

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

FAO(MV) No.4221 of 2013

Reserved on: 24.06.2026

Date of decision:13.07.2026

**Date of uploading on website:
13.07.2026**

Bhagat Ram (since deceased) through LRs

.....Appellants.

Versus

Ram Kali & others

.....Respondents.

Coram

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

¹*Whether approved for reporting?*

For the appellants:

Mr. Ashok Sharma, Senior Advocate, with Ms. Anubhuti Sharma, Advocate.

Names of respondents No. 1, 6 & 7 deleted.

For respondents 2 & 3:

Mr. Himanshu Kapila, Advocate, vice Mr. Manohar Lal Sharma, Advocate.

For respondent No. 4:

Mr. H.S. Rana, Advocate.

For respondent No. 5:

Mr. Praneet Gupta, Advocate.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant-Bhagat Ram (since deceased, through his legal representatives), who was one of the petitioners/claimants

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

before the learned Tribunal below (hereinafter referred to as “the appellant”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘The Act’) against impugned award, dated 10.07.2013, passed in MAC No. 38 of 2010, by learned Motor Accident Claims Tribunal, Bilaspur, H.P. (hereinafter referred to as “the learned Tribunal below”), whereby the claim petition filed by the petitioners-claimants, including the appellant herein, under Section 166 of the Act, was allowed and petitioner No. 2 (appellant herein) was awarded compensation in the sum of Rs.4,76,970/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the realization of the amount from respondent No. 3, i.e., The New India Assurance Company Limited (respondent No. 4 herein).

2. The facts giving rise to the instant appeal are that the petitioners/claimants, i.e., Smt. Har Dei, wife of Shri Bhagat Ram, Shri Bhagat Ram son of Shri Kaniya Ram, Shri Gita Ram son of Shri Bhagat Ram filed a claim petition under Section 166 of the Act. The petitioners averred in their claim petition that on 02.05.2010, around 12:30 p.m. when they were sleeping in their house at village Sai Brahmna, truck having registration No. HP-24C-3022 fell down on the roof of

their house due to the rash and negligent driving of respondent No. 1. In the aforesaid accident, petitioner No. 1- Smt. Har Dei sustained injuries, a cow died and another sustained injuries and the house and cowshed of the petitioners were damaged. The aforesaid truck was owned by respondent No. 2-Shri Kuldeep Singh (respondent No. 3 herein) and it was insured with respondent No. 3-The New India Assurance Company Limited (respondent No. 4 herein). The petitioners, by filing the claim petition, sought damages in the sum of Rs.15,00,000/-.

3. Respondents No. 1 and 2, i.e., driver and owner of the offending vehicle filed their reply, wherein they denied the occurrence of the accident due to the rash and negligent driving of respondent No. 1 and they averred that there was a sudden mechanical failure, which caused the accident. They denied that there was any loss to the property etc. of the petitioner due to the accident.

4. Respondent No. 3-Insurance Company filed its separate reply, wherein it was averred that the offending vehicle was being plied in contravention of the provisions of the Act and the driver of the vehicle was not having a valid and effective driving license and there was no contract of

insurance between the parties. As per the replying respondent, the claim petition was filed in collusion with respondents No. 1 and 2 to grab compensation by unfair means. It was averred that petitioners No. 2 and 3 were not owners of the house and the petitioners have not filed on record any estimate of repairs and abstract of cost prepared by the authorized valuer/Engineer.

5. The petitioners filed rejoinder to the replies filed by the respondents, wherein they reiterated the averments made in the petition and denied the stand taken by the respondents.

6. On 08.09.2010 the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether the accident was the result of rash and negligent driving of the vehicle by respondent No. 1 and property of the petitioners was damaged in the said accident? OPP***
- 2. If issue No. 1 supra is proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP***
- 3. Whether the petition is not maintainable? OPR 1 & 2***
- 4. Whether the petitioners have no cause of action? OPR-1 & 2***
- 5. Whether the driver of the vehicle in question was not having valid and effective driving license to drive the vehicle in question at the***

relevant time? OPR-3

6. *Whether the vehicle in question was being plied without valid documents, if so, its effect? OPR-3*

7. *Relief."*

7. After the parties led their evidence and after hearing the learned counsel for the parties, the claim petition was allowed by the learned Tribunal below and petitioner/claimant No.2-Shri Bhagat Ram was held entitled for compensation in the sum of Rs.4,76,970/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the realization of the amount from respondent No. 3-Insurance Company.

8. Feeling aggrieved and dissatisfied, appellant-Shri Bhagat Ram, who was one of the petitioners before the learned Tribunal below and died during the pendency of the instant appeal and now being represented by his legal representatives, preferred the instant appeal against the impugned award dated 10.07.2013, with prayer to allow the instant appeal by modifying the impugned award by allowing interest @ 9% per annum from the date of filing of the claim petition.

9. Learned Senior Counsel for the appellants contended that while passing the impugned award the

learned Tribunal below has overlooked the evidence of the Architect, who was the expert witness, without assigning any reason. He further contended that the learned Tribunal below had erred in making a deduction of 30% even from the estimated loss assessed by PW-2 Shri Ganesh Sharma.

10. Per contra, the learned counsel for respondents 2 to 4 and 5 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.

11. I have heard the learned Senior Counsel for the appellants, learned counsel/vice counsel for the respective respondents and carefully examined the entire records.

12. The case of the petitioners is that on 02.05.2010, at around 12:30 a.m., an explosion took place outside the house of petitioner Gita Ram and it was found that a truck, bearing registration No. HP-24C-3022, loaded with clinker, had fallen down on the lintel of his house, which had caused damage to the house and cowshed. The learned Tribunal below had given its findings on issue No. 1 that the accident had occurred due to rash and negligent driving of the offending vehicle by its driver and the property

of the petitioners was damaged in the said accident. So far as the findings on issue No. 1 regarding negligence of the driver are concerned, neither the insurance company nor the owner/driver of the offending vehicle had assailed the same. Hence, these findings on issue No. 1 have attained finality.

13. By means of the claim petition, the petitioner had claimed compensation on account of damage to his house as well as injuries sustained by petitioner No. 2 Smt. Har Dei and for the death of one cow and injuries to another cow. The learned Tribunal had awarded compensation in the sum of Rs.5000/- for the death of one cow and Rs.1500/- with respect to the injuries sustained by another cow. However, no compensation was granted for the alleged injuries sustained by petitioner No. 1-Smt. Har Dei on account of lack of evidence.

14. By way of the instant appeal, the original petitioner Shri Bhagat Ram has challenged the award only on the ground that the compensation with respect to damage to his house had been awarded by the learned Tribunal below on the lower side by ignoring the report of the Architect and also by erroneously deducting 30% of the amount from the estimated loss assessed by PW-2 Shri Ganesh Sharma.

15. The principle of law as far as the grant of compensation is well settled. In ***Reshma Kumari v. Madan Mohan [(2009) 13 SCC 422]***, Apex Court referring to ***Livingstone v. Rawyards Coal Co.*** held that grant of compensation involving an accident is within the realm of law of torts. The relevant para of the aforesaid judgment is extracted hereunder:

“41. Indisputably, grant of compensation involving an accident is within the realm of torts. It is based on the principle of restitution in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.” (See Livingstone v. Rawyards Coal Co. (1880) 5 AC 25 (HL)).

16. In support of his case, one of the petitioners Shri Gita Ram appeared in the witness-box as PW-5 and he deposed that on the intervening night of 1st and 2nd May, around 12:30 a.m., when they were sleeping in their home, an explosion occurred. When he went outside he saw truck, bearing registration No. HP-24C-3022, which was loaded with clinker, had fallen on the lintel of their home. Due to the accident their kitchen and adjacent rooms got severely damaged. Cow-shed also got damaged and three year old cow had died and another cow got injured. He further deposed that his mother also sustained injuries in the said

accident. This witness had quantified the damages @ Rs.12,00,000/-. Shri Subhash Chand, appeared in the witness-box as PW-4 and deposed that on 02.05.2010, after 12:00 mid night, he was going home and in the meantime vehicle having registration No. HP-24C-3022, which was being driven by driver-Kuldeep Chand, in a rash and negligent manner, fell on the house of the petitioners. He further deposed that he went to the spot and pulled the driver out of the vehicle. As per this witness, a cow of the petitioners died and house as well as cow-shed got severely damaged.

17. The petitioners, in support of their case had also examined PW-6 Shri Anup Kumar, Architect, who deposed that on 04.07.2011 he visited the spot for making reconstruction estimate of the house of the petitioners. He further deposed that after doing measurement of the damaged house on the spot, he prepared reconstruction estimate Ex. PW-6/A (17 sheets). As per report Ex. PW-6/A, there was total damage of Rs.7,42,654/- to the house of the petitioners. However, no reliance can be placed on his report, Ex.PW-6/A, as he cannot be termed as an expert witness, as he was a qualified Architect, but not an Engineer

capable of assessing the loss caused to the structure. He is also not an expert in the area of Civil Engineering. Moreover, this witness had visited the spot in the month of July, 2011, i.e., after more than one year of the occurrence as such it cannot be said that after a period of more than one year, same position was existing on the spot, when the inspection was carried-out as it was on the date of accident.

18. Shri Ganesh Sharma, who was Diploma Holder in Civil Engineering and working as Junior engineer, HPPWD, appeared in the witness-box as PW-2. He had prepared the report Ex. PW-2/A, wherein the damages caused to the building and its cost of construction has been assessed to the extent of Rs.6,72,100/- This witness had inspected the spot after 7-8 days of the incident and was competent to assess the value of the structure, as he was having expertise in the field of civil engineering and he had fulfilled the criteria, as laid down under Section 45 of the Evidence Act

19. Therefore, the only available evidence qua the damage to the house is the report of PW-2 Shri Ganesh Sharma. As per report prepared by this witness, the damage suffered by the petitioner was to the extent of Rs.6,72,100/-. This report had remained unshaken and had not been

controverted by any legally acceptable evidence as no evidence to the contrary has been led by the respondents, therefore, report, Ex. PW-2/A, can be taken into consideration while assessing damage caused to the house of the petitioner. As per the estimate prepared in report, Ex. PW-2/A, the petitioners had suffered damage to their house to the extent of Rs.6,72,100/-. However, while awarding the compensation, the learned Tribunal below had erroneously deducted 30% as depreciation of the house. In the opinion of this court, no amount could have been deducted by the learned Tribunal below as depreciation and instead, the Tribunal below should have taken into consideration the fact that cost of construction of the house increases over passage of time. In the opinion of this court, if the claim is found to be genuine and if it is found that the claimant has suffered the loss as claimed, there is no reason why a further depreciation should be ordered by the Tribunal. Therefore, as per report, Ex. PW-2/A, the petitioner is entitled to the damages suffered by the petitioner with respect to his house in the sum of Rs. Rs.6,72,100/-

20. In view of what has been discussed hereinabove, the impugned award is modified, as above. The petitioner is

awarded compensation in the sum of Rs.6,72,100/- with respect to the damage caused to his house. Rest of the award including the interest component shall remain the same. The instant appeal, stands disposed of in the aforesaid terms.

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

(Sushil Kukreja)
Judge

13th July, 2026
(virender)