

**IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA**

**FAO(MV) No.313 of 2024**  
**Reserved on: 07.09.2026**  
**Date of decision: 15.09.2026**  
**Date of uploading on website:**  
**15.09.2026**

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Jai Singh .....Appellant.

Versus

Ajay Kumar & others .....Respondents.

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*Coram*

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

<sup>1</sup>*Whether approved for reporting?* Yes.

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For the appellant: Ms. Anjali Soni Verma,  
Advocate.

Respondents No. 1 & 2 *ex parte*.

For respondent No. 3: Mr. Praneet Gupta, Advocate.

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**Sushil Kukreja, Judge.**

The instant appeal has been maintained by appellant-Jai Singh, i.e. owner of the offending vehicle, who was respondent No. 1 before the learned Tribunal below (hereinafter referred to as “the appellant/owner of the offending vehicle”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’) against impugned award, dated 28.09.2023, passed in MACP No.3-D/2015, by learned Motor Accident Claims Tribunal-II, Kangra at Dharamshala, District

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

Kangra, H.P. (hereinafter referred to as “the learned Tribunal below”), whereby the claim petition filed by the petitioner-claimant-Shri Ajay Kumar (respondent No. 1 herein), under Section 166 of the Act, was partly allowed and he was held entitled for compensation of Rs.3,48,700/- with interest @7.5% per annum from the date of filing of the petition till the realization of the amount from respondent No. 2-New India Assurance Company Limited and respondent No. 2 was given right to recover the same from respondent No. 1-Shri Jai Singh, owner of the offending vehicle.

2. The facts giving rise to the instant appeal are that the petitioner/claimant, i.e., Shri Ajay Kumar, preferred a claim petition under Section 166 of the Act before the learned Tribunal below wherein he sought compensation of Rs.25,00,000/- on account of injuries sustained by him in motor vehicle accident involving car having temporary registration No. HP-40-T-1967, which was later registered as HP-39C-3191 (offending vehicle). As per the petitioner on 01.02.2014, around 05:30 p.m., he was riding on his motorcycle, having registration No. HP-39A-9204, and going to his shop at Darini bazaar, Tehsil Shahpur, District Kangra, H.P.. When he reached near the wine shop, respondent No.

1-Shri Jai Singh or respondent No. 1-A Shri Kakoo Ram, owner and driver of the offending vehicle, respectively, while driving the offending vehicle in a very high speed came on the wrong side and hit his motorcycle. Due to the accident he fell down on the road and sustained multiple injuries and his left leg was fractured. As per the petitioner, the accident took place due to the rash and negligent driving of respondent No. 1 or respondent No. 1-A. After the accident, the petitioner was rushed to Civil Hospital, Shahpur where he was given first aid and referred to Dr. RPGMC Tanda where he remained admitted from 01.02.2014 to 11.02.2014, 15.07.2014 to 17.07.2014 and 09.08.2014 to 12.08.2014. The petitioner further pleaded that he remained outdoor patient even after 12.08.2014 and had spent Rs.1,00,000/- on his treatment. He was running a shop of photographer and prior to the accident he used to earn to Rs.15,000/- per month and after the accident he was suffering from mental depression.

3. Respondent No. 1, i.e., owner of the offending vehicle filed his reply, wherein he denied the allegations of the petitioner and averred that the petitioner did not suffer any injury or permanent disability due to the rash and

negligent driving of vehicle, bearing registration No. HP-39C-3191. He averred that he was not driving the offending vehicle, but one Kakoo Ram (respondent No. 1-A) was driving the same. He further averred that the petitioner sustained injuries due to his own fault and negligence as he was driving the motorcycle at a very high speed. He also averred that the compensation claimed by the petitioner was highly exorbitant and excessive.

4. Respondent No. 1-A Shri Kakoo Ram (driver of the offending vehicle) also filed his reply to the claim petition, wherein he took preliminary objection qua maintainability of the petition. On merits, he denied all the allegations as alleged in the petition. He averred that neither he was driving the offending vehicle nor any FIR was registered against him. He had no knowledge about the accident and the vehicle involved in it.

5. Respondent No. 2-New India Assurance Company Limited filed its separate reply, wherein preliminary objections qua non-joinder of necessary parties, the driver was not holding a valid and effective driving licence and the vehicle was being driven in violation of the terms and conditions of the insurance policy were taken. On merits, it

was averred that the place of accident was within the jurisdiction of Police Station, Shahpur,. It was further averred that the accident had not taken place due to the rash and negligent driving of respondent No. 1 or respondent No. 1-A, thus the petitioner was not entitled for any compensation. Even otherwise, the compensation, as sought by the petitioner, was highly excessive.

6. On 24.06.2019 the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether on dated 01.02.2014 at/about 5.30 pm petitioner Ajay Kumar sustained injuries on account of accident of the vehicle No.HP-39C-3191 at Drini Chowk Tehsil Shahpur Distt. Kangra, H.P. due to rash and negligent driving of respondent No. 1, as alleged? OPP***
- 2. If issue No. 1 is proved in affirmative, whether the petitioner is entitled for compensation, if so, to what extent and from whom? OPP***
- 3. Whether respondent No. 1-A was driving the alleged vehicle at the time of accident and respondent No. 1 was not driving the alleged vehicle, as alleged? OPR-1***
- 4. Whether the petition is not maintainable, as respondent No. 1A has no connection with the alleged accident, as alleged? OPR-1A***
- 5. Whether respondent No. 1 was not holding valid and effective driving licence at the time of accident, as alleged? OPR-2***
- 6. Whether the alleged vehicle involved in the accident was being driven in contravention of the terms and conditions of the insurance policy and the Motor Vehicle Act/Rules, as***

***alleged? OPR-2***

**7. *Relief.***

7. After the parties led their evidence and after hearing the learned counsel for the parties, the claim petition was partly allowed by the learned Tribunal below and petitioner/claimant (respondent No. 1 herein) he was held entitled for compensation of Rs.3,48,700/- with interest @7.5% per annum from the date of filing of the petition till the realization of the amount from respondent No. 2- Insurance Company and respondent No. 2 was given right to recover the same from respondent No. 1-Shri Jai Singh, owner of the offending vehicle.

8. Feeling aggrieved and dissatisfied, appellant-Shri Jai Singh, owner of the offending vehicle and respondent No. 1 before the learned Tribunal below, preferred the instant appeal against the impugned award dated 28.09.2023, with prayer to allow the instant appeal by setting aside the impugned award qua him (appellant).

9. Learned Counsel for the appellant contended that the appellant was not driving the offending vehicle at the time of the accident, rather respondent No. 2-Kakoo Ram was driving the same and the accident had taken place due

to the own fault and negligence of the petitioner himself, as such the liability to pay the compensation to the petitioner cannot be fastened upon the appellant.

10. Per contra, the learned counsel for respondent No. 3-Insurance Company supported the impugned award and contended that the impugned award is the result of proper appreciation of both facts and law and the appeal, being devoid of merits, be dismissed. Learned counsel for the Insurance Company further contended that Kaku was not driving the offending vehicle and it was the appellant himself who was driving the vehicle.

11. I have heard the learned counsel for the appellant, learned counsel for respondent No. 3 and carefully examined the entire records.

12. The perusal of the record reveals that on 01.02.2014 petitioner-Ajay Kumar sustained injuries on account of the accident of the vehicle No. HP-39C-3191 due to the rash and negligent driving of respondent No. 1. The perusal of the record further reveals that respondent No. 1-Jai Singh (appellant herein) has not disputed that his car bearing Temporary No. HP-40-T-1967 (permanent registration No. HP-39C-3191) had met with an accident on

01.02.2014 and he has also not disputed that the accident took place due to the rash and negligent driving of the car. The only defence taken by the appellant is that he had engaged one Kakoo Ram (respondent No. 1-A), as driver of the car, who was driving the car at the relevant date. However, except for the bald statement of the appellant there is no other evidence on record to show that respondent No. 1-A-Kakoo Ram was driving the vehicle in question at the time of the accident. Therefore, in the absence of any evidence on record, it cannot be said that respondent No. 1-A-Kakoo Ram was driving the car at the time of the accident.

13. The statement of the petitioner, while appearing as PW-3 was duly corroborated by Shri Baldev Singh, who appeared in the witness-box as PW-4, which established on record that on 01.02.2014, around 05:30 p.m. respondent No. 1(appellant herein), was driving car bearing temporary No. HP-40-T-1967 (permanent registration No. HP-39C-3191) in a rash and negligent manner and hit against the motorcycle of the petitioner near Darini Chowk, therefore, petition was not maintainable against respondent No. 1-A-Kakoo Ram.

14. The perusal of the material on record further

reveals that the accident took place due to the rash and negligent driving of the appellant who was driving the vehicle at the time of accident. The plea of the Insurance Company (respondent No. 3 herein) is that the appellant was not holding an effective and valid driving licence at the time of the accident in question and the vehicle was being driven in contravention of the terms and conditions of the insurance policy. Therefore, it was incumbent upon the appellant to have produced on record his driving licence, however, for the reasons best known to the appellant, he has failed to place on record his driving licence.

15. It is a settled law that initial onus is upon the owner of the offending vehicle to produce on record the driving licence of the driver and thereafter the onus will shift upon the insurance company to prove that the driving licence is not effective and valid. In ***Pappu & Others Versus Vinod Kumar Lamba & Another, (2018) 3 SCC 208***, Hon'ble Supreme Court held that the initial onus is on the owner of the vehicle to adduce into evidence the fundamental document like driving license and the Insurance Company cannot be saddled with the liability where owner has failed to adduce these documents. Relevant extract of this judgement

is reproduced as under:

***“13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.”***

16. In the case on hand, the appellant, while appearing in the witness-box as RW-1 has also admitted in his cross-examination that he was not having any driving licence to drive the vehicle. Therefore, without producing his driving licence, the owner of the vehicle who was driving the vehicle at the relevant time cannot be said to have extricated himself

from his liability. The insurance company would become liable only after such driving license is produced by the owner of the offending vehicle. As held in ***Vinod Kumar Lamba's*** case (supra), mere production of valid insurance certificate, in respect of offending vehicle is not enough for the owner to make insurance company liable to discharge liability arising from rash and negligent driving by the driver of the vehicle. The insurance company can be fastened with the liability on the basis of the valid insurance policy only after basic facts are pleaded and established that the vehicle was not only duly insured but also that it was driven by an authorized person having a valid driving license. The insurance company would become liable only after such foundational facts are pleaded and proved by the other side.

17. Hence, in view of the foregoing discussion and the position of law emerging, in the facts and circumstances of the present case, the insurance company cannot be fastened with the liability in law. The owner-cum-driver of the offending vehicle insured with the insurer was not authorized to drive the vehicle when the accident occurred and thus there was a breach of policy conditions.

18. For the reasons recorded above, the insurance

company has rightly been absolved from liability to pay the compensation. Now the question, which arises for consideration, is as to whether in the facts and circumstances of the case, the insurance company can be directed to pay the compensation amount with liberty to recover the same from owner of the vehicle. Learned counsel for the insurance company 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 the petitioner as well as respondents No.1 and 2 contended that in the instant case, the petitioner 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.

19. It is settled proposition of law that the Motor Vehicles Act is the benevolent piece of legislation. The petitioner herein is the third party, therefore, the right of a third party cannot be defeated only on the ground that the driver of the offending vehicle was not holding the valid driving license. The concept of pay and recover is of recent

origin, meant to take care of the suffering undergone not only by 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."*

20. 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.”***

21. 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”.*

22. Again, the Hon’ble Supreme Court in ***Pappu & others vs. Vinod Kumar Lamba & another, (2018) 3 Supreme Court Cases 208***, had held as under:

*“19. In the present case, the owner of the vehicle (Respondent 1) had produced the insurance certificate indicating that Vehicle No. DIL 5955 was comprehensively insured by Respondent 2 (insurance company) for unlimited liability. Applying the dictum in National Insurance Co. Ltd (National Insurance Co. Ltd. vs. Swaran Singh, (2004) 3 SCC 297), to subserve the ends of justice, the insurer (Respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law.”*

23. The same view has further been followed in the case of ***Parminder Singh vs. 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 realization. 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.”***

24. 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 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, i.e. appellant-Jai Singh.

25. In view of what has been discussed hereinabove, the impugned award dated 28.09.2023, passed by the learned Tribunal below, needs no interference and the instant appeal, being devoid of merits, deserves dismissal and is accordingly dismissed.

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

**( Sushil Kukreja )**  
**Judge**

**15<sup>th</sup> September, 2026**  
(virender)