

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) Nos. 148 & 229 of 2016

Reserved on: 20.08.2026

Date of decision: 14.09.2026

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1. FAO (MV) No.148 of 2016

Sangita Anand

...Appellant

Versus

Sandhya Tomar and others

...Respondents

2. FAO(MV) No.229 of 2016

Shriram General Insurance Company Limited

...Appellant

Versus

Sangita Anand and others

...Respondents

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Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?* Yes

FAO (MV) No.148 of 2016

For the appellant: Mr. Aditya Chouhan, Advocate.

For the respondents: M. Anil Chauhan, Advocate, for respondent No.1.

Mr. Gambhir Singh Chauhan & Mr.Viurender Kumar, Advocates, for respondent No.2.

Mr. Jagdish Thakur, Advocate, for respondent No.3.

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

FAO(MV) No.229 of 2016

For the appellant:

Mr. Jagdish Thakur, Advocate.

For the respondents:

M. Aditya Chouhan, Advocate, for respondent No.1.

Mr. Anil Chauhan, Advocate, for respondent No.2.

Mr. Gambhir Singh Chauhan & Mr.Virender Kumar, Advocates, for respondent No.3.

Sushil Kukreja, Judge

Since both these appeals are the offshoot of impugned award dated 02.06.2014, passed by learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, HP, in MAC Petition No.120-MAC/2 of 2013/2012, they are being taken up together for disposal. The parties shall be referred to as they were before the learned Tribunal below.

2. The appeal, being FAO No.148 of 2016 is maintained by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short, 'MV Act'), for the enhancement of compensation amount awarded by the learned Tribunal below, whereas, the appeal, being FAO No.229 of 2016, is maintained by the Insurance Company, with the prayer to set-aside the impugned award dated 02.06.2014, thereby dismissing the claim petition preferred by the petitioner.

3. Briefly stated the facts of the case, giving rise to the instant appeals, are that on 09.08.2011, while petitioner-Sangita Anand was going to attend her duties on a motorcycle of her colleague, then at about 9.30 AM, near Sataun Bus Stand, a vehicle (Mahindra Utility) bearing registration No.HP-18-3747, being driven by respondent No.2 in a rash and negligent manner, came from Ranuka side and hit the motorcycle, on which the petitioner was a pillion rider, as a result of which, she sustained multiple and grievous injuries, including fracture of her right leg. She was taken to Civil Hospital, Paonta Sahib, from where, she was referred to Regional Hospital, Nahan. However, she preferred to take treatment at Mahandiratta Hospital, Ambala City, where she remained admitted from 09.08.2011 to 16.09.2011. As per the petitioner, she remained bed ridden for about three months and spent more than Rs.1,50,000/- on her treatment, transportation, special diet, attendant etc. She was working as Female Health Worker and was earning Rs.30,000/- per month. Hence, she prayed for grant of compensation to the tune of Rs.10,00,000/-.

4. Respondent No.1 & 2, i.e. owner and driver of the offending vehicle, in their joint reply, raised preliminary objections

qua non-joinder of necessary parties, suppression of material facts etc. On merits, it was averred that the petitioner sustained simple injuries due to her own fault and the fault of the motorcyclist. It was also averred that the petitioner had claimed highly exaggerated and excessive amount of compensation .

5. In the reply filed by respondent No.3-Insurance Company, preliminary objections regarding non-joinder of owner, driver and insurance company of the motorcycle, the driver not possessing a valid and effective driving licence, the vehicle was not insured on the date of accident and that the petition was filed in collusion with respondents No.1 & 2. On merits, it was averred that respondent No.1 had sold the vehicle to one Shri Sunder Singh much prior to the accident, hence, respondent No.1 had ceased to be the owner of the vehicle. It was also averred that a highly imaginary compensation was claimed by the petitioner and she was not entitled to any compensation. It was further averred that the accident had occurred on account of the sole negligence of the rider of the motorcycle, on which the petitioner was travelling. The petitioner had deliberately not impleaded the owner, driver and insurance company of the said motorcycle as party to the claim petition.

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

- “1. Whether the petitioner sustained injuries on account of rash and negligent driving of offending vehicle, i.e. Mahindra Utility bearing No.HP-18-3747 by respondent No.2 Pratap Singh on 09.08.2011 at about 9:00 AM, near Sataun Bus Stand, if so, its effect? OPP**
- 2. Whether the petitioner is entitled to compensation amount, if so, from whom and to what extent? OPP**
- 3. Whether the petition is not maintainable in the present form? ...OPR-1& 2**
- 4. Whether the petition is bad for non-joinder of necessary parties? ...OPR-3**
- 5. Whether respondent No.2 driver of Mahindra Utility No.HP-18-3747 was not possessed a valid and effective driving licence at the time of accident? OPR-3**
- 6. Whether Mahindra Utility No.HP-18-3747 was not having a valid insurance policy at the time of accident, if so, its effect? ...OPR-3**
- 7. Whether the petition has been filed in collusion with respondents NO.1 and 2, if so, its effect? ...OPR-3**
- 8. Relief.”**

7. After parties led their evidence, the claim petition was partly allowed and the petitioner was awarded compensation of Rs.1,00,000/-. The liability of respondents No.1 to 3 shall be jointly and several and respondent No.3, being insurer, was held liable to pay the award amount as indemnifier. However, liberty was granted to respondent No.3/insurance company to file

appropriate proceedings against respondent No.1 and its subsequent owner RW-4 for recovery of the award amount in accordance with law.

8. Feeling aggrieved and dissatisfied, respondent No.3/ Insurance Company preferred FAO(MV) No.229 of 2016, with the prayer that the impugned award may be quashed and set-aside and the claim petition be dismissed. Similarly, petitioner-Sangita Anand also preferred an appeal [FAO (MV) No.148 of 2016], for enhancement of the amount of compensation.

9. Learned counsel for the appellant/insurance company contended that the learned Tribunal below has erred in fastening the liability on the Insurance Company because the insurance policy was effective from 10.08.2011 as per certificate cum policy schedule Ext.RA, whereas, the accident in question had taken place on 09.08.2011, but the learned Tribunal below has observed that since the premium was received by the insurance company on 09.08.2011 at 8.05 AM, hence, the insurance company was held liable to pay the award amount as indemnifier.

10. Learned counsel for the appellant/petitioner- Sangita Anand contended that the learned Tribunal below has granted inadequate compensation, which deserves to be enhanced. The learned Tribunal below has wrongly held that the petitioner did not suffer any loss of earning, expenses for treatment, transportation, etc. though she had placed ample evidence on record.

11. On the other hand, learned counsel for respondents No.1 and 2/owner and 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 appeals.

12. I have heard learned counsel for the insurance company as well as learned counsel for the petitioner and learned counsel for respondents No.1 and 2/owner and driver of the offending vehicle and also carefully examined the entire record.

13. The first question which arises for consideration before this Court is as to whether the Insurance Company is liable to pay the compensation. It is not in dispute that the

accident in question had taken place on 09.08.2011 at 9:30 AM. Perusal of the certificate cum policy schedule Ext. RA reveals that the policy was valid from 10.08.2011 to the midnight of 09.08.2012. The case of the owner of the offending vehicle is that the premium was paid on 09.08.2011 at 8:05 AM, as per photocopy of cover-note Mark Y, therefore, the insurance policy was effective from 09.08.2011 at 8:05 AM as such the owner cannot be held liable to make the payment of the award amount. Perusal of cover-note Mark Y shows that premium was paid on 09.08.2011 at 8.05 AM. As discussed above, policy Ext. RA was valid from 00:00 on 10.08.2011 to midnight of 09.08.2012. There is express mention in the cover note that the commencement of the period of insurance was for one year w.e.f. 10.08.2011 to 09.08.2012 and the cover note was issued on 09.08.2011 at 8.05 AM. Therefore, the date, i.e. 09.08.2011 cannot be taken to be the date of issuance of the policy.

14. Now, the question, as stated above, whether simply because the premium has been accepted, the risk would automatically be assumed by the insurance company.

15. Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and others, (1984) 2 SCC 719*** held that mere filing any proposal for insurance and depositing first premium with the Life Insurance Corporation do not create a binding contract between the Life Insurance Corporation and the proposal so as to enable the heirs of the deceased after his death to claim the amount covered by the insurance policy and held as under:

"15. ... The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. ... "

16. In the case on hand, for getting the offending vehicle insured, the offer by way of premium was given by the owner on 09.08.2011, at 8:05 AM, which was accepted by the Insurance Company from 00:00 hours of 10.08.2011 to 11:59 hours of 09.08.2012. In the opinion of this Court, if depositing the premium with Insurance Company is treated as offer given by the owner for issuance of insurance policy of the offending vehicle, it would not *ipso facto* lead to irresistible conclusion that the offer has been accepted immediately unconditionally by the insurance company. After the policy was issued, it would mean that the offer of the owner was accepted by the insurance company to begin

the contract of insurance. Thus, the contract of insurance would only commence from the date and time of issuance of the insurance policy.

17. The issue as to whether the date of issuance of policy would be the relevant date for all purposes or date of proposal or date of issuance of receipt came for consideration before the Hon'ble Supreme Court in the case of ***Reliance Life Insurance Co. Ltd. Vs. Jaya Wadhvani, (2024) 2 SCC 427.*** Placing reliance on the judgment in the case of ***Life Insurance Corporation of India & another Vs. Dharam Vir Anand, (1998) 7 SCC 348*** and ***Life Insurance Corporation of India Vs. Mani Ram, (2005) 6 SCC 274,*** the Hon'ble Supreme Court held that date of issuance of insurance policy would be the relevant date for all purposes and not the date of proposal or the date of issuance of receipt. Relevant paras of the aforesaid judgment read as under:-

“12. 14th July 2012, therefore, cannot be taken to be the date of issuance of policy. It is only the date of issue of receipt of the initial premium. The date of issue of policy being 16.07.2012 is actually the date from which the policy commences and becomes effective.

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16. Relying upon the above judgment in the case of Dharam Vir Anand (supra), this Court again in the case of Life Insurance Corp'n. of India vs. Mani Ram, reiterated the same view and held that the date of issue of policy would be the relevant date even if there was backdating as has been

done in the case of Dharam Vir Anand (supra)."

18. In the present case also, as discussed above, the date of issue of policy is 10.08.2011, whereas the accident had taken place on 09.08.2011, therefore, the policy commences and becomes effective from 10.08.2011 only, as such, the Insurance Company cannot be held liable to pay the amount of compensation and it is the owner who is to pay the amount of compensation to the petitioner. Thus, in light of the above discussion, the submission of learned counsel for the owner that the Insurance Company must be held liable to pay compensation is not acceptable.

19. Learned counsel for the petitioner contended that the learned Tribunal below has awarded inadequate compensation as the petitioner had sustained multiple and grievous injuries in the accident in question.

20. Now the next question, which arises for consideration before this Court, is whether the learned Tribunal below has not awarded adequate compensation in favour of the petitioner. It has come in the evidence on record that the petitioner has sustained multiple injuries in the accident in question. Although, petitioner *Sangita Anand*, while appearing in the witness-box as PW-1,

stated that she has also sustained disability, however, no disability certificate has been placed on record by the petitioner in this respect. The petitioner has suffered compound fracture of both bones of right leg, therefore, the learned Tribunal below has rightly awarded a sum of Rs.50,000/-, under the head 'pain and sufferings' and Rs.50,000/-, under the head 'loss of enjoyment of life'. Hence, no fault can be found in the impugned award so far as the compensation under these heads is concerned.

21. No amount has been awarded to the petitioner under the head 'loss of earning or earning capacity as the learned Tribunal below has rightly concluded that the petitioner was employed as Female Health Worker in the Health & Family Welfare Department as such it cannot be said that she had suffered any loss of earning or earning capacity. The petitioner was also denied medical expenses as the learned Tribunal below has rightly observed that the petitioner had not pleaded that she had not claimed medical reimbursement of bills from her department. The learned Tribunal below has further rightly observed that there were no pleadings or even averments made by the petitioner that the medical bills could not have been reimbursed by her department, as such, the learned Tribunal had

declined the medical expenses to the petitioner, being a Government employee as the same having been reimbursed.

22. Since the petitioner had suffered multiple injuries in the accident in question, including fracture of her right leg, she must have incurred some amount on special diet and taxi charges. Therefore, a sum of Rs.5,000/-, under the head 'special diet' and further sum of Rs.5,000/-, under the head 'taxi charges, would be appropriate to be awarded in favour of the petitioner.

23. Learned counsel for the petitioner 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 of the offending vehicle. However, as discussed above, the date of issue of policy is 10.08.2011, whereas, the accident had taken place on 09.08.2011, therefore, the policy commences and becomes effective from 10.08.2011 only, as such, the Insurance Company cannot be held liable to pay the amount of compensation and it is the owner who is to pay the amount of compensation to the petitioner and in such a case, the direction to pay and recover cannot be issued.

24. No other point was urged before me.

25. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the appeal (FAO No.148 of 2016) preferred by petitioner- Sangita Anand is partly allowed, whereas, the appeal (FAO No.229 of 2016) filed by the insurance Company is allowed. The impugned award dated 02.06.2014, passed by learned Tribunal below is modified to the extent that the petitioner is held entitled to compensation to the tune of Rs.1,10,000/- and respondent No.1/owner shall be liable to make payment of compensation to the petitioner. Rest of the terms of the impugned award including interest component need no interference.

Both the appeals are disposed of in the above terms.
Pending application(s), if any, shall also stand disposed of.

(Sushil Kukreja)
Judge

September 14, 2026
(V. HImalvi)