

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 31<sup>st</sup> DAY OF MAY, 2022**

**BEFORE**

**HON'BLE MS. JUSTICE JYOTSNA REWAL DUA**

**FIRST APPEAL FROM ORDER No.96 of 2016**

**Between:-**

**RELIANCE GENERAL INSURANCE COMPANY  
LIMITED, BRANCH OFFICE MOHALLA  
MANGWAIN, MANDI TOWN,  
DISTRICT MANDI, H.P.,  
THROUGH ITS MANAGER (LEGAL),  
2<sup>ND</sup> FLOOR, SCO 145-146, SECTOR 9-C,  
MADHYA MARG, CHANDIGARH**

**.....APPELLANT**

**(BY SH. JAGDISH THAKUR, ADVOCATE)**

**AND**

- 1. SMT. LATA DEVI  
W/O LATE SH. BHAG MAL,**
- 2. KIRAN (MINOR)  
S/O LATE SH. BHAG MAL,**
- 3. KUMARI KANIKA (MINOR)  
D/O LATE SH. BHAG MAL  
(BOTH MINORS THROUGH THEIR  
MOTHER-R-1)**
- 4. SMT. SUMANI  
W/O SH. Bhole RAM,**
- 5. SH. Bhole RAM  
S/O SH. SURAT RAM,**

**ALL R/O VILLAGE DANGAHAR (KHIL),  
POST OFFICE KAMAND, ILLAQUA UTTARSAAL,  
DISTRICT MANDI, H.P.**

**.....RESPONDENTS/PETITIONERS**

**6. SH. SHUKRU RAM**  
**S/O SH. KANHU RAM,**  
**R/O VILLAGE KATWAHAR, PO KAMAND,**  
**ILLAQUA UTTARSAAL, DISTT. MANDI, H.P.**  
**(OWNER OF VEHICLE CAR EON**  
**BEARING NO.HP-33C-4270)**

**7. SH. TARA CHAND**  
**S/O SH. SHOBHA RAM,**  
**R/O VILLAGE KATWAHAR (KOOT),**  
**PO KAMAND, ILLAQUA UTTARSAAL,**  
**DISTRICT MANDI, H.P.**  
**(DRIVER OF VEHICLE CAR EON**  
**BEARING NO.HP-33C-4270)**

**.....RESPONDENTS**

**(SH. VIRBAHADUR VERMA, ADVOCATE,**  
**FOR R-1 TO R-5)**

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*This Appeal coming on for admission this day,  
the Court delivered the following:*

### **J U D G M E N T**

A motor accident occurred on 26.07.2013, resulting in death of Dinesh Kumar and Bhagmal. Legal heirs and dependents of Bhagmal instituted a claim petition under Section 166 of the Motor Vehicles Act for award of compensation on account of death of Bhagmal, who was aged 26 years at the time of accident.

Learned Motor Accident Claims Tribunal (III) Mandi, District Mandi (in short 'Tribunal') in its award dated 5.6.2015, held that the motor vehicle involved in the accident was being driven rashly and negligently by

respondent No.7-Tara Chand. On account of rash and negligent driving of the vehicle by Tara Chand, Bhagmal suffered fatal injuries. The monthly income of the deceased was assessed at Rs.12,000/-. His age was determined as 26 years at the time of accident. On that basis, total compensation of Rs.25,83,000/- alongwith interest @ 9% per annum was awarded to the claimants/respondents No.1 to 5. The liability to pay the compensation amount was fastened upon the insurer. Feeling aggrieved, the Insurance Company has preferred the instant appeal.

**2.** During hearing of the case, learned counsel for the appellant-Insurance Company raised following twofold contentions for assailing the impugned award:-

**I.** The vehicle in question was not being driven by respondent No.7-Tara Chand, but by Bhagmal. The observations and findings to the contrary recorded in the impugned award are not borne out from the record, therefore, the liability to pay the compensation amount could not be fastened upon the appellant-Insurance Company.

**II.** The income of the deceased has been assessed by the learned Tribunal on the higher side; the payable

compensation has also not been worked out in accordance with law.

The above two points are being discussed separately hereinafter:-

### **3. Driver of the ill-fated vehicle:-**

**3(i).** Learned counsel for the appellant argued that the vehicle in question was being driven by Bhagmal at the time of accident and not by respondent No.7-Tara Chand. Bhagmal did not have any licence to drive the vehicle, therefore, the liability to pay the compensation amount could not be fastened upon the Insurance Company. In support of this factual assertion, attention was invited to the contents of FIR No.95/2013, dated 26.07.2013 (Ext. PW2/A). Learned counsel for the appellant argued that the FIR was registered on the basis of statement of respondent No.7-Tara Chand. This was the first document in point of time. As per the FIR, Tara Chand had stated that he alongwith Dinesh Kumar and Bhagmal were travelling in the vehicle in question. The vehicle was being driven by him (Tara Chand). They had gone to attend a marriage at Larankelo, Manali on 25.07.2013. After attending the marriage, they prepared for starting their return journey. Bhagmal and Dinesh Kumar got separated from him. On

reaching the site of parking of the vehicle, he found the vehicle missing. He assumed that it must have been driven by Bhagmal. He also stated that the car key was inside the vehicle and that he had parked the vehicle on a downward slope. Learned counsel submitted that the FIR was got proved by the claimants themselves through PW2. Under these circumstances, learned Tribunal could not have ignored the contents of the FIR. The averments in the FIR had to be considered in totality. It was the FIR, which was made the basis for filing of claim petition by the claimants. As per the FIR, the vehicle was not driven by respondent No.7 (Tara Chand) at the time it met with the accident. The findings of learned Tribunal that Tara Chand was driving the vehicle at the time of the accident are contrary to the version of Tara Chand as given in the FIR. Reliance was placed upon the judgments rendered by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. V. Rattani and others, 2009 ACJ 925*** and ***Oriental Insurance Company Limited Versus Premlata Shukla and others, (2007) 13 SCC 476.***

Opposing the submissions of learned counsel for the appellant, learned counsel for the claimants/respondents No.1 to 5 argued that it was a case where

respondent No.7-Tara Chand had given an entirely different version while appearing in the witness box as RW-2. Therefore, his statement, which was made the basis for lodging of the FIR, cannot be relied upon in isolation. Learned counsel for respondents No.1 to 5 referred to the statement of respondent No.6/owner of the vehicle-Shukru (RW-1), who stated that he owned the vehicle in question and had employed respondent No.7-Tara Chand on it as his Driver. That it was Tara Chand, who had driven the vehicle on 25.07.2013 to Manali. Learned counsel also invited attention to the statement made by respondent No.7-Tara Chand while appearing in the witness box as RW-2. As RW-2, respondent No.7 stated that he was employed by respondent No.6 as Driver of the vehicle in question. He had driven the vehicle on 25.07.2013 to Manali. Dinesh Kumar and Bhagmal were in the vehicle. The three had started their return journey in the same vehicle, which was driven by him (Tara Chand). On their journey back from Manali, he (Tara Chand) parked the vehicle at Naggar and came out from it. Dinesh Kumar and Bhagmal remained inside the vehicle. The vehicle was parked on a downward slope with its key inside. On coming back to the place, he came to know that the vehicle had met with an accident,

causing death of Dinesh Kumar and Bhagmal. Learned counsel for respondents No.1 to 5 stated that in such a situation, where the Driver had given two different versions of the mode and manner of occurrence of the accident, one in the FIR and the other while appearing in the witness box, then, the version given in the FIR could not have been accepted without noticing the contradictions occurring in his statement recorded on oath in the Court. The argument of learned counsel for respondents No.1 to 5 is that the learned Tribunal did not make any error in considering the FIR, the statement made by Tara Chand on oath in the Court as well as the version of the appellant for determining the issue of rash and negligent driving of the vehicle in question.

**3(ii).** On hearing learned counsel for the parties and going through the record, I do not find that the findings recorded by the learned Tribunal with respect to the rash and negligent driving of the vehicle by Tara Chand suffer from any infirmity. The reasons for coming to this conclusion are explained hereinafter:-

FIR, Ext.PW-2/A, was registered on the basis of statement of RW-2 Tara Chand. The version of Tara Chand in the FIR was that he alongwith Bhagmal and Dinesh

Kumar had gone to attend a marriage at Larankelo, Manali on 25.07.2013. They had gone in the vehicle in question, which was being driven by him (Tara Chand). At around 12:30 am, he started to come towards the parked vehicle for their return journey. Bhagmal and Dinesh Kumar got separated from him. He could not locate the vehicle at the place where he had parked it. Afterwards, he came to know about the occurrence of the accident involving the vehicle.

While appearing in the witness box, respondent No.7 on oath stated that all three persons started their return journey from Manali together. He parked the vehicle enroute at Naggar and came out of the vehicle. The other persons, i.e. Dinesh Kumar and Bhagmal, remained inside the vehicle. On his return to the parking place, he came to know that the vehicle had met with the accident causing fatal injuries to the other two occupants of the vehicle. The pleaded case of the claimants was that the accident had occurred on account of rash and negligent driving of the vehicle by respondent No.7-Tara Chand.

Thus, there are three different versions of the mode and manner of occurrence of the accident, two given by respondent No.7-Tara Chand and one that of the claimants. As per first version given by respondent No.7-



Tara Chand to the Police on 25.07.2013, he found the vehicle missing from parking place and, therefore, assumed that the vehicle must have been driven by Bhagmal. As per Tara Chand's second statement, recorded on oath in the Court, he was driving the vehicle on the return journey from Larankelo, Manali with both the occupants, i.e. Dinesh Kumar and Bhagmal, inside the vehicle. He got out from the vehicle at Naggar, but the key of the vehicle remained inside. On return to the parking place, he came to know that the vehicle had met with an accident. The contrary stands taken by respondent No.7 might be for the reason to save himself from the punishment in criminal case. The statement of owner of the vehicle, RW-1, is also to the effect that he had employed respondent No.7 as his Driver. There is no evidence on record to show that Bhagmal used to drive the vehicle or that Bhagmal was driving the vehicle in question at the time of the accident. The observation made by the learned Tribunal that respondent No.7-Tara Chand was trying to distort the real facts in order to save himself from the criminal liability finds support from the evidence and documents on record. In view of contradiction in the stand taken by respondent No.7, the averments in the FIR regarding the identity of the

Driver of the vehicle could not be accepted in isolation. The other contemporary record was liable to be considered, which was lawfully considered by the learned Tribunal. Therefore, I do not find any justification to interfere with the findings of the learned Tribunal that the petitioners had discharged the onus to prove that the deceased suffered fatal injuries on account of rash and negligent driving of the vehicle by respondent No.7-Tara Chand.

#### **4. Quantum of compensation:-**

Learned Tribunal has held that deceased was admittedly working as a trained Carpenter. His wages were assessed as Rs.12,000/- per month. On that basis, the payable compensation was worked out as under:-

*“23. The deceased was 26 years of age at the time of his death. Therefore, the multiplier of 17 as approved by the Hon’ble Supreme Court in Sarla Verma Vs DTC 2009 ACJ 1298. The total loss of dependency comes to Rs.12000/- x12x17 = Rs.24,48,000/-. In addition to this, the petitioners are awarded as Rs.25,000/- as funeral charges. Another sum of Rs.10,000/- as loss of estate. The petitioner no.1 is further awarded as a sum of Rs.1,00,000/- on account of loss of consortium. The amount so awarded shall be paid by the respondents jointly and severally. However, respondent No.3 has to indemnify the awarded amount. This issue is decided accordingly.”*

From the submissions advanced by learned counsel for the parties and perusal of record, what comes out is that deceased was about 26 years of age at the time

of his death. The claimants have pleaded that the deceased used to earn Rs.30,000/- per month from all sources. That he was a skilled Carpenter as well as Mason and was doing the work of private contractor of constructing the houses. However, but for the statement of his wife (PW-1), there is no other contemporary evidence available on record to substantiate that the deceased was a skilled Carpenter, Mason and worked as such or that he was hired on contract basis for construction purposes. There is no contemporary evidence on record to substantiate that the deceased was earning Rs.30,000/- per month as pleaded in the claim petition. Learned Tribunal has assessed the wages of the deceased as Rs.12,000/- per month (as per prevalent rate of Carpenter in the market). The accident had taken place on 25.07.2013. In **2022 (1) SCC 198**, titled **Chandra alias Chandaram and another Vs. Mukesh Kumar Yadav and others**, Hon'ble Apex Court held that '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 guesswork is required to be done, but at the same time, the guesswork for assessing the income of

the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of the deceased, 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 deposing about the income of the deceased.'

Even if the deceased is considered to be a highly skilled construction worker, then also, in terms of minimum wages notified in the State for the year 2012-13, his wages would come around Rs.7000/- per month. Using some guess work, the income of the deceased is taken as Rs.8,000/- per month.

Learned Tribunal had applied multiplier of 17 taking into consideration the age of the deceased. Learned Tribunal has given 50% enhancement to the income of the deceased for future prospects and has deducted 1/3<sup>rd</sup> from the income for personal living expenses of the deceased. It is not in consonance with the law laid down by the Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others, (2017) 16 SCC 680***, whereunder, 40% addition on account of future prospects was required to be made to the income of the deceased. The

deceased is survived by five legal heirs/dependents i.e. his widow, one son, one daughter, mother and father. Accordingly, in view of the law laid down in ***Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121***,  $\frac{1}{4}$  deduction for personal expenses was required to be carried out on his total assessed income of Rs.8,000/-. The compensation under the heads 'Funeral Charges' and 'Loss of Estate' is required to be worked out in accordance with law laid down in Pranay Sethi's case, supra. The claimants are also entitled to 'Consortium' in light of law laid down in ***(2018) 18 SCC 130***, titled ***Magma General Insurance Company Limited Versus Nanu Ram alias Chuhru Ram and others***. The calculation of amount of compensation thus is re-worked out as under:

Income taken	Rs.8,000/-	
40% addition in income on account of future prospects	Rs.3,200/-	
Total income	Rs.11,200/-	
$\frac{1}{4}$ deduction for personal expenses	Rs.11,200-2,800/-	Rs.8,400/- per month
Annual income	8400x12	Rs.1,00,800/-
Multiplier of 17	1,00,800x17	Rs.17,13,600/-
Funeral Charges	Rs.15,000/-	
Loss of Estate	Rs.15,000/-	
Loss of Consortium	40,000x5	Rs.2,00,000/-
Cost	Rs.5000/-	
Total award	17,13,600+15,000+15,000+2,00,000+5000	Rs.19,48,600/-

The claimants are entitled to interest at the rate of 7.5% per annum on the compensation amount from the date of accident till payment.

In view of above discussion, present appeal is partly allowed. The impugned award passed by the learned Motor Accident Claims Tribunal (III), Mandi, District Mandi in Claim Petition No.31/2013 is modified to the extent indicated above. The remaining terms and conditions of the impugned award shall remain the same. The amount of compensation shall be apportioned between respondents No.1 to 5 as per their respective shares determined by the learned Tribunal.

The appeal stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

May 31, 2022  
*Mukesh*

Jyotsna Rewal Dua  
Judge