

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 22 of 2014

Reserved on: 16.07.2026

Date of decision: 12.08.2026

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12.08.2026**

United India Insurance Company Ltd. Appellant

Versus

Upinder Kumar & others. Respondents

Coram

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

¹ *Whether approved for reporting? Yes.*

For the appellant: Dr. Lalit K. Sharma, Advocate.

For respondent No. 1: Ms. Suchitra Sen, Advocate.

For respondent No. 2: Mr. Vishwas Kaushal, Advocate,
vice Mr. Vivek Negi, Advocate.

For respondent No. 3: Mr. Rohit, Advocate, vice Mr.
Sumit Sood, Advocate.

Sushil Kukreja, Judge

The instant appeal has been filed by the appellant, who was respondent No. 3 before the learned Motor Accidents Claims Tribunal (I) Mandi, District Mandi, H.P. (hereinafter referred to as “the learned Tribunal”) under Section 173 of the Motor Vehicles Act, 1988 (for short “the Act”) against impugned award, dated 19.10.2012, passed by the learned Tribunal, whereby Claim Petition No. 72 of 2009,

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

filed by the petitioner, under Section 166 of the Act, was allowed and the petitioner was held entitled for compensation in the sum of Rs. 2,06,745/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization of the entire amount from respondents No. 1 & 2 jointly and severally and respondent No. 3, being insurer, was directed to indemnify the award.

2. The brief facts of the case are that on 19.12.2008, while the petitioner was on his way to his house from Mandi in his car bearing registration No. HP-33A-6465 and reached near a curve on bridge at Bindravani, a vehicle bearing Registration No. HP-34A-1565, came from Kullu side and hit the car of the petitioner, as a result of which, the petitioner sustained multiple grievous injuries all over his body. After the accident, the petitioner become unconscious and was firstly taken to Zonal Hospital, Mandi, wherefrom he was referred to IGMCM, Shimla, where he underwent surgery. According to the petitioner, the accident had occurred due to rash and negligent driving of the driver of the aforesaid vehicle. It has been averred in the claim petition that due to

the injuries sustained by the petitioner in the accident, he became disabled and now was not in a position to do any work. Hence, he filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 30,00,000/-.

3. Respondent No. 1 contested the claim petition by filing reply and respondent No. 2 adopted the reply filed by respondent No. 1. In the reply, it has been stated that the accident had taken place due to negligence of the petitioner, who at the relevant time, was driving his car in a hasty manner without following the traffic rules.

4. Respondent No. 3/Insurance Company in its reply took preliminary objections that the petitioner was not having a valid and effective driving licence and the vehicle was being plied in violation of the terms and conditions of the insurance policy as well as the provisions of M.V. Act. On merits, it has been averred that the vehicle in question was not insured with the Insurance Company and prayer for dismissal of the claim petition has been made.

5. In rejoinder, contents of the reply filed by respondents No. 1 & 2 have been denied and that of the

petition are reasserted and reaffirmed.

6. On 21.06.2011, the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether Upinder Kumar @ Deepak Soni sustained injuries in a road side accident on 19.12.2008, involving the vehicle No. HP-34A-1565 being driven by respondent No. 2 in a rash and negligent manner? OPP***
- 2. If issue No. 1 is proved in affirmative, for what amount of compensation and from whom the petitioner is entitled? OPP***
- 3. Whether the vehicle in question was being plied in contravention to the provisions of insurance policy as well as provisions of the Motor Vehicles Act, if so its effect? OPR-3***
- 4. Whether the driver of the vehicle bearing No. HP-34A-1565 was not having a valid and effective driving licence at the time of accident, if so it effect? OPR-3***
- 5. Relief.”***

7. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed and the petitioner was held entitled for compensation in the sum of Rs. 2,06,745/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization of the entire amount from respondents No. 1 & 2 jointly and severally and respondent No. 3, being insurer,

was directed to indemnify the award.

8. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 19.10.2012.

9. I have heard the learned counsel for the appellant, learned counsel for the respondents and carefully examined the entire record.

10. The learned counsel for the appellant contended that the learned Tribunal below has committed an illegality and material irregularity by not believing the contents of FIR, Ext. RW-2/A, wherein it has been specifically stated that the accident had occurred solely on account of the negligence of the petitioner himself. He further contended that the impugned award is a result of mis-appreciation of the oral as well as documentary evidence on record, therefore, the same is liable to be set aside by accepting the present appeal.

11. Conversely, the learned counsel for respondent No. 1/claimant supported the impugned award and prayed for dismissal of the instant appeal.

12. At the outset, it may be pertinent to mention that the Hon'ble Supreme Court of India in cases like ***Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others***, (2009) 13 SCC 530, ***Kusum Lata and Others Vs. Satbir and others*** (2011) 3 SCC 646 and ***Bimla Devi Vs. Satbir Singh*** (2013) 14 SCC 345 has repeatedly held that the Motor Vehicles Act is a social piece of legislation and it has been enacted with the intent and object to facilitate the claimants/victims to get redressed for injuries or for loss of their family members, as early as possible. Therefore, it is desirable to adopt a more realistic, pragmatic and liberal approach in such matters and the claimants/petitioners are not required to prove the case beyond the reasonable doubt. It is sufficient if the claimants/petitioners establish their case on touchstone of preponderance of probabilities.

13. In ***Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others***, (2009) 13 Supreme Court Cases 530, it has been held by the Hon'ble Supreme Court that the claimants are merely to establish their case on the touchstone of preponderance of probability. Paragraph

15 of the judgment reads as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

14. Similar reiteration of law can be found in ***Kusum Lata and Others Vs. Satbir and Others, (2011) 3 Supreme Court Cases 646***, wherein, the Hon'ble Supreme Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case, as it is required to be done in a criminal trial. Paragraph 9 of the judgment reads as under:-

“9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.”

15. Likewise, in ***Bimla Devi and Others Vs. Satbir Singh and Others, (2013) 14 Supreme Court Cases 345***, the Hon'ble Supreme Court has held that in claim cases, it is difficult to get witnesses, much less eyewitnesses, thus extremely strict proof of facts in accordance with provisions of the Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to those cases.

16. In ***Mathew Alexander vs. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510]***

"12....A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident....."

17. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. Keeping in mind the above stated observations of Hon'ble Supreme Court, the appreciation of evidence in the instant case has to be done on the

touchstone of preponderance of probabilities.

18. In order to prove the negligence, the petitioner himself appeared in the witness box as PW-1 and tendered in evidence his affidavit, Ext. PW-1/A, wherein, he narrated almost all the averments, as stated in the claim petition. He has specifically stated in his affidavit that the accident had taken place due to rash and negligent of respondent No. 2. In cross-examination, he admitted that FIR with respect to the accident in question has been registered against him, but stated that after the accident, he became unconscious and the FIR was got lodged by respondent No. 2.

19. On the other hand, respondent No. 2, i.e. driver of the offending vehicle, appeared in the witness box as RW-1 and tendered in evidence his affidavit, Ext. RW-1/A, wherein, he deposed that on 19.12.2008, he was driving the tanker bearing registration No. HP-34A-1565 and was going from Kullu to Ambala, when the tanker reached near Bindrabani, suddenly car bearing registration No. HP-33A-6465 came from Mandi side in a rash and negligent manner and struck with the tanker. It has been further deposed that

the driver of the car was driving the same on a wrong side and has left his lane in order to cross the bridge, as such, he struck his vehicle with the tanker.

20. RW-2, Constable Chaman Lal No. 909, in his cross-examination stated that the accident in question had taken place at Bindrabani Bridge and as per the statement of author of the FIR, the accident had taken place due to negligence of Upender Kumar, driver of the car.

21. Now the necessary question that has to be addressed in this appeal is as to whether the Tribunal was right in concluding that there was negligence on the part of the driver of the offending vehicle bearing HP-34A-1565. I have carefully scrutinized the entire evidence on record and from the closure scrutiny thereof it has become clear that in the FIR, petitioner himself has been shown as an accused. The perusal of the FIR, Ext. RW-2/A shows that it was registered on the statement of one Neeraj, S/o Mohan Lal. The best person to prove these specific averments in the FIR was the complainant/informant-Neeraj. It was incumbent upon the Insurance Company to have proved the FIR by

producing informant-Neeraj in the witness box, however, for the reasons best known to it, he has not been examined. Hence, an adverse inference has to be drawn against it for non-examination of the author of the FIR. Therefore, in the absence of the examination of the informant, F.I.R. cannot be used as a substantive piece of evidence to determine how the petitioner met with the accident or whose negligence led to the accident. Needless to state that FIR and police papers are not substantive piece of evidence and these are the documents to corroborate a fact or to contradict the same. Therefore, in the absence of non-examination of the author of FIR, no reliance can be placed upon the same.

22. Learned counsel for the appellant/Insurance Company contended that the petitioner while appearing in the witness box as PW-1, has himself admitted the suggestion that the accident had taken place due to his negligence and, therefore, according to him, it has been duly proved that the accident had taken place due to the negligence of the petitioner himself. However, the statement of the petitioner has to be read in its entirety, as in his

examination-in-chief he has specifically deposed that the accident had taken place due to the rash and negligent driving of respondent No. 2. In his cross-examination also, at the first instance, he has denied the suggestion that the accident took place due to his mistake. He further stated in cross examination that though FIR regarding the accident in question has been registered against him, but after the accident he became unconscious and FIR was got lodged by respondent No. 2. Therefore, while reading the entire statement of the petitioner, it cannot be said that the accident had taken place due to own negligence of the petitioner. This court can take judicial notice of the fact that on the basis of FIR registered against the petitioner, a criminal case was registered against him and vide judgment dated 01.08.2014, the Court of learned Chief Judicial Magistrate, Mandi, District Mandi, H.P., acquitted him from the offences punishable under Sections 279, 337 & 338 of the Indian Penal Code

23. The Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Chamundeswari & Ors***, reported in **2021 (18) SCC 596**, has held that if any evidence

before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. The relevant paragraph of the judgment reads as under:-

“8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage C.A.@ SLP(C) No.4705 of 2019 to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.”

24. In the instant case, the evidence on record led by the petitioner before the learned tribunal below is contrary to the contents of the FIR and the same inarguably establishes that the offending tanker had hit the car of the petitioner. The evidence also points towards the negligence of the driver of the offending tanker namely Sher Singh in causing the said accident. Thus on analyzing the entire evidence, particularly

the statement of eye witness, i.e. PW-4, Naresh Kumar, it has been established that the driver of the offending tanker was solely responsible for the accident. Therefore, in view of the evidence led on record, reasonable presumption is raised in favour of the petitioner and the learned Tribunal below has correctly and rightly reached at the conclusion that the accident had been caused due to rash and negligent driving of offending tanker by its driver namely Sher Singh and the petitioner received injuries while he was driving his car.

25. Therefore, there is no irregularity or infirmity in the finding of the learned Tribunal below with regard to the negligence aspect, warranting interference by this Court, as such, the same is confirmed.

26. No other point was urged before me.

27. In view of the above discussion, the appeal fails and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of.

(Sushil Kukreja)
Judge

August 12, 2026
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