(2026:HHC:29445)

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 474 of 2015 &
Cross Objection No. 37/2017
Reserved on: 06.07.2026
Date of decision: 17.07.2026
Date of uploading on website: 18.07.2026

Oriental Insurance Company Ltd. …..Appellant

Versus

Subhadra Devi & Ors. ……Respondents

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?*

For the appellant/: non-cross-objector — Dr. Lalit K. Sharma, Advocate.

For respondents No. 1 to 3/ : Cross-objectors — Mr. Suneel Awasthy, Advocate.

For respondents No. 4: Mr. Ravinder Singh Jaswal, Advocate.

Respondent No. 5 ex parte.

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellant/Insurance Company, who was respondent No. 3 before the learned Motor Accidents Claims Tribunal, Kinnaur at Rampur Bushahr, District Shimla, H.P., (hereinafter

---

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

referred to as “the learned Tribunal”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’), against impugned award, dated 05.06.2015, passed by the learned Tribunal below, whereby Claim Petition No. 0100051/2012, filed by the petitioners, under Section 166 of the Act, was allowed and the petitioners were held entitled for compensation in the sum of Rs. 9,93,000/- alongwith interest at the rate of 6% per annum from the date of filing of the petition till the realization/deposit of the amount and respondent No. 3/Insurance Company was held liable to pay the amount of compensation.

2. The brief facts of the case are that on 31.12.2011, Vinod Kumar was travelling in Bolero Camper Jeep bearing registration No. HP-35B-1005, being driven by respondent No. 2-Shiv Ram and was on his way from Anni to Shawad. Around 12:30 A.M., when the vehicle reached 200 meters ahead of Village Barad, respondent No. 2-Shiv Ram stopped the vehicle on the road and alighted therefrom leaving ignition on. The vehicle started moving and it rolled down about 250 meters off the road, leading to death of

Vinod Kumar on the spot, who was sitting in the vehicle. After the accident, the dead body of the deceased was brought to CHC, Anni, where his post-mortem was conducted on 01.01.2012. According to the petitioners, accident had occurred on account of rash and negligent act on the part of respondent No. 2. At the time of accident, the deceased was working as Manager-cum-Salesman under the employment of respondent No. 1-Amar Chand and was getting a monthly salary of Rs. 10,000/-. Hence, the petitioners filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 20,00,000/-.

3. Respondent No. 1, owner of the offending vehicle, contested the claim petition by filing reply and admitted the accident. It is also admitted that the deceased was working as Manager-cum-Salesman on a monthly salary of Rs. 10,000/- with him. The vehicle in question was duly insured with respondent No. 3, therefore, compensation, if any, assessed by the Tribunal is liable to be indemnified by respondent No. 3, being insurer.

4. Respondent No. 2, driver of the offending vehicle, in his reply, denied the fact that cause of accident was his rash and negligent driving.

5. Respondent No. 3/Insurance Company in its reply raised preliminary objections qua maintainability, vehicle being plied in breach of policy conditions as well as in breach of the provisions of Motor Vehicles Act. It is alleged that respondent No. 1 was not possessing a valid and effective registration-cum-fitness certificate and route permit at the time of the accident. It has further been alleged that the driver of the vehicle was not possessing valid and effective driving licence at the time of the accident, which was in the knowledge of the insured. The driver was also not authorized to drive the vehicle of the category for want of valid driving licence. The deceased, at the time of accident, was travelling in the vehicle as an unauthorized/gratuitous passenger, which is violation of the terms and conditions of the Insurance Policy. It is submitted that the Insurance Company is not liable to indemnify the owner since the deceased was travellling as an unauthorized/gratuitous

passenger. Apart from this, the claim set-up by the petitioners is termed as exorbitant and excessive.

6. On 21.02.2014, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether deceased Vinod Kumar died on account of rash and negligent driving of respondent No. 2, as alleged? OPP***
>
> ***2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation and if so, to what extent and from whom? OPP***
>
> ***3. Whether the deceased was travelling as gratuitous passenger in the offending vehicle, as alleged? OPR-3***
>
> ***4. Whether the driver of the offending vehicle was not having a valid and effective driving licence to ply the vehicle, as alleged?OPR-3***
>
> ***5. Whether the vehicle was being driving without valid route permit, as alleged, if so, to what affect ? OPR-3***
>
> ***6. Relief."***

7. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed and the petitioners were held entitled to compensation of Rs. 9,93,000/- alongwith interest at the rate of 6% per annum from the date of filing of the petition till the realization/deposit of the amount and respondent No. 3/Insurance Company

was held liable to pay the same.

8. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 05.06.2015.

9. I have heard the learned Counsel for the appellant, learned counsel for the respondents and carefully examined the entire record.

10. The Learned counsel for the appellant contended that the learned Tribunal below has committed illegality while saddling the entire liability upon the Insurance Company, as the vehicle in question was a goods carrier vehicle and the deceased was travelling as an unauthorized/gratuitous passenger without goods and the insured has committed breach of the terms and conditions of the Insurance Policy. With these averments, he prayed that the impugned award be set aside and the present appeal be accepted.

11. The perusal of the material available on record reveals that on 31.12.2011, deceased Vinod Kumar was travelling in the offending vehicle, being driven by respondent No. 2-Shiv Ram and when the vehicle reached

200 meters ahead of Village Barad, respondent No. 2-Shiv Ram stopped the vehicle on the road and alighted therefrom leaving ignition on. The vehicle started moving and it rolled down about 250 meters off the road, leading to death of Vinod Kumar on the spot, who was sitting in the vehicle. The learned Tribunal below has given the findings that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle. So far as findings regarding negligence of the driver of the vehicle is concerned, neither owner nor insurance company has assailed the same. Therefore, the findings of the learned Tribunal below on issue No. 1 has attained finality.

12. Now the question which arises for consideration is that as to whether deceased Vinod Kumar was travelling in the offending vehicle as an unauthorized/gratuitous passenger at the time of accident. The case of the petitioners is that at the time of accident, the deceased was working as Manager-cum-Salesman under the employment of respondent No. 1-Amar Chand and on 31.12.2011, he was travelling in Bolero Camper Jeep bearing registration No.

HP-35B-1005 on his way from Anni to Shawad. It has been admitted by respondent No. 1 that the deceased was working with him as manager-cum-salesman in liquor vend at Village Shawad.

13. Before adverting to the facts of the present case, this Court deems it appropriate to examine the law evolved with respect to unauthorized/gratuitous passengers travelling in the goods vehicle. Section 147 of the 1988 Act is pari materia to Section 95 of the 1939 Act. One of the major differences between the two enactments was that 1939 Act defines the expression "goods vehicle" whereas 1988 Act defines the term "goods carriage". As per 2(8) of the 1939 Act, "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers'. However as per 2(14) of the 1988 Act, „goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

The Hon'ble Supreme Court examined the liability of unauthorized/gratuitous passengers in the goods vehicle in ***New India Assurance Company vs. Satpal Singh & Ors. reported as (2000 (1) SCC 237).*** While examining the said question, the Hon'ble Supreme Court held that an insurance policy covering third party risk is not required to exclude of gratuitous passenger in a vehicle no matter the vehicle is of any type or class. Hence in view of the law laid down by the Hon'ble Supreme Court in ***Satpal Singh'****s*** case (supra), the Insurance Company is held liable to pay compensation even for gratuitous passengers of the goods vehicle.

14. Subsequently, the Hon'ble Supreme Court in ***New India Assurance Company Ltd Vs Asha Rani & Ors. reported as 2003 (2) SCC 223*** examined the correctness of its earlier Judgment Satpal Singh (Supra) and overruled the said Judgment and held as follows:

> *"26. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers*

would not be liable therefor."

15. Again, the 1988 Act was amended and Motor Vehicles (Amendment) Act, 1994 came into effect. The material portion of the provision contained in Section 147 of the 1988 Act, as amended by the Motor Vehicles . (Amendment) Act, 1994, reads as follows:

> *"147. Requirements of policies and limits of liability- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-*
> *(a) xxx xxx xxx*
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (2)*
> *(i) against any liability which may be incurred by him in of respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;"*

16. In ***National Insurance Company Ltd. vs. Baljit Kaur & Others,*** reported as ***2004 (2) SCC 1,*** the Hon'ble Supreme Court examined the issue of whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the 1988 Act. The Hon'ble Supreme Court held that the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle. It was not

the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people'. The relevant portion of the aforesaid judgement, inter alia, reads as follows:

> *"11. Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his authorized representative travelling in the goods vehicle, of Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle rt as a medium of conveyance.*
> *12. We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous NEUTRAL CITATION NO: 2023: DHC: 2763 passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. Vs. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.*
> *13. It is pertinent to note that a statutory liability enjoined*

upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-`-vis the 1939 Act as regard definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated.

... ...

17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorized representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorized representative carried in the vehicle besides the third parties. The 19 Neutral Citation No. (2026:HHC:10818) intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of .

sub-section (1) of Section 147 would have included the owner of the goods or his authorized representative besides the passengers who are gratuitous or otherwise"

17. Hence, the legal position as it stands today is that the owner/authorized representative of the owner of the of goods travelling in a goods vehicle would be covered by the insurance policy. However, a gratuitous passenger travelling in a goods vehicle will not be covered by the insurance policy.

18. Based on this legal position, this Court now proceeds to examine the facts of the present case. The case of the petitioners is that at the time of accident, the deceased was working as Manager-cum-Salesman under the employment of respondent No. 1-Amar Chand. It has been admitted by respondent No. 1 (owner of the vehicle) that the deceased was working with him as manager-cum-salesman in liquor vend at Village Shawad .

19. Admittedly, the offending vehicle bearing registration No. HP-35B-1005 has been registered as light goods vehicle. The perusal of RC, Ext. R-2 shows that it is a light goods vehicle with sitting capacity of 03. As per Insurance Certificate, Ext. R-1, the vehicle was duly insured w.e.f. 30.03.2011 to 29.03.2012 and the accident had taken place during the subsisting period of insurance. Onus to prove this issue was upon the Insurance Company by leading evidence that the deceased was travelling as an unauthorized/gratuitous passenger in the offending vehicle at the time of accident. However, the appellant- insurer has not led any evidence to prove that the risk of the owner of the

goods or his authorized representative was not covered, in terms of Insurance Policy Ext. RW-3/A. The appellant-Insurance Company failed to prove on record that the deceased was travelling as gratuitous passenger in the offending vehicle at the time of the accident. Thus, in the absence of any evidence on record led by the insurance company, it cannot be said that the deceased, who was admittedly an employee of respondent No. 1, was travelling in the offending vehicle as an unauthorized/gratuitous passenger. Since,it has been admitted by respondent No. 1 that the deceased was working with him as manager-cum-salesman in liquor vend at Village Shawad, therefore, it leaves no manner of doubt that on the intervening night of 31.12.2011 and 01.01.2012 deceased was travelling in the offending vehicle as an employee of respondent No. 1. Hence he cannot be termed as unauthorized/gratuitous passenger. The learned Tribunal below has rightly come to the conclusion that there is no violation of terms and conditions of the insurance policy, so far as the travelling of the deceased in the offending vehicle.

20. Hence, in view of the above settled principle of law as well as the discussion made above, the Tribunal was justified in recording a finding that the employees of the insured travelling in the vehicle were covered for all risks and damages as per insurance certificate-cum-policy schedule Ext. R-1. Thus, it cannot be said that the learned Tribunal below has committed any illegality while fastening the liability upon the insurance company.

21. Learned counsel for the cross-objectors contended that while awarding the compensation, learned Tribunal below has failed to assess the future prospects of the claimants/cross-objectors, therefore, he submitted that amount of compensation is required to be enhanced.

22. This contention of learned counsel for the cross-objectors is not devoid of any merit, as 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. It has further been held 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."*

23. In the instant case, at the time of accident, the deceased was aged about 35 years of age and was on fixed salary. Therefore, 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 as the deceased was aged below 40 years.

24. Thus, after fixing the notional monthly income of the deceased at Rs. 6,000/- and adding 40% of the monthly income towards future prospects, the amount comes to Rs. 8,400/- and after deducting 1/3rd share from the income of the deceased for his own use, i.e. Rs. 2,800/-, the total dependency comes to Rs. 5600/- (8400-2800=5600/-) per month. By applying the multiplier of '16' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs. 10,75,200/- (5600 x 12 x 16).

25. 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."

26. 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."*

27. 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/-, petitioners No. 2, being son, is entitled to parental consortium of Rs. 53,240/- and petitioner No. 3, being mother, is entitled to filial consortium of Rs.

53,240/-. Accordingly, the total amount of compensation comes out as under:-

“**Head**	**Amount**
(i) Loss of dependency	Rs. 10,75,200/-
(ii) Funeral expenses	Rs.19,965/-
(iii) Loss of estate	Rs.19,965/-
(iv) Spousal consortium	Rs.53,240/-(payable to respondent No.1)
(v) Parental consortium	Rs.53,240/-(payable to respondent No.2)
(v) Filial consortium	Rs.53,240/-(payable to respondent No.3)

Total compensation awarded is **Rs. 12,74,830/-”**

28. Accordingly, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal filed by the appellant/Insurance Company is dismissed and cross objections preferred by cross objectors/respondents No. 1 to 3 are allowed. The impugned award dated 05.06.2015 passed by learned Tribunal below is modified to the extent that the petitioners are entitled to Rs.

Rs. 12,74,830/-. This Court, however, does not see any reason to interfere with the rate of interest awarded on the amount of compensation as well as its apportionment. Rest of the terms of the impugned award also need no interference.

29. No other point was urged before me.

30. The appeal is disposed of in the aforesaid terms, so also pending applications, if any.

(Sushil Kukreja)
Judge

17th July, 2026
(raman)