

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MV) No.192 of 2013

Reserved on: 20.06.2026

Date of decision:08.07.2026

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Oriental Insurance Company Limited

...Appellant

Versus

Sarita Devi and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant: Mr. Deepak Gupta, Advocate.

For the respondents: Mr. Maan Singh, Advocate, for respondents No.1, 2, 3(i) & 3(ii).
Mr. P.P. Chauhan, Advocate, for respondent No.4.

Sushil Kukreja, Judge

The instant appeal is preferred by the appellant/ Oriental Insurance Company (hereinafter referred to as the appellant), under Section 173 of the Motor Vehicles Act (for short "MV Act"), against the award dated 19.02.2013, passed by the learned Motor Accident Claims Tribunal, Kullu, District Kullu, HP, in Claim Petition No.39 of 2011, with a prayer to quash and set aside the impugned award.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

2. Brief facts of the case giving rise to present appeal are that respondents No.1 to 3/petitioners (hereinafter referred to as the petitioners) filed a claim petition under Section 166 of MV Act, whereby they sought compensation to the tune of Rs.60,00,000/- on account of death of Dinesh Kumar, who was husband of petitioner No.1, father of petitioner No.2 and son of petitioner No.3 [now deceased, through her legal heirs, i.e. respondents No.3(i) & 3(ii) herein]. It was averred by the petitioners that on 16.10.2021, when Dinesh Kumar was waiting for a bus on the side of the road at place Dobhi, then at about 7:30 PM, a motorcycle bearing registration No.HP-34A-1261 came, being driven by respondent No.1-Duni Chand in a rash and negligent manner and struck against said Dinesh Kumar, as a result of which, he fell down on the road and sustained multiple injuries. He was taken to Regional Hospital, Kullu, where he was declared brought dead.

3. As per the petitioners, at the time of his death, the deceased was 37 years old, he was serving as Assistant Audit Officer, AG, Shimla and was drawing a monthly salary of Rs.31,806/-. He was also looking after his agriculture work and managing household affairs. The offending vehicle was owned by

respondent No.1-Duni Chand and it was insured with Oriental Insurance Company (appellant herein). It was also submitted that the deceased was the only earning member in the family. Hence, they sought compensation to the tune of Rs.60,00,000/-.

4. The owner-cum-driver of the offending vehicle, in his reply to the claim petition, averred that the accident had taken place due to the negligence on the part of deceased Dinesh Kumar himself, who suddenly came in front of the motorcycle in a hasty manner and struck against it and met with the accident. It was further averred that the motorcycle in question was duly insured with Oriental Insurance Company (appellant herein).

5. In the reply filed on behalf of the Oriental Insurance Company, it took preliminary objections that the driver of the motorcycle was not having a valid and effective driving licence, the vehicle was being plied in contravention of the provisions of the Act and in breach of the terms and conditions of the insurance policy. On merits, it was averred that the amount claimed was highly exaggerated, hence, it prayed for dismissal of the claim petition.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on

16.05.2012:-

“1. Whether late Shri Dinesh Kumar had died in an accident on account of rash and negligent driving of respondent No.1? OPP

2. In issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP

3. Whether respondent No.2 being indemnifier is liable to pay the compensation? ...OPR-1& 2.

4. Whether the vehicle was being plied in breach of terms and conditions of the insurance policy? OPR-2

5. Relief.”

7. After parties led their evidence, the claim petition was allowed and the petitioners were held entitled for compensation of Rs.52,08,280/- alongwith interest at the rate of 9% per annum from the date of filing of petition till the final realization of the amount from the respondents jointly and severally.

8. Feeling aggrieved/dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 19.02.2013 passed by the learned Tribunal below, with a prayer to quash and set-aside the impugned award.

9. Learned counsel for the appellant/Insurance Company contended that the driver was not in possession of a valid and effective driving licence at the time of accident as the driving licence Ext.RW2/C was issued for LMV-NT vehicle only and not

for the motorcycle. He further contended that since there was breach of the terms and conditions of the policy, hence, the appellant could not have been made liable to pay the compensation.

10. On the other hand, learned counsel for respondent No.1, 2, 3(i) & 3(ii) supported the award passed by the learned Tribunal below. He contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective, hence, prayed for dismissal of the instant appeal.

11. I have heard the learned counsel for the appellant as well as learned counsel for respondents No.1 to 3(ii) and learned counsel for respondent No.4 and also carefully examined the entire record.

12. The main contention raised by the learned counsel for the appellant/insurance company is that respondent No.1, i.e. owner-cum-driver of the motorcycle in question, was not holding a valid and effective driving licence at the time of accident and, therefore, the insurance company is not liable to pay any compensation to the petitioners.

13. Perusal of the record reveals that on 19.05.2022, a coordinate Bench of this Court had granted permission to the Insurance Company to examine District Transport Officer, Thoubal, District Manipur and appointed Mr.Tajinder Thakur, Advocate as Commissioner. Relevant portions of the aforesaid order are reproduced as under:-

“Heard. The appellant had filed an application under Order 26 Rule 4(a), CPC read with Order 18 Rule 19, CPC before the learned MACT below to appoint a Commissioner to record the statements of District Transport Officer, Thoubal, District Manipur. The said application was allowed by the learned Tribunal vide order dated 20.9.2012 and accordingly Shri Tajinder Thakur, Advocate was appointed as Commissioner to record the evidence as per law and submit report alongwith evidence to the Tribunal on or before 30.11.2012.

In the given facts and circumstances of the case, I deem it proper to allow the application for recording the evidence of DTO, Thoubal, District Manipur on commission and once again appoint Shri Tajinder Thakur, Advocate as a Commissioner. However, his fee is now fixed at Rs.75,000/, which shall be deposited by the Insurance Company by 15th June, 2022, failing which right to examine DTO, Thoubal, District Manipur on commission shall be deemed to be closed without reference to the Court. The fee shall be deposited before the learned MACT below and the same shall be released to the Court Commissioner on his moving an application to this effect. In the event of depositing of fee, the Commissioner shall proceed to record the evidence of the DTO Thoubal, District Manipur expeditiously and in no event later than 15th August, 2022. Report be sent to this Court in a sealed cover, so as to reach well before the next date of hearing.....”

14. Thereafter, pursuant to the aforesaid order passed by the a coordinate Bench of this Court on 19.05.2022, Mr.Tajinder

Thakur, Advocate, submitted his report dated 29.09.2022, perusal of which reveals that Licence No.153422/MTH was issued in favour of Shri Rajinder Singh, son of Shri Dharam Chand. The said report is extracted as under:-

"It is submitted that in compliance of order dated 26.08.2022 passed by this Hon'ble Court, undersigned visited the office of District Transport Officer, Thoubal, District Manipur for recording the evidence. I recorded statement of Shri Kh. Sanjeev Kumar Singh, DTO In charge, Thoubal, Manipur on 20.09.2022, who stated that he is posted there since July 2022 as DTO In charge. He stated that he has seen the licence No. 153422/MTH presented by the undersigned. As per record, above said licence has been issued in favour of Shri Rajinder Singh son of Shri Dharam Chand, Village Santla, PO Gummer, Tehsil Dehra, District Kangra, Himachal Pradesh on 16.02.2010, which was valid from 16.10.2010 to 15.02.2013 (HTV). As per office record, above licence has not been issued to Duni Chand son of Devi Ram, Village Jachhani, Post Office Chhenoyer, District Kullu, Himachal Pradesh. The statement of abovesaid Sh. Kh. Sanjeev Kumar Singh is enclosed alongwith abstract of the licence register, for the kind perusal of this Hon'ble Court. The licence No. 153422/MTH of Duni Chand, which has been received from Hon'ble MACt Kullu is also enclosed herewith.

The report is submitted for the kind perusal of this Hon'ble Court."

15. Thereafter, witness Sanjeev Kumar, District Transport Officer, Thoubal, Manipur, was cross-examined in terms of order dated 21.05.2024. This witness was cross-examined at length, however, nothing favourable could be elicited from his cross-examination. No evidence to the contrary has been led by respondent No.1/owner-cum-driver of the vehicle that he was

having a valid and effective driving licence at the time of the accident. Since as per the report of the Commissioner, the licence No.153422/MTH was in the name of Rajinder Singh and not issued in favour of respondent No.1-Duni Chand, therefore, it has been duly proved on record that respondent No.1/driver of the motorcycle in question was not holding a valid and effective driving licence at the time of the accident.,

16. Now the question, which arises for consideration, is as to who is liable to pay the amount of compensation. Learned counsel for the appellant has vehemently contended that since there was a fundamental breach of the policy condition, therefore, the insurance company cannot be held liable to pay any compensation to the petitioners. On the other hand, learned counsel for respondents No.1 to 3(ii) contended that in the instant case, deceased was a third party, hence, the liability to pay the amount of compensation should be fastened upon the insurance company in the first instance with liberty to recover it from the owner.

17. The concept of pay and recover is of recent origin, meant to take care of the suffering undergone by not only innocent but also ignorant third parties. In ***National Insurance Co. Ltd. V.***

Swaran Singh, reported in **(2004) 3 SCC 297**, the Hon'ble Supreme Court while laying down parameters/guidelines while deciding the claim application by the Tribunal in clause (iii), (iv) & (vi) of para-110 of the judgment, has held as under:-

- (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.*
- (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*
- (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.*

18. Reiterating the said principle, the Hon'ble Supreme Court again in the case of **Jawahar Singh v. Bala Jain reported**

in (2011) 6 SCC 425, held in paras 10 to 12 asunder:-

- “10. On behalf of Respondent 6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the insurance policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accidents Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the claimants and such liability had been correctly fixed on the owner of the motorcycle, Jawahar Singh.
11. It has been well settled that if it is not possible for an awardee to recover the compensation awarded against the driver of the vehicle, the liability to make payment of the compensation awarded fell on the owner of the vehicle. It was submitted that in this case since the person riding the motorcycle at the time of accident was a minor, the responsibility for paying the compensation awarded fell on the owner of the motorcycle. In fact, in *Ishwar Chandra v. Oriental Insurance Co. Ltd.*, (2007) 10 SCC 650, it was held by this Court that in case the driver of the vehicle did not have a licence at all, the liability to make payment of compensation fell on the owner since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle.
12. Before the Tribunal reliance was also placed on the decision in *National Insurance Co. Ltd. v. Gh. Mohd. Wani*, 2004 ACJ 1424 (J&K) and *National Insurance Co. Ltd. v. Gadigewwa*, 2005 ACJ 40 (Kant), wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the special leave petition.”

19. Similarly view has also been reiterated in **Shamanna**

Vs. Divisional Manager, Oriental Insurance Company Limited),

(2018) 9 SCC 650, wherein the Hon'ble Supreme Court in para-6

of the judgment has held as under:-

“6. As per the decision in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third-party risks. The Tribunal is required to consider “as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver ... does not fulfill the requirements of law or not will have to be determined in each case”.

20. The same view has further been followed in the case

of ***Parminder Singh v. New India Assurance Company Limited,***

(2019) 7 SCC 217, whereby the Hon'ble Supreme Court has

approved the principle of “Pay and Recover” in such cases. Again

in the case of ***Kurvan Ansari Alias Kurvan Ali v. Shyam***

Kishore Murmu, (2022) 1 SCC 317, in para-17, applying the

principle of pay and recover, the Hon'ble Supreme Court has held

as under:-

“17. Accordingly, the appellants are entitled for a sum of Rs.4,70,000 (Rupees four lakhs seventy thousand only) towards total compensation with interest @ 6% p.a. from the date of claim petition till the date of realisation. The enhanced compensation shall be apportioned between the appellants as ordered by the Tribunal. The entire compensation shall be paid to the appellants by Respondent 2 insurance company, and we keep it open to the insurance company to recover the same from Respondent 1 owner of the motorcycle by initiating

appropriate proceedings as the motorcycle was driven by the driver who was not possessing valid driving licence on the date of the accident.”

21. Therefore, in view of the above discussion and the law laid down by the Hon'ble Supreme Court, this Court is of the view that the appellant/insurance company is to be made liable to indemnify the compensation amount awarded by the learned Tribunal below in the first instance and thereafter to recover the same from the owner of the offending vehicle. Consequently, the impugned award dated 19.02.2013, passed by the learned Tribunal below, is modified only to the extent that the awarded amount of compensation shall be first paid to the petitioners by the appellant/Insurance Company, who shall be entitled to recover the same from respondent No.2/owner-cum-driver of the motorcycle, in accordance with law. The remaining part and terms of the impugned award, including the interest component, shall remain the same.

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

(Sushil Kukreja)
Judge

July 08, 2026
(V. Himalvi)