

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 509 of 2016

Reserved on: 20.07.2026

Date of decision: 18.08.2026

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New India Assurance Co. Ltd. Appellant

Versus

Shyam Kumari & Ors. Respondents.

Coram

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

¹ *Whether approved for reporting?*

For the appellant:	Mr. B.M. Chauhan, Senior Advocate with Ms. Kamakshi Tarlokta and Mr. Amit Himalvi, Advocates.
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For the respondents:	Mr. N.D. Sharma, Advocate, for respondent No. 1.
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Respondents No. 2 to 4 are ex parte.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant/Insurance Company, who was respondent No. 4 before the Motor Accidents Claims Tribunal (IV) Shimla, District Shimla, H.P. (hereinafter referred to as “the learned

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

Tribunal”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘The Act’) against impugned award, dated 27.06.2016, passed by the learned Tribunal below, whereby MAC Petition RBT No. 55-S/2 of 2014/12, filed by the petitioner, under Section 166 of the Act was allowed and she was held entitled for compensation in the sum of Rs. 9,24,800/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till its realization and respondent No. 4/Insurance Company was held liable to pay the amount of compensation.

2. The brief facts of the case are that on 16.03.2010, Hira Parkash was going from his village to Reckong Peo in a vehicle bearing registration No. HP-27A-0461 to sell apple nursery. When the aforesaid vehicle reached at Morang curve on NH-22, it met with an accident, due to which, Hira Parkash died on the spot. According to the petitioner, the deceased died on account of rash and negligent driving of respondent No. 2, Anil Kumar. The deceased was an agriculturist and horticulturist and the only earning member of the family. He used to grow apple nursery

and was an expert in growing the apples. The deceased used to earn Rs. 20,000/- per month from all the sources. It has been claimed in the petition that the owner of the vehicle in question handed over the vehicle to respondent No. 2, who was having a valid and effective driving licence, but on the way, respondent No. 2, Anil Kumar, handed over the vehicle to respondent No. 3, Sharav Bangyal, who was not having knowledge to drive the vehicle, as a result of which, the vehicle rolled down from the road. Hence, the petitioner, who is mother of the deceased, filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 15,00,000/-.

3. Respondent No. 1, in his reply, took preliminary objections qua maintainability and that the vehicle in question was duly insured with respondent No. 4, at the time of accident and the driver engaged by him was having valid and effective driving licence. On merits, it has been stated that respondent No. 2, Anil Kumar was having a valid and effective driving licence at the time of accident and the vehicle had been engaged with M/s Tidong Company at

Kinnaur. It has further been stated that it was not in his knowledge that respondent No. 2 handed over the vehicle to respondent No. 3. It was without his consent and prior permission and he never authorized his driver to do the same.

4. Respondent No. 2, in his reply, took preliminary objections qua maintainability, non-joinder of necessary parties and that he was holding a valid and effective driving licence at the time of accident. On merits, it has not been denied that the deceased was travelling with his goods, i.e. small apple plants, in the offending vehicle at the time of accident. It has been admitted that owner of the vehicle had appointed him as driver and handed over the vehicle to him on the day of accident. It has been stated that he was having a valid and effective driving licence at the time of accident. It has been denied that the accident took place due to his rash and negligent driving. It has been claimed that the vehicle in question was parked on the right side of the road and he stepped down from the vehicle to answer the call of nature by taking all the necessary precaution, i.e. removing the key from the lock. However, at the same time, respondent No. 3

pressed the clutch of the vehicle, due to which, it rolled down into a deep gorge, which resulted into accident. Therefore, respondent No. 3 is liable for the accident.

5. Respondent No. 3 despite having been duly served, did not appear before the learned Tribunal, hence he was proceeded against ex parte vide order dated 26.06.2014.

6. Respondent No. 4/Insurance Company in its reply, took preliminary objections qua maintainability, cause of action, the deceased was travelling in the vehicle as an unauthorized/gratuitous passenger and the vehicle was being plied in contravention of the terms and conditions of the Insurance Policy and its driver was not holding a valid and effective driving licence. On merits, case of the petitioner has been denied and it has been claimed that the amount, as claimed by the petitioner is highly excessive and exaggerated and without any legal basis. Hence, prayer for dismissal of the petition has been made.

7. On 29.07.2014, the learned Tribunal below had framed the following issues for consideration and

adjudication:

- “1. Whether deceased Hira Prakash had died in motor vehicle accident took place on 16.03.2010, at about 11:25 A.M., on account of rash and negligent driving of driver of vehicle bearing registration No. HP-27A-0461? OPP**
- 2. Whether petitioner is entitled for grant of compensation, if so, then what should be the quantum of compensation and from whom? OPP**
- 3. whether the petition is not maintainable in the present form, as alleged? OPR**
- 4. Whether the petitioner has no cause of action to file the present petition, as alleged? OPR**
- 5. Whether the petition is bad for non-joinder and mis-joinder of necessary parties, as alleged? OPR**
- 6. Whether the driver of vehicle bearing registration No. HP-27A-0461, was not holding valid and effective driving licence, as alleged? OPR-3**
- 7. Whether the deceased was travelling in the said vehicle as gratuitous passenger, as alleged? OPR**
- 8. Whether the vehicle was being driven in contravention of Motor Vehicles Act? OPR**
- 9. Relief”**

8. 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. 9,24,800/- alongwith interest at the rate of 9% per

annum from the date of filing of the petition till its realization and respondent No. 4/Insurance Company was held liable to pay the amount of compensation.

9. Feeling aggrieved and dissatisfied, the appellant preferred the instant appeal against the impugned award dated 27.06.2016.

10. I have heard the learned Senior Counsel for the appellant, learned counsel for respondent No. 1 and carefully examined the entire record.

11. The learned Senior Counsel for the appellant contended that at the time of accident, respondent No. 3 was driving the vehicle, who was possessing a fake driving licence and in order to avoid liability, the petitioner as well as respondents No. 1 to 3 in collusion with each other, filed the claim petition, 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.

12. Conversely, the learned counsel for respondents supported the impugned award and prayed for dismissal of

the instant appeal.

13. The first question which arises for consideration before this Court is as to whether at the time of the accident, respondent No. 3 was driving the vehicle, who was not holding a valid and effective driving licence to drive the offending vehicle.

14. The onus to prove that respondent No. 3 was not holding a valid and effective driving licence at the time of accident was upon the appellant/Insurance Company.

15. The case of respondent No. 1, i.e. owner of the vehicle is that he had kept respondent No. 2, Anil Kumar, as driver, who was holding a valid and effective driving licence at the time of the accident and it was not in his knowledge that respondent No. 2 handed over the vehicle to respondent No. 3. His further case is that respondent No. 2, handed over the vehicle to respondent No. 3 without his consent and prior permission and he never authorized his driver to do the same..

16. Respondent No. 1, Krishan Lal, also appeared in the witness box as RW-1 and deposed that he had kept

respondent No. 2, Anil Kumar, as driver in his vehicle and he had attached his vehicle with M/s Tidong Company at Kinnaur. He further deposed that he had seen his driving licence before engaging him as driver in his vehicle. In cross-examination, he stated that he was not aware that at the time of accident, respondent No. 3 Sharav Bangyal was driving the vehicle in question.

17. Respondent No. 2, Anil Kumar, while appearing in the witness box as RW-2 deposed that he was employed as driver by respondent No. 1 in vehicle bearing registration No. HP-27A-0461. As per the statement of this witness, at the relevant time, he had parked his vehicle on the right side of the road and he stepped down from the vehicle to answer the call of nature and in the mean time, he saw that the vehicle went off the road in river Satluj.

18. On the other hand, respondent No. 3/Insurance Company has examined its investigator, Kamal Narayan, who appeared in the witness box as RW-4 and deposed that he conducted the investigation in the case and as per his report, Ext. RW-4/A, the vehicle in question was being driven

by respondent No. 3, Sharav Bangyal, who was not having valid driving licence. In cross-examination, he admitted that he never visited the spot for conducting the investigation.

19. RW-5, K.K. Gupta, Deputy Manager of the Insurance Company, deposed that respondent No. 3 Sharav Bangyal was driving the offending vehicle at the time of accident without valid and effective driving licence. He also stated that respondent No. 1 filed a claim before Consumer Forum against the Insurance Company, however, the same was dismissed vide order dated 05.10.2015, whereby, driving licence of respondent No. 3 Sharav Bangyal was found to be fake on the basis of investigation conducted.

20. It may be pertinent to mention that respondent No. 3 Sharav Bangyal did not contest the case before the Tribunal below and was proceeded against ex parte. Thus it can be presumed that he had got nothing to say in the matter. The perusal of FIR, Ext. PW-2/A also reveals that at the time of accident, the offending vehicle was being driven by respondent No. 3. Hence, in view of the entire evidence on record, as discussed above, it has become clear that at

the relevant time, respondent No. 2, Anil Kumar, who was driving the offending vehicle, parked the same on the side of the road to answer the call of nature after taking necessary precautions. However, in the meantime, respondent No. 3, Sharav Bangyal, pressed the clutch of the vehicle, due to which, the vehicle started running down and fell into Satluj river. Therefore, the Id. Tribunal rightly concluded that the accident had occurred due to rash and negligent driving of respondent No. 3 Sharav Bangyal, which resulted into the death of its two occupants namely Hira Prakash and Sunil and grievous injuries to two other persons.

21. Now the question which arises for consideration before this Court is as to whether respondent No. 2 handed over the vehicle in question to respondent No. 3 with the knowledge of respondent No. 1, i.e. the owner of the vehicle and on account of the act of carelessness on the part of the owner, the vehicle went into the hands of respondent No. 3, who was not holding a valid and effective driving licence.

22. It has come on record that respondent No. 2 Anil Kumar was holding a valid and effective driving licence. Now,

when the owner of the offending vehicle had engaged a person holding a valid and effective licence to drive the same, it was for the insurance company to plead and prove that the vehicle went into the hands of respondent No. 3 Sharav Bangyal without the knowledge of the owner and the former was not possessing a valid licence. Admittedly neither it was pleaded by the insurer nor there is any evidence led to show that it was with the knowledge of the owner or on account of some act of carelessness on his part that a person not holding a licence came to occupy driver's seat.

23. In the similar facts and circumstances, our own High Court in bunch of appeals lead case being FAO (MVA) No. 340 of 2000, titled as ***New India Assurance Co. Vs. Satya Parkash Thakur and Ors., Latest HLJ 2007 (HP) 12,*** has held as under:-

“6. I have heard the counsel for the parties and gone through the record. It is true that evidence on record clearly establishes that the vehicle at the relevant time was being driven by Raj alias Danu. It is also a fact that Raj alias Danu did not hold a licence to drive the bus. But it is also a fact that the owner of the bus had engaged a man, named J.R. Verma, to drive the bus and said J.R. Verma was holding a valid licence. Now, when the owner

of the bus had engaged a person holding a valid and effective licence to drive the bus, the insurance company cannot escape its liability for payment of compensation merely by proving the fact that the man who was driving the vehicle at the time of occurrence of the accident did not possess a licence. In such a situation, the insurance company is further required to allege and prove that it was with the knowledge of the owner or on account of some act of carelessness on the part of the owner that the vehicle went into the hands of a person not possessing a licence. In the present case, admittedly neither such an allegation was made nor was any evidence led to show that it was with the knowledge of the owner or on account of some act of carelessness on his part that a person not holding a licence came to occupy driver's seat. In this view of the matter, I find support from a judgment of Hon'ble Apex Court in [National Insurance Co. Ltd. v. Swaran Singh](#) . So the first contention raised by the insurance company is rejected."

24. In the instant case also, as discussed, no evidence has been led by the Insurance Company that it was with the knowledge of the owner or on account of some act of carelessness on the part of the owner that the vehicle went into the hands of respondent no. 3 who was not possessing a licence to drive the vehicle in question.

25. Now the next question, which arises for consideration before this Court is as to whether the owner of the offending vehicle can be held guilty for commission of breach of terms of policy as stated by the Insurance

Company? The Hon'ble Supreme Court in a catena of judgments has held that the insurance company cannot absolve its liability unless it is established that the insured was guilty of breach of the policy conditions. The insurer must prove that the insured was guilty of breach of policy condition, i.e., he was aware and had knowledge of the fact that the driver engaged by him to drive the vehicle did not possess a valid and effective driving licence and despite having this knowledge and despite such awareness, he had allowed such a driver to drive the vehicle.

26. In ***Hind Samachar Ltd. (Delhi Unit) Versus National Insurance Company Ltd. & ors., 2026 (7) SCC 773***, the Hon'ble Supreme Court has held that even if the licence is fake, the insurance company is liable to pay compensation, if it fails to prove that the insured had deliberately committed breach in entrusting the vehicle to a driver who had a fake licence. The Insurance Company must establish that the breach was on the part of the insured as the owner of a vehicle employing a driver can only look at the licence produced by the person seeking employment and is

not expected to verify from the licence issuing authority whether the licence is fake or not. Relevant paras of the judgment are reproduced as under:-

"7. Lehu (supra) was a case in which though an allegation of the driving licence produced being fake was raised, the same was not proved before the Tribunal. The trite law was noticed that even if the licence is fake, the insurance company is liable to pay compensation, if they fail to prove that the insured had deliberately committed breach in entrusting the vehicle to a driver who had a fake licence. New India Assurance Co. v. Kamla wherein despite finding breach, the insurer was directed to pay compensation to the third parties, but, enabled recovery from the insured was noticed. It was categorically held that whether the insured would be protected by such an order was left open to be considered on the facts of each case. It was held in Lehu and Ors.(supra) that: -

"18.....we are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

12. We do not find any substance in the argument of the respondent-insurer that a collusion can be validly inferred since the driving licence was produced by the owner. In fact, the owner of the truck is not an individual and is a company, as we see from the cause title. Undisputedly, even if the tort-feasor is the driver, the liability for any negligence of the driver rests on the owner of the vehicle, vicariously. There can be no suspicion raised merely because the owner had produced the driving licence before Court. It only indicates that the owner had been diligent enough to procure the driving licence from the driver and produce it before the Tribunal, so as to validly raise a case for indemnification by the insurer.

16. As has been noticed in Geeta Devi (supra) there is no pleading or substantiation of due diligence having not been employed at the time of entrustment. R1W1 was the Advertising In-charge of the appellant who produced the licence before the Court as Exhibit R1W1/1. The certificate issued by the RTO Gurdaspur was also marked as R1 which we referred to from the additional documents. In cross examination, there was only a bland

suggestion made to the witness that the Directors of R2 knew that R1 possessed only a fake driving licence. There were no questions put to the witness, who was examined on behalf of the owner, as to the actual entrustment of the vehicle or whether R1 was employed regularly or temporarily and when such employment commenced, which are crucial insofar as proving or disproving due diligence by the owner at the time of engagement of the driver and the entrustment of the vehicle. As has been rightly held by the precedents above noticed, the owner of a vehicle employing a driver can only look at the licence produced by the person seeking employment and is not expected to verify from the licence issuing authority whether the licence is fake or not.”

27. In ***Nirmala Kothari's*** case (supra), the Hon'ble Supreme Court held that while hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. The relevant paras of the judgment read as under:-

“10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

11. The view taken by the National Commission that the law as settled in the Pepsu case is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of National Insurance Co. Ltd. vs. Swaran Singh & Ors. (SCC pp.341, para 110)

“110. (iii)...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 licenced driver or one who was not disqualified to drive at the relevant time."

12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."

28. In **Ram Chandra Singh's** case (supra), it has been held by the Hon'ble Supreme Court in para-11 of the judgment, which read as under:-

"11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer."

29. Applying the afore-stated edicts to the case on

hand, it has become clear that the insurance company would continue to remain liable unless it is proved that the owner/insured was aware or had knowledge of the fact that the driving licence was fake and still permitted that person to drive the vehicle. As discussed above, the appellant-insurance company did not even raise the plea that the owner of the vehicle allowed respondent no.3 to drive the vehicle knowing that he was not having any licence. Its stand was that the accident had occurred due to the negligence of the respondent no.3. Therefore, in such circumstances the insurance company cannot escape its liability for payment of compensation merely by proving the fact that the man who was driving the vehicle at the time of occurrence of the accident did not possess a valid and effective driving licence.

30. In view of my aforesaid discussion, this Court does not find any infirmity and illegality in the award passed by the learned Tribunal below.

31. Hence, the appeal filed by the appellant being devoid of any merit is dismissed and the impugned award dated 27.06.2016 is upheld.

32. No other point was urged before me.
33. The appeal stands disposed of in the above terms,
so also the pending applications, if any.

(Sushil Kukreja)
Judge

August 18, 2026
(raman)