

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 40 of 2014

Reserved on: 22.08.2026

Date of decision: 14.09.2026

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14.09.2026**

New India Assurance Co. Ltd. Appellant

Versus

Shiv Dei & Anr. Respondents

Coram

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

¹ *Whether approved for reporting?*

For the appellant: Mr. Praneet Gupta, Advocate.

For the respondents: Respondent No. 1 ex parte.

Mr. Surya Chauhan, Advocate,
for respondents No. 2 & 3.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'The Act'), against impugned award, dated 07.11.2013, passed by learned Motor Accidents Claims Tribunal Bilaspur, District Bilaspur, H.P. (hereinafter referred to as "the learned Tribunal"),

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

whereby MAC Petition No. 37 of 2010, filed by the petitioner, under Section 166 of the Act was allowed with costs and she was held entitled for compensation in the sum of Rs. 1,85,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization and respondent No. 3/Insurance Company was held liable to pay the amount of compensation. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 26.03.2009, while petitioner alongwith other relatives was coming back from Haridwar in a vehicle bearing registration No. HP-24A-7117, at about 12:40 P.M. when the said vehicle reached near Village Majra, Paonta Sahib, it met with an accident, as driver of the vehicle, i.e. respondent No. 2 could not negotiate the curve and struck with a mango tree. Due to the aforesaid accident, the petitioner sustained grievous injuries and she was taken to Civil Hospital, Paonta Sahib, from where, she was referred to PGI, Chandigarh, where she remained admitted as indoor patient w.e.f. 27.03.2009 to 07.04.2009. According to the petitioner, the accident took

place due to rash and negligent driving of respondent No. 2, i.e. driver. It has been alleged by the petitioner that prior to the accident, she was earning Rs. 8,000/- per month from agriculture and household work. However, after the accident she was unable to work properly and she had to engage a person to look after her. It has also been alleged that on treatment, she spent more than Rs. 1,00,000/-. Hence, the petitioner filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 10,00,000/-.

3. Respondents No. 1 & 2, i.e. owner and driver of the offending vehicle, in their reply, took preliminary objections qua maintainability and jurisdiction. On merits, factum of the accident has been admitted, however, it has been denied that the accident had taken place due to rash and negligent driving of respondent No. 2. It has been stated that the vehicle was being driven at a normal speed and accident had occurred due to some mechanical fault. It has been denied that the prior to accident, the petitioner was earning Rs. 8,000/- per month and had spent more than Rs. 1,00,000/- on her treatment.

4. Respondent No. 3, by filing reply, took preliminary objections qua maintainability of the petition, that the offending vehicle was being plied without valid documents and that the petitioner was travelling in the offending vehicle as gratuitous passenger. On merits, contents of the petition have been denied for want of knowledge.

5. On 14.09.2010, the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether the accident was the result of rash and negligent driving of vehicle by respondent No. 2 and the petitioner sustained injuries in the said accident? OPP***
- 2. If issue No. 1 supra is proved in affirmative, to what amount of compensation, the petitioner is entitled to and from whom? OPP***
- 3. Whether the petition is not maintainable? OPRs***
- 4. Whether the driver of the vehicle in question was not holding valid and effective driving licence to drive the vehicle in question at the relevant time? OPR-3***
- 5. Whether the vehicle in question was being plied without valid documents? OPR-3***
- 6. Whether the petitioner was travelling as gratuitous passenger in the vehicle in question? OPR-3***
- 7. Whether the vehicle in question was not insured with respondent? OPR-3***
- 8. Relief”***

6. After the parties led evidence and after hearing the learned counsel for the parties, the petition filed by the petitioner was allowed with costs and she was held entitled for compensation in the sum of Rs. 1,85,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization and respondent No. 3/Insurance Company was held liable to pay the amount of compensation.

7. Feeling aggrieved and dissatisfied, the appellant preferred the instant appeal against the impugned award dated 07.11.2013.

8. I have heard the learned counsel for the appellant, learned counsel for respondents No. 2 & 3 and carefully examined the entire record.

9. The learned counsel for the appellant contended that the learned Tribunal below has miserably failed to appreciate Ext. R-2 & Ext. RX, copy of insurance policy in its correct perspective, as the vehicle in question was a private vehicle and had been insured against third party only. He further contended that the occupants of the private car were

not covered under the Act Policy, as no extra premium was paid by the owner of the vehicle, therefore, he submitted that the present appeal may be allowed and the Insurance Company may be exonerated from paying the amount of compensation to the petitioner.

10. Conversely, the learned counsel for respondents No. 2 & 3 supported the impugned award and prayed for dismissal of the instant appeal.

11. Now the question which arises for consideration before this Court is as to whether the Insurance Company or owner of the offending vehicle is liable to indemnify the petitioner.

12. It is not in dispute that on 26.03.2009, while the petitioner alongwith other relatives was coming back from Haridwar in a vehicle bearing registration No. HP-24A-7117, it met with an accident, due to which the petitioner sustained grievous injuries on her person. The R.C. of the offending vehicle has been adduced in evidence as Ext. R-1, the perusal of which shows that Class of vehicle is LMV (Jeep/Gypsy) and its seating capacity was 10.

13. At the very out-set, it may be pertinent to mention here that the insurance can be of two types, i.e., comprehensive/package policy of a private vehicle, which covers the insurance of the passengers traveling in the same and the other policy is known as "Liability Only Policy", wherein only the risk of the owner-driver is covered, but risk of an occupant of a private vehicle is not covered. The Insurance Policy has been adduced in evidence as Ext.R-2/RX, the perusal of which, shows that it is a "Liability Only Policy/Act Policy" and was valid w.e.f. from 04.09.2008 to 03.09.2009.

14. Before advertng to adjudicate the instant appeal on merits, this court finds it germane to consider the current position of law with regard to the issue in hand. In ***National Insurance Co. Ltd. vs. Balakrishnan and Anr., (2013) 1 SCC 731***, the Hon'ble Supreme Court while making a distinction between an "act only policy" and "Comprehensive/package policy" made following observation:-

"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy"

would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

15. As observed earlier, in the present case, the policy in question has been placed on record as Exts. R-2/RX, the perusal of which shows that it is "Liability Only Policy". Its perusal nowhere suggests that it was package policy (comprehensive policy). The petitioner was neither the owner of the vehicle in question, nor an employee of the owner. The perusal of the aforesaid policy shows that the risk of the occupants/persons traveling in the vehicle has not been covered. There is no statutory requirement to cover the risk of occupants in private vehicle. The risk of occupant in a

private vehicle can only be covered by paying premium, which is not the case in the present matter. It is admitted fact that no premium was paid by the owner of the vehicle in question for covering the risk of the occupants.

16. The risk of the petitioner, who was sitting in insured vehicle would not be covered by third party and hence, the appellant/Insurance Company would not be liable to satisfy the award. It is well settled proposition of law that in such a case, the direction to pay and recover cannot be issued.

17. In view of my aforesaid discussion, since Insurance policy Exts. R-2/RX, was "Liability Only Policy" as such the same did not cover the risk of death or bodily injury to the persons traveling in the vehicle. Hence, the liability cannot be fastened upon the insurance company and the learned Tribunal below has committed grave error while fastening the liability to pay the compensation on the appellant/Insurance Company.

18. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex

Court, the present appeal is allowed and the impugned award dated 07.11.2013, passed by the learned Tribunal below, is modified to the extent that instead of respondent No. 3/Insurance Company, respondent No. 1/owner of the offending vehicle shall pay the compensation to the petitioner. The remaining part and terms of the impugned award, including the interest component, shall remain the same.

19. No other point was urged before me.

20. The appeal is disposed of, so also pending application(s), if any.

(Sushil Kukreja)
Judge

September 14, 2026
(raman)