

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 390 of 2014

Reserved on: 13.08.2026

Date of decision: 24.08.2026

Date of uploading on Website: 24.08.2026

National Insurance Company Limited

...Appellant

Versus

Laxmi Singh and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant: Mr. Jagdish Thakur, Advocate.

For the respondents: M. B.S. Chauhan, Senior Advocate,
with Mr. Sahil Sharma & Ms. Aditi
Rana, Advocates, for respondent
No.1.

Mr. Y.P. Sood, Advocate, for
respondents No.2 & 3.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act (for short "M.V. Act"), against award dated 04.05.2013, passed by the learned Motor Accident Claims Tribunal, Shimla, HP, in MACT No.26-S/2 of 2011, with a prayer to quash and set aside the impugned award. The parties shall be

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

referred to as they were before the learned Tribunal below.

2. Briefly stated the facts of the case, giving rise to the present appeal, are that on 24.12.2010, while petitioner Laxmi Singh walking on the left side of the road at place Fagu, Tehsil Theog, District Shimla, then at about 4.25 PM, a vehicle bearing registration No.HP-09C-0125 came from Theog side and hit him, as a result of which, he sustained injuries on his both legs and his left leg was got fractured. Thereafter, he was taken to PHC Fagu, from where, he was referred to IGMCH, Shimla, where he remained admitted from 24.12.2010 to 05.01.2011. He was operated on 30.12.2010 and iron plates were inserted in his left leg. He had spent about Rs.1,50,000/- on his medical treatment. The accident had occurred due to the rash and negligent driving of the vehicle in question by its driver/respondent No.2. As per the petitioner, he was an agriculturist/horticulturist and he used to earn about Rs.50,000/- per month from his profession. Hence, he prayed for grant of compensation to the tune of Rs.15,00,000/- alongwith interest @ 12% per annum.

3. Respondent No.1 & 2, i.e. owner and driver, in their joint reply, raised preliminary objections qua locus standi, concealment of material facts and maintainability of the petition.

On merits, it was denied that the accident had occurred due to rash and negligent driving of the driver/respondent No.2.

4. In the reply filed by respondent No.3-Insurance Company, preliminary objections regarding maintainability, the driver was not holding valid and effective driving licence at the time of the accident and that the claim petition was filed in collusion with the owner. On merits, it was averred that the petitioner had claimed a highly excessive and exaggerated amount of compensation. Hence, prayer for dismissal of the claim petition was made.

5. On the pleadings of the parties, the learned Tribunal below framed the following issues on 15.09.2011:-

- “1. Whether the petitioner had suffered injuries on account of rash and negligent driving of vehicle No.HP-09C-0125 by respondent No.2? OPP**
- 2. If issue No.1 is proved, what amount of compensation and from whom petitioner is entitled to? OPP**
- 3. Whether driver of vehicle No. HP-09C-0125 had not been in possession of a valid and effective driving licence? ...OPR-3**
- 4. Whether claim petition is not maintainable against respondents? ...OPR**
- 5. Relief.”**

6. After parties led their evidence, the claim petition was partly allowed and compensation to the tune of Rs.1,38,000/-

was awarded in favour of the petitioner and against the respondents alongwith interest at the rate of 9% per annum from the date of petition till deposit of the award amount. In addition, costs to the tune of Rs.3,000/- was also awarded and the insurance company was directed to deposit the award amount.

7. Feeling aggrieved/dissatisfied, the appellant-insurance company preferred the instant appeal against award dated 04.05.2013 passed by the learned Tribunal below, with a prayer to quash and set aside the impugned award.

8. Learned counsel for the appellant/Insurance Company contended that the Tribunal below has erroneously fastened the liability on the insurance company as on the date of the accident, respondent No.2 was not having any licence to drive the vehicle in question. He further contended that the learned Tribunal below has erred in taking the income of the petitioner as Rs.4,500/- per month, that too in the year 2010, therefore, the compensation awarded by the learned Tribunal is liable to be reduced.

9. On the other hand, learned Senior Counsel for the petitioner as well as the learned counsel for respondents No.1 & 2/ owner & driver supported the award passed by the learned

Tribunal below and 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.

10. I have heard the learned counsel for the appellant/Insurance Company as well as learned Senior Counsel for the petitioner and learned counsel for respondents No.1 & 2/owner and driver and also carefully examined the entire record.

11. It is not in dispute that on 24.12.2010, when the petitioner was walking on the left side of the road at Fagu, then at about 4.25 PM, the vehicle in question came from backside and hit him, as a result of which, he sustained injuries on both his legs and his left leg was got fractured.

12. Learned counsel for the appellant/insurance company firstly contended that the learned Tribunal below has erred in taking the income of the petitioner as Rs.4,500/- per month, that too in the year 2010, therefore, the compensation awarded by the learned Tribunal is liable to be reduced.

13. In order to prove his income, petitioner Laxmi Singh himself appeared in the witness-box as PW-3 and deposed that he was an agriculturist and horticulturist. He used to grow two crops in an year, but after the accident, he was not in a position to do any work. He further deposed that he had suffered permanent disability to the extent of 25% as per Disability Certificate Ext.PW2/A. PW-2 Dr.Anurag Sharma proved on record Disability Certificate of the petitioner Ext.PW2/A and deposed that the petitioner had suffered permanent disability to the extent of 25% in relation to his left lower limb. However, except for the bald statement of the petitioner, no evidence has been led by him to the effect that he was earning Rs.60,000/- per month. Therefore, in the absence of any cogent and satisfactory evidence on record, the learned Tribunal below had rightly assessed the income of the petitioner in the sum of Rs.4,500/- per month. The learned Tribunal below has awarded Rs.1,08,000/- on account of future prospects, Rs.20,000/- for pain and sufferings and Rs.10,000/- for attendant charges to the petitioner. However, no amount was awarded on account of medical treatment as no medical bills had been placed on record by the petitioner. Hence, in the opinion of this Court, no interference is required in the

impugned award so far as the findings recorded by the learned Tribunal below on the quantum is concerned.

14. The next contention raised by the learned counsel for the appellant/insurance company is that respondent No.2 was not having any driving licence what to talk about the learner's licence on the date of the accident, therefore, in the insurance company is not liable to pay any compensation. He contended that learner's licence of respondent No.2-Prashant Negi adduced in evidence as Ext.RW1/A as well as his LMV driving licence Ext. RW1/B clearly demonstrate that learner's licence was effective w.e.f. 19.01.2011 to 18.07.2011 and the LMV driving licence Ext.RW1/B was valid w.e.f. 30.03.2011 to 29.03.2031, whereas, the accident in question had occurred on 24.12.2010, therefore, respondent No.2 was not having any licence to drive the vehicle at the time of the accident in question. It is also an admitted case of the parties that the vehicle involved in the accident was a car bearing registration No.HP-09C-0125, which was owned by respondent No.1 and was being driven by respondent No.2-Prashant Negi.

15. Now, the question which arises for consideration before this Court is as to whether at the time of the accident in

question, the driver was having a valid and effective driving licence or not. The learned Tribunal below had framed an issue on this aspect and had returned its findings against the insurance company by taking an adverse inference against it. The perusal of the record reveals that Rajinder Singh-owner of the vehicle, while appearing in the witness-box as RW-1, tendered in evidence the learner's licence of respondent No.2-Prashant Ext.RW1/A as well as his LMV driving licence Ext.RW1/B. Perusal of these documents shows that learner's licence Ext. RW1/A was valid w.e.f. 19.01.2011 to 18.07.2011, whereas the LMV driving licence Ext.RW1/B was valid w.e.f 30.03.2011. Admittedly, the date of accident is 24.12.2010. Therefore, it was incumbent upon the owner of the offending vehicle to have produced on record the driving licence of the driver which was valid on the date of accident. However, driving licence of the driver of the offending vehicle was neither adduced on behalf of the owner, nor by the driver and this very burden being not discharged by the owner that the vehicle was being driven by a driver having a valid and effective driving licence, the burden of proof cannot be shifted upon the insurance company. The learned Tribunal below has wrongly shifted this burden upon the appellant/insurance

company, therefore, the impugned award on this very point of determination, which has been decided against the appellant-insurance company, is based on perverse finding and the same needs inference. Since the vehicle in question was being driven on the date of accident without having any driving licence, the insurance company cannot be held liable to pay compensation to the petitioner.

16. Now the question, which arises for consideration, is as to who is liable to pay the amount of compensation. Learned counsel for the appellant 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.

17. 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.

18. 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."*

19. 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".*

20. The same view has further been followed in the case of ***Parminder Singh v. 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 realisation. 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."

21. 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 appellant/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.

22. Consequently, the impugned award dated 04.05.2013, passed by the learned Tribunal below, is modified only to the extent that the awarded amount of compensation shall be first paid to the petitioner by the appellant/Insurance Company, who shall be entitled to recover the same from respondent No.2/owner of the offending vehicle, in accordance with law. The

remaining part and terms of the impugned award, including the interest component, shall remain the same.

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

(Sushil Kukreja)
Judge

August 24, 2026
(V. HImalvi)