



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO(MVA) No. 341 of 2015

Decided on: 14th November, 2025

Madhu Joshi and another

....Appellants

Versus

Rajesh Kumar alias Sonu and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the appellants:

Mr. N.K. Thakur, Senior Advocate with
Mr. Divya Raj Singh, Advocate.

For the respondents:

Ms. Devyani Sharma, Senior Advocate
with Mr. Anirudh Sharma, Advocate, for
respondent No.3.

Respondents No.1 and 2 ex-parte vide
order dated 19.03.2025.

Jiya Lal Bhardwaj, Judge (Oral)

The appellants have preferred the present appeal against the award dated 22.04.2015 passed by MACT, Una, District Una, Himachal Pradesh in **M.A.C.P No.18 of 2013** titled ***Madhu Joshi and another vs. Rajesh Kumar alias Sonu and others***, whereby the claim petition preferred by them has been allowed, thereby awarding a sum of Rs.3,42,750/- in their favour as compensation along with interest at the rate of 7.5% per annum from the date of filing the petition till realization of the payment. The

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

appellants are seeking enhancement of the compensation amount awarded to them.

2. Shorn of unnecessary details, the appellants who are the unfortunate parents of deceased Prabhat Joshi had preferred the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10 Lakhs for untimely death of their son. The deceased had died in a motor vehicular accident, which took place on 16.04.2013 at Rakkar Colony near Cheverlot Showroom in District Una, H.P. involving Tipper Truck No.HR-64-6574.

3. The appellants have challenged the award on the grounds that the income of the deceased has wrongly been taken as Rs.3,000/- per month, whereas it should have been taken on a higher side in view of the principles enunciated in ***Kishan Gopal & another. vs. Lala & Ors. (2014) 1 SCC 244***. Further, the Tribunal below has erred while deducting 25% on account of contributory negligence holding that the deceased at the time of accident was not holding a driving license. The Tribunal has also erred while awarding interest @ 7.5% per annum on the compensation amount which is on the lower side, however, the same should have been awarded @ 9% per annum.

4. Mr. N.K. Thakur, the learned Senior Counsel

representing the appellants with the able assistance of Mr. Divya Raj Singh, Advocate, vehemently argued that the award under challenge deserves to be modified, thereby substantially enhancing the amount on account of untimely death of the deceased, who was son of the appellants and further the interest may be enhanced to 9% per annum on the compensation amount.

5. On the other hand, Ms. Devyani Sharma, the learned Senior Counsel duly assisted by Mr. Anirudh Sharma, Advocate, representing respondent No.3 has supported the award passed by the Tribunal below and contended that since there is no documentary evidence with respect to the income of the deceased, the Tribunal below has correctly taken the income of the deceased as Rs.3,000/- per month, since he was unemployed. So far as the award of interest is concerned, it has been argued that the Tribunal below in its discretion has rightly awarded the interest @ 7.5% per annum on the compensation amount which is now generally being awarded by the Hon'ble Apex Court in various pronouncements.

6. In support of her contention, she has placed reliance upon the judgment of Hon'ble Supreme Court in ***Kajal vs. Jagdish Chand and others, (2020) 4 SCC 413*** and submitted that since the award passed by the Tribunal is just, the same does not require any interference.

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

8. As far as the first contention raised by the learned Senior Counsel for the appellants that the Tribunal below has erred while taking the income of the deceased as Rs.3,000/- per month, is concerned, the same deserves to be accepted for the reason that since the deceased was a student of 10+1, he had a bright future. The learned Senior Counsel has taken this Court through the evidence led by the appellants, especially affidavit of appellant No.1, who appeared before the Tribunal below as PW-3 and tendered her evidence by way of an affidavit Exhibit PW3/A, wherein, it has been stated by her that the deceased was a brilliant student and further was having interest in the field of sports and cultural activities. In the affidavit, it has also been stated that the deceased was aiming to become an IAS Officer. If the cross examination of this witness is seen, respondent No.3 has not put any specific suggestion with respect to the fact that the deceased was not aiming to become an IAS Officer, which fact was specifically stated in the affidavit.

9. Since the deceased was 16 years old and further had done his matriculation as is evident from Exhibit PX and scored Second Division, his income can be considered at least at the rate of Rs.150 per day, meaning thereby, the notional income of

deceased would be Rs.4,500/- per month. In near future, the deceased was to get married and as per the law laid down by the Hon'ble Supreme Court in Constitution Bench judgment in ***National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680***, 50% of the income of deceased would be treated as his personal and living expenses being bachelor. The Tribunal has rightly applied the multiplier of 18, but has erred in not considering the future prospects of the deceased. Since the deceased was aged 16 years and below 40 years, while computing the income of deceased, 40% towards future prospects had to be added in the income of the deceased which is now taken as Rs.4,500/- per month.

10. The learned Senior Counsel representing the Insurance Company has vehemently opposed that the income of the deceased cannot be considered as Rs.150 per day, for the reason, that as per the Press Information Bureau, Government of India, Ministry of Labour and Employment, the minimum wages across the country at the relevant time were Rs.115/- per day and, therefore, the enhancement, if any, can be made at the rate of Rs.115/- per day, since the deceased was unemployed. Though the submission made by the learned Senior Counsel as per the Press Information Bureau is correct, but such income cannot be applied in every case,

especially when in the case at hand, it has been proved on record that the deceased was studying in 10+1 and was having interest in sports and further he was aspiring to become an IAS Officer. As already discussed above, there was no suggestion regarding the aim of the deceased to become an IAS Officer.

11. So far as the second contention raised by the learned Senior counsel for the appellants with respect to deduction of 25% on account of contributory negligence is concerned, the said contention deserves acceptance for the reason that the deceased could not have been held liable to contribute for accident simply for the reason that he had no driving license. In case, the deceased was not having the licence to drive the vehicle, he could be inflicted with some penalty under the Motor Vehicles Act, 1988, but his contribution towards the accident cannot be attributed to him. In the present case, the Tribunal has returned the findings that the driver of the truck was driving the vehicle in a rash and negligent manner which findings have not been assailed. Thus, the conclusion drawn by the Tribunal holding that since the deceased was driving the scooter without licence, he is liable for contributory negligence is wrong and further the finding to deduct 25% of the compensation amount is also wrong and illegal and these findings are set aside.

12. The learned Senior Counsel appearing for the

appellants argued that so far as award of interest @ 7.5% per annum on the compensation amount is concerned, it is on the lower side keeping in view the law laid down by the Hon'ble Supreme Court in ***Sube Singh & another. vs. Shyam Singh(Dead) & Others,(2018) 3 SCC 18***, wherein, the three-Judge Bench had enhanced the interest awarded @ 6% per annum to 9% per annum on the compensation amount.

13. On the other hand, Ms. Devyani Sharma, the learned Senior Counsel representing respondent No.3 has laid emphasis on the judgment passed in ***Kajal vs. Jagdish Chand' case(supra)*** and ***Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd. & anr.ss,(2022) 7 SCC 738*** and submitted that since the Hon'ble Apex Court has awarded interest at the rate of 7.5% per annum on the compensation amount, the same deserves to be upheld. Since, the Hon'ble Supreme Court in ***Sube Singh's case (supra)*** had enhanced the interest as awarded by the Tribunal from 6% to 9% per annum, I am of the considered view that the interest deserves to be enhanced from 7.5% to 9% per annum on the compensation amount. The Hon'ble Supreme Court in its judgment in ***Jagdish vs. Mohan and others,(2018) 4 SCC 571***, which again is by a three-Judge Bench had enhanced the rate of interest from 7.5% to 9% on the compensation amount awarded by the Tribunal.

Similarly, in ***Nutan Rani & another vs. Gurmail Singh & others***, (2018) 17 SCC 109, the three-Judge Bench of Hon'ble Supreme Court has awarded interest @ 9% per annum on the compensation amount. It is a settled law that even the *obiter dicta* of the Hon'ble Supreme Court is binding on this Court and since in the above pronouncements, the three-Judge Bench decisions have awarded interest @ 9% per annum on the compensation amount, I am of the considered view that the interest deserves to be enhanced and as such, the award amount will carry interest @ 9% per annum instead of 7.5% as awarded by the Tribunal below.

14. The Tribunal below has not awarded any amount on account of consortium. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others***, (2018) 18 SCC 130, has culled out the principles to award the consortium on account of untimely death of the children and, therefore, the appellants are held entitled to a sum of Rs.50,000/- each on account of filial consortium for the reason that the Hon'ble Supreme Court in Constitution Bench judgment in ***Pranay Sethi's case (supra)*** has held that after every three years 10% increase has to be awarded. Since the judgment has been pronounced in the year 2017 and now we are in 2025, the consortium of Rs.50,000/- each is to be paid to both the appellants

under the head of filial consortium. The award on the head of funeral expenses is not disturbed.

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

16. Thus, the appeal preferred by the appellants deserves to be allowed, thereby enhancing the compensation amount awarded in their favour along with interest and the amount is assessed and awarded as under:-

| | | |
|-------------------------------------|---|--|
| 1. | Monthly Salary | Rs.4,500/- |
| 2. | Add future prospects @40% | Rs.4,500 + Rs.1,800/-=Rs.6,300/- |
| 3. | Deduction towards personal expenses 50% | Rs.3150/- |
| 4. | Annual Loss of dependency | Rs.3150 x12: Rs.37,800/- |
| 5. | Multiplier 18 | Rs.37,800/-x18: Rs.6,80,400/- |
| 6. | Loss of consortium | Rs.50,000/- each x 2= Rs.1,00,000/- (appellants No.1 & 2) |
| 7. | Funeral charges: | Rs.25,000/- |
| Total amount of compensation | | Rs.8,05,400/- |

17. In view of the above, the appeal filed by the appellants is allowed and the award passed by the Tribunal below is modified and a total sum of Rs.8,05,400/- is awarded in favour of the appellants along with interest at the rate of 9% per annum from the date of filing the petition. So far apportionment of the compensation amount is concerned, it shall be 75% to appellant No.1 and remaining 25% to appellant No.2 as per the award. Since, the

appeal preferred by the appellants has been allowed, the Insurance company is directed to deposit the enhanced amount within 90 days from the date of this judgment in the Registry of this Court.

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

No order as to costs.

14th November, 2025

(ankit)

**(Jiya Lal Bhardwaj)
Judge**