Latest HLJ 2025 (HP)(1) 45 In the High Court of Himachal Pradesh, Shimla.

FAO No. Appeal No.129 of 2023 a/w FAO No.239 of 2023

(A) Motor Vehicles Act, 1988–Section 39–Unregistered Vehicle–Insurer's Liability & Fundamental Breach– Appeal by insurer–Rash and Negligent Driving–Maintainability of Appeal–Road accident caused by a rashly and negligently driven vehicle holding the driver-owner and the insurer jointly and severally liable–Whether plying of the vehicle without any registration certificate would amount to fundamental breach–Held–Yes–That, the temporary registration was granted to vehicle in question on 30.08.2012, which had expired on 29.09.2012 and the accident took place on 30.01.2013 when the offending vehicle was being plied on the public road without any registration certificate–Appeal allowed. (Para 18)

(B) Motor Vehicles Act, 1988 Section–166–Deduction for personal expenses–The Ld. Tribunal below had wrongly deducted 1/3rd out of the total yearly income towards the personal expenses of deceased– At the time of the accident, there were four dependents of the deceased–Held–That, the subsequent death of father of the deceased during the pendency of the claim petition before the Ld. Tribunal below cannot be a reason for reduction of the compensation towards personal expenses–Award modified. (Para 21)

(C) Motor Vehicles Act, 1988 –Section–166–Pay and Recover Principle – Third-party claims–Held–That, the insurance company is statutorily bound to satisfy the award at the first instance, even if it has a valid defense against the insured–Insurance Company was directed to pay 2025 Neelam Kapoor & Others V/s Shri Puran Chand & another 45

the compensation of ?23,88,140/- to the claimants and recover the same from the owner-cum-driver of the vehicle. (Paras 31 & 32) Cases referred:

(1) Narinder Singh vs. New India Assurance Company Limited & others, 2014 (9) SCC 3024.

(2) Kirti & another vs. Oriental Insurance Company Limited, (2021) 2 SCC 166.

(3) National Insurance Company Limited vs. Pranay Sethi & others, (2017) 16 SCC 680.

(4) Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130.

(5) New India Assurance Company Limited vs. Somwati & others alongwith other matters, (2020) 9 SCC 644.

(6) United India Insurance Company Ltd. vs. Lehru & Ors., (2003) 3 SCC 338.

(7) Kusum Lata vs. Satveer, (2011) 3 SCC 646.

(8) Amrit Paul Singh & another vs. Tata AIG General Insurance Company Limited & others, (2018) 7 SCC 558.

Parties represented by:

For the Appellant: Mr. Jiya Lal Bhardwaj, Senior Advocate, with Mr. Sanjay Bhardwaj, Advocate in FAO No. 129 of 2023. Mr. B.M. Chauhan, Sr. Advocate, with Ms. Kamakshi Tarlokta, Advocate in FAO No. 239 of 2023.

For the Respondents: Mr. Varun Rana, Advocate for R-No. 2, Mr. B.M. Chauhan, Senior Advocate, with Ms. Kamakshi Tarlokta, Advocate, FAO No. 129 of 2023, Mr. J.L. Bhardwaj, Sr. Advocate, with Mr. Sanjay Bhardwaj, Advocate in FAO No. 129 of 2023.

Sushil Kukreja, Judge:- Since both these appeals are the offshoots of impugned award dated 11.05.2023, passed by learned Motor Accident Claims Tribunal, Sundernagar, District Mandi, H.P. (hereinafter referred to as “the learned Tribunal below”), they are taken up together for disposal.

2. Appeal, i.e., FAO No. 129 of 2023, is maintained by the appellants, who were petitioners-claimants before the learned Tribunal below (hereinafter referred to as “the petitioners-claimants”), and appeal, i.e. FAO No. 239 of 2023, is maintained by the appellant/New India Assurance Company Limited (hereinafter referred to as “Insurance Company”), under Section 173 of the Motor Vehicles Act, 1988 (for short “MV Act”), against award dated 11.05.2023, passed by the learned Motor Accident Claims Tribunal, Sundernagar, District Mandi, H.P., whereby Claim Petition No. 6471 of 2013, filed by the petitioners-claimants (hereinafter referred to as “the claimants”) under Section 166 of the MV Act, was allowed and the appellant-Insurance Company was ordered to deposit the amount of compensation.

3. The claimants, i.e., Smt. Neelam Kapoor widow of late Shri Arun Kapoor, Miss Tanvi Kapoor, Master Anshul Kapoor, daughter and son of late Shri Arun Kapoor, respectively and Shri Prem Lal Kapoor father of late Shri Arun

Kapoor, maintained a claim petition before the learned Tribunal below seeking compensation of Rs.50,00,000/- on account of death of Shri Arun Kapoor involving car bearing registration No. HP-69A-1263 (the offending vehicle). As per the claimants, the accident occurred on 30.01.2013, near village about 10:30 p.m. at place Bhira, Police Station Sadar, District Hamirpur, H.P.. During the pendency of the claim petition before the learned Tribunal below, claimant-Shri Prem Lal Kapoor died and on an application filed by other claimants on 20.08.2015, his name was deleted from the array of the claimants.

4. The facts giving rise to the instant petitions are that on 30.01.2013, around 10:30 p.m., deceased-Arun Kapoor was standing on the road near village Bhira. The offending vehicle, which was being driven by respondent No.4-Puran Chand in a rash and negligent manner, hit against the deceased. The driver of the vehicle fled away from the spot and the deceased was rushed to Regional Hospital, Hamirpur, where he was declared brought dead. Subsequently, during the course of the investigation, it was unearthed that the offending vehicle was being driven by respondent No.4-Puran Chand. As per the petitioners (claimants), the deceased, who was 44 years old at the time of the accident, was running a shop of shoes in the name and style of M/s Vishal Option, Bhojpur at Sundernagar and his monthly income was Rs.40,000/-. It was also averred that the deceased used to earn Rs.3,00,000/- annually from his orchard, which

was grown on the land owned by the deceased in Mohal Churag, Tehsil Karsog, District Mandi, H.P.. The petitioners also sought a sum of Rs.2,00,000/- for love and affection, Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- for loss of estate, Rs.20,000/- towards funeral expenses and Rs.50,00,000/- on account of untimely death of Shri Arun Kapoor. As per the petitioners, driver-cumowner of the offending vehicle, i.e. respondent No. 4-Puran Chand and insurer (appellant herein in FAO No. 239 of 2023) are jointly and severally liable to pay the compensation to the petitioners. The petitioners also sought interest @ 12% per annum to be awarded on Rs.50,00,000/- from the date of accident till the actual date of payment.

5. The respondents, i.e., driver-Puran Chand of the offending vehicle and the insurer-The New India Assurance Company Limited contested the claim petition by filing their separate replies. Respondent No. 1, driver-cum-owner of the offending vehicle denied that the accident was caused by him and he was liable to pay the compensation to the petitioners (claimants), as a false FIR had been registered against him. He admitted that the offending vehicle was insured with the Insurance Company (appellant herein in FAO No. 239 of 2023), which was valid upto 29.08.2013.

6. The Insurance Company (respondent No. 2 before the learned Tribunal below) opposed the claim petition by filing separate reply, wherein preliminary objections, viz., driver of offending vehicle was not having valid and effective driving licence and the claim petition had been filed in collusion as well as the offending vehicle was being driven in violation of terms and conditions of the insurance policy were taken. On merits, the Insurance Company averred that the amount of compensation is highly excessive and it denied the income of the deceased.

7. The petitioner-claimants filed rejoinder, wherein the claim of the respondents was denied and the averments made in the claim petition were reiterated.

8. Subsequently, respondent No. 2-Insurance Company amended its reply and took objections that vehicle No. HP69A-1263 (offending vehicle) was not insured with it and the petition had been filed in collusion to grab undeserved compensation from respondent No. 2.

9. On 22.07.2019 the learned Tribunal below had framed the following issues for consideration and adjudication:

“1. Whether the death of Sh.Arun Kumar was caused due to rash and negligent driving of vehicle bearing registration No. HP-69A-1262 by Shri Puran Chand on 30.01.2013 at place near village Bhira, PS Sadar Hamirpur, District Hamirpur as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so what amount and from whom? OPP

3. Whether respondent No. 1 was not having valid and effective driving licence at the time of accident? OPR-2

4. Whether the offending vehicle was being plied in violation of terms and conditions of

Insurance Policy? OPR-2

5. Relief."

10. After deciding issues No. 1 and 2 in favour of the petitioners, issues No. 3 and 4 against respondent No. 2 (Insurance Company), the claim petition was allowed and petitioners (claimants) were held entitled for compensation of Rs.20,63,000/- to be paid by respondents No. 1 and 2 jointly and severally alongwith interest @ 6% per annum from the date of filing of the claim petition till its realization. Respondent No. 2-Insurance Company, being the insurer of the offending vehicle, was ordered to deposit the aforesaid compensation amount.

11. Feeling aggrieved and dissatisfied, the petitioners-claimants preferred FAO No. 129 of 2023 seeking enhancement of the compensation amount and Insurance Company maintained FAO No. 239 of 2023 with a prayer to set-aside the impugned award passed by the learned Tribunal below.

12. The learned counsel for the appellant-Insurance Company contended that the award passed by the learned Tribunal below is illegal and contrary to the facts of the case, as on the date of the accident, the vehicle was being plied on the road without proper registration which amounted to fundamental breach of the insurance policy as such the learned Tribunal below had wrongly fastened the liability upon the insurance company to pay the amount of compensation to the claimants.

13. On the other hand, learned counsel for respondent No. 4-owner-cum- driver of the offending vehicle contended that the vehicle was duly insured with the

appellant insurance company w.e.f. 30.08.2012 to 29.08.2013 and the vehicle was registered on the basis of the sale certificate in Form No. 21 issued by the dealer and road worthiness certificate in Form No. 22 issued by the Manufacturer on sale/delivery on 30.08.2012 and the same was neither subjected to any additional trial nor was subjected to such trial for the purpose of satisfying its roadworthiness at the time of issuance of the registration certificate meaning thereby that the vehicle was road worthy and had not developed any defect in the intervening period of expiry of the temporary registration certificate and its registration on 16.02.2013. He further contended that the non-registration of the vehicle is neither a fundamental breach of the terms and conditions of the policy under Section 149 of the Act for avoidance of liability nor there is any such condition in the certificate of insurance and schedule annexed therewith, as such the learned Tribunal below has rightly fastened the liability upon the appellant-insurance company.

14. It is not in dispute that the vehicle, bearing registration No. HP-69A- 1263, was owned by respondent No. 4-Shri Puran Chand, and on 30.01.2013, at

around 10:30 p.m., due to the rash and negligent driving of said Shri Puran Chand, the aforesaid vehicle met with an accident near village Bhira, Police Station Sadar, District Hamirpur, H.P. and the predecessor-in-interest of the claimants, namely Shri Arun Kumar had died in the accident in question.

15. It is not in dispute that as per Form No. 21 (Sale Certificate), the vehicle in question was sold by the authorized dealer on 30.08.2012 and the appellant-insurance company had insured the vehicle at the time of its purchase from the authorized dealer on the basis of the particulars furnished in the sale certificate in Form No. 21, roadworthiness certificate in form No. 22 and temporary registration number. The insurance policy was valid w.e.f. 30.08.2012 to 29.08.2013. As per the Motor Vehicles Act, the vehicle sold unregistered has to be registered with the Regional Transport Authority within a period of one month. It is also not in dispute that the vehicle in question was not registered within thirty days, i.e., before the expiry of the temporary registration certificate and it was registered only on 16.02.2013, as per the registration certificate, which is placed on record as Ex. RW-2/B. It is also not in dispute that the vehicle in question met with an accident on 30.01.2013, therefore, it has become clear that on the date of the accident, the vehicle was being plied on the road without any registration certificate.

16. Section 39 of the Act provides for necessity for registration which reads as under: “39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

17. Thus, Section 39 of the Motor Vehicles Act, 1988, prescribes that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter-IV of the Act and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries unless the vehicle is registered and the vehicle shall carry a registration mark displayed in the prescribed manner. Now, the question, which arises for consideration before this court is as to whether plying of the vehicle without any registration certificate would amount to fundamental breach, as contended by the learned Senior Counsel for the insurance company. This question had come up for consideration before the Hon’ble Apex Court in Narinder Singh vs. New India Assurance Company Limited & others, 2014 (9) SCC 3024, wherein it has been held as under:

“11. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

12. Indisputably, a temporary registration was granted in respect of the vehicle in question,

which had expired on 11.1.2006 and the alleged accident took place on 22.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

18. In the case in hand, temporary registration was granted with respect to the vehicle in question on 30.08.2012, which had expired on 29.09.2012. The accident took place on 30.01.2013 when the offending vehicle was being plied on the public road without any registration certificate. Admittedly, the vehicle in question was got registered on 16.02.2013, as per the registration certificate, Ex.

RW-2/B. Respondent No. 4 i.e. the owner of the vehicle has not provided any material on record to show that before or after 29.08.2012 when the period of temporary registration expired, he had either applied for permanent registration of the vehicle, as provided under Section 39 of the Act or moved any application for extension of period of temporary registration on the ground of some special reasons. Therefore, the perusal of the record makes it clear that on the date of the accident, the vehicle in question was being plied without any registration certificate. Thus, in view of the aforesaid judgment of the Hon'ble Supreme Court, since the vehicle was being plied without any registration certificate, it is not only an offence punishable under Section 192 of the Act, but also a fundamental breach of the insurance policy. Hence, it can safely be held that the offending vehicle was being plied by respondent No. 2, i.e., its owner-cum-driver in violation of terms and conditions of Insurance Policy as such the findings of the learned Tribunal below on this aspect deserve to be set-aside.

19. The learned counsel for the claimants contended that the impugned award passed by the learned Tribunal below deserves to be modified on the ground that the learned Tribunal below had wrongly deducted 1/3rd out of the total yearly income towards the personal expenses of deceased, keeping in view the fact that there are only three dependents, whereas at the time of the accident there were four dependents, as the father of the deceased had died during the pendency of the present petition before the learned Tribunal below and in such view of the matter 1/4th of the amount should have been deducted out of the total yearly income towards the personal expenses of the deceased.

20. In Kirti & another vs. Oriental Insurance Company Limited, (2021) 2 Supreme Court Cases 166, it has been held as under: "I. Deduction for personal expenses 9. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallize at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the

parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law."

21. In the instant case too, admittedly, at the time of the accident, there were four dependents of the deceased, i.e., his widow, daughter, son and father but the father of the deceased had died during the pendency of the claim petition. Therefore, in view of the law laid down by Hon'ble Supreme Court, the subsequent death of father of the deceased during the pendency of the claim petition before the learned Tribunal below cannot be a reason for reduction of the compensation.

22. In Sarla Verma & others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was married, the

deduction towards personal and living expenses of the deceased should be one- third where the number of dependent family members is 2 to 3; onefourth where

the number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceeds 6. 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.

23. Since there were four family members who were dependent upon the income of the deceased at the time of accident, 1/4th of his income is required to be deducted towards personal and living expenses, in view of the law laid down by the Hon'ble Supreme Court in Kirti's case (supra). The learned Tribunal below has assessed the income of the deceased as Rs.1,75,225/- and while computing the future prospects @ 25%, the income of the deceased was taken as Rs.2,19,000/- per annum. Thus, after the deduction of 1/4th of the income towards the personal expenses of the deceased, his contribution to family comes out to Rs.1,64,250/- (2,19,000/- - 54,750/-) per annum.

24. In Sarla Verma's case (supra), it has further been held by the Hon'ble Supreme Court 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. The relevant portion of the aforesaid judgment is as under:- '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, M16 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."

25. Since the deceased was 46 years of age, as such by applying the multiplier of '13' as per the settled law, the compensation under the head, loss of dependency is re-fixed as Rs.21,35,250/- (1,64,250/- x 13).

26. Now, coming to the last aspect, i.e., the conventional heads. The learned counsel for the claimants contended that the Tribunal below has not awarded the amount on account of filial consortium in favour of the father of the

deceased, whereas, as per the law laid down by the Hon'ble Apex Court, it should have been awarded.He further contended that while awarding the amount under the heads, i.e., loss of estate, funeral expenses, parental consortium and spousal consortium, the learned Tribunal below had not taken the increase @ 10% after every three years.

27. In National Insurance Company Limited vs. Pranay Sethi & others, (2017) 16 SCC 680, the Hon'ble Supreme Court has held that for the conventional heads, namely, "Loss of Estate", "Loss of Consortium" and "Funeral Expenses" amount of compensation is fixed as Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively and the aforesaid figures quantified by the Apex Court have to be enhanced on percentage basis, at the rate of 10%, in a span of every three years. The relevant portion of the aforesaid judgment is as under:

"52. .... It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

28. In Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 Supreme Court Cases 130, the Hon'ble Supreme Court has laid down that consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. The relevant portion of the aforesaid judgement reads as under:

"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is general defined as rights pertaining to the relationship of a husband-wife which allows compensation o the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and taining”.

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of love, affection, care and companionship of the deceased child.”

29. Having taken note of the aforesaid judgment rendered by the Hon’ble Apex Court in Magma General Insurance’s case (supra), the Hon’ble Apex Court in its judgment passed in New India Assurance Company Limited vs. Somwati & others alongwith other matters, (2020) 9 Supreme Court Cases 644, has held as under:

“34. The Constitution Bench in Pranay Sethi has also not under conventional head included any compensation towards ‘loss of love and affection’ which have been now further reiterated by three-Judge Bench in United India Insurance Company Ltd. (supra). It is thus now authoritatively well settled that no compensation can be awarded under the head ‘loss of lve and affection’.

35. The word ‘consortium’ has been defined in Black’s law Dictionary, 10th edition. The Black’s law dictionary also simultaneously notices the filial consortium, parental consortium and spousal consortium in following manner: “Consortium 1. The benefits that one person, esp. A spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium. Filial consortium A child’s society, affection, and companionship given to a parent. Parental consortium A parent’s society, affection and companionship given to a child. Spousal consortium A spouse’s society, affection and companionship given to the other spouse.”

36. In Magma General Insurance Company Ltd. (supra) as well as United India Insurance Company Ltd. (supra), Three-Judge Bench laid down that 54 Latest Himachal Law Judgments 2025

the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In paragraph 87 of United India Insurance Company Ltd. (supra), ‘consortium’ to all the three claimants was thus awarded. Paragraph 87 is quoted below: “87. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi

(supra) and Magma General (supra), the following amounts are awarded under the conventional heads:

i) Loss of estate: Rs.15,000

ii) Loss of consortium:

a) Spousal consortium: Rs.40,000

b) Parental consortium: 40,000x3=Rs.1,20,000

iii) Funeral expenses: Rs.15,000”

37. Learned counsel for the appellant has submitted that Pranay Sethi has only referred to spousal consortium and no other consortium was referred to in the judgment of Pranay Sethi, hence there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in Pranay Sethi has referred to amount of Rs.40,000/- to the ‘loss of consortium’ but the Constitution Bench had not addressed the issue as to whether consortium of Rs.40,000/- is only payable as spousal consortium. The judgment of Pranay Sethi cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.

38. The Three-judge Bench in United India Insurance Company Ltd. (supra) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.

39. We, thus, found the impugned judgments of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however, accept the submissions of learned counsel for the appellant that there is no justification for award of compensation under separate head ‘loss of love and affection’. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head ‘loss of love and affection’.”

30. Accordingly, in view of the law laid down by the Hon’ble Apex Court, as above, and by taking the increase @ 10%, after every three years, under the conventional heads, the petitioners are entitled to Rs.19,965/-, for loss of estate, Rs.19,965/- as funeral expenses, petitioner No. 1, i.e., the widow of the deceased is entitled to Rs.53,240/- towards loss of spousal consortium, petitioners No. 2 and 3, i.e., daughter and son are entitled to Rs.53,240/- each as parental consortium 2025 Neelam Kapoor & Others V/s Shri Puran Chand & another 55

and his father (since deceased) was entitled to Rs.53,240/- as filial consortium. Accordingly, the total amount of compensation is worked out as under:

Head Amount

(i) Loss of dependency Rs.21,35,250/-

(ii) Funeral expenses Rs.19,965/-

(iii) Loss of estate Rs.19,965/-

(iv) Spousal consortium Rs.53,240/-(payable to petitioner No.1)

(v) Filial consortium Rs.53,240/- (payable to father [since deceased])

(vi) Parental consortium Rs.1,06,480/- (Rs.53,240/- each payable to petitioners No. 2 & 3) Total compensation awarded: Rs.23,88,140/-

31. Now, the next question, which arises for consideration before this court is as to who shall be liable to pay the amount of compensation to the claimants. It has been held by the Hon'ble Supreme Court that in order to provide immediate relief to the claimants, the Tribunal, even, where it finds that the insurer may escape the liability to pay the compensation, may ask the Insurance Company to pay compensation to the claimants and ask it to recover the compensation so paid from the insured. In National Insurance Co. Ltd. v. Swaran Singh, 2004 (3) SCC 297, the Hon'ble Apex Court held that in case of a third party claim, the insurance company has the statutory liability to satisfy the judgment in the first instance and then to recover the same from the owner and driver. The relevant portion of the aforesaid judgement reads as under:-

"73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favor of a third party is also statutory. Xxx

77. In United Insurance Co. Ltd. v. Jaimy and Ors. 1998 ACJ 1318 (Ker.) it is stated: (ACJ pp.1324- 25, paras 19-22) "Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer in respect of any judgment or award. In the context it is proved that an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) as to under what circumstances this can be successfully recovered from the insured.

Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned and it is precisely enacted in regard thereto that the liability covered by Section 2(b) as is required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person. In other words, section 149(4) considers the right of the insurance company in regard to re- imbursement of the amount paid by them only in the context of a situation other than the one contemplated under Section 149(2)(b). It would mean that except under the situation provided 593/2008, 596/2008 & 598/2008 by Section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got

rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations under section 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasize that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company."

(Emphasis supplied) xxx

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub- section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in 593/2008, 596/2008 & 598/2008 negative language may now be noticed. The said provision must be read with

sub-section (1) thereof. The right to avoid liability in terms of sub- section (2) of Section 149 is restricted as has been discussed

hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defense but it is another thing to say that despite the fact that its defense has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

xxx Conclusion

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time."

32. In United India Insurance Company Ltd. vs. Lehru & Ors., (2003) 3 SCC 338 which was noted in Swaran Singh’s case (Supra) it was held that even in the case where a willful breach on the part of the insured is established, the Insurance Company would remain liable to the third

parties. But, it may be able to recover the amount paid from the insured. The relevant portion of the judgement is reproduced hereunder:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver was a driving license. If the driver produces a 593/2008, 596/2008 & 598/2008 driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149

(2) (a) (ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the license was fake, the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the license was fake and still permitted that person to drive. More importantly, even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654; Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; and New India Assurance Company Ltd. v. Kamla, (2001) 4 SCC 342. We are in full agreement with the views expressed therein and see no reason to take a different view."

(Emphasis supplied)

33. In Kusum Lata v. Satveer, (2011) 3 SCC 646, the Hon'ble Apex Court, the Hon'ble Supreme Court has observed as under:-

"13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the Insurance Company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three judge Bench of this Court in the case of National Insurance Company Limited v. Swaran Singh and ors reported in (2004) 3 SCC 297".

34. In Amrit Paul Singh & another vs. Tata AIG General Insurance Company Limited & others, (2018) 7 Supreme Court Cases 558, Hon'ble Supreme Court has again put a seal of approval on the principles laid down in Swaran Singh's case (supra) and it has been held as under:

"16. The Court held that if, on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possession the requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. That apart, minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to third parties. The other category of cases that the Court addressed to included cases where the licence of the driver is found to be fake. In that context, the Court expressed its general agreement with United India Insurance Co. Ltd. v. Lehru (2003 (3) SCC 338) and stated thus:

(Swaran Singh Case (National Insurance Co. Ltd. vs. Swaran Singh, (2004) 3 SCC 297) p. 337, para 92)

“92. ...In Lehru case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. ...”

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of

licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh and Lakhmi Chand in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh and other cases pertaining to pay and recover principle.”

35. In view of what has been discussed hereinabove, the appeals filed by the claimants as well as insurance company are allowed. The impugned award stands modified and the petitioners-claimants are held entitled for compensation in the sum of Rs.23,88,140/-along with interest @ 6 % per annum from the date of filing of the petition till realization of the entire amount of compensation. The respondent No. 4 herein (in FAO No. 239 of 2023), i.e., owner-cum-driver of the vehicle in question is held liable to pay the amount of compensation. However, as the vehicle in question was duly insured at the time of accident and being a third party liability, the appellant Insurance Company is directed to satisfy the award in the first instance & pay it to the claimants, where after the insurance company shall be entitled to recover the same from respondent No. 4, i.e., owner-cum-driver of the vehicle in question. The remaining terms of the impugned award, shall remain the same. The appeals stand disposed of in the above terms, so also the pending applications, if any.