

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**  
**FAO (MV) No. 150 of 2025**  
**Decided on: 06.04.2026**

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Virender Kumar Walia (deceased) through LRs  
.....Appellants

Versus

Sheela Devi & Ors. ....Respondents

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*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup> *Whether approved for reporting?*

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For the appellants:

Ms. Shalini Thakur, Advocate.

For the respondents:

Mr. Upasna Thakur, Advocate, vice  
Mr. Karan Singh Kanwar,  
Advocate, for respondents No. 1  
to 4.

Mr. Munish Kumar and Ms.  
Raksha Thakur, Advocates, vice  
Mr. Jagdish Thakur, Advocate, for  
respondent No. 6.

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**Sushil Kukreja, Judge** (oral)

By way of instant appeal, the appellants, who were respondents No. 1(A) and 1(B) before the learned Tribunal below, are laying challenge to the award, dated 20.12.2024, passed by learned Motor Accident Claims Tribunal-II, Nahan, District Sirmaur, H.P., in Petition No. 105-N/2 of 2019, whereby the claim petition filed by the claimants was allowed.

2. The perusal of the record reveals that respondent No. 5, Sahi Ram, has expired on 13.11.2020, i.e. during the

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment? yes*

pendency of the claim petition before the learned Tribunal below, whereas, the impugned award was passed by the learned Tribunal below on 20.12.2024. The award, therefore, has been passed by the learned Tribunal below without taking note of the death of respondent No. 5. The impugned award, therefore, admittedly is against a dead person, i.e., respondent No. 5, Sahi Ram. There is no quarrel so as to the fact that respondent No. 5 has expired well before hearing arguments in the claim petition by the learned Tribunal below. No doubt, application, i.e. CMP(M) No. 2274 of 2025, for bringing on record the legal representatives of respondent No. 5, Sahi Ram has been filed in the present appeal, however, whether the appeal on his death stands abated for want of consequential steps is a question to be gone into and determined by learned Tribunal below.

3. It is settled proposition of law that where a party dies in a pending suit/appeal and judgment/decree is passed in ignorance to such death, the question of substitution of his/her legal heirs and setting aside the abatement, if any, can only be considered by the Court, before whom the suit/appeal was pending at that time.

4. In ***Jagan Nath and others*** versus ***Smt. Ishwari Devi***, 1988 (2) Shimla Law Cases 273, it has been held that the question of substitution of legal representatives of a deceased

party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party, the lis was pending. Paragraph 6 of the aforesaid judgment reads as under:-

*“6. The fact that one of the several defendant-appellants against whom an indivisible decree was passed by the trial Court, had died during the pendency of the appeal before the lower appellate court, and steps to bring his legal representatives on the record of the appeal had not been taken within the prescribed period, being undisputed, it must be held that the appeal had already abated prior to the decision of the lower appellate court dated April 9, 1987. The decree of the lower appellate court was thus a nullity as it had been passed also against a dead person. The legal position is not in dispute. What is the course which should normally be adopted in a situation like this, has been succinctly stated in the decision of the Calcutta High Court in Kanailal’s case (supra). It was observed by the Division Bench, after noticing the decisions of various High Courts and the Supreme Court, that:*

*..... In such circumstances, in our opinion the uniform procedure followed by the other High Courts as referred to hereinbefore should be accepted, namely, the ineffective decree passed by the court of appeal below should be set aside and the appeal should be remanded to the said court, keeping it open to the appellants to move the said court for an opportunity to have the abatement set aside if the appellants could satisfy the said court that they are so entitled in law.....*

*I am in entire agreement with the aforesaid observations.”*

5. Further in ***Karam Chand and others*** versus ***Bakshi Ram and others***, 2002 (1) Shimla Law Cases 9, it has again been held that as and when the questions with respect to substitution of legal heirs of deceased party and abatement of the suit or appeal for want of consequential steps, arise in relation to a suit or appeal, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party.

Relevant paragraphs of the aforesaid judgment read as under:

*"4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlen Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:*

*(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;*

*(ii) Whether the abatement should be set aside or not; and*

*(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?*

*5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place"*

6. Similarly, the apex Court in ***Kishun @ Ram Kishun*** versus ***Bihari***, AIR 2005 Supreme Court 3799, has held that a judgment against or in favour of a dead person is nullity.

7. In the present case, respondent No. 5, Sahi Ram died when the appeal was pending before the learned Tribunal below, hence the question of substitution of his legal heirs and setting aside the abatement, if any, was to be decided by the same Court. Accordingly, the impugned award dated 20.12.2024 is set aside and the case is remanded back to the learned Tribunal below with a direction to decide the question of substitution of legal representatives of respondent No. 5, Sahi Ram and setting aside the abatement, if any, after affording due opportunity of being heard to the parties and thereafter dispose of the claim petition afresh on merits. The parties through learned counsel representing them are directed to appear before learned Motor Accident Claims Tribunal-II, Nahan, District Sirmaur, H.P., on **06.05.2026**.

8. Since the accident pertains to the year, 2019, learned Tribunal below is directed to dispose of the claim petition on or before **31.10.2026**.

9. The appeal is disposed of in the aforesaid terms. Pending application(s), if any, also stands disposed of.

**( Sushil Kukreja )  
Judge**

**April 06, 2026**  
(raman)