



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

FAO (MVA) No. 503 of 2015

Reserved on: 8.7.2025

Date of decision: 30.10.2025

Union of India & Another.Appellants.

Versus

Kiran Bala & others.Respondents.

Coram

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

Whether approved for reporting?¹ Yes.

For the Appellants : Mr.Balram Sharma, Deputy Solicitor General of India with Mr.Rajiv Sharma, Advocate.

For the Respondents : Mr.Vikas Rathore, Advocate, for respondents No. 1 to 4.

Respondent No. 5 already ex parte vide order dated 21.7.2016.

Vivek Singh Thakur, Judge

This appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the 'MV Act') against award dated 9.6.2015 passed by Motor Accident Claims Tribunal-III, Mandi, H.P. (for short MACT) in Claim Petition No. 52 of 2007, titled as Kiran Bala & others Vs. Commandant, 70 RCC (Gref) & others, whereby Claim Petition preferred by claimants/respondents has been allowed and

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

appellants have been directed to pay compensation amounting to ₹13,77,000/- alongwith interest @ 9% per annum from the date of filing of the petition till payment of the compensation alongwith cost of ₹5,000/-.

2. Parties hereinafter shall be referred as per their status before the MACT, for convenience.

3. Claimant No. 1 Kiran Bala is wife of deceased Halku Ram, claimant No. 2 Chamari Devi is mother of deceased Halku Ram, whereas claimants No. 3 and 4 are minor children of deceased Halku Ram.

4. Respondent No. 1 is Incharge of vehicle No. 99E-61171 involved in the accident, whereas respondent No. 2 Lalit Kumar is driver of said vehicle. Respondent No. 3 is Union of India.

5. Brief facts of the case are that deceased Halku Ram was serving as Chowkidar in IPH Department Kelong, District Lauhal and Spiti, H.P. On 2.2.2007 at 4:00 P.M., he took lift in Tanker bearing No. 99E-61171 of the respondents from Tandi Trishe point towards Stingri. The aforesaid Tanker driven by driver respondent No. 2 Lalit Kumar, when reached near Villing Nallah, rolled down in the Nallah about 30 meters, causing multiple injuries on the whole body of Halku Ram. Halku Ram was shifted to Kelong Hospital for immediate treatment, wherefrom he was referred to Kullu and from Kullu to IGMCM, Shimla where, on

6.2.2007, he succumbed to his injuries and postmortem (Ex. PW-1/C) of his dead body was conducted on 7.2.2007.

6. FIR No. 7/2007 (Ex. PW-1/B), dated 2.2.2007, with respect to accident in reference was registered in Police Station, Kelong under Sections 279, 337 and 304A IPC against respondent No. 2, driver.

7. Claimants preferred Claim Petition under Section 166 of the MV Act for awarding compensation, amounting to ₹20,00,000/- for death of deceased Halku Ram on account of rash and negligent driving on the part of respondent No. 2.

8. Respondents opposed the Claim Petition on the ground that deceased Halku Ram himself had given undertaking in an affidavit Mark-D on 3.2.2007 in presence of Hans Raj Kaushal, Junior Engineer, IPH Nargul Section and Mast Ram P&H department, which was attested by Executive Magistrate, Kelong, stating therein that he was traveling in the vehicle on his own will and neither he nor his family members would claim any compensation from the respondents.

9. It was further stand of the respondents that accident took place due to mechanical defect in the vehicle, the Claim Petition was filed on the basis of false manipulated facts, and deceased was not earning ₹12,000/- per month.

10. After considering the pleadings and evidence placed on record, it was concluded by the MACT that death of Halku Ram has

caused on account of rash and negligent driving on the part of respondent No. 2, and undertaking given by deceased Halku Ram was against the statute and thus was not sustainable and claimants had every right to file and maintain the Claim Petition.

11. MACT had determined the amount of compensation on the basis of monthly salary of ₹6400/- as was being received by deceased Halku Ram from the Department, but without taking into consideration claim of additional income put forth by the claimants. Wife of deceased was also held entitled for ₹1,00,000/- on account of loss of consortium, minor children were held entitled for ₹1,00,000/- for loss of care and guidance, and ₹25,000/- was awarded on account of funeral charges and as such claimants were held entitled to receive compensation of ₹13,77,000/- to be paid by respondents jointly and severally alongwith interest @ 9% per annum thereon with cost of ₹5,000/-.

12. Learned Deputy Solicitor General of India has contended that for undertaking given by the deceased Halku Ram, wherein it was deposed on oath by Halku Ram that he sat in the vehicle on his own will by taking lift on his request, claimants were and are not entitled for any claim; and in any case, if claimants are held entitled for claim, then the amount of compensation of ₹13,77,000/- is highly exorbitant and compensation of ₹1,00,000/- on account of consortium to the wife and ₹1,00,000/- to the minor children on account of loss of care and guidance

is also arbitrary. It has also been contended that addition of enhancement of 50% of income for assessing the compensation is also wrong and, therefore, impugned award deserves to be set aside/modified.

13. Claimants have examined one witness, PW-1 Chamari Devi, who is mother of the deceased. She has placed on record her examination-in-chief on affidavit, claiming therein that monthly income of Halku Ram was ₹18,400/- with averments that deceased was earning ₹6400/- per month from service/job and ₹12,000/- as agriculturist by selling milk, vegetables, food grains etc. Though she has been cross-examined, but income from salary has not been disputed therein, however, it has been asserted that deceased was not earning anything from agriculture income and Chamari Devi has also admitted that there was no cow or buffalo reared by deceased at Kelong.

14. Facts that deceased was serving as Chowkidar in IPH Department and was earning ₹6400/- per month and at the time of death his age was 36 years, have not been disputed at any point of time. The occurrence of accident is also not disputed and relation of claimants with the deceased has also not been contested at any stage.

15. Though respondents have placed reliance on affidavit/undertaking sworn by deceased Halku Ram, stating therein that he had taken lift in the vehicle of respondents at his own and had

received injuries on account of accident of the said vehicle and he or his family members shall not claim any compensation in future from the GREF, however, the said affidavit has not been proved on record in accordance with law, despite the claim of respondents that it was sworn before the SDO (Civil) Kelong rather except placing photocopy of affidavit on record as Mark-D, no evidence either oral or documentary or record has been placed on record to prove the affidavit and/or its contents. Original of affidavit has also not seen light of the day.

16. It is also noticeable that accident took place on 2.2.2007 at about 4:00 P.M., wherein Halku Ram had suffered severe injuries and he was referred from Kelong Hospital to Kullu and therefrom to IGMC, Shimla, where he expired on 6.2.2007. In such a situation, it is highly imaginary that deceased Halku Ram had sworn affidavit Mark-D before SDO (Civil) Kelong, in presence of Hans Raj Kaushal, Junior Engineer and Mast Ram employee of the IPH Department. Neither Hans Raj nor Mast Ram was examined. No one from Office of SDO (Civil) Kelong was examined nor any record of the said office was produced in evidence.

17. Though for want of proving the affidavit/undertaking on record, in accordance with law, the said undertaking/affidavit relied upon by the respondents is of no help to them, however, even if it is taken into consideration, then also deceased Halku Ram could have given undertaking with respect to his personal claim only and undertaking given

by him on behalf of his family members/dependents with respect to their right to claim compensation on account of his death is neither valid nor sustainable. A person can relinquish his personal claim, but not the claim of other family members or dependents by swearing an affidavit or giving undertaking. No provision under the MV Act creates restriction on filing the Claim Petition for compensation by the dependents on account of death of a person in motor accident, where he would be traveling on his own will by taking a lift in the vehicle. Therefore, findings returned by the MACT in this regard do not suffer any perversity or illegality and are not required to be interfered with.

18. MACT has not taken into consideration agricultural income of ₹12,000/-, but has only taken into consideration monthly salary income of ₹6400/-. The MACT has added 50% amount of income for future prospects and applied multiplier of 15 for determining the loss of dependency after deducting 1/3rd towards personal expenses.

19. In view of law laid down, as approved and held in paras 37, 42, 59.3 and 59.8, in ***National Insurance Company Limited Vs. Pranay Sethi and others, (2017) 16 SCC 680***, and ***Megma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130***, and keeping in view the monthly salary from the Government service and age of 36 years of the deceased and number of dependents (four), only 1/4th should have been deducted towards

personal expenses, and compensation has to be determined by adding 50% of future income as a future prospects and applying multiplier of 15, and apart from it claimants shall be entitled for ₹15,000/- on account of loss of estate, ₹15,000/- for funeral expenses; and loss of consortium at the rate of ₹40,000/- for each Claimants.

20. In aforesaid terms, claimants would have been entitled for compensation as under:-

1. Monthly salary ₹6400/-
2. Deduction 1/4: ₹6400-1600=₹4800/-
3. Annual loss of dependency: ₹4800x12=₹57,600/-
4. Add future income @ 50%: ₹57,600+28,800=₹86400/-
5. Multiplier 15: ₹86,400x15=₹12,96,000/-
6. Funeral Charges ₹15,000/-
7. Loss of estate ₹15,000/-
8. Loss of consortium ₹40,000/- each=₹1,60,000/-
9. Total amount of compensation:
₹12,96,000+15,000+15,000+1,60,000/-=₹14,86,000/-

21. Rule 233(2) of the H.P. Motor Vehicle Rules, 1999 provides that provisions of Order 41 Rules 22 and 33 of the Code of Civil Procedure, 1908, shall, so far as may be, apply to the appeals filed under the Act.

22. Following observations of the Apex Court in ***Eastern Coalfields Limited and others v. Rabindra Kumar Bharti, (2022) 12 SCC 390***, are also relevant to be referred:

“18. We may also observe that reference made to Order 41 Rule 33 of the Code of Civil Procedure may not have been justified. Order 41 Rule 33 no doubt clothes the appellate court with an extra ordinary power, which however is a rare jurisdiction. It is to reach justice in the special facts of a case. It is not an ordinary Rule to be applied across the board in all the appeals. In fact, the principle is inter alia no doubt that even if there is no appeal by any of the parties in the proceedings, an order can be passed in his favour in the appeal carried by the other side. Any order which ought to have been passed can be passed.”

23. This High Court, considering judgments of the High Courts and the Apex Court, has held that MACT or Appellate Court(s) is/are within its/their jurisdiction to enhance the compensation without the prayer being made for the same.

24. In ***Surekha w/o Rajendra Nakhate and others v. Santosh s/o Namdeo Jadhav and others, (2021) 16 SCC 467***, the Apex Court has held that for not filing cross-appeal by the claimants in an appeal preferred by the owner/Insurer, enhancement of compensation cannot be declined merely on that ground and it has been reiterated that it is well settled that in the matter of insurance claim compensation in reference to the motor accident, the Court should not take hypertechnical approach and ensure that just compensation is awarded to the affected person or the claimants.

25. From the above discussion, it is apparent that grounds for assailing the award are not sustainable, rather amount of compensation determined by the MACT is on lower side and deserves to be enhanced.

26. The MACT has awarded interest @9% per annum, but I am of the opinion that interest @7.5% shall be appropriate.

27. In view of above discussion, it is held that claimants shall be entitled for compensation of ₹14,86,000/- alongwith interest @7.5% per annum from the date of accident till realization/deposit of the same.

28. Accordingly, impugned award passed by the MACT is modified and the claimants shall be entitled for the compensation as determined herein above and shall be apportioned as under:-

- (a) Wife of deceased 50%.
- (b) Mother of the deceased 10%.
- (c) Children of deceased 20% each.

Appeal stands disposed of in aforesaid terms, so also pending applications, if any.

30th October, 2025
(Keshav)

(Vivek Singh Thakur),
Judge.