HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: **07.08.2026**
Pronounced on: **21.08.2026**
Uploaded on: **21.08.2026**

Whether the operative part or full
Judgment is pronounced: **Full**

Mac App No. 160/2020(O&M)
Mac App No. 30/2021(O&M)

United India Insurance Co. Ltd. …..Appellant(s)/Petitioner(s)

Through: Mr. Dinesh Singh Chauhan, Adv.
Ms. Damini Singh Chauhan, Adv.
in Mac App No. 160/2020
Mr. Deepak Mahajan, Adv.
inMac App No. 30/2021

vs

Mohan Singh and others ….. Respondent(s)

Through: Mr. Deepak Mahajan, Adv.
in Mac App No. 160/2020
Mr. Dinesh Singh Chauhan, Adv.
Ms. Damini Singh Chauhan, Adv.
in Mac App No. 30/2021

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Aggrieved by the award dated 06.11.2019 passed by the Presiding Officer, MACT Samba (for short 'the Tribunal') in the claim petition, titled, "Mohan Singh and another vs. Shamsher Chand and others", whereby the appellant/insurance company has been directed to pay the compensation of Rs. 3,94,000/- to the appellants/claimants along with interest at the rate of 6% per annum from the date of filing of the claim petition till the payment of the award, the instant appeals have been filed by the claimants as well as the Insurance Company.

2. **In Mac App No. 160/2020**, the appellant/insurance company has raised following issues in the memo of appeal:

> Whether the learned Presiding Officer, Motor Accidents Claims Tribunal, Samba, was justified in directing the Appellant/United India Insurance Company ltd. to indemnify the insured, especially when the driver namely, Shamsher Chand S/o. Mr. Krishan Chand R/o. Village Badheri, Tehsil and District Samba, who was driving the Offending "Passengers Carrying Commercial Vehicle" i.e. Bus No. JK-02H 6468, was holding fake and fraudulent "Driving License"?
>
> Whether the learned Presiding Officer, Motor Accidents Claims Tribunal, Samba, was justified in closing the evidence of the Appellant- United India Insurance Company Limited, without summoning the witness, whose diet expenses stood deposited, as per the procedure as laid down in Order XVI of Code of Civil Procedure, 1908 and returning a finding to the contrary?

3. In **Mac App No. 30/2021**, the appellants/claimants have assailed the award dated 06.11.2019 on the ground that the compensation under the head of "Filial Consortium "was wrongly granted to them and further the notional annual income of the deceased fixed by the learned Tribunal @ Rs. 36,000/- is too meagre.

4. Learned counsel for the appellant-Insurance Company reiterated the submissions made in the memo of appeal. He vehemently contended that the learned Tribunal did not afford the proper opportunity to the appellant/insurance company to lead evidence despite the fact that diet expenses were already deposited by the Insurance Company.

5. On the other hand, learned counsel for the appellants/respondents-claimants has submitted that the learned Tribunal has not rightly assessed the quantum of compensation as the notional income of the deceased determined by the learned Tribunal is too meagre. He also submitted that the "Filial Consortium" has also not been rightly awarded in terms of

judgment of the Supreme Court in **Magma General Company Ltd. v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**.

6. Heard learned counsel for both the sides and perused the record, including the record of the learned Tribunal.

7. The record depicts that the claimants, namely, Mohan Singh and Manjeet Kour, filed the claim petition seeking compensation on account of the death of their only son, Gurpreet Singh, aged about 13 years, who died in a motor vehicular accident that occurred on 04.09.2012 at about 3:00 p.m. The deceased was alighting from the bus at Ramgarh Bazaar when the driver of the offending vehicle, while driving the bus at a high speed and in a rash and negligent manner, caused the accident, resulting in his fatal injuries. At the time of the accident, the deceased was a student of 8th Class.

8. The respondent-Insurance Company filed its response to the claim petition, contending, inter alia, that the driver of the offending vehicle was not holding a valid and effective driving licence authorising him to drive the said vehicle. It was, therefore, pleaded that no liability could be fastened upon the appellant-Insurance Company to indemnify the insured-owner of the offending vehicle. The appellant-Insurance Company also denied the occurrence of the accident itself.

9. Respondent Nos. 1 and 2 were put to notice but respondent Nos. 1 and 2 did not cause appearance, as such, they were set *ex parte* by the learned Tribunal.

10. On the basis of the pleadings of the parties, following issues were framed:

> I. Whether an accident took place on 04.09.2012 at about 3 PM at Ramgarh Bazar when the deceased Gurpreet Singh was boarding off the bus but the driver i.e. respondent No. 1 drove

the offending vehicle No. JK02H-6468 rashly and negligently, as a result of which fatal accident was caused and the deceased suffered multiple fatal injuries and died? OPP

II. Whether respondent No. 1 was not holding valid driving license at the time of the accident? OPR3

III. Whether the respondent No. 3 is not liable to pay any compensation as the offending vehicle was driven in contravention of the terms and conditions of the Insurance policy? OPR3

IV. In case issue No. 1 is proved in affirmative, whether petitioners are entitled to any compensation under Motor Vehicle Act and, if so, from whom and to what extent? OPP

V. Relief. OP Parties.

11. The appellants-claimants, besides examining one of the claimants, namely, Mohan Singh, also examined Baljeet Singh in support of their claim. On the other hand, the appellant-Insurance Company failed to produce any witness despite having been afforded several opportunities. Consequently, the learned Tribunal proceeded to decide the claim petition and passed the impugned award.

12. The appellant/insurance company has asserted that it had raised the issue with regard to the validity of the driving license of the driver of the offending vehicle but the learned Tribunal closed the evidence of the appellant/insurance company without summoning the witness, despite the fact that the diet expenses were deposited by the company, which incapacitated the insurance company to prove issue No. 2.

13. A perusal of the record reveals that the Insurance Company had deposited the diet expenses for summoning of the witness, Shamsher Chand, driver of the offending vehicle to prove issue No. 2. The minutes of the proceedings reveal that the evidence of the claimants was closed on 18.02.2016 and the matter was posted for the evidence of the respondents. On 09.05.2016, the respondent/Insurance Company deposited the diet expenses of the witness. On 05.10.2016, respondent No. 3 therein i.e. respondent No. 1-Shamsher

Chand-witness was present, but his statement was not recorded, as court time was over. On 08.05.2018, Shamsher Chand was present in the Court, but he had not brought the original license, and he was directed to produce the same. Thereafter, on 18.12.2018, the counsel for the insurance company sought time to produce the witness. Thereafter, again notice was issued to the witness on 06.07.2019 and the summon was received on 14.08.2019 with the endorsement that the complete address of the said witness was not available and as such, the appellant/Insurance company was directed to produce the said witness by taking *dasti* summons. On 14.08.2019, also summons issued to the witness was received back with endorsement that address was incomplete, and as such, appellant-Insurance company was granted last opportunity to produce the witness after taking *dasti* summons. Thereafter, on 17.09.2019, the evidence of the Insurance-Company was closed. It appears that the appellant-Insurance Company did not get the *dasti* summons for effecting service of the witness.

14. The evidence of the claimants was closed way back in the year 2016, whereas the insurance company took three years for examining one witness and despite specific direction of *dasti* summons for effecting service upon the said witness, *dasti* summons was not taken by the appellant/insurance company.

15. In view of the above, this Court is of the considered view that once the appellant/insurance company itself failed to get the *dasti* summons for effecting service upon the witness, it cannot be heard to say that proper opportunity was not granted to the appellant/insurance company to lead evidence. Accordingly, the appeal of the Insurance Company bearing Mac App No. 60/2020 being devoid of any merit, is hereby **dismissed.**

16. In appeal bearing **Mac App No. 30/2021** filed by the claimants, the only issue raised by the appellants with regard to the assessment of notional income of the deceased and the grant of filial consortium. Perusal of the impugned award reveals that the learned Tribunal, while assessing the compensation, took the notional income of the deceased minor at Rs. 3,000/- per month, applied the multiplier of 18 and, after deducting 50% towards his personal and living expenses, assessed the loss of dependency at Rs. 3,24,000/-. The learned Tribunal further awarded a sum of Rs. 40,000/- towards loss of filial consortium.

17. In Kajal v. Jagdish Chand & Ors., (2020) 4 SCC 413, Hon'ble the Supreme Court assessed the notional income on the basis of the Minimum Wages payable to a skilled workman and opined that the same would be reflective of the minimum amount which she would have earned on becoming major.

18. Later, in Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd., (2022) 7 SCC 738, the Apex Court while considering the grant of compensation to the parents on account of injuries suffered by a five-year-old child, relied upon Kajal's case (supra) and observed that the notional income should be calculated on the basis of minimum wages payable to a skilled worker.

19. In the year 2012, the minimum wage for skilled workman was Rs. 200/- per day, as per the notification of Government of J&K dated 22.01.2010. In the case of Master Ayush, (supra), the Hon'ble Apex Court observed that in addition to the Minimum Wages for skilled worker, the Appellant would be also entitled to 40% for future prospects in view of the judgment of National Insurance Company Limited v. Pranay Sethi & Ors, (2017) 16 SCC 680.

20. Thus the monthly income of the deceased, as per the minimum wages, was required to be enhanced @ 40%. The learned Tribunal has applied the multiplier of 18, which as per the Apex Courts' decision in **Reshma Kumari vs. Madan Mohan, (2013) 9 SCC 65,** ought to have been 15.The same judgment has been followed by the Supreme Court in **"Divender Kumar Tripathi v.Oriental Insurance Co. Ltd"** (2025) INSC 1429.

21. Thus, the total compensation on account of loss of dependency would be Rs. 7,56,000/.[Rs. 6000 p.m. + 40% (Future Prospects) = Rs. 8400/- ii. Rs. 8400- 50% (personal expenses) = Rs. 4200/- iii. Rs. 4200/- x 12 x 15 = Rs. 7,56,000/-.

22. Further, the learned Tribunal was not correct in awarding a sum of Rs. 40,000/ to both the claimants under the head of "Loss of Filial Consortium". The sum of Rs. 40,000/ each was required to be paid to both the claimants under this head.

23. Accordingly, the award of the learned Tribunal is modified, and appellant-Insurance Company is directed to pay Rs. 8,66,000/- as compensation to the claimants under the following heads:

a. Loss of dependency	= Rs. 7,56,000/
b. Funeral Expenses	= Rs. 15,000/
c. Loss of Estate	= Rs. 15,000/
d. Loss of Filial Consortium	= Rs. 80,000/
Total:	Rs. 8,66,000/-

24. The interest component shall remain the same. Appellant-Insurance Company shall deposit the balance amount within a period of one month from today and upon such deposit, the amount shall be released in favour of claimants after their due identification and deducting the requisite court fee in accordance with law. **Mac App No. 30/2021** is accordingly **disposed of.** The claimants shall furnish the bank account details of their accounts and the amount of compensation be transferred to the said accounts in accordance with the order passed by the learned Tribunal.

(RAJNESH OSWAL)
JUDGE

Jammu
21.08.2026
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No