

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MV) No.4247 of 2013

Reserved on: 18.09.2026

Date of decision: 25.09.2026

Date of uploading on Website: 25.09.2026

Ishwar Dass and another

...Appellants

Versus

Kanta Devi and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting? Yes.*

For the appellants: Mr. Vivek Sharma & Mr. Bhairav Gupta,
Advocates.

For the respondents: Mr. H.S. Rangra, Advocate, No.1 to 3.
Mr. Deepak Bhasin, Senior Advocate, with
Mr. Sambhav Bhasin, Advocate, for
respondent No.5.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellants/owner and driver under Section 173 of the Motor Vehicles Act (for short 'MV Act'), against award dated 27.08.2012, passed by the learned Motor Accident Claims Tribunal (1), Mandi, District Mandi, HP, in Claim Petition No.93 of 2009, with the prayer that impugned award may be set aside and the claim petition be

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

dismissed. The parties shall be referred to as they were before the learned Tribunal below.

2. Briefly stated the facts of the case, giving rise to the present appeal, are that the petitioners (respondents No.1 to 3 herein) filed a claim petition under Section 166 of MV Act, whereby they sought compensation to the tune of Rs.15,00,000/- on account of death of Shri Narender Kumar, who was husband of petitioner No.1 and father of petitioners No.2 & 3. It was averred by the petitioners that on 29.04.2000, at about 11:50 AM, when Narinder Singh was going on foot on his side in a *kachha* portion of the road at Village Sanyah, a Tractor bearing registration No.HP-32-0672 came from Kansha chowk side, being driven by respondent No.2 (appellant No.2 herein) in a rash and negligent manner and due to the excessive speed, he could not control the vehicle and dashed against Narender Singh and crushed him, as a result of which, he sustained multiple grievous injuries on his person and died on the spot.

3. As per the petitioners, at the time of his death, deceased Narender Singh was aged about 39 years, he was working as T-Mate in HPSEB and was earning about Rs.15,000/- per month from all sources. The deceased was the only earning

member in the family and due to his untimely death, the petitioners had suffered a lot of agony.

4. In their joint reply, respondents No.1 & 2/owner and driver of the offending vehicle pleaded that the accident had occurred due to the rash and negligent act of the deceased himself. It was denied by them that they were liable to pay any compensation. It has been averred that since the Tractor was comprehensively insured with respondent No.3, therefore, the insurer was liable to pay the compensation to the petitioners.

5. Respondent No.3-Insurance Company, in its reply, raised preliminary objections regarding that the driver was not holding a valid and effective driving licence at the time of the accident in question, breach of the terms and conditions of insurance policy and that the petition being not maintainable as petitioners had also obtained compensation under Workmen Compensation Act. On merits, it was averred that the deceased at the time of accident was sitting in the vehicle bearing registration No.HP-32-0672 as a gratuitous passenger and the insurance company had not covered the liability in respect of gratuitous passenger. It was further averred that the amount claimed was highly exaggerated and out of proportion. It was also averred that

since the insured had committed breach of terms and conditions of insurance policy, therefore, the replying respondent was not liable to indemnify the insured.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 18.07.2011:-

- “1. Whether Narender Kumar died in a road side accident on 29.04.2000 at Village Sanyah involving vehicle No.HP-32-0672 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, the petitioners as well as proforma respondent No.4 are entitled and from whom? ...OPP**
- 3. Whether the respondent No.2 was not holding a valid and effective driving licence to drive the vehicle bearing No.HP-32-0672 at the time of accident, if so its effect? ...OPR-3**
- 4. Whether the vehicle No.HP-32-672 was being plied in contravention to the provisions of M.V.Act as well as terms and conditions of the Insurance Policy, if so its effect? ...OPR-3**
- 5. Whether the deceased Narinder Kumar was sitting/travelling in the vehicle involved in the accident as gratuitous passenger, if so its effect? ...OPR3**
- 6. Relief.”**

7. After parties led their evidence, the claim petition was allowed and the petitioners were held entitled for a compensation of Rs.4,58,200/- alongwith interest at the rate of 7.5% per annum from the date of petition till realization from respondents No.1 and

2 jointly and severally as the vehicle in question was being plied in contravention of the provisions of M.V. Act as well as the terms and conditions of the Insurance Policy.

8. Feeling aggrieved and dissatisfied, the appellants preferred the instant appeal against the impugned award dated 27.08.2012, passed by the learned Tribunal below, with the prayer to set-aside the impugned award and to dismiss the claim petition.

9. Learned counsel for the appellants contended that the learned Tribunal below has gravely erred in holding that the deceased was travelling in the Tractor at the time of the accident in question. He also contended that the learned Tribunal below had awarded a highly excessive compensation in favour of the petitioners and the Tribunal clearly erred in fastening liability on the owner of the tractor. With these submissions, he prayed that the impugned award be set aside and the present appeal be accepted.

10. On the other hand, learned counsel for the insurer supported the award and contended that as the deceased was sitting along with driver on tractor, the same amounted to violation of conditions of policy, therefore, no liability can be fastened against it. It was only the owner of tractor, who alone is liable to

pay compensation as such the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective.

11. I have heard the learned counsel for the appellant as well as the learned Senior Counsel for respondents No.1 to 3 and learned Senior Counsel for respondent No.5 and also carefully examined the entire record.

12. It is not in dispute that the Tractor bearing registration No.HP-32-0672 was owned by respondent No.1 and it was being driven by respondent No.2 (appellants herein) at the time of the accident in question. Respondent No.1-owner, while appearing in the witness-box as RW-1, stated that the the vehicle was being driven by its driver at a very slow speed and in a careful manner. In his cross-examination, he admitted the suggestion that a criminal case arising out of the accident in question was registered against respondent No.2. Perusal of FIR Ext. PW3/A reveals that specific allegation of rash and negligence was levelled against the driver of Tractor bearing registration No.HP-32-0672.

13. On appraisal of the evidence led before it, the learned Tribunal below arrived at a conclusion that the accident had occurred due to the rash and negligent driving of Tractor bearing

registration No. HP-32-0672 by its driver, which had resulted into death of Narender Singh.

14. Now the question, which arises for consideration before this Court, is as to whether the deceased was travelling in the tractor alongwith the driver at the time of accident. The onus was upon the Respondent No.3- insurance company to prove that the deceased was travelling in the tractor at the time of accident. Insurance Company examined RW-2 Balbir Singh, who had investigated the case FIR No.122, dated 29.04.2000 and he specifically deposed that as per the file, Tractor bearing No.HP-32-0672 was involved in the accident. He further stated that during the course of investigation, it was found that two persons were sitting in the offending Tractor at the time of the accident in question, out of them, one had fallen down and died, whose name was Narender Kumar. In his cross-examination, he denied that suggestion that deceased Narender Kumar was a pedestrian, who suddenly tried to cross the road and the driver of the Tractor was not at fault.

15. PW-3 HC Suresh Kumar produced on record copy of FIR Ext.PW3/A, the registration of which has not been disputed by respondent Nos.1 & 2. Perusal of the contents of FIR Ext.PW3/A

reveals that two persons were sitting in the Tractor No.HP-32-0672 and one boy, aged about 18 years, was moving on the side of the road. All of a sudden, speed of the tractor increased and driver tried to control the same unsuccessfully, but the vehicle went on the wrong side and one person came under its rear tyre, who was removed underneath the tyre with the help of other persons. Said person was taken to hospital and later on, as per author, he succumbed to the injuries.

16. The next question that falls for consideration before this Court is as to whether the person travelling in tractor sitting besides driver can be construed to be an unauthorized passenger in breach of policy condition dis-entitling the petitioners to claim compensation against insurer of the tractor.

17. As per Section 2(44) tractor means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but exclude a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle". Therefore, it is made clear that the tractor shall be used for agricultural purposes and the trailer which is attached to the tractor, obviously has to be

used for agricultural purposes only unless registered otherwise.

18. It is well settled that in the Tractor, except driver, no person can travel. Anybody traveling in the Tractor apart from driver is only an unauthorized passenger. It is not the case of the respondents that the Trailer was attached and the deceased travelled in the Trailer. In ***National Insurance Company Ltd. vs V. Chinnamma and others, (2004) 8 SCC 697***, the Hon'ble Apex Court held that the person travelled in the Tractor/Trailer would not fall within the category of persons travelled along with the goods and they could not be termed as third parties. It has been held that a tractor by itself is not a goods carriage. The Apex Court also observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the M.V.Act. The observations made by the Apex Court in paras-15 and 16 are relevant, which read as under:

“15. Furthermore, a tractor is not even a goods carriage. The expression ‘goods carriage’ has been defined in Section 2(14) to mean

“any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods”

whereas, “tractor” has been defined in Section 2(44) to mean

“a motor vehicle which is not itself constructed to carry and load (other than equipment used for the purpose of propulsion); but excludes a roadroller”.

“Trailer” has been defined in Section 2(46) to mean

“any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle”.

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of “goods carriage” as contained in judis Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani and other decisions following the same, as the accident had taken place on 24.11.1991 i.e., much prior to coming into force of the 1994 amendment.”

19. In the instant case, in view of the aforesaid discussion, it is evident that at the time of the accident, the deceased was travelling on the tractor in violation of the terms and conditions of the insurance policy. Therefore, in view of aforesaid judgment and dictum laid down by the Hon'ble Apex Court, no liability can be fastened on the Insurance Company as the seating capacity of the tractor is only one and perusal of policy Ext.RX shows that no premium was paid to cover the risk of any passenger. Hence, this Court is of the view that the deceased

was a gratuitous passenger travelling in the Tractor in question and the learned Tribunal below, on appreciation of the evidence on record, had rightly reached the said finding by fastening liability on the appellants.

20. No other point was urged before me.

21. Therefore, in view of the above discussion, no interference is required in the impugned award dated 27.08.2012 passed by the learned Motor Accident Claims Tribunal(1), Mandi, District Mandi, HP. Consequently, the instant appeal, being devoid of merits, deserves dismissal and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(Sushil Kukreja)
Judge

September 25, 2026
(V. Himalvi)