

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 47 of 2014

Reserved on: 22.08.2026

Date of decision: 18.09.2026

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18.09.2026**

National Insurance Co. Ltd. & Anr. Appellants

Versus

Prabha Devi & Anr. Respondents

Coram

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

¹ *Whether approved for reporting?*

For the appellants: Mr. Jagdish Thakur, Advocate.

For the respondents: Mr. K.S. Thakur, Advocate, for
respondent No. 1.

Respondent No. 2 ex parte.

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellants/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), against impugned award, dated 05.08.2013, passed by the learned Motor Accidents Claims Tribunal-III, Shimla, District Shimla, H.P., (hereinafter referred to as "the learned Tribunal"), whereby MAC Petition No. 15-S/2 of 2012/11, filed by petitioner, Prabha Devi, under Section 166 of the Act, was

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

allowed and she was held entitled for compensation in the sum of Rs. 4,10,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the compensation amount, to be paid by the appellants/Insurance Company as indemnifier. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 14.01.2011 Master Aryan (since deceased) alongwith his father late Sh. Jawahar Lal, was travelling in a Maruti Wagon-R bearing Registration No. HP-09-2938, which was being driven by his father. When the aforesaid car reached near Pungrish *Nullah*, its driver Jawahar Lal lost control over the same and it rolled down into a deep gorge. Due to the aforesaid accident, Master Aryan and his father Jawahar Lal succumbed to the injuries on the spot. It has been averred in the petition that at the time of accident, Master Aryan was studying in Class 6th and he was a brilliant student and was having bright and shining future. It has been further averred that the accident had taken place due to rash and negligent driving of the

driver of the vehicle. Hence, the petitioner filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 20,00,000/-.

3. Respondents No. 1 & 2, by filing reply, contested the petition on the grounds that the deceased was son of the owner-cum-driver and was not covered under the terms and conditions of the insurance policy. The vehicle was being driven in breach of terms and conditions of the insurance policy. The driver was not having valid and effective driving licence and the petition was filed in collusion with respondent No. 3.

4. Respondent No. 3, in its reply took preliminary objections qua cause of action, the person who was driving the vehicle in question was not possessing a valid and effective driving licence, the vehicle was being plied without valid registration, fitness certificate and route permit and the petitioner was travelling in the said vehicle as gratuitous passenger. On merits, content of the petition have been denied.

5. On 26.11.2012, the learned Tribunal below had

framed the following issues for consideration and adjudication:

- “1. Whether Jawahar Lal drove vehicle No. HP-09-2938 on 14.01.2011 rashly and negligently resulting into death of Master Aryan?OPP**
- 2. If issue No. 1 is proved, to what compensation the petitioner is entitled and from whom? OPP**
- 3. Whether Jawahar Lal was not holding valid and effective driving licence at the time of accident? OPR**
- 4. Whether the petition is collusive? OPR**
- 5. Relief”**

6. 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. 4,10,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the compensation amount, to be paid by respondents No. 1 & 2 jointly and severally.

7. Feeling aggrieved and dissatisfied, the appellants/Insurance Company preferred the instant appeal against the impugned award dated 05.08.2013.

8. I have heard the learned counsel for the appellants, learned counsel for respondent No. 1 and

carefully examined the entire record.

9. The learned counsel for the appellants contended that the driver of the vehicle in question, who was the owner of the vehicle and father of the deceased, was under the influence of liquor at the time of accident, therefore, Insurance Company cannot be held liable to pay the compensation.

10. On the other hand, the learned counsel appearing on behalf of respondent No. 1 supported the impugned award and prayed for dismissal of the instant appeal.

11. The perusal of the material available on record reveals that on 14.01.2011 deceased Master Aryan alongwith his father Jawahar Lal were travelling in a Maruti Wagon-R bearing Registration No. HP-09-2938, which was being driven by Jawahar Lal himself, who was father of the deceased and it met with an accident, as a result of which, Master Aryan alongwith his father Jawahar Lal succumbed to the injuries on the spot. It has come on record that Jawahar Lal who was driving the offending vehicle had consumed alcohol at the time of accident.

12. Now the question which arises for consideration before this Court is as to whether the Insurance Company can be held liable when driver of the offending vehicle was driving the same under the influence of liquor. This issue is no longer *res integra* in view of the decision reported in ***Latest HLJ 2010 HP 1, Khem Chand Vs. Smt. Uma Devi and others***, wherein, Coordinate Bench of this Court has held that such ground is not available to the Insurance Company as intoxication of the driver is not a ground available to the Insurance Company under Section 149 of the Act. Paragraphs 4 & 5 of the aforesaid judgment are reproduce as under:-

"4. The law is very well settled that a claim which falls within the purview of an Act policy i.e. a liability falling within the ambit of Section 147 of the Motor Vehicles Act, 1988 (the Act) can only be contested by the Insurance Company on the grounds available to it under Section 149 of the Act. It is not permitted to contest the proceedings on any other grounds. Intoxication of the driver is not a ground available to the Insurance Company under Section 149 of the Act. Therefore, the liability, which is statutory under Section 147 of the Act, has to be satisfied by the insurer. It may be clarified that in case the insurer in addition to the liability which it is bound to cover under the Act covers other liability then in case of such extended liability, it may raise the defences available to it as per terms of the policy, but as far as statutory liability is concerned, the insurer has no

authority to incorporate any term in the policy which is not contemplated in terms of Section 149 of the Act. Therefore, the Insurance Company could not have been permitted to raise this defence and it could not be permitted to recover the awarded amount from the insured.

5. In this case, I also find that the clause in the policy relied upon by the insurance company is not applicable. This clause which provides that the insurance company shall not be liable if the person driving the vehicle is intoxicated with the knowledge and consent of the insured is incorporated in Section-I of the policy. This section only deals with own damage claims, i.e. damage caused to the vehicle in question. Section-II of the Act deals with third parties and does not contain a similar clause. Therefore, it is apparent that even the policy did not contemplate the the insurance company would not be liable in case of third parties in case the driver drove the vehicle in an intoxicated condition, with the knowledge of the owner."

13. This legal position was thereafter reiterated in ***Oriental Insurance Company Ltd. vs. Sangeyum, 2016 ACJ 1783.***

14. Adverting to the facts of the present case. It has been duly proved on record, that the vehicle in question was duly insured with the appellants/Insurance Company at the time of accident, as such, Insurance Company cannot be exonerated from paying the compensation amount, as in view of aforesaid decision rendered by Coordinate Bench of

this Court in ***Khem Chand's*** case (supra) and in terms of Section 149 of the Act, ground of intoxication of the driver is not available to the insurer. In view of the above, learned Tribunal has not committed any error in saddling the appellants-insurance company with the liability to pay the compensation to the original claimants.

15. No other point was urged before me.

16. Accordingly, in view of the aforesaid decision, the instant appeal, which sans merit, deserves dismissal and is accordingly dismissed.

Pending application(s), if any, stands disposed of.

(Sushil Kukreja)
Judge

18th September, 2026
(raman)