(2025:HHC:14619-DB)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 4165 of 2013

Reserved on: 14th May, 2025.

Date of decision: 20th May, 2025

Oriental Insurance Com.Ltd. ...Appellant

Versus

Satya Devi and others ...Respondents

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes

For the Appellant: Mr.G.C. Gupta, Sr. Advocate with Ms.Meera Devi Advocate vice Mr.Deepak Gupta, Advocate.

For the Respondents: Mr. Ashir Kaith, Advocate viceMr.Hamender Singh Chandel, Advocate for respondents No.1 to 6.

Mr. P.P. Chauhan, Advocate for respondents No.7 and 8.

Vivek Singh Thakur, Judge

Present appeal has been preferred by Insurance Company under Section 173 of Motor Vehicles Act against Award dated 20th August, 2013 passed by the Motor Accident Claims Tribunal (II), Shimla (in short 'the MACT') in Claim Petition No. 27-S/2 of 2010 titled Satya Devi and others vs. Baldev Ram and others filed under Section 166 of Motor Vehicles Act whereby the MACT has held that claimants/respondents No.1 to 6 are entitled for compensation of Rs.15,80,000/- along with interest at the rate of 7.5% per annum from

the date of filing of petition i.e. 25th March, 2010 till realization of whole amount which includes loss of contribution Rs.15,60,000/-, loss of estate Rs.5000/-, funeral charges Rs.5000/- and loss of consortium Rs.10,000/-.

2 For convenience, the parties herein are being referred as per their status before the MACT.

3 Brief facts of the case are that on 10th July, 2009 deceased Surat Ram, working as T-mate in the Electricity Department, and his co-employee Budhi Ram, working as Assistant Lineman in the same Department, were returning from Nav Bahar after attending the complaints of consumers, boarded the bus bearing registration No.HP-63-2638 being driven by respondent No.1 Baldev Ram, owned and possessed by respondent No.2 Sangeeta Dogra and insured by respondent No.3 Oriental Insurance Company Limited (present appellant). Surat Ram was standing near front door whereas Bhudhi Ram was standing near rear door. Doors of bus were open. When bus reached near Sanjauli at 2.15 PM, the bus driver, who was driving the bus in high speed in rash and negligent manner applied sudden brakes. For applying sudden brake in rash or negligent manner, Surat Ram fell down out of the bus and suffered injuries in his left leg with rear tyre of the bus. Injured Surat Ram was taken to the IGMC hospital. Budhi Ram was accompanying him. The police recorded the statement of Budhi Ram in the hospital under Section 154 Cr.P.C. wherein with details of aforesaid facts, he had

categorically stated that accident had occurred on account of rash or negligent driving of driver, who, later on, had taken the injured to IGMC. On the basis of aforesaid statement, FIR Ext.PW2/A was registered in Police Station Dhalli, District Shimla.

4 Injured Surat Ram expired in the hospital on the same day at 5.30 PM. His dead body was subjected to postmortem in IGMC Shimla. The postmortem report is Ext.PW4/A.

5 Later on, after completion of investigation, challan was presented against respondent No.1 Baldev Ram for causing death by driving the bus in rash and negligent manner.

6 Petitioners/claimants preferred claim petition before the MACT and examined 5 witnesses, whereas respondents i.e. owner and driver examined themselves as RW1 and RW2. No evidence was led by Insurance Company.

7 After taking into consideration the material on record, the MACT awarded the compensation to petitioners, as referred supra.

8 I have heard learned counsel for parties and have gone through record.

9 Learned counsel for Insurance Company has argued that in present case, rash and negligent driving has not been established on record as no independent witness has been examined to prove this fact and it is not possible for a driver to drive the bus rashly and negligently at Sanjauli which is a highly crowded area and further that in any case, deceased was also responsible on account of

contributory negligence for the incident leading to his death. It has been submitted that onus was on claimants to prove the rash and negligent driving but the only witness examined by them is PW3 Budhi Ram who, being a co-employee of deceased, is an interested witness and cannot be relied upon as PW3 Budhi Ram has not stated in his statement about lodging of FIR.

10 It has come in evidence that bus was full of passengers but none of eye witness has been examined and only interested witness has been examined which is not sufficient to discharge the onus upon the petitioners to prove the rash and negligent act on the part of bus driver.

11 It has been further argued on behalf of appellant that Baldev Ram was not having valid driving licence as it was issued for 20 years whereas for driving the transport vehicle i.e. bus, a valid licence is required for which currency of licence at relevant point of time, under Section 14 of Motor Vehicles Act, was 3 years, and thus licence issued for 20 years can never be valid for driving the transport vehicle. To substantiate this plea, learned counsel has relied upon judgments ***New India Assurance Co. Ltd. vs. Roshanben Rahemansha Fakir and another*** reported in ***AIR 2008 SC 2266,*** and ***Rajo Devi vs. Kailash Giri Bus Service Socieity and others*** reported in ***2010 ACJ 572*** as well as relevant provisions of Motor Vehicles Act.

12 To substantiate the plea that onus to prove the validity of driving licence is upon the driver and owner, he has referred the judgment reported in ***Pappu and others vs. Vinod Kumar Lamba and another*** reported in ***(2018)3 SCC 208.***

13 It has been also contended that age of deceased has been considered by MACT as 50 years on the basis of age reflected in Postmortem report Ext.PW4/A, whereas from the copy of Parivar Register Ext.PW5/E, it is apparent that year of birth of deceased Surat Ram was 1954 and in the year 2009, at the time of accident, he was 55 years old. Therefore, it has been contended that according to age of 55 years, multiplier of 11 has to be applied instead of 13 as applied by the MACT.

14 It has been argued that deceased was to be retired at the age of 58 years and therefore, his future prospects are to be considered in the light of the said fact and his income is not to be considered only on the basis of salary being drawn by him at the time of occurrence of accident. Therefore, it has been contended that the MACT has wrongly considered the income of deceased at the rate of Rs.15,000/- per month for the purpose of calculating compensation amount.

15 It has been contended that loss of estate, funeral charges and loss of consortium have also been wrongly awarded in favour of claimants and amount of compensation calculated by the MACT is highly exorbitant.

16 Learned counsel for claimants has submitted that deceased Surat Ram had died on account of rash and negligent act of driver as evident from statement of PW3 Budhi Ram, copy of FIR and statement of PW2 ASI Prem Lal. Further that driver Baldev Ram was having valid driving licence to drive the transport vehicle. He has also contended that loss of estate, funeral charges and loss of consortium have been awarded by MACT at lower side and keeping in view the fact that this Court is having jurisdiction to determine just and fair compensation, the amount of loss of estate, funeral charges and loss of consortium deserve to be enhanced in terms of the judgment of Supreme Court in ***National Insurance Co. Limited vs. Pranay Sethi and others*** reported in ***(2017)16 SCC 680 and Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018)18 SCC 130.*** He has supported the determination of quantum of compensation for other components as awarded by the MACT.

17 Budhi Ram Thakur has been examined as PW3. In his deposition, he has categorically stated that his statement was also recorded by police. The said fact is corroborated by PW2 ASI Prem Lal who has proved the copy of FIR Ext.PW2/A on record, which has been registered on the basis of statement of PW3 Budhi Ram recorded under Section 154 Cr.P.C. in the hospital by Investigating Officer. At any point of time it was never suggested to Budhi Ram that he was having any interest in present matter. His only relation with deceased

Surat Ram is that he was co-employee with Surat Ram and was travelling along with him in the bus during the course of employment. His presence with deceased Surat Ram is natural which has not been disputed before the MACT. It is also not a plausible argument that instead of a person knowing and travelling with deceased, other persons who were strangers were required to be searched and examined as independent witnesses of accident particularly when occurrence of incident and presence of PW3 Budhi Ram on the spot has not been disputed. Integrity of PW3 Budhi Ram remained unimpeached. Therefore, petitioners have discharged their onus to prove rash and negligent act on the part of Baldev Ram. It is also well known that strangers rarely come forward to participate in police inquiry and Court proceedings.

18 Plea of learned counsel for appellant with respect to validity of driving licence alleging its currency for 20 years is also misconceived. In fact, as also has been stated by driver Baldev Ram as RW2, the driving licence was endorsed for driving PSVBUS from 7.9.1995 which continued till relevant renewal of 6.1.2012 whereby driving licence for transport vehicle was renewed from 6.1.2012 to 5.1.2015 and driver, as a witness, has stated that he was driving the bus since last 19 years and there was a valid licence for driving the bus for 20 years. This statement does not mean that currency of licence was for 20 years. Currency of licence is to be ascertained,

verified and proved from driving licence, copy whereof has been placed on record as Ext.RW2/A.

19 Driver Baldev Ram was having driving licence, copy whereof has been placed on record as Ext.RW2/A. Perusal of this documents reflects that licence was issued on 1.8.1986. Therefore, it was endorsed for driving throughout India vehicle of the descriptions:- Transport w.e.f. 27.09.1993, LMVCAB w.e.f. 1.8.1986 and PSVBUS w.e.f. 7.9.1995. Before accident, lastly it was renewed on 6.1.2012 from the Registration and Licencing Authorty, Ghumarwin, District Bilaspur and it was valid to drive Transport vehicle upto 5.1.2015.

20 It is apparent from aforesaid facts that currency of driving licence was 3 years only as provided under Motor Vehicles Act at relevant point of time. It is apt to record that no such objection was ever taken by Insurance Company before the MACT at the time of production of copy of driving licence or by examining independent witness thereafter. Driver and owner have also discharged their onus to prove that bus was being driven by person having valid driving licence. Therefore, plea with respect to validity of licence is misconceived and is rejected.

21 Though plea has been taken that deceased Surat Ram was liable for contributory negligence but no such plea was ever taken by Insurance Company before the MACT nor any evidence has been led in this regard. Therefore, this plea is not sustainable.

22 Plea of appellant with respect to age of deceased Surat Ram is genuine and thus, acceptable for the evidence on record particularly Ext.PW5/E copy of Parivar Register, which has been placed on record by claimants and therefore, at the time of death of deceased Surat Ram, his age was 55 years. It is also an admitted fact that salary of deceased at the time of accident was 12,829/-.

23 Following paras of ***Pranay Sethi's case*** are relevant for the purpose of adjudication of present matter:-

> "37. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from *Sarla Verma vs. DTC (2009)6 SCC 121; Reshma Kumari vs. Madan Mohan (2013)9 SCC 65, Rajesh vs. Rajbir Singh (2013)9 SCC 54* and *Munna Lal Jain vs. Vipin Kumar Sharma (2015)6 SCC 347*. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, *Sarla Verma's case* lays down:- (SCC p.136)
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> > "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family

members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. 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 dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the 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.”

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42. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

> “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.”
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> .....

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.

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and he courts shall be guided by paras 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with para 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

24 In ***Magma General Insurance Company Limited vs.Nanu Ram alias Chuhru Ram and others*** reported in ***(2018)18 SCC 130*** the Supreme Court has held as under:-

"24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *National Insurance C. Ltd. vs Pranya Sethi (2017) 6 SCC 680.* In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.4,000/- each for loss of filial consortium."

25 Learned counsel for appellant has also canvassed that because deceased had to retire after 3-4 years on attaining the age of 58 years, therefore, the claimants are not entitled for compensation

on the basis of last pay drawn by deceased and therefore, instead of multiplier of 11 for loss of income, multiplier of 4 is to be applied on the basis of remaining years of job and thereafter determining multiplicand on the basis of pension payable to deceased, multiplier of 7 is to be applied to income of deceased after retirement.

26 Aforesaid plea is misconceived because in such eventuality, for calculating the loss of income after retirement, instead of multiplier of 7, multiplier has to be applied on the basis of average age of persons in India or in Himachal Pradesh based either on survey of Health Department or evidence to be adduced on record with regard to expected age of deceased. This exercise would have to be taken into consideration for determining correct multiplier to determine the actual loss of contribution/earning. Adoption of such practice shall result into uncertainty, chaos and confusion for determining the loss of contribution/earning in different cases. To avoid such situation, the Supreme Court, in ***Sarla Verma and Pranay Sethi's cases,*** has formulated and approved an uniform formula by taking into consideration all factors. Therefore, plea of learned counsel for appellant is not acceptable. Thus irrespective of retirement after some years, multiplier of 11 is only to be applied to deceased falling in the age group of 55-60 years. Definitely, the persons, who have attained the age of 55 or 60 years, in normal circumstances, are not expected to expire before or on completion of period of 11 years. Different persons may live for different period, i.e.

may be upto for 10, 20 or 30 years or lesser or more years. For the convenience to arrive at just and fair compensation by providing application of the same factor to all persons belonging to the same age group, the issue has been settled by the Supreme Court in its judgments including ***Pranay Sethi's case***. Similarly future prospects have also to be taken into consideration as has been provided by the Supreme Court in its judgment, keeping in view all factors relevant to be considered for calculating just and fair compensation. Therefore, plea raised on behalf of Insurance Company on this count is not tenable.

27. It is true that in ***Pranay Sethi's case*** there is a direction to deduct 10% of income towards tax for calculating the loss of of income/contribution. However, it does not mean that tax is to be deducted in all eventualities/cases including the claims pertaining to labour class having meager income below the range of taxable income with no possibility, in future, of falling in the category of persons liable to pay income tax. In present case, monthly income of deceased taken into consideration does not attract the levy of income tax at relevant time much less today. Therefore, there is no need to deduct 10% income towards tax.

28 In the present case, there are 6 claimants. However, claimants namely Santosh, Meena Devi, Maina Devi and Kamlesh are married daughters of deceased. Therefore, they cannot be considered as dependent legal heirs of deceased Surat Ram and thus only two

claimants i.e. respondents No.1 and 6 are to be considered as dependent claimants and they shall be entitled for amount of compensation. However, daughters shall be entitled for loss of consortium only on account of death of their father.

29 For loss of income/contribution to the dependent legal heirs, dependency is the main criteria for awarding compensation under MV Act. But loss of consortium has nothing to do with dependency. The “loss of contribution on account of dependency” and “loss of consortium being family members/relatives” are entirely two different concepts/phenomenons. The dependent legal heirs, apart from compensation under other heads, shall also be entitled for loss of consortium, whereas other family members who are not dependent-legal heirs of the deceased, though, shall not be entitled for compensation but shall be entitled for loss of consortium which is awarded for personal loss of love and affection, guidance and psychological, emotional losses etc. In present case, claimants No.1 and 6 can only be considered as dependent legal heirs, whereas others, who are married daughters, for want of any material on record, are not be considered as dependent legal heirs and, therefore, amount of compensation other than loss of consortium shall not be payable to non-dependent claimants/respondents No.2 to 5, but only to claimants/respondents No.1 and 6 who are wife and son of deceased, whereas all claimants including from respondents No.1 and

6 shall be entitled for separate loss of consortium at the rate of Rs.40,000/- each.

29 In view of afore facts and circumstances and considering the pronouncements of the Supreme Court, respondents No.1 and 6 shall be entitled for compensation in following terms:-

Monthly income =	12,829/- per month
Deduction towards personal expenses (1/3rd)	12829 x 1/3 = Rs.4276/-
Monthly loss of contribution (multiplicand)	12829-4276=8553/-
Future prospects in terms of para 59.3 of Pranay Sethi's case @ 15%	8553 x 15%=1282 8553+1282 =9835
Multiplier	11
Amount of compensation=	9835 x 12 x 11= 12,98,220/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total amount of compensation=	13,28,220/-

30 In addition, respondents No. 1 and 6 shall also be entitled for Rs.40,000/- each for loss of consortium.

31 Claimants/respondents No.2 to 5, shall be entitled only for loss of consortium at the rate of Rs.40,000/- each.

32 Claimants shall also be entitled for interest at the rate of 7½% per annum from the date of filing of petition i.e. 25.03.2010 till final payment or deposit of same.

33 Respondents No.1 to 3 are held liable to pay the amount of compensation jointly and severally to the claimants along with interest. However, it is the liability of respondent No.3 to indemnify the award on behalf of respondents No.1 and 2. Accordingly, respondent No.3 is directed to deposit the amount of compensation along with interest from the date of filing of petition till its final realization, if not deposited already in aforesaid terms, on or before 31st July, 2025.

The impugned award is modified in aforesaid terms and appeal is disposed of accordingly.

(Vivek Singh Thakur),
Judge.

20th May, 2025(MS)