

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV No.145 of 2014

Reserved on: 01.07.2026

Date of decision: 27.07.2026

Date of uploading on Website: 27.07.2026

Kushal Singh and another

...Appellants

Versus

Mohan Lal and another

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellants: Mr. H.S. Rangra, Advocate.

For the respondents: Mr. Lokesh Thakur, Advocate, vice
Mr.G.R. Palsra, Advocate, for respondent
No.1.

Mr. Dipankar Bagga, Advocate, vice
Mr.J.S. Bagga, Advocate, for respondent
No.2.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellants-petitioners (hereinafter referred to as the petitioner) under Section 173 of the Motor Vehicles Act (for short 'MV Act') against the impugned award dated 29.07.2013, passed by the learned Motor Accidents Claims Tribunal, Mandi, District Mandi, HP, in Claim Petition No.38/2011, whereby the claim petition filed by them was

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

dismissed, with a prayer to set aside the impugned award.

2. Briefly stated the facts of the case, giving rise to the present appeal, are that on 03.11.2009, when Durga Devi was standing by the side of road near Visco Resort, than at about 12.30 PM, a Maruti Car bearing registration No.HP-31-8339 owned and being driven by respondent No.2 in a rash and negligent manner, came from Mandi side and hit the vehicle against Durga Devi, as a result of which, she sustained multiple injuries. Thereafter, she was taken to Zonal Hospital, Mandi, where she remained admitted upto 07.11.2009, on which date, she died due to the injuries sustained by her in the accident. It was averred by the petitioner that the at the time of her death, the deceased was aged about 65 years and was earning Rs.3,500/- per month as she was doing agricultural work as well as selling the milk. It was further averred that the petitioners were the legal heirs of the deceased on the basis of a Will, executed by her in their favour and they being minors, were living under the care and custody of Jaswant Singh. Hence, the petitioners sought compensation to the tune of Rs.10,00,000/-.

3. Respondent No.1-Insurance Company, in its reply, raised preliminary objections that the driver of the offending

vehicle was not holding a valid and effective driving licence, the vehicle was being plied in violation of the terms and conditions of the insurance policy and the petitioners have no cause of action to file the petition. On merits, all the averments as contained in the petition were denied by respondent No.1.

4. Respondent No.2/driver-cum-owner of the offending vehicle filed reply to the claim petition, wherein it was averred that no accident had taken place due to his rash and negligent driving. It was denied by him that the deceased had sustained injuries in the accident, due to which she died lateron. The age as well as income of the deceased was also denied.

5. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 19.05.2012:-

- “1. Whether Smt. Durga Devi died in motor vehicle accident on 3-11-2009, involving the vehicle bearing registration No.HP-31-8339 being driven by respondent No.2 in a rash and negligent manner, as alleged? ...OPP***
- 2. If issue No.1 is proved in affirmative, for what amount of compensation the petitioners are entitled and from whom? OPP***
- 3. Whether the driving of the vehicle involved in the accident was not holding a valid and effective driving licence, if so its effect? OPR-1***
- 4. Whether the vehicle in question was being plied in contravention of terms and conditions of insurance policy and under the provision of Motor Vehicle Act, if so its effect? ...OPR-1***

5. Whether the petitioners have no cause of action? ...OPR-1

6. Relief.”

6. The parties led their evidence and after hearing the learned counsel for the parties, the petition was dismissed by the learned Tribunal below.

7. Feeling aggrieved and dissatisfied, the appellants-petitioners preferred the instant appeal against the impugned award dated 29.07.2013, passed by the learned Tribunal below, with the prayer to set-aside the impugned award, by awarding the compensation in their favour on account of death of the deceased.

8. Learned counsel for the appellants contended there was sufficient evidence on record to prove that the accident had occurred due to the rash and negligent driving of respondent No.1. He also contended that the learned Tribunal below has committed a serious illegality in holding that the death of deceased was not caused due to the accident in question. Hence, he submitted that the impugned award may be quashed and be set-aside.

9. Conversely, learned vice counsel representing respondents No.1 and 2 supported the impugned award and prayed for dismissal of the instant appeal.

10. I have heard the learned counsel for the appellant as well as learned vice counsel for respondent No.1 and learned counsel for respondent No.2 and also carefully examined the entire record.

11. The principle of claim for compensation in accidents arising out of the use of the motor vehicle is based on tortious liability and the negligence of the driver of the motor vehicle is a sine quo non for maintaining a claim under the provisions of the Act. The rash and negligent aspect is to be considered on the basis of evidence produced before the Tribunal/Court by the parties. In the claim proceedings, the Tribunal/Court is not under an obligation to find the guilt of a person for commission of offence rather the claim petition ought to be considered on the theory of preponderance of probabilities to get impression as to what must have been occurred upon the impression got by the evidence on record. Therefore, the theory of preponderance of probabilities is applicable to ascertain whether any incident or accident has occurred or not and who is responsible and to what extent.

12. In the instant case, admittedly, the deceased was the aunt (*Bua*) of the petitioners. In support of their case, the petitioners have examined one Jaswant Singh, through whom the

claim petition was filed, as PW-1, who deposed that the accident had occurred due to the rash and negligent driving of the vehicle in question by respondent No.2, who hit the deceased outside the road on a wide, open road, when she was standing by the side of the road near Visco Resort, Mandi. However, in his cross-examination, this witness admitted that he was not present on the spot at the time of the accident. Therefore, no reliance can be place upon the testimony of this witness with respect to the fact that the accident had occurred due to the rash and negligent driving of the vehicle in question by respondent NO.2. PW-2 Teg Singh deposed that on 03.11.2009, at about 12.30 PM, while he was taking tea in a Tea Stall, opposite to Visco Resorts, he noticed a Maruti Car No.HP31-8339 coming from Mandi side towards Sundernagar, being driven by respondent No.2 in a rash and negligent manner and struck the same with Durga Devi, who was standing by the side of the road, as a result of which, she suffered multiple injuries. He further stated that respondent No.2 fled away from the spot and the deceased was taken to the hospital and later on she had died at PGI Chandigarh. In his cross-examination, he stated that other persons were also present at the spot and he remained there for about one hour. He further

stated that the police did not visit the spot in his presence. However, no other witness was examined by the petitioners to corroborate the statement of PW-2 Teg Singh. It is the case of the petitioners that the matter was reported to police in Police Station Sadar, Mandi, however, perusal of the record reveals that no FIR has been placed on record or any police official was examined to prove that any FIR was lodged in the Police Station about the alleged accident, which was caused due to the rash and negligent driving of the vehicle in question by respondent No.2. Admittedly, no FIR was registered against respondent No.2 and, therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the accident had occurred due to the rash and negligent driving of the vehicle in question by respondent No.2. Hence, the learned Tribunal below has rightly held that the petitioners were not entitled to any compensation from the respondents on account of death of the deceased.

13. Therefore, in view of my aforesaid discussion, no interference is required in the impugned award dated 29.07.2013, passed by the learned Tribunal below. Consequently, the instant appeal, being devoid of merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

July 27, 2026
(V. Himalvi)