

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No.500/2009

c/w

MA No.516/2009

Reserved on: 30.01.2026

Pronounced on: 13.02.2026

Uploaded on: 13.02.2026

MA No.500/2016

The Oriental Insurance Company Ltd.
Divisional Office No.1, Town Hall Building, Jammu
Through its Sr. Divisional Manager, Dr. R.K.Dupper, Age 48 years
....Appellant(s)

Through:- Mr. Amrit Sarin, Advocate

Versus

1. Prem Gupta S/o Late Chander Parkash Gupta
R/o 51 C/C Gandhi Nagar, Jammu
2. Madan Lal S/o Sardari Lal Gupta
R/o H.No.391, Gandhi Nagar, Jammu
3. Kulvinder Singh S/o Santokh Singh
R/o Sarore Adda, Samba
4. Sukhvinder Singh @ Buntoo S/o Dhian Singh
Caste Labana Sikh r/o Sunjwan, Vijaypur,
Tehsil and District Samba
...Respondent(s)
5. The New India Assurance Co. Ltd.
B.O. College Road, Kathua Through I/C
Branch Manager (Insurer of Bus No.JK08-7129).
....Proforma respondent(s)

Through:- Mr. Raghu Mehta, Advocate for R-1

MA No.516/2009

Prem Gupta S/o Late Chander Parkash Gupta
R/o 51 C/C Gandhi Nagar, Jammu

....Appellant(s)

Through:- Mr. Raghu Mehta, Advocate

Versus

1. The Oriental Insurance Company Ltd.
B.O. Canal Road, Jammu through its I/C Branch Manager
(Insurer of Bus No.JK02X-1731)
2. Madan Lal S/o Sardari Lal Gupta
R/o H.No.391, Gandhi Nagar, Jammu
(Owner of the Bus No.JK02X-1731)
3. Kulvinder Singh S/o Santokh Singh
R/o Sarore Adda, Samba District Samba
(Owner of Bus No.JK02X-1731)
4. Sukhvinder Singh @ Buntoo S/o Dhian Singh
Caste Labana Sikh r/o Sunjwan, Vijaypur,
Tehsil and District Samba (Driver of the Bus NO.JK02X-1731)
5. The New India Assurance Co. Ltd.
B.O. College Road, Kathua Through its I/C
Branch Manager (Insurer of Bus No.JK08-7129)
6. Ravinder Singh S/o Sh. Jagdev Singh R/o Village Billawar,
Tehsil Billawar District Kathua
(Owner of the Bus No.JK02-7129)
7. Nardev Singh S/o Sh. Isher Singh R/o village Tilla,
Tehsil Billawar District Kathua
(Driver of the Bus No.JK08-71209)

...Respondent(s)

Through:- Mr. Amrit Sarin, Advocate for R-1

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

MA No.500/2019

1. This is an appeal against the award dated 13th August, 2009 passed by the Motor Accident Claims Tribunal, Jammu [“the Tribunal”] in file No.707/Claim titled Prem Gupta v. Oriental Insurance Company Limited and others, whereby the Tribunal has awarded a compensation of Rs.2,22,024/- minus the interim compensation, if any received by respondent No.1, along with interest @ 7.5% per annum and the appellant-Insurance Company along with respondent No.5-New India Assurance Company have been directed to satisfy the award. The Oriental Insurance Company alone has chosen to file appeal whereas respondent No.5-New India Assurance Company has accepted the award.

MA No.516/2009

2. This is an appeal by the claimant-Prem Gupta seeking enhancement of compensation awarded by the Tribunal, in terms of the impugned award dated 13.08.2009 passed in file No.707/Claim titled Prem Gupta v. Oriental Insurance Limited and others.
3. Having regard to the fact that both these appeals arise out of an award dated 13th August, 2009, passed in claim petition titled Prem Gupta v. Oriental Insurance Company Ltd. and others, as such, are taken up for consideration and disposal together.

Factual Matrix

4. On 01.11.2007, at about 9 am the deceased Neelam Gupta, the wife of respondent No.1 (Claimant) along with few others was travelling in a Maruti Car bearing Registration No.JK02M-0615 from Jammu to Dharmshalla. The deceased along with others met with an accident near Berero Khad near Barian Camp Supwal Tehsil and District Samba, when it was crushed between two offending busses bearing Registration Nos.JK02X-1731 and JK028-7129, which were coming from opposite direction in high speed driven by their drivers in rash and negligent manner. The wife of respondent No.1-claimant died on spot.
5. With a view to claiming compensation under the Motor Vehicles Act, 1988 [“the Act”], respondent No.1 filed a claim petition before the Tribunal seeking a total compensation of Rs.37 lakh along with interest @ 12%. The claim petition was inter alia contested by the appellant-Insurance Company. On the basis of the pleadings of the parties, following issues were framed in all the claim petitions arising out of the accident, including the claim petition under consideration:

- “1. Whether an accident occurred on 1.-11-2007 at Barero Khad near Baria Camp Supwal Tehsil and District Samba by involvement of two vehicles No.JK08 7129 and No.JK02X 1731 being driven in the hands of respective drivers in which deceased namely Anil Sharma, Neelam Gupta, N.D.Gupta and Sushil Gupta received fatal injuries?
OPP

2. If issue No.1 is proved in affirmative, whether petitioners in each case are entitled to the compensation; if so to what amount and from whom? OPP
 3. Whether drivers of both vehicles at the time of accident was not holding valid and effective driving license and drove the vehicles in contravention of terms and conditions of policy of insurance, RC, route permit and fitness? OPR 1 and 5
 4. Whether accident has occurred by the contributory negligence by the drivers of both vehicles, if so how and what is its effect? OPR 1 & 5
 5. Whether claim petition are bad for misjoinder of parties, if so how? OPR 5
 6. Whether on the date of accident vehicle No.JK02X 1731 had been transferred by the erstwhile owner, if so how and what it its effect? OPR 1
 7. Relief. O.P. Parties.”
6. With a view to discharge the burden of proof, the respondent-complainant examined himself and Pw-J.S.Kudian, an employee of the Income Tax Department. On the basis of the evidence that was led by the parties including respondent No.1 herein, issue No.1, 3, 4, 5 and 6 have been decided in favour of the claimants and against the Insurance Companies.
7. So far as issue No.2 is concerned, which pertains to the entitlement of the respondent-claimant to compensation, the Tribunal having considered the statements of claimant-Prem Gupta and PW-J.S.Kudian, came to the conclusion that the respondent-claimant had failed to prove the actual income of the deceased-Neelam Gupta at the time of accident and, accordingly, fixed Rs.4,000/- per month as notional income of the deceased

and computed the compensation payable to the respondent. The respondent was held entitled to Rs.2,22,024/- along with interest @ 7.5% per annum from the date of filing of the claim petition till liquidation.

8. Insofar as the appeal of the Insurance Company is concerned, I do not find any substantial ground urged to find fault with the impugned award passed by the Tribunal.
9. It is submitted by Mr. Amrit Sarin, learned counsel appearing for the Insurance-Company, that the Tribunal did not appreciate that the respondent-claimant had miserably failed to indicate and demonstrate the source of income, which was reflected in the income tax return of the deceased for the assessment year 2007-2008. He, however, did not dispute the amount of compensation granted on other aspects.
10. *Per contra*, Mr. Raghu Mehta, learned counsel appearing for the respondent-claimant, who has also filed a separate appeal, seeks enhancement of compensation on the ground that respondent No.1-claimant has sufficiently proved that the annual income of the deceased in the assessment year 2007-08 was Rs.2,71,747/-, which was recorded in the Income Tax Return filed by the deceased and proved before the Tribunal by examining PW-J.S.Kudian, an employee of the Income Tax Department. It is also the case of the respondent-claimant that while computing

compensation payable to him, the Tribunal did not apply the correct multiplier, which, in the instant case, was 9 keeping in view the age of the deceased as 57 years. The enhancement of compensation is also sought on the ground that having regard to the age of the deceased, there ought to have been increase in the income of the deceased on account of future prospects, which in the instant case would 10% of the annual income.

11. Having heard learned counsel for the parties and perused material on record, I am of the considered opinion that the appeal of the Insurance Company, which is devoid of any merit, deserves to be dismissed. The only plea taken by Mr. Amrit Sarin, leaned counsel for the Insurance Company, to assail the award is that, though, the respondent-claimant has proved the income of the deceased by placing on record and proving the Income Tax Return for the relevant year, yet he failed to demonstrate the source of income earned by the deceased. The plea taken is without substance and cannot be accepted.

12. Neither this court hearing appeal nor the tribunal could have gone into the source of income of the deceased, which was duly recorded in the ITR filed by her with the Income Tax authorities. That apart, there is ample evidence on record to show that she was a partner in a business firm by the name of M/s Chander Parkash Prem Kumar and had been earning income from the

aforesaid business. There is no evidence in rebuttal led by the Insurance Company to doubt the correctness of the income or Income Tax Return submitted by respondent-claimant. We, however, find substance in the submission of Mr. Mehta, learned counsel appearing for the respondent-claimant, that the Tribunal has failed to take into consideration the actual income of the deceased at the time of accident. The Tribunal has also not applied the relevant multiplier to workout fair and just compensation, which in the instant case is 9. Amount granted on account of consortium is also required to be modified in terms of the **National Insurance Company Ltd. v. Pranay Sethi and others.**

13. For all these reasons, I hold the respondent-claimant entitled to following amount of compensation:-

- i) Taking the annual income of the deceased as Rs.2,71,747/-, making an addition of 10% in terms of **National Insurance Company Ltd. v. Pranay Sethi and others, (2017) 16 SCC 680**, annual loss of comes to $(2,71,747 + 27,175) = \text{Rs.}2,98,922$. Deducting 50% towards her personal expenses (deceased has left behind only one dependent), the total annual loss of income would be Rs.1,49,461.00. Applying the multiplier of 9, as per **Sarla Verma and others v. Delhi Transport Corp. and anr (2009) 6 SCC 121**, the total loss of income comes to $(1,49,461 \times 9) \text{ Rs.}13,45,149/-$.

Under conventional heads, the claimant shall be entitled to

i) *Funeral expenses* : 15,000/-

ii) *Loss of consortium* : Rs.40,000/-

Total : **Rs.14,00,149/-**

The aforesaid amount minus the amount already received shall become payable to the respondent No.1-claimant with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. The Insurance Company shall satisfy the modified award and deposit the balance amount before the Registry of this Court. The Registry shall release the amount in terms of the modified award in favour of the claimant after verification and identification.

The award passed by the tribunal is modified to the aforesaid extent and the appeal of the respondent-claimant shall stand disposed of. The appeal of Insurance Company is, however, dismissed.

(Sanjeev Kumar)
Judge

JAMMU
13.02.2026
Vinod, Secy

Whether the order is speaking : Yes
Whether the order is reportable: Yes

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