IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MV) No.13 of 2014

Reserved on: 31.10.2026

Date of decision: 19.11.2026

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United India Insurance Company Ltd.

...Appellant

Versus

Hakami Devi and others

…Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

[1] *Whether approved for reporting?*

For the appellant:	Mr. Vivek Negi, Advocate.
For the respondents:	Mr. Parav Sharma, for respondents No.1 to 3.
	Mr. Inderjeet Singh Narwal, Advocate, for respondents No.4 & 5.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act (for short 'MV Act'), against award dated 01.08.2013, passed by the learned Motor Accidents Claims Tribunal, Hamirpur, HP, in MAC Petition No.59 of 2010, with a prayer to quash and set aside the impugned award dated 01.08.2013.

2. Briefly stated the facts of the case, giving rise to the

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

present appeal, are that the petitioners (respondents No.1 to 4 herein) filed a claim petition under Section 166 of MV Act, whereby they sought compensation to the tune of Rs.20,00,000/- on account of death of Bablu, who was son of petitioner No.1 and grandson of petitioner No.2 and brother of petitioner No.3. It was averred by the petitioners that on 11.09.2009, Bablu alongwith other persons was travelling in Mahindra Scropio bearing registration No.HP-22A-2907 from Dhaned to Manikaran, which was being driven by its owner Rajesh Kumar. When the said vehicle reached at place Dawada near Hanogi Mata Mandir, at about 2:45 AM on 12.09.2009, it met with an accident because the driver could not negotiate the curve due to rash and negligent driving as well as high speed, as a result of which, the vehicle skidded off the road and fell into River Beas, causing the death of Bablu and other occupants travelling in the vehicle.

3. As per the petitioners, at the time of his death, deceased Bablu was aged about 25 years and he was a photographer by profession and also running his photo-studio-cum-Electronics shop at Dhaned and used to earn about Rs.35,000/- per month. In addition thereto, the deceased owned land in Village Lahari and used to earn approximately Rs.10,000/-,

thereby he was earning more than Rs.35,000/- per month from all resources. The deceased was the only earning member in the family and due to his untimely death, the petitioners had suffered a lot of agony.

4. Respondent No.1-Insurance Company, in its reply, raised preliminary objections regarding maintainability of the petition, the driver was not holding a valid and effective driving licence at the time of the accident, the owner has violated the terms and conditions of the policy. On merits, it was denied that the deceased used to earn Rs.35,000/- per month. It was averred that the owner of the vehicle was plying the vehicle as taxi and there was sheer violation of the terms and conditions of the policy, hence, the insurance company is not liable to pay any compensation to the petitioners.

5. In the reply filed on behalf of respondents No.2 to 4, i.e. legal heirs of the driver-cum-owner of the offending vehicle, they took preliminary objections qua maintainability, estopple, mis-joinder of necessary parties, the amount claimed was excessive, the accident did not occur due to rash and negligent driving of late Shri Rajesh Sharma. On merits, it was averred that respondents No.2 to 4 were not owners of the vehicle at the time of the

accident. It was also averred that the accident had not taken place due to rash and negligent driving of late Shri Rajesh Sharma, who took proper care and caution to avoid the accident. The vehicle was in slow speed.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 22.06.2011:-

> ***"1. Whether the death of Bablu died on 12.09.2009 in the motor accident due to rash and negligent driving of the driver of vehicle No.HP-22A-2907, as alleged? ....OPP***
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> ***2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? ...OPP.***
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> ***3. Whether the petition is not maintainable in the present form, as alleged? ...OPRs***
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> ***4. Whether the driver of vehicle No.HP-22-2907 was not holding a valid and effective driving licence?...OPR-1***
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> ***5. Whether the vehicle in question was being plied as taxi and, as such, owner of the vehicle violated terms and conditions of the insurance policy? ...OPR-1***
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> ***6. Whether the vehicle No.HP22A-2907 was not having fitness certificate? ...OPR-1.***
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> ***7. Whether the accident had taken place due to overloading of the passengers? ..OPR-1.***
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> ***8. Whether the petitioners are estopped from filing the petition due to their act and conduct? ...OPRs-2 to 4.***
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> ***9. Relief."***

7. After parties led their evidence, the claim petition was allowed and the petitioners were awarded a sum of Rs.5,70,000/-

as compensation alongwith interest at the rate of 7.5% per annum from the date of filing of the petition, that is, 19.11.2010, till the payment was made and respondent No.1-Insurance Company (appellant herein) was directed to deposit the compensation amount.

8. Feeling aggrieved and dissatisfied, the appellants preferred the instant appeal against the impugned award dated 01.08.2013, passed by the learned Tribunal below, with the prayer to quash and set-aside the impugned award.

9. Learned counsel for the appellant-Insurance Company has contended that the learned Tribunal below has erred in taking the income of the deceased as Rs.5,000/- per month without there being any documentary proof and it ought to have taken the income of the deceased on the basis of minimum wages prevalent at the time of the accident. He further contended that the seating capacity of the vehicle in question was seven, including driver, whereas, nine persons were travelling in the vehicle at the time of the accident. He also contended that the appellant had deposited the awarded amount in six claim petitions and it could not have been saddled with any further liability to indemnify any other passenger beyond permissible seating capacity of the vehicle with

respect to any award passed subsequently

10. On the other hand, learned counsel for the respondents supported the award and contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective.

11. I have heard the learned counsel for the appellant as well as learned counsel for respondents No.1 to 3 and respondents No.4 & 5 and also carefully examined the entire record.

12. It is not in dispute that the offending vehicle bearing registration No.HP-22A-2907 was owned and was being driven by Rajesh Sharma at the time of the accident in question. RW-1 Rattan Lal, Assistant Manager of the Insurance Company, deposed that at the time of the accident in question, nine persons were sitting in the vehicle. He further deposed that seven petition had already been decided by the Tribunal. In his cross-examination, he admitted that the insurance company had already deposited the awarded amount in six petitions. RW-2 Shyam Lal deposed that on 12.09.2009, Rajesh was going to Manali/ Manikaran alongwith his friends and due to mud on the road, the vehicle of his son-in-law skidded of the road and fell into the river.

In his cross-examination, he admitted that at the time of the accident, nine persons, including the driver, were sitting in the vehicle in question.

13. On appraisal of the evidence led before it, the learned Tribunal below arrived at a conclusion that the accident had taken place due to the rash and negligent driving of the vehicle bearing registration No. HP-22A-2907 by its driver, which had resulted into death of Bablu.

14. Learned counsel for the appellant firstly contended that in the absence of any documentary proof with respect to the income of the deceased, the learned Tribunal below ought to have taken the income of the deceased on the basis of minimum wages prevalent at the time of the accident. Therefore, the question, which arises for consideration before this Court, is whether the learned Tribunal below had correctly assessed the income of the deceased at Rs.5,000/- per month or not.

15. In ***Chandra v. Mukesh Kumar Yadav, (2022) 1 SCC 198***, it has been held by the Hon'ble Supreme Court that in the absence of any documentary evidence on record, the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. Merely

because the claimants were unable to produce documentary evidence to show the monthly income of the deceased, same does not justify adoption of lowest tier of minimum wage while computing the income. Relevant portion of the aforesaid judgment reads as under:-

> *"9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."*

16. Thus, the contention of learned counsel for the appellant that in the absence of any documentary proof with respect to the income of the deceased, the learned Tribunal below ought to have taken the income of the deceased on the basis of minimum wages prevalent at the time of the accident is devoid of

any force. To prove the income of the deceased, petitioner No.1 Hakmi Devi, while appearing in the witness-box as PW-1, deposed that the deceased, who was her son, was unmarried and he was running a photography and electronic shop and was also having income from agriculture and by performing the job of a cook. His total income from all sources was about Rs.18,000/- to 20,0000/- per month. PW-2 Vikram Singh stated that deceased Bablu was doing the work of photographer as well as the work of repair of TV, Fridge and mobile and his monthly income was about Rs.25,000/- to 30,000/- He further deposed that the deceased was also earning Rs.8,000/- to 10,000/- per month from his profession of a cook and thereby, he was also earning Rs.8,000/- to 10,000/- per month. However, the petitioners have failed to produce any cogent and satisfactory evidence on record to prove the income of the deceased. Therefore, in the absence of any documentary evidence, in the opinion of this Court, considering the year of accident and the avocation of the deceased, his notional monthly income of Rs.5,000/- as assessed by the learned Tribunal below, appears to be appropriate in the facts and circumstances of the instant case.

17. Learned counsel for the appellant/insurance company

next contended that the number of persons travelling in the vehicle was more than the permitted seating capacity and its liability as per the policy is only to the extent of 6+1 passengers and not more than that as no premium has been paid for covering the risk of the excess number of occupants of the vehicle, therefore, the insurance company would not be liable to make payment of the compensation amount as far as they are concerned and the insurance company is liable to meet the awards only in respect of the maximum permitted passengers.

18. In the case of ***United India Insurance Company Limited Vs. K.M. Poonam and others, 2015 (15) SCC 297,*** the Hon'ble Supreme Court has considered the issue of payment of compensation and liability of the Insurance Company vis-à-vis owner of the vehicle when the vehicle involved in the accident is insured and limits to certain passengers if the passengers are in excess of permitted limit. It would be useful to extract the relevant paragraphs of the aforesaid judgment for ready reference: Paras-36 to 40 of the judgment are reproduced as under:-

> *"36. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six*

persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle.

37. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle. As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.

38. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam case.

39. The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur case and direct that the Insurance Company should deposit the total amount of compensation

> *awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the insurance policy from the owner of the vehicle, as was directed in Baljit Kaur case.*
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> *40. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle."*

19. The Hon'ble Supreme Court, in the aforesaid judgment has considered the judgment in the case of ***Anjana Shyam and others(2007) 7 SCC 445*** and it has also considered another decision in the case of ***National Insurance Company Ltd. Vs. Baljit Kaur(2004) 2 SCC 1*** and held that the Insurance Company should deposit the total compensation amount awarded to all the claimants and the amount so deposited to be disbursed to the claimants in respect of their claims with liberty to the Insurance Company to recover the amounts paid by it over and above the

compensation amount payable in respect of the persons covered by the insurance policy from the owner of the vehicle.

20. In the case on hand, perusal of the copy of RC of the vehicle placed on record as Ext.R-8 shows that the seating capacity of the vehicle in question, including driver, was ‘seven’. It has been duly proved on record that at the time of accident, ‘nine’ passengers were sitting in the vehicle and all of them had died. Since no premium was paid for covering the risk of the excess number of occupants of the vehicle, therefore, in view of the aforesaid enunciation of law, the insurance company would not be liable to make payment of the compensation amount as far as the excess number of occupants are concerned. The insurer cannot be saddled with the liability to pay compensation to all the occupants of the offending vehicle. The Insurance Company is liable to honour the claims with respect to 6+1 passengers as per the Registration Certificate and Insurance Policy. Any direction with regard to saddling of liability on the Insurance Company more than the seating capacity would run contrary to the terms and conditions of the policy as well as it would be in violation of the statutory provisions. Hence, the Insurance Company is required to be saddled with liability to the extent of 6+1 passengers only.

Therefore, the interest of justice would be met if the Insurance Company is directed to deposit the entire compensation as awarded by the Tribunals restricting its liability only to the extent of 6+1 passengers and by expressly granting liberty to it to recover the excess amount paid by it to the claimants from the owner of the vehicle in question. For the aforesaid purpose, the total amount of the six awards which are the highest shall be construed as the liability of the Insurance Company.

21. No other point was urged before me.

22. Hence, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal is partly allowed and the impugned award dated 01.08.2013, passed by learned Tribunal below is modified. The Insurance Company is liable to the extent of 6+1 passengers only and the total amount of the six awards, which are the highest, shall be construed as the liability of the Insurance Company. The insurance company is directed to pay the amount of compensation to the petitioners/claimants in the first instance, who shall be entitled to recover the same from respondents No.4 & 5, who are legal heirs of owner-cum-driver of the vehicle in question, in accordance with law. The remaining part and terms of the

impugned award, including the interest component, shall remain the same.

The present appeal is disposed of accordingly, so also the pending applications, if any. Interim directions, if any, are vacated.

(Sushil Kukreja)
Judge

November 19, 2026
(V. Himalvi)