IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MVA) No.435 of 2016

Reserved on: 01.07.2026

Date of decision: 10.07.2026

Date of uploading on Website: 10.07.2026

National Insurance Company Limited

...Appellant

Versus

Hira Gaha and others

…Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

[1] *Whether approved for reporting?*

For the appellant:	Mr. Jagdish Thakur, Advocate.
For the respondents:	Mr. Anuj Bali, respondents No.1 & 2. None for respondents No.3 & 4.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-National Insurance Company (hereinafter referred to as the appellant), under Section 173 of the Motor Vehicles Act (for short “MV Act”), against award dated 25.05.2016, passed by the learned Motor Accident Claims Tribunal, Shimla District Shimla, H.P., in M.A.C.C. No.54-S/2 of 2013, with a prayer to set aside the impugned award.

---

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

2. Succinctly, the facts giving rise to the present appeal are that respondents No.1 and 2 (hereinafter referred to as the petitioners) filed a claim petition under Section 166 of the Act, whereby they sought compensation to the tune of Rs.20 lacs on account of death of Krishan Bahadur Gaha, who was husband of petitioner No.1 and father of petitioner No.2. It was averred by the petitioners that on the intervening night of 11/12.10.2012, Krishan Bahadur Gaha hired a vehicle (Bolero Pickup) bearing registration No.HP-10A-3519 for transporting his goods from Gawas to Barara and when the said vehicle reached near Kutani, Shaila Pani, Tehsil Chopal, District Shimla, HP, the driver of the vehicle, i.e. respondent No.2, had lost control over it, as a result of which, the vehicle went off the road into a deep gorge. Due to the accident, Krishan Bahadur Gaha sustained grievous injuries and died on the spot.

3. As per the petitioners, at the time of his death, the deceased was 25 years old and he was earning more than Rs.15,000/- per month. The offending vehicle was owned by respondent No.1-Monmohan Singh and it was insured with respondent No.2 (appellant herein). It was also averred that the deceased was the only earning member in the family and due to

his untimely death, the petitioners had suffered a lot of agony. Hence, they sought compensation to the tune of Rs.20 lacs.

4. Respondent No.1/owner of the vehicle, filed reply to the claim petition, wherein he raised preliminary objections qua maintainability and that the amount claimed was highly exaggerated. On merits, it was averred that the accident was caused due to mechanical fault and there was no negligence on the part of the driver. It was also averred that at the relevant time, the driver was having a valid driving licence. It was admitted that the vehicle in question was hired by the deceased for transporting his goods from Gawas to Barara.

5. In its reply, the National Insurance Company (appellant herein) took preliminary objections regarding maintainability, the deceased was traveling in vehicle as an unauthorized and gratuitous passenger, the driver was not having a valid and effective driving licence at the time of accident and that the vehicle was being plied in violation of the terms and conditions of the insurance policy. On merits, it was averred that the accident had occurred due to the rash and negligent driving of the vehicle in question by its driver. It was also averred that the amount of compensation as claimed is highly exaggerated, inflated and

without any legal basis.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 15.02.2016:-

> ***"1. Whether Sh. Krishan Bahadur Gaha died in a road accident on 11/12.10.2012 involving vehicle No. HP-10A-3519, being driven by respondent No.2 in a rash and negligent manner: ....OPP***
>
> ***2. If issue No.1 is proved in affirmative, for what amount of compensation, the claimants are entitled and from whom? ...OPP***
>
> ***3. Whether the claim petition is not maintainable? ...OPR***
>
> ***4. Whether the vehicle in question was being driven by respondent No.2 without having a valid and effective driving licence at the time of accident, if so, its effect ? ...OPR-3***
>
> ***5. Whether the vehicle in question was being permitted to ply in violation to the terms and conditions of the insurance policy as well as provisions of the Motor Vehicles Act, if so, its effect? ...OPR-3.***
>
> ***6. Whether there is collusion between the claimants and respondents No.1 and 2, if so, its effect? ...OPR-3***
>
> ***7. Relief."***

7. After parties led their evidence, the claim petition was partly allowed and the petitioners were awarded compensation to the tune of Rs.17,78,000/- alongwith interest at the rate of 9% per annum from the date of petition till the realization of the whole

amount with interest from respondents No.1 and 2 jointly and severally. However, the ultimate liability to pay the compensation along with up-to-date interest was on respondent No.3, with whom the vehicle in question was insured at the time of accident.

8. Feeling aggrieved and dissatisfied, the appellant/ insurance company preferred the instant appeal against award dated 25.05.2016, passed by the learned Tribunal below, with a prayer to set-aside the impugned award and the claim petition be dismissed with costs.

9. Learned counsel for the appellant/Insurance Company has contended that the impugned award is based merely on surmises and conjectures, as such, the same is liable to be set-aside. He further contended that the learned Tribunal has also erred in taking the income of the deceased as Rs.7,000/- per month without there being any documentary proof. He also contended that the learned Tribunal below has erred in awarding addition of 50% to the income of the deceased on account of future prospects and also erred in awarding conventional damages on the higher side, therefore, it is prayed that the impugned award deserves to be modified.

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 the respondents and also carefully examined the entire record.

12. Perusal of the record reveals that on 11.10.2012, deceased- Krishan Bahadur Gaha hired the vehicle in question for transporting his goods from Gawas to Barara and when the said vehicle reached near Kutani, Shaila Pani, its driver lost control over the vehicle, as a result of which, it went off the road into a deep gorge and due to the said accident, Krishan Bahadur Gaha sustained grievous injuries and died on the spot. Learned Tribunal has specifically given findings on issue No.1 that the accident had occurred due to the rash and negligent driving by the driver of the offending vehicle. So far as the findings on issue No.1 qua negligence is concerned, neither the appellant/Insurance Company, nor the owner/driver of the offending vehicle had assailed the said findings, as such, the same has attained finality.

13. Now 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.7,000/- per month. To prove the income of the deceased, petitioner No.1 Hira Gaha stepped into the witness-box as PW-1 and tendered in evidence her affidavit Ext. PW1/A by way of examination-in-chief, wherein she stated that the deceased was a pruner and he was expert in all kinds of horticultural works. She further stated that at the time of accident, her husband was privately employed with Kanwar Singh and was earning Rs.15,000/- per month. PW-2 Kanwar Singh also tendered in evidence his affidavit Ext. PW2/A, wherein he fully corroborated the version of PW-1 Hira Gaha. However, no documentary evidence has been produced by the petitioners in order to prove the income of the deceased.

14. In ***National Insurance Company Limited*** Versus ***Pranay Sethi & others, (2017) 16 SCC 680***, a Constitution Bench of the Hon'ble Apex Court held that the compensation has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an

acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. Para-55 of the judgment is reproduced as under:-

> *"55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."*

15. Now, the question which arises for consideration before this Court is as to what income should be assessed in the present case. As observed earlier, the learned Tribunal below had assessed the income of the deceased as Rs.7,000/- per month. However, in the opinion of this Court, considering the year of accident and the avocation of the deceased, his notional monthly income of Rs.7,000/-, as assessed by the learned Tribunal below, appears to be appropriate in the facts and circumstances of the instant case.

16. It has further been held in ***Pranay Sethi's*** case (supra) that while determining the income, in case the deceased was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to the income of the deceased towards future prospects should be made. Paras 59.3 and 59.4 of the said judgment read as follows:-

> *"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."*

17. In the instant case, the learned Tribunal Court has erroneously awarded 50% increase to the monthly income of the deceased as future prospects since the deceased was a self-employed. Admittedly, at the time of accident, the deceased was aged about 29 years of age, as is evident from post mortem report Ext. PW3/A and in view of the law laid down by the Apex Court in ***Pranay Sethi's*** case (supra), an addition of 40% of the notional monthly income of the deceased, in this appeal, can be made towards future prospects, since the deceased was aged below 40 years.

18. In ***Sarla Verma and others*** Versus ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the

number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceeds 6. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

19. In ***Salra Verma's*** case (supra), it has been further held by the Hon'ble Supreme Court that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years. Para-42 of the judgment is reproduced as under:-

> *'42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

20. In the case on hand, the number of dependent family members is '3', therefore, 1/3rd of the amount from the total

income has to be deducted towards personal and living expenses of the deceased. Since the deceased was 29 years of age at the time of his death, therefore, as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma's*** case (supra), the appropriate multiplier would be '17', which has rightly been applied by the learned Tribunal below.

21. Thus, after fixing the notional monthly income of the deceased at Rs.7,000/- and adding 40% of the monthly income towards future prospects, the amount comes to Rs.9,800/-/- and after deducting 1/ 3rd share from the income of the deceased for his own use, i.e. Rs.3,266/-, the total dependency comes to Rs.6,534/- (9800-3266=6,534) per month. By applying the multiplier of '17' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs.13,32,936/- (6534 x 12 x 17).

22. In ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 Supreme Court Cases 130,*** the Hon'ble Supreme Court has laid down that consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. The relevant portion of the aforesaid judgment reads 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 general defined as rights pertaining to the relationship of a husband-wife which allows compensation o the surviving spouse for loss of "company, society, cooperation, 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 love, affection, care and companionship of the deceased child."*

23. While placing reliance upon the judgment passed by the Hon'ble Apex Court in ***Pranay Sethi's*** case (supra), the

Hon'ble Supreme Court in ***Sunita & ors. Vs. United India Insurance Co. Ltd. & ors., Civil Appeal No.9538 of 2025****,* decided on July 17, 2025, had enhanced the compensation under the conventional heads @ 10% after a span of every three years w.e.f. the year 2017 and held as follows:-

> *"20. Regarding the monthly income of the deceased, we concur with the view taken by the Courts below in assessing the same to be Rs.12,000/- per month, for there being no error therein. Hence, in awarding compensation which is just and fair, we are inclined to increase the amount awarded under the conventional heads, namely, loss of estate, loss of consortium, and funeral expenses by 10% adverting to the settled principle of law laid down by this Court in National Insurance Co. Ltd. v. Pranay Sethi, that such amount should be revised every three years."*

24. Accordingly in view of the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** as well as ***Sunita's*** cases (supra), by enhancing the compensation under the conventional heads @ 10%, after every three years from the year 2017, the petitioners are entitled to loss of estate at Rs.19,965/-, funeral expenses at Rs.19,965/-. Petitioner No.1, being widow of the deceased, is entitled to spousal consortium of Rs.53,240/- and petitioner No.2, being son, is entitled to parental consortium of Rs.53,240/-. Accordingly, the total amount of compensation comes

out as under:-

Head	Amount
(i) Loss of dependency	***Rs.13,32,836/-***
(ii) Funeral expenses	***Rs.19,965/-***
(iii) Loss of estate	***Rs.19,965/-***
(iv) Spousal consortium	***Rs.53,240/- (payable to petitioner No.1)***
(v) Parental consortium	***Rs.53,240/-(payable to petitioner No.2)***

Total compensation awarded is Rs.14,79,246/-

25. Consequently, 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 25.05.2016 passed by learned Tribunal below is modified to the aforesaid extent only. This Court, however, does not see any reason to interfere with the rate of interest awarded on the amount of compensation. Rest of the terms of the impugned award also need no interference.

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

(Sushil Kukreja)
Judge

July 10, 2026
(V. Himalvi)