be recorded. This witness remained for about 15 to 20 minutes in the hospital, as Ashok Kumar was not admitted there and he was referred to PGI and they were waiting for ambulance. Thereafter, they had returned back to the Police Station, and got recorded their arrival rapat. Voluntarily stated that arrival rapat on 22.06.2014, has not been got recorded by him. He has denied that in the arrival

rapat on 22.06.2014, there is no reference with regard to the statement of Ashok Kumar. This witness has not visited the spot, where the accident had taken place. He feigned ignorance that on 22.06.2024, at 9:00 am, the DDR entry with regard to the accident was recorded. He has admitted that under the statement, after applying the fluid, he has attested the same and on the back side of this paper, name of one Lakhwinder Singh son of Prittam, caste Jat, Meerapur, District Bijnour, has been mentioned. Voluntarily stated that the statement of Ashok Kumar was recorded in haste. He has denied that Ashok Kumar has not made the statement Ext. RW4/D, nor he has put his signature. He has admitted that in the inquest report, he has mentioned that the statement of Ashok Kumar was recorded, when he was lifted in the ambulance. Firstly, he has deposed that he does not know the name of the persons, who were with him in the hospital, but voluntarily stated that Mansu Ram and Bani Lal were not there. He admitted that in the inquest report, reference of injuries, found on the person of Ashok Kumar, were not explained.

23. So far as the documentary evidence is concerned, postmortem report is Ext. PW1/B; Ext. PW1/C is the referral slip; Ext. PW3/A is the salary statement; Ext. PW3/B is the pay slip bill for the month of May, 2014; Ext. RW1/A is the copy of rapat No. 20(A), which was recorded at the instance of Rajinder Kumar, qua his arrival; Ext. RW2/B is the copy of registration certificate; Ext. RW2/C is the copy of the Goods Carrier Permit; Ext. RW2/D is the copy of insurance policy; Ext. RW2/E is the copy of driving licence; Ext. RW4/A is the copy of statement of Sanjay Kaushal; Ext. RW4/B is the copy of statement of Prem Lal Kaushal; Ext. RW4/C is the copy of inquest report; and Ext. RW4/D is the copy of statement of Ashok Kumar.

24. This is the entire evidence.

25. In the present case, the learned Tribunal has categorically 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. Those findings have been assailed before this Court.

26. The Insurance Company, in the present case, has heavily relied upon the evidence of RW-4 ASI Rajinder Singh, who is the Investigating Officer. Admittedly, in this case, FIR has not been lodged by the petitioners, nor by PW-2, who has been examined by the petitioners as an eye witness to the accident in question.

27. The registration of FIR is not sine qua non for seeking the compensation in the proceedings under the M.V. Act, as the proceedings under the M.V. Act are summary in nature, where the liability of the tortfeasor is to be fixed on the touchstone of preponderance of probabilities.

28. The object of the FIR has elaborately been discussed by the Hon'ble Supreme Court, way back in the year 1972, in case ***Nasib Versus State of Bihar, AIR 1972 SC 283***. Relevant para of the judgment, is reproduced, as under:-

> *"The object of FIR from the point of view of the formant is to set the criminal law in motion. From the point of view of the investigating authorities it is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The report does not constitute substantive evidence though it is important as conveying the earliest information about the occurrence. It can be used only as a previous statement for the purpose of contemplated under Section 157 of Section*

> *145 of the Evidence Act that is for corroborating or contradicting its maker and not of other witnesses."*

29. As stated above, the petitioners have examined PW-2 Ram Chander, as an eye witness. Before discussing the evidentiary value of the statement of PW-2 Ram Chander, who has categorically stated that he has seen the accident in question, the evidence of the star witness of the Insurance Company, i.e. RW-4, is required to be scrutinized. This witness admittedly had not seen the incident. As alleged by the respondents, in the present case, Sh. Ashok Kumar sustained fatal injuries on account of skidding of his motorcycle on gravels. These facts have been pleaded by the respondents to demonstrate that the offending vehicle was not involved in the accident. The evidence of RW-4 has already been discussed above, and to the considered opinion of this Court, this witness, along with C. Surinder Kumar reached at R.H. Bilaspur, where he noticed that first aid was given to Ashok Kumar in emergency. Rapat No. 14 has not been produced on record by the respondents. Meaning thereby, the best evidence has been withheld from the scrutiny of this Court by the respondents, as such, an

inference against the respondents has to be drawn by this Court.

30. The petitioners produced the referral slip Ext. PW1/C, in which, it has categorically been mentioned that Ashok Kumar was referred for further management on 22.06.2014 at 10:56 am. The accident in question had taken place, according to the petitioners, on 22.06.2014 at about 8:45 am. It does not lie in the mouth of RW-4 to say that Ashok Kumar was in a position to make the statement. How a person, who has been referred to PGI, can be said to be in a position to make the statement.

31. RW-4 is not a novice, but a policeman, with long experience of investigating of the cases in his kitty and he has not sought the opinion of the Doctor, who was attending Ashok Kumar, in R.H. Bilaspur. The time of accident is stated to be 8:45 am and he has been referred to PGI Chandigarh at 10:56 am. Meaning thereby, a judicial notice can be taken qua the serious condition of Ashok Kumar.

32. In this case, owner, driver and Insurance Company have taken the plea that the accident had taken

place due to the rash and negligent driving of the deceased himself, while driving his motorcycle No. HP24A-6581. The respondents have examined RW-1, who has proved the copy of GD Entry No. 20(A) dated 23.06.2014, whereas, RW-2 Mansu Ram is the owner of the offending vehicle and he has not seen the accident, in question. RW-3 Sanjeev Kumar has proved the inquest report. RW-4 is the Investigating Officer of the case. Admittedly, the accident, in question, had not taken place in the presence of RW-2, as well as, RW-4. In such situation, the evidence of PW-2 Ram Chand, assumes significance, as he has not only deposed against the driver of the offending vehicle (respondent No. 2), but also withstood the lengthy cross-examination. The respondents, in the present case, could not probabilize any reason to draw an inference as to why PW-2 has deposed against respondent No. 2. Moreover, the standard of evidence for deciding the claim petition is based upon the preponderance of probabilities. If the evidence of PW-2 is seen with the touchstone of the preponderance of probabilities, then, the evidence of RW-2, as well as, RW-4, is not liable to be taken into consideration, as

the same is hit by Section 60 of the Evidence Act, 1872 {(Sec. 55 of Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)}. Provisions of Section 60 of the Indian Evidence Act is reproduced, as under:-

> *"**60. Oral evidence must be direct.***
> *Oral evidence must, in all cases, whatever, be direct; that is to say, -*
> *If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*
> *If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*
> *If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*
> *If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :*
> *Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.*
> *Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.*

33. The learned counsel for the Insurance Company has placed much reliance on the statement of RW-4, especially the alleged statement of deceased Ashok Kumar, as well as, his father and brother. The I.O. has not bothered to obtain the opinion of the Doctor treating Ashok Kumar, qua

his mental and physical condition to depose regarding the accident, in question. The time line, in the present case, has assumed significance. According to the petitioners, as well as, from the deposition of PW-2, the accident, in question, had taken place at about 8:45 am, whereas, the Doctor at Regional Hospital, Bilaspur, referred injured Ashok Kumar for further management at 10:56 am. The short duration of treatment with Regional Hospital Bilaspur demonstrates the serious condition of Ashok Kumar at that time. Unfortunately, Ashok Kumar expired on the same night at 12:30 am (23.06.2014). The injury was there on his right side of chest and pelvis. The I.O. RW-4 has alleged that in the statement of Ashok Kumar, his father and brother, qua the fact that the accident, in question, had taken place due to skidding of the motorcycle, driven by Ashok Kumar and admittedly, FIR has not been lodged by petitioner No. 1, nor her father-in-law and brother-in-law. A young family member has expired in the accident and it cannot be expected from the other family members that they will rush to the police to lodge the FIR, as admittedly, they were under trauma, at that

time. Admittedly, the alleged statements of deceased, his father and brother were not recorded by the I.O., under the provisions of Section 164 Cr.P.C., by producing them before the Magistrate, nor the respondents have bothered to call the father or brother of Ashok Kumar to confront them with their statement, which they had allegedly made before the I.O. (RW-4).

34. Perusal of Ext. RW4/D shows that the space between the last three lines of this document is less in comparison to the space, which has been left by the I.O. in the opening lines.

35. In such situation, the statement, which has been made on oath by PW-2 assumes significance and the same has rightly been relied upon by the learned Tribunal to conclude that the accident in question had taken place due to rash and negligent driving of respondent No. 2, in which, deceased Ashok Kumar sustained injuries and expired.

36. In this case, although, the petitioners have not filed the cross-objections, however, Mr. K.B. Khajuria, Advocate appearing for respondents No. 1 to 4, has prayed

that the amount of compensation may kindly be enhanced, so that the same could fall within the definition of 'just compensation'.

37. It is no longer res integra that the endeavour of the Court/Tribunal is to grant 'just compensation', while deciding the petition under Section 166 of M.V. Act. 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 petitioners, falls within the definition of 'just compensation' or not.

38. The age of deceased Ashok Kumar, has been pleaded in the claim petition as 40 years. Petitioner No. 1, when appeared in the witness box, filed her affidavit, which is based upon the assertions, as made in the claim petition, in which, she has asserted the age of her husband as 40 years. Even, in the postmortem report Ext. PW1/E, age of Sh. Ashok Kumar has been mentioned as 40 years. In the absence of any evidence, contrary to the statement, as mentioned in the postmortem report, the learned Tribunal has rightly taken the

age of Sh. Ashok Kumar, at the time of his death, as 40 years, which does not require any interference.

39. So far as the earning of Sh. Ashok Kumar, during his life time is concerned, as per the petitioners, he was working as Music Teacher, with Jawahar Navodaya Vidyalya, Kothipura, District Bilaspur, H.P. and his salary has been pleaded as Rs. 47,751/-. By examining PW-3, petitioners have proved the salary certificate Ext. PW3/A. As per this document, the gross salary of Sh. Ashok Kumar for the month of May, 2014 was Rs. 47,751/-.

40. His age has been proved as 40 years and in view of the decision in "**National Insurance Company Ltd. Versus Pranay Sethi & Others, (2017) 16 Supreme Court Cases 680**", 50% amount is liable to be added, on account of future prospects of Sh. Ashok Kumar, had he been alive. Relevant paragraphs 59 to 59.8 are reproduced, as under:-

> "59. *In view of the aforesaid analysis, we proceed to record our conclusions:-*
> *59.1. The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot*

take a contrary view than what has been held by another coordinate Bench.

59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

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

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/-, respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

41. Thus, by adding 50%, his total income comes to Rs. 47,751/- + 50% (Rs. 23,875) = Rs. 71,626/- per month,

as such, his annual income comes to Rs. 71,626/- x 12 = Rs. 8,59,512/-. The income tax component is liable to be deducted from the said income.

42. The age of the deceased, at the time of accident was held to be 40 years. As per the income tax slab, applicable for the financial year 2014-15, income upto Rs. 2,50,000/- was exempted. Thus, out of Rs. 8,59,512/-, the amount of total taxable income comes to Rs. 6,09,512/- (Rs.8,59,512/- minus Rs.2,50,000/-). Out of the said amount, Rs. 2,50,000/- falls within the tax slab of 10% and remaining Rs. 3,59,512/- falls within the tax slab of 20%. Thus, the tax component comes to Rs. 96,902/-. The education cess @3% on the said amount of Rs. 96,902/- is also liable to be deducted, which comes to Rs. 2,907/-. Thus, the total tax component comes to Rs. 99,809/-. Hence, the total established annual income of the deceased comes to Rs. 8,59,512/- minus Rs. 99,809/- = Rs. 7,59,703/-.

43. Learned Tribunal has deducted 1/4th amount on account of personal expenses, had Sh. Ashok Kumar been alive. Thus, deducting 1/4th, out of the income of the

deceased, on account of his personal expenses, his contribution towards his family, thus, comes to Rs. 7,59,703/- - Rs. 1,89,926 = Rs. 5,69,777/- per annum.

44. The learned Tribunal has applied the multiplier of '14', which is appropriate multiplier to be applied in the present case, in view of the law laid down in "**Sarla Verma *Vs* *Delhi Transport Corportation, 2009 (6) SCC 121***". Thus, the loss of dependency comes to Rs. 5,69,777/- x 14 = Rs. 79,76,878/-.

45. The learned Tribunal has fallen into error by granting a sum of Rs. 1,00,000/- under the head loss of consortium and Rs. 25,000/- under funeral expenses. The said findings are not sustainable in the eyes of law, in view of the decision of the Constitution Bench of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra).

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

47. In view of the decision of Hon'ble Supreme Court, in **Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others,** reported in **(2018) 18 Supreme Court Cases 130**, all the petitioners are held entitled to compensation under the head 'loss of consortium'. The relevant paras 21 to 24 of the judgment, are reproduced, 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 generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, 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 the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under `loss of consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of

the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium."

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

1. Loss of income	=	*Rs. 79,77,878/-*
2. Loss of consortium	=	*Rs.1,60,000/- (Rs. 40,000/- each)*
3. Loss of estate	=	*Rs. 15,000/-*
4. Funeral Expenses	=	*Rs. 15,000 /-*
Total	=	***Rs. 81,66,878/-.***

49. The entitlement of the petitioners with a view to grant just compensation, thus, comes to Rs. 81,66,878/-.

50. The learned Tribunal has awarded the rate of interest to the petitioners at the rate of 7.5% per annum, which has rightly been awarded by the learned Tribunal.

51. Viewed thus, the amount of compensation is liable to be reduced. Consequently, the appeal is dismissed and the amount of compensation is enhanced from Rs. 66,77,000/- to Rs. 81,66,878/- along with interest at the rate of 7.5% per annum. The ultimate liability to pay the amount of compensation is on the Insurance Company, being insurer of

the offending vehicle. The award passed by the learned Tribunal is modified accordingly.

52. Parties are left to bear their own costs.

53. Memo of costs be prepared accordingly.

54. Record be sent back.

(Virender Singh)
Judge

31st October, 2026
(Pramod Kumar)