

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MV) No.432 of 2015

Reserved on: 17.08.2026

Date of decision:07.09.2026

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Oriental Insurance Company Limited

...Appellant

Versus

Vinod Kumar and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant:

Mr. Deepak Gupta, Senior Advocate,
with Ms. Meera Devi & Ms. Yashika
Thakur, Advocates.

For the respondents:

Mr. Pranjal Munjal & Mr. Harshit
Sharma, Advocates, for respondents
No.1 to 4.

Name of respondent No.5 deleted.

Mr. Parav Sharma, Ms. Vishali
Lakhanpal & Ms. Srishti Ramesh,
Advocates, for respondents No.6 & 7.

Sushil Kukreja, Judge

The instant appeal is preferred by the appellant-Oriental Insurance Company (hereinafter referred to as the appellant) under Section 173 of the Motor Vehicles Act (for short "MV Act"), against award dated 11.06.2015, passed by the learned Motor Accident Claims Tribunal-III, Kangra at Dharamshala,

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

District Kangra, HP, in MACP No.67-G/II/13/07, with a prayer to quash and set aside the said award. The parties to the lis shall be referred to as they were before the learned Tribunal below.

2. Brief facts of the case, giving rise to present appeal, are that the petitioners (respondents No.1 to 4 herein) filed a claim petition under Section 166 of MV Act, whereby they sought compensation on account of death of Shakuntla Devi, who was wife of petitioner No.5 (now deceased) and mother of petitioner No.1 to 4. It was averred by the petitioners that on 22.05.2007, while Shakuntla Devi was returning from the Market of *Addehey-di-Hatti* and was walking on the extreme left side of the road, then at about 1:45 PM, a Tata Sumo bearing registration No.HP-01H-2872 suddenly came from backside and hit her, as a result of which, she fell down on the road and sustained grievous injuries. She was taken to CHC Nadaun, where she succumbed to the injuries.

3. As per the petitioners, at the time of the accident, the deceased was aged about 50 years and she was earning Rs.5,000/- per month from sewing, diary, agriculture etc. Hence, they sought compensation to the tune of Rs.10,00,000/-.

4. Respondents No.1 and 2, i.e. owner and driver of the offending vehicle, in their joint reply, took preliminary objections qua maintainability and *locus standi*. On merits, it was averred that Tata Sumo was parked and was not being driven, but due to vis-major, the vehicle moved and caused the accident and there was no negligence on the part of respondent No.2. It was further averred that the petitioners were not dependents upon the deceased and the married daughters had no right to claim compensation.

5. In the reply filed on behalf of the Oriental Insurance Company, it took preliminary objections qua valid and effective driving licence and the violation of terms and conditions of the insurance policy. On merits, it was averred that the petitioners were not entitled to any compensation and denied the averments made in the petition. Hence, prayer for dismissal of the petition was made.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 30.03.2010:-

***“1. Whether Smt. Shakuntla Devi died due to rash and negligent driving of respondent No.2 who was driving vehicle No.HP-01H-2872 on 22.05.2007, as alleged?
...OPP***

2. *In issue No.1 is answered in affirmative, to what amount petitioners are entitled to the compensation and from whom? OPP*
3. *Whether petition is not maintainable? ...OPR*
4. *Whether petitioners No.2 to 4 have no locus standi to claim compensation? ...OPR*
5. *Whether the accident in question was result of vis-Major, if so, its effect? ...OPR*
6. *Whether respondent No.2 was not holding a valid driving licence? ..OPR*
7. *Whether the vehicle was being plied in violation of the terms and conditions of the insurance policy? ..OPR*
8. *Relief."*

7. After parties led their evidence, the claim petition was allowed with costs and the petitioners were held entitled for a sum of Rs.4,95,088/- as compensation with simple interest at the rate of 8% per annum from the date of filing of the petition till realization of the whole amount with interest from respondent No.3, with whom the vehicle in question was insured.

8. Feeling aggrieved/dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 11.06.2015 passed by the learned Tribunal below, with a prayer to quash and set-aside the impugned award.

9. Learned Senior Counsel for the appellant-Insurance Company contended that as there was no evidence with regard to negligence on the part of the driver of the vehicle in question, the claim petition should have been dismissed. He also contended

that the driver was not having a valid and effective licence as such there was breach of the terms and conditions of the policy, therefore, the appellant/insurance company could not have been made liable to pay the compensation to the petitioners.

10. On the other hand, learned counsel for respondents No.1 to 4 & learned counsel for respondents No.6 & 7 supported the award passed by the learned Tribunal below. They contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective, hence, prayed for dismissal of the instant appeal.

11. I have heard learned Senior Counsel for the appellant as well as learned counsel for respondents No.1 to 4 and learned counsel for respondents No.6 & 7 and also carefully examined the entire record.

12. Learned Senior Counsel for the appellant firstly contended that the petitioners have failed to prove that deceased Shakuntla Devi died due to the rash and negligent driving of respondent No.2, who was driving the vehicle bearing registration No.HP-01H-2872 on 22.05.2007. Now, the question which arises for consideration is as to whether the deceased had died due to the rash and negligent driving of the vehicle in question by its

driver/respondent No.2. To prove the negligence, the petitioners had examined two eye witnesses, i.e. ,PW-3 Dalip Singh and PW-4 Harbans Singh. PW-3 Dalip Singh is the husband of deceased, who was accompanying her at the time of the accident in question. He categorically deposed that on 22.05.2007 when he alongwith his wife was returning from the market, a Tata Sumo, which was parked on the side of the road on a slope without putting a stone under its tyres and there was no driver in the vehicle, it suddenly hit his wife from backside, as a result of which, she sustained grievous injuries and ultimately she died on the way of hospital due to the said injuries. PW-4 Harbans Singh deposed that on 22.05.2007, when he was in the market at *Addehey-di-Hatti*, he saw that Shakuntla Devi had come under a Tata Sumo and she was taken to Nadaun for treatment. Perusal of the material on record reveals that at the relevant time, respondent No.2 driver was not in the vehicle, which was parked on a slope without putting a stone under its tyres. Without realizing the gravity of an unforeseen event, respondent No.2 had left the vehicle unattended and parked it on the slope, hence, the accident had occurred due to his negligence. The matter was also reported to the police and an FIR Ext. PW2/A was registered against the

accused in Police Station Jawalamukhi. Perusal of FIR Ext.PW2/A reveals that the accident had occurred due to the negligence of respondent No.2 and it also corroborates the version of PW-3 Dalip Singh and PW-4 Harbans Singh. Therefore, it is proved on record that the accident in question had occurred due to the rash and negligent driving of respondent No.2.

13. Learned Senior Counsel for the appellant/insurance company next contended that respondent No.2, i.e. driver of the Tata Sumo in question, was not holding a valid and effective driving licence at the time of accident, therefore, the insurance company is not liable to pay any compensation to the petitioners. It is an admitted case of the parties that at the time of the accident, the offending vehicle was owned by respondent No.1 and respondent No.2 was its driver. The driving licence of respondent No.2-Avtar Singh was placed on record by RW-3-Jitender Kumar, Criminal Ahlmad, as Ext. RW3/A, perusal of which, reveals that it was issued to drive motorcycle, scooter, car & Jeep. The driver of the offending vehicle appeared in the witness-box as RW-4 and in his cross-examination, he stated that his driving licence Ext.RW3/A was issued from Panipat and the same was issued between the year 2003 to 2005. However, perusal of driving

licence Ext.RW3/A reveals that the date of issuance has not been mentioned in the same. Therefore, the onus was upon the insurance company to prove that the driver of the offending vehicle was not having a valid effective driving licence at the time of accident in question. To prove the fact that the driving licence Ext. RW3/A was a fake licence, the insurance company had examined RW-5 Vikram Singh, License Clerk, from the SDM office, Panipat (Haryana), who deposed that driving licence Ext.RW3/A was not issued from their office. However, in his cross-examination, he stated that he had only brought the record of the year 2004 and 2008. Since as per version of RW-4 Avtar Singh, driving licence Ext.RW3/A was issued between the year 2003 to 2005, it was incumbent upon the insurance company to have summoned the records with respect to the year 2003 and 2005. The insurance company had summoned the record only with respect to the year 2004 and 2008. However, for the reasons best known to it, the records with respect to the year 2003 & 2005 have not been summoned. Therefore, in the absence of any record for the year 2003 and 2005, the appellant/insurance company has failed to prove that the driving licence Ext. RW3/A was a fake and forged document. Moreover, the owner of the offending vehicle,

while appearing in the witness-box was RW-2, had admitted in his cross-examination that before engaging the services of respondent No.2 as driver, he had seen his driving licence.

14. 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.

15. In ***Hind Samachar Ltd. (Delhi Unit) Versus National Insurance Company Ltd. & ors. (2026) 2 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. Lehru (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 Leheru 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."

16. In ***Nirmala Kothari Vs. United India Insurance Company Limited, (2020) 4 SCC 49***, 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."

17. In **Ram Chandra Singh Vs. Rajaram and others (2018)**

8 SCC 799, 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."

18. Therefore, in view of the law cited hereinabove, 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. In the instant case, as discussed above, the owner of the offending vehicle while stepping into the witness box as RW-2, had admitted, in his cross-examination, that before engaging the services of respondent No.2 as driver, he had seen his driving licence. Since it has come

on record that the owner of the offending vehicle has satisfied himself that the driver was having a driving licence before engaging him and no evidence to the contrary has been led by the insurance company that the owner was aware of the fact that the driving licence was fake, still permitted the driver to drive the vehicle, the insurance company cannot be absolved from its liability to pay compensation to the petitioners.

19. In view of my aforesaid discussion, this Court does not find any infirmity and illegality in the award passed by the learned Tribunal below. Hence, the appeal filed by the appellant/insurance company, being devoid of any merit, is dismissed and the impugned award dated 11.06.2015 is upheld.

20. No other point was urged before me.

The appeal stands disposed of in the above terms, so also the pending application(s), if any.

(Sushil Kukreja)
Judge

September 07, 2026
(V. Himalvi)