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(2025) 12 SHI CK 0004

Himachal Pradesh HC

Case No: First Appeal From Order No. 167 Of 2016

National Insurance Company Ltd	APPELLANT
Vs	
Chinta Mani And Others	RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Motor Vehicles Act, 1988-Section 166
- Evidence Act, 1872-Section 138, 146

Hon'ble Judges: Jiya Lal Bhardwaj, J

Bench: Single Bench

Advocate: Ashwani Sharma, Ishan Sharma, B.N. Sharma

Final Decision: Partly Allowed

Judgement

Jiya Lal Bhardwaj, J

1. The appellant-Insurance Company has preferred the instant appeal against the award dated 23.03.2015 passed by t e Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr in MAC Petition No.0100078 of 2011, titled, Smt.Chinta Mani and others vs. Govind Singh and others, whereby the Tribunal awarded a sum of Rs.28,23,000/- in favour of respondents No.1 to 6/claimants along with interest @ 6% per annum from the date of filing the petition till realization of the amount.

2. The key facts necessary for adjudication of dispute in the present appeal are that respondents No.1 to 6/claimants had preferred the claim petition under Section 166 of the Motor Vehicles Act, 1988 on account of death of Dalip Singh, who was husband of respondent No.1, father of respondents No.2 to 4 and son of respondents No.5 and 6 claiming an amount of Rs.25,00,000/- along with interest @ 12% per annum from the date f filing f petition. The accident took place on 19.06.2011 at 5.00 a.m. at Village Pasada, P.O.Dhar Ga ra, Tehsil Rampur, District Shimla, H.P., involving a car No.HP-06A-1841 being driven by respondent No.2 n the said date. The deceased was travelling in the car which was driven by respondent No.2 in a rash and negligent manner.

3. It was pleaded in the claim petition that the deceased, at the relevant time, was employed as Cook with M/s Shabri Associates, Serang Hydro Power Project, Tapri and drawing monthly salary of Rs.12,000/- and was also earning Rs.20,000/- per month from agriculture and horticulture pursuits.

4. The owner and driver of the vehicle involved in the accident who were respondents No.1 and 2 in the claim petition and respondents No. 7 & 8 respectively in the present appeal filed the joint reply and admitted the factum of accident, however, denied that it is caused due to rash and negligent driving of respondent No.2, driver in the claim petition.

5. The appellant-Insurance Company filed separate reply and took preliminary objections qua maintainability and violation of mandatory terms and c nditi ns f the insurance policy. It was submitted that he vehicle was being plied in breach of policy conditions and fu ther the respondents were neither possessing valid registration certificate nor driving licence to drive the vehicle.

6. The Tribunal below after framing issues, recorded the evidence led by the parties. The claim petition was allowed and a sum of Rs.28,23,000/- was awarded as compensation in favour of respondents No.1 to 6/claimants along with interest @ 6% per annum from the date of filing of claim petition till its realization.

7. The Tribunal below held that respondents No.1 to 4 shall be entitled to 20% of the compensation amount each and remaining 20% shall be paid to respondents No. 5 and 6 in equal proportion, being the parents of the deceased.

8. The appellant-Insurance Company has filed the instant appeal, challenging the award on the ground that there is no justification of taking the income of the deceased as Rs.12,000/-per month and further awarding 50% on account of future prospects, in the absence of evidence on record. It was also pleaded that since the deceased was self-employed, the award of futu e p ospects was not applicable, in view of the decision rende ed in Reshma Kumari and others vs. Madan Mohan and another 2013 (9) SCC 65. Further, the am unt awarded to the claimants as compensation under the miscellaneous heads is also on the hig er side and not justifiable.

9. On the other hand, the learned counsel representing respondents/claimants has supported the award passed by the Tribunal below and submitted that since it is not disputed that the deceased was working as a Cook, the award passed by the Tribunal below does not require any interference.

10. I have heard the learned counsel for the parties and perused the record carefully.

11. Mr. Ashwani Sharma, learned senior counsel duly assisted by Mr. Ishan Sharma, Advocate has vehemently argued that since there is no documentary proof regarding the income of the deceased, the Tribunal below has erred in taking the income of the deceased as Rs.12,000/- . He further argued that the Tribunal below has wrongly added 50% on the income of the deceased on account of uture prospects, whereas, as per law laid down by the C nstitution Bench of the

Hon'ble Supreme Court in Na ional Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680, addition of only 40% o ght to have been added. He strongly placed reliance up n the N tification dated 29.11.2010 issued by the Government of Himachal Pradesh, Department of Labour and Employment, wherein, the daily wage of semi-skilled worker was fixed as Rs.132/- per day and since the acc dent in question had taken place on 19.06.2011, the wages of deceased ought to have been taken only @ 132/- per day and not beyond that.

12. The learned senior counsel has also vehemently argued that so far as mark 'A' is concerned, no doubt, it is consolidated salary of deceased from September to June, 2011, but it has not been proved in accordance with law. Since there is no documentary evidence, the wages of the deceased cannot be taken as Rs.12,000/- as assessed by the Tribunal below. Therefore, the award passed by the Tribunal below deserves to be modified, thereby granting the compensation on the basis of wages fixed by the Government of Himachal Pradesh.

13. Not only this, the learned senior counsel has drawn the attention of this Court to the cr ss-examination of one of the claimants Smt.Chin a Mani, who is wife of the deceased and stated that their family fall under the IRDP category whose annual income is less than Rs.20,000/-

14. It is n t in dispute that the appellant-Insurance Company has not led any evidence. No doubt, a suggestion has been put to claimant Smt.Chinta Devi, who appeared as PW-1, that the deceased was not working as a Cook, but she has stated that it is wrong that the deceased was not working as a Cook. The factum of the deceased working as a Cook has been proved by PW-3 Vinod Kumar. While cross-examining this witness, no suggestion has been put by the appellant-Insurance Company to controvert this fact, which shows that the deceased, at the relevant time, was working as a Cook. The Hon'ble Supreme Court has held that in case the party does not raise any doubt regarding the correctness of the statement of the witness, the unchallenged part of his evidence is to be relied upon. In this regard, it is relevant to quote para 40 of the judgment in Laxmibai (dead) through LRs and another vs. Bhagwantbuva (dead) through LRs and others (2013) 4 SCC 97 as under:-

"40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the c rrectness of the statement of a witness, the said wi ness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objec ed to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information, tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity.

Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit.

Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See Khem Chand v. State of H.P, State of U.P. v. Nahar Singh, Rajinder Pershad v. Darshana Devi and Sunil Kumar v. State of Rajasthan.)"

15. Not only this, even the driver of the vehicle, who caused the accident had appeared in the witness box as RW-1 and deposed in his cross-examination that the deceased was getting Rs.12,000/- as salary, including food and residence. It is true that there is no documentary evidence having been produced by the respondent Nos. 1 to 6/claimants regarding the income of the deceased, but at the same time, once the deceased was working as a Cook and died in an accident on 19.06.2011, his income cannot be taken less than Rs.12,000/- per month, as rightly been assessed by the Tribunal below.

16. The Hon'ble Sup eme Court in Chandra alias Chanda alias Chandaram and another vs. Mukesh Kumar Yadav and others (2022) 1 SCC 198 has held that the income of a pers n as stated cannot be ignored only on the ground that the salary certificate was not proved and the compensation cannot be determined on the basis of adopting minimum wage notified for the skilled labour. No doubt, the m n mum 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 and some amount of guess-work is required to be done and the relevant para of the judgment is reproduced hereinbelow:-

"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 guesswo k is required to be done. But at the same time the g esswo k for assessing the income of the deceased sho ld 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."

17. The aforesaid dictum of the Hon'ble Supreme Court has been considered by a Co-ordinate Bench of this Court in FAO No.58 of 2022, titled, United India Insurance Company Ltd. vs. Sumna Devi and others and upheld the income of the deceased taken at Rs.10,000/- per month. No doubt, one of the claimants has stated that their family falls under IRDP, but it does not mean that the deceased at the time of accident was not working as Cook. This Court is taking judicial notice of the fact that when the accident took place on 19.06.2011, the wages of a Cook were about

Rs.12,000/- per month. Since the factum of the deceased having been working as Cook has been proved by leading cogent evidence and the appellant-Insurance Company has not led any evidence to rebut, the findings arrived at by the Tribunal that the deceased was working as C ok and drawing monthly salary of Rs.12,000/-per month are affirmed.

18. So far as the addition of 50% of the income towards the future prospects is concerned, that is contrary to the law laid down by the Hon'ble Supreme Court in Pranay Sethi (supra), wherein, it has been held that where the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should warrant when the deceased was below the age of 40 years. Admittedly, in the present case, the deceased at the time of accident was 32 years old and thus the future prospects of 40% has to be added on the income of the deceased. Thus, the income of deceased comes to Rs.12,000+Rs.4800= Rs.16,800/-. Out of the total monthly income, 1/4th is to be deducted towards personal expenses of the deceased since respondents No.1 to 6/claimants are more than 4 in number, as per the dictum in Pranay Sethi (supra). Hence, the total monthly income of the deceased comes to Rs.16,800-Rs.4200=Rs.12,600/- and the annual income comes to Rs.12,600 X 12= Rs.1,51,200/-

19. The Tribunal below has also erred while granting a sum of Rs.1,00,000/- as loss of consortium and Rs.1,00,000/- for loss of love and a ection and a sum Rs.25,000/- as funeral charges to resp ndents No. 1 to 6/claimants. As per the dictum of he Hon'ble Supreme Court in Magma General Ins rance Company Ltd. versus Nanu Ram alias Chuhru Ram and others (2018) 18 SCC 130, the claimants are held entitled to Rs.40,000/- each as consortium. In this judgment, the Hon'ble Supreme Court has held t at t e wife is entitled to spousal consortium of Rs.40,000/- and the children are entitled to parental consortium of Rs.40,000/- each and the parents as filial consortium amounting of Rs.40,000/- each. The Hon'ble Supreme Court in Pranay Sethi's case (supra) decided in the year 2017 has held that after every three years, there should be enhancement on the amount of conventional heads and thus the claimants are held entitled to Rs.50,000/- each towards consortium being spousal, parental and filial. As per the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra), respondents No.1 to 6/claimants are also held entitled to an amount of Rs.20,000/-each towards loss of estate and funeral charges after the increase of 10% every three years.

20. Since the Tribunal below has erred on some counts, as stated above, the appeal pre erred by the appellant-Insurance Company is partly allowed and the respondents are held entitled to he amount as under:-

Sr.No.	Head	Amount
1.	Income	Rs.12,000/- per month.
2.	Future prospects @ 40%	Rs.12000 x 40 / 100 = Rs.4800/-
3.	Total income	Rs.12,000+Rs.4800=Rs.16,800/-
4.	Deduction towards personal expenses 1/4th	Rs.16,800-Rs.4200=Rs.12,600/-

5.	Annual loss of dependency	Rs.12,600X12=Rs.1,51,200/-
6.	Multiplier 16	Rs.1,51,200X16=Rs.24,19,200/-
7.	Spousal consortium	Rs.50,000/- (payable to respondent No.1)
8.	Parental consortium	Rs.1,50,000/- (Rs.50,000X3 payable to respondents No.2 to 4).
9.	Filial consortium	Rs.1,00,000/- (Rs.50,000X2 payable to respondent No.5 and 6).
10.	Loss of estate	Rs.20,000/-
11.	Funeral charges	Rs.20,000/-
Total amount of compensation.		**Rs.27,59,200/-**

21. No other points have been raised and argued by the learned counsel for the parties.

22. In view of the above, the appeal preferred by the appellant-Insurance Company is partly allowed and the award dated 23.03.2015 passed by the Tribunal below in MAC Petition No.0100078 of 2011, titled, **Smt.Chinta Mani and others vs. Govind Singh and others,** awarding a sum of Rs.28,23,000/- is modified and respondents No.1 to 6 are held entitled to a sum of Rs.27,59,200/- along with interest @ 6% as awarded by the Tribunal bel w. The apportionment as ordered by the Tribunal below is main ained.

Pending applications, if any, also stand disposed of accordingly.