



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO(MVA) No.36 of 2016

Decided on: 07th November, 2025

Depot Manager of Dehradun Roadways

....Appellant

Versus

Suman Devi and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ **Yes**

For the appellant:

Mr. Rahul Mahajan, Advocate.

For the respondents:

Mr. Y.P. Sood, Advocate, for respondent Nos.1 to 4.

Mr. Dheeraj K. Vashisht, Advocate, for respondent No.5.

Respondent No.6 is ex parte vide order dated 17.03.2025.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present appeal, the appellant has assailed the award dated 06.10.2015, passed by the Motor Accident Claims Tribunal (II) Una, District Una (H.P.), whereby the claim petition preferred by respondents No.1 to 4 has been allowed, thereby awarding a sum of Rs.41,95,000/- to them along with interest at the rate of 9% per annum from the date of filing of the petition till

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

realization and the appellant and respondent No.6 in the appeal have been held to pay the compensation jointly and severally.

2. The challenge in the present appeal is only on the quantum. The learned counsel representing the appellant has vehemently argued that the Tribunal below has wrongly assessed the income of the deceased as Rs.25,000/- per month, whereas, the said income has not been proved on record. Further, he argued that the Tribunal has erred while computing the compensation by taking the future prospects of 30% of the actual income, whereas, as per the law laid down by the Hon'ble Supreme Court in the Constitution Bench judgment in ***National Insurance Company Limited vs. Pranay Sethi and others*, (2017) 16 SCC 680**, it has been held that where the deceased was self employed and between the age of 40 to 50 years, an addition of 25% is to be added towards the future prospects.

3. The learned counsel for the appellant further argued that the Tribunal has wrongly awarded interest at the rate of 9%, per annum whereas, it should have been on the lower side.

4. On the other hand, the learned counsel for the claimants has supported the reasoning given by the Tribunal and contended that since the Tribunal has failed to grant the consortium to the children and mother on account of the death of the deceased,

the award passed by the Tribunal deserves to be modified. He contended that though the claimants have not filed cross objections, but this Court can modify the award while exercising the powers under Order 41 Rule 33 of the Code of Civil Procedure (for short "CPC").

5. I have heard learned counsel for the parties and perused the material placed on record.

6. The first contention raised by the counsel for the appellant that the Tribunal has wrongly taken the income of the deceased as Rs.25,000/- deserves to be rejected on the sole ground that as per the statement of PW-1 who has proved the Salary Certificate (Exhibit PW1/B), the income has been shown as Rs.25,000/-. While cross examining the said witness, no suggestion has been put to him and, therefore, the income which had been taken by the Tribunal below, does not warrant any interference.

7. The second contention raised at the bar that the Tribunal below has wrongly awarded 30% future prospects is accepted in view of the dictum of the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***, wherein it has been held that where the age of the deceased, who is self-employed, is between 40 to 50 years, an addition of only 25% is to be added. Admittedly, the age of the deceased at the time of accident was above 40 years and,

therefore, Tribunal below has erred while computing future prospectus by adding 30% to the actual income instead of 25%.

8. So far as the third contention with respect to the award of interest is concerned, since the Tribunal below has the power to award the interest, which is awarded @9% per annum as per its discretion, the same does not require any interference. At this juncture, it is relevant to mention that as per the judgment passed by the Hon'ble Supreme Court in ***Sube Singh and another vs. Shyam Singh (Dead) and others***, (2018) 3 SCC 18, the three-Judge Bench had awarded 9% interest per annum, though the Tribunal below had awarded 6% interest per annum.

9. It is a settled law that even *obiter dictum* of the Hon'ble Supreme Court is binding on this Court. The learned counsel for the appellant has not brought to my notice any judgment by the three-Judge Bench, wherein interest awarded is less than 9% per annum. Therefore, the Tribunal below has rightly awarded interest on the compensation amount at the rate of 9% per annum, which does not call for any interference.

10. The Tribunal below while assessing the compensation has erred in not awarding the consortium to the daughter, son and mother, who are respondents No.2 to 4 respectively, though respondent No.1 has been awarded spousal consortium. No doubt,

the claimants have not preferred any appeal against the award passed by the Tribunal below, but keeping in view the provisions of Order 41 Rule 33 of CPC, this Court is of the considered view that since as per the dictum of the Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others*, (2018) 18 SCC 130**, the claimants have been awarded compensation on account of consortium to parents after elaborating Spousal consortium, Parental consortium and Filial consortium. Respondents No.2 and 3/claimants are entitled to parental consortium on account of premature death of their parent, who was the bread earner and respondent No.4/claimant is entitled to filial consortium.

11. It is apt to notice here that Order 41 Rule 33 of CPC gives the power to the Appellate Court to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection.

12. The Hon'ble Apex Court in ***Pralhad & others vs. State***

of Maharashtra & Anr., (2010) 10 SCC 458, has held as under:-

"18. The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

19. In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10(4) of the Supreme Court of Judicature of England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties.

20. In Vanarsi vs. Ramphal, AIR 2004 SC 1989, this Court construing the provisions of Order 41 Rule 33 of CPC held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed,

allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in Samundra Devi and others vs. Narendra Kaur and others, (2008) 9 SCC 100 (para 21) that this power under Order 41, Rule 33 of CPC cannot be exercised ignoring a legal interdict."

13. This Court has also considered the powers of the Appellate Court in ***National Insurance Co. vs. Dharmesh*, (2021) 4 SLC 2151**, which reads as under:-

"13. At this stage, learned counsel for Appellant-Insurance Company vehemently argued that no amount, if any, can be awarded in the appeal filed by the Appellant-Insurance Company in favour of the claimants, especially when no cross appeals, praying therein for enhancement of compensation have been filed by the claimants. However, this Court is not in agreement with the aforesaid submissions having been made on behalf of the Appellant-Insurance Company. On the issue of power of appellate court to make an

additional award, reference is made to Ranjana Prakash and Ors. V. Divisional Manager and Ors (2011) 14 SCC 639, whereby it has been held that amount of compensation can be enhanced by an appellate court while exercising powers under Order 41 Rule 33 CPC, relevant para of the aforesaid judgment is reproduced herein below:

"Order 41 Rule 33 CPC enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer."

14. It is quite apparent from the aforesaid judgment rendered by the Hon'ble Apex Court that this Court while exercising power under Order 41 Rule 33 CPC can proceed to award compensation even in those cases, where no cross appeals have been filed. It is not in dispute that learned Tribunal below while passing impugned award has not awarded amount, if any, on account of loss of estate and espousal consortium as well as filial consortium to claimant No.1 to 3 and as

such, award to that extent needs to be modified.”

14. On bare perusal of the exposition of law laid down herein above by the Hon'ble Supreme Court, this Court is of the considered view that to do complete justice between the parties, the powers under Order 41 Rule 33 of CPC can be exercised and since the Tribunal below has not awarded consortium as per the judgment of Hon'ble Supreme Court in **Nanu Ram's case (supra)**, this Court awards amount under the head of parental & filial consortium to respondents No.2 to 4.

15. The Hon'ble Supreme Court in **Pranay Sethi's case (supra)** has held that the amount quantified as consortium has to be enhanced 10% in a span of 3 years, therefore, this Court is of the considered view that all the claimants are held entitled to a sum of Rs.50,000/- each.

16. The Tribunal has assessed the income of the deceased as Rs.25,000/- per month, which does not require any interference and so far the addition of 30% increase as future prospects is concerned, that needs to be modified, thereby granting only 25% increase and thus the total compensation to which the claimants are entitled, is determined as under:-

1.	Monthly Salary	Rs.25,000/-
2.	Add future prospects @25%	Rs.25,000+Rs.6250 :Rs.31,250/-
3.	Deduction ¼ :	Rs.31,250-Rs.7812.5: Rs.23,437.5/-
4.	Annual Loss of dependency	Rs.23,437.5 x12 : Rs.2,81,250/-
5.	Multiplier 14 :	Rs.2,81,250 x14: Rs.39,37,500/-
6.	Loss of estate :	Rs.25,000/-
7.	Loss of consortium :	Rs.50,000/- each x 4 : Rs.2,00,000/- (respondents No.1 to 4)
8.	Funeral charges :	Rs.25000/-
Total amount of compensation		Rs.41,87,500/-

17. No other points have been raised by the learned counsel appearing for the parties.

18. In view of the above, the award passed by the Tribunal below is modified and a total sum of Rs.41,87,500/- is awarded in favour of respondents No.1 to 4 along with interest at the rate of 9% per annum from the date of filing the petition till actual realization. The apportionment as ordered by the Tribunal is maintained. The appeal is accordingly disposed of. No order as to costs .

07th November, 2025
(ankit)

(Jiya Lal Bhardwaj)
Judge