

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Mac App No. 34/2020

Date of pronouncement: 27.07.2026

Date of uploading: 28.07.2026

New India Assurance Co. Ltd.

.....Appellant

Through :- Mr. Jugal Kishore, Advocate.
v/s

Sh. Mikhtiar Chand & Ors.

.....Respondents

Through :- Mr. Ashwani Gupta, Advocate for R-
3.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
27.07.2026

1. Before advertng to the merits of the present appeal, it is apposite to briefly notice the factual background leading to its institution. According to the claimant, on 25.03.2012, the deceased was travelling in a bus bearing registration No. JK02AS-8905 from Delhi to Jammu when the said bus collided with a truck bearing registration No. HP69A-5623. The accident is stated to have occurred due to the rash and negligent driving of the truck-driver, resulting in the death of the deceased.

2. Upon consideration of the claim petition, the Motor Accident Claims Tribunal, Samba (hereinafter referred to as "the Tribunal"), allowed the claim and awarded compensation of ₹5,02,000/- along with interest at the rate of 7.5% per annum. The Tribunal further directed respondent No. 3, namely the appellant herein, New India Assurance Company Ltd., to satisfy the award on the premise that the offending vehicle was insured with it.

3. Aggrieved by the aforesaid award, the appellant has preferred the present appeal primarily on the ground that the Tribunal has erroneously fastened the liability upon it. According to the appellant, the offending truck bearing registration No. HP69A-5623 was never insured with the appellant but was, in fact, insured with respondent No. 7, namely United India Insurance Company Ltd.

4. It is further contended that even at the stage when the Tribunal passed the interim award under the principle of no-fault liability, the appellant had specifically brought this factual error to the notice of the Tribunal by moving an application seeking correction of the interim award dated 08.04.2015, whereby the appellant had been wrongly directed to satisfy the award. The appellant had also sought appropriate relief with regard to the erroneous fastening of liability.

5. The appellant had, in its written statement before the Tribunal, categorically pleaded that it had insured vehicle bearing registration No. JK02AS-890 and not the offending truck bearing registration No. HP69A-5623. The evidence led before the Tribunal, including the testimony of the witnesses, consistently established that the accident had occurred due to the negligent driving of the truck bearing registration No. HP69A-5623.

6. A perusal of the impugned award reveals an apparent error inasmuch as the Tribunal has erroneously fastened the liability upon the appellant. The liability to satisfy the award ought to have been fastened upon respondent No. 7, United India

Insurance Company Ltd., being the insurer of the offending truck at the relevant point of time.

7. Despite due service, none has appeared on behalf of respondent No. 7, United India Insurance Company Ltd., to contest the present appeal. Although represented through counsel earlier, respondent No. 7 has chosen not to contest the proceedings.

8. In order to effectively adjudicate upon the present appeal, this Court has carefully examined the record of the Tribunal. It transpires therefrom that, by virtue of the interim award dated 08.04.2015 passed under the principle of no-fault liability, the Tribunal had erroneously directed the appellant–New India Assurance Company Ltd. to satisfy the interim award. Aggrieved thereby, the appellant filed an application on 21.10.2015 seeking correction of the said order, specifically praying that the liability be fastened upon respondent No. 6 before the Tribunal, namely United India Insurance Company Ltd., being the insurer of the offending vehicle. Accepting the said contention, the Tribunal, by order dated 21.10.2015, directed respondent No. 6 to satisfy the interim award. Thereafter, the appellant also moved an application seeking its deletion from the array of parties on the ground that it was neither the insurer of the offending vehicle nor a necessary party to the proceedings. However, despite objections having been filed, the said application remained undecided.

9. The record further reveals that FIR No. 98/2012 was registered at Police Station, Garota. Upon completion of the investigation, the final police report attributed criminal liability to

the driver of the truck bearing registration No. HP69A-5623, thereby identifying the said truck as the offending vehicle.

10. The oral evidence adduced before the Tribunal also supports the aforesaid position. The claimant's witness, Mukhtiar Chand, unequivocally deposed that the accident had occurred due to the rash and negligent driving of the truck. The said witness reiterated the same position during cross-examination. The final police report is also consistent with the oral evidence in identifying the truck as the offending vehicle responsible for the accident.

11. It is an admitted position on record that the offending truck was not insured with the appellant. Rather, it stood insured with respondent No. 6 before the Tribunal, namely United India Insurance Company Ltd. It was in recognition of this undisputed factual position that the Tribunal corrected its earlier interim order by directing respondent No. 6 to satisfy the interim award instead of the appellant.

12. Curiously, while passing the final award, the Tribunal proceeded on the erroneous assumption that the offending vehicle was insured with respondent No. 3, namely the appellant herein, thereby overlooking its own earlier order dated 21.10.2015, whereby the liability under the interim award had already been shifted to respondent No. 6.

13. Significantly, the order dated 21.10.2015, whereby the liability to satisfy the interim award was fastened upon respondent No. 7, was never challenged by the said respondent at any stage of the proceedings. Consequently, the said finding attained finality and

constituted a relevant circumstance which the Tribunal ought to have borne in mind while rendering the final award.

14. The record further demonstrates that despite the appellant having consistently pleaded that it was not the insurer of the offending vehicle and having sought deletion from the array of parties, the Tribunal failed to decide the said application. This omission ultimately resulted in an erroneous fastening of liability upon the appellant. The undisputed factual position before the Tribunal was that the offending vehicle was the truck bearing registration No. HP69A-5623 and not the bus bearing registration No. JK02AS-8905 in which the deceased was travelling at the time of the accident.

15. There is yet another significant aspect which escaped the attention of the Tribunal. The claim petition had been instituted against as many as six respondents, including the owners and drivers of both the vehicles involved in the accident. However, while deciding Issue No. 1, the Tribunal failed to return a categorical finding as to which of the two vehicles constituted the offending vehicle. Equally, the Tribunal did not examine whether the circumstances of the case disclosed any element of contributory negligence on the part of either vehicle. The finding recorded on Issue No. 1 appears to have been rendered mechanically, without a proper appreciation of the pleadings and evidence on record. Such an approach has resulted in serious prejudice to the appellant, which had consistently maintained throughout the proceedings that it could not be saddled with the liability to satisfy the award, the

offending vehicle having admittedly been insured with respondent No. 7 herein, namely United India Insurance Company Ltd.

16. In view of the foregoing discussion, this Court is satisfied that the impugned award, to the extent it fastens liability upon the appellant, cannot be sustained. Accordingly, the appeal deserves to succeed and is, therefore, allowed.

17. Consequently, the impugned award shall stand modified to the extent that the liability to satisfy the award shall be on respondent No. 7 herein (respondent No. 6) before the Tribunal), namely United India Insurance Company Ltd., being the insurer of the offending truck bearing registration No. HP69A-5623. The amount, if any, deposited by the appellant before this Court shall be returned back forthwith and Tribunal shall proceed to recover the awarded amount with interest throughout from respondent No. 7 (United India Insurance Co Ltd) and pay to the claimants in apropos to its satisfaction. A copy of this judgment be transmitted to the Tribunal for information and necessary compliance.

18. The appeal is, accordingly, **disposed of** along with all pending applications, if any.

(Sanjay Parihar)
Judge

JAMMU
27.07.2026
Sneha

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes