

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MVA) No.210 of 2025

Reserved on: 17.07.2026

Date of decision: 17.08.2026

Date of uploading on Website: 17.08.2026

ICICI Lombard General Insurance Company Limited

...Appellant

Versus

Byasa Devi 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: Mr. Lovneesh Kanwar, Senior Advocate,
with Mr. Tek Chand, Advocate, No.1 to 3.
Mr. Amit Kumar Dhumal, Advocate, for
respondents No.4(i) to 4(vi).

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-National Insurance Company (hereinafter referred to as the appellant), under Section 173 of the Motor Vehicles Act (for short "MV Act"), against award dated 27.05.2025, passed by the learned Motor Accident Claims Tribunal, Sarkaghat, District Mandi, HP, in MACT Petition No.45 of 2021, with the prayer that the impugned

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

award may be set aside and the claim petition be dismissed with costs.

2. Briefly stated the facts of the case, giving rise to the present appeal, are that respondents No.1 to 3 (hereinafter referred to as the petitioners) filed a claim petition under Section 166 of the Act, whereby they sought compensation to the tune of Rs.50,00,000/- on account of death of Shri Brij Lal, who was husband of petitioner No.1 and father of petitioners No.2 & 3. It was averred by the petitioners that on 31.01.2019, at about 8:30 PM, Brij Lal was travelling in Bolero Camper bearing registration No.HP-28-6730, which met with an accident at place Dhandernala, near VPO Dhalwan, Tehsil Baldwara, District Mandi, due to which, Brij Lal sustained serious injuries and died on the spot. It was further averred that the accident had occurred due to the rash and negligent driving of the vehicle in question by its driver, i.e. respondent No.3.

3. As per the petitioners, at the time of his death, deceased Brij Lal was aged about 50 years, who was posted as Forest Worker in the Department of Treasuries, Accounts & Lotteries, Government of Himachal Pradesh and was getting Rs.25,015/- as salary. Besides this, he was also earning

Rs.5,000/- per month from his landed property and other sources. It was also averred that the deceased was the only earning member in the family and due to his untimely death, the petitioners had suffered a lot of agony. Hence, they sought compensation to the tune of Rs.50,00,00/-.

4. Respondent No.1-Insurance Company, in its reply, raised preliminary objection qua maintainability of the petition. On merits, it was averred that the vehicle in question was neither validly registered, nor it could have been plied in the public place. It was also averred that the vehicle was being driven in contravention of the terms and conditions of the insurance policy and the petitioners had claimed a highly exorbitant/exaggerated amount. The petitioners had filed the claim petition in collusion with respondents No.2 and 3.

5. In their joint reply, respondents No.2 & 3, i.e. owner and driver of the offending vehicle, also raised preliminary objection regarding maintainability of the petition. On merits, it was averred that the FIR, if any, was lodged, the same was fabricated and manufactured by the petitioners as respondents No.2 & 3 had never committed any accident while driving any vehicle.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues/additional issues on 22.04.2022 & 21.09.2023:-

- “1. Whether Sh. Brij Lal died in the motor accident on account of rash and negligent driving of respondent No.3 OPP**
- 2. If issue No.1 is proved in affirmative, to what amount and at what rate of interest the petitioners are entitled fro compensation? ...OPP**
- 3. Whether the petition is not maintainable? ...OPR**
- 3-A. Whether respondent No.3 was not possessing valid and effective driving licence at the time of accident, as alleged? ...OPR-1.**
- 3-B. Whether vehicle No.HP-28-6730 was being driven in violation of terms and conditions of the insurance policy? ...OPR-1.**
- 4. Relief.”**

7. After parties led their evidence, the claim petition was partly allowed with costs and the petitioners were held entitled to compensation in the sum of Rs.35,63,528/- with interest at the rate of 7.5% per annum from the date of filing of the petition till realization thereof and respondent No.1 (appellant herein) was directed to deposit the award amount within a period of one month.

8. Feeling aggrieved and dissatisfied, the appellant/ insurance company preferred the instant appeal against the impugned award dated 27.05.2025, passed by the learned

Tribunal below, with the prayer to set-aside the impugned award and dismissal of the claim petition.

9. Learned counsel for the appellant/Insurance Company has contended that the learned Tribunal below has committed illegality while saddling the entire liability upon the Insurance Company, as the vehicle in question was a goods carrier vehicle and the deceased was travelling as an unauthorized/gratuitous passenger and the insured has committed breach of the terms and conditions of the Insurance Policy. With these averments, he prayed that the impugned award be set aside and the present appeal be accepted.

10. On the other hand, learned counsel for the respondents supported the award and contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective.

11. I have heard the learned counsel for the appellant as well as the learned Senior Counsel for respondents No.1 to 3 and learned counsel for respondents No.4(i) to 4(vi) and also carefully examined the entire record.

12. The perusal of the material available on record reveals on 31.01.2019, deceased Brij Lal was travelling in Bolero Camper

bearing registration No.HP-28-6730, which met with an accident at place Dhandar-Nala, near VPO Dhalwan, Tehsil Baldwara, District Mandi, due to which, he sustained serious injuries and died on the spot. The learned Tribunal below has specifically given findings on issue No.1 that the accident had occurred due to the rash and negligent driving on the part of the driver, i.e. respondent No.3.

13. Now the question, which arises for consideration before Court, is that as to whether deceased Brij Lal was travelling in the offending vehicle as an unauthorized/gratuitous passenger at the time of accident, as contended by the learned counsel for the appellant. The case of the petitioners is that the deceased was employed as Forest Worker in the Department of Treasuries, Accounts and Lotteries, Government of HP and on 31.01.2019, while the deceased was travelling in Bolero Camper bearing registration No. HP-28-6730 alongwith his goods, i.e. paint, water tank and other material, then at about 8:30 PM, the said vehicle met with an accident near a place Dhandar-Nala on account of rash and negligent driving by its driver Rajender Kumar, as a result of which, Brij Lal sustained serious injuries and died on the spot. The burden to prove the breach of a terms of insurance policy rests squarely on the party which complains of such breach.

The test which can be applied in such a situation would be that which party would fail if no evidence is led or the onus is not discharged. In the present case, the answer would be the appellant-Insurance Company. In this behalf, reference can be made to the judgment passed by the Hon'ble Supreme Court in ***National Insurance Co.Ltd. v. Swaran Singh, (2004) 3 SCC 297***, wherein the Hon'ble Supreme Court has observed as under:

"110. The summary of our findings to the various issues as raised in this petition is as follows:

*((i)******

*(ii) ******

*(iii)******

(iv)The Insurance companies are, 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.

(v)The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case."

14. Applying the ratio of the law laid down by the Supreme Court, as referred to above, the onus to prove that the deceased was travelling in the offending vehicle as an unauthorized passenger at the time of accident was upon the insurance company. Admittedly, the vehicle involved in the accident was a goods carrier vehicle and the same was not meant to carry

passengers. As per Insurance Certificate, Ext. RW1/B, the vehicle was duly insured w.e.f. 18.01.2019 to 17.01.2020 and the accident had taken place during the subsisting period of insurance. Though, the insurance company has examined its Legal Manager Ritika Kamboj as RW-3 in support of its case that deceased Brij Lal was travelling in the offending vehicle as a gratuitous passenger at the time of the accident, however, except for her oral statement, no other evidence has been led to this effect. Therefore, the bald statement of RW-3 Ritika Kamboj without any corroborative evidence, cannot be relied upon. On the other hand, petitioner No.1-Byasa Devi, who is the wife of the deceased, while appearing in the witness-box as PW-1 categorically deposed that on 31.01.2019, her husband was travelling in the vehicle in question alongwith his goods, i.e. paint, water tank and other material. Such statement of the PW-1 has not been refuted and the insurance company has nowhere suggested to PW-1 that the deceased was not travelling in the vehicle as owner of the goods, neither there was any suggestion to PW-1 that the deceased was travelling in the vehicle as a gratuitous passenger. A suggestion was put to the PW-1 that the bills were not produced on record, to which, she had given explanation that the bills were with the

deceased and there is a possibility that the same would have fallen during the accident. No suggestion was given to PW-1 that the deceased was not travelling in the offending vehicle as owner of goods or he was not transporting goods in the vehicle. Another witness, who had endorsed the stand of the petitioners that the deceased was travelling in the vehicle as owner of goods, is the driver of the offending vehicle, who appeared in the witness-box as RW-1. The factum of the deceased being the owner of goods was admitted by the driver in his cross-examination. The insurance company had also not cross-examined the driver of the vehicle with regard to the status of the deceased as gratuitous passenger. The appellant-insurance company has not been able to discharge the onus placed upon it. In the absence of any evidence led by the insurance company, the version of the petitioners and the owner of the offending vehicle has to be believed. Therefore, in the absence of any evidence on record, it cannot be said that the deceased was travelling as an unauthorized passenger in the offending vehicle, as such the sole contention raised by the learned counsel for the appellant is not tenable and is liable to be rejected out-rightly.

15. No other point was urged before me.

16. Therefore, in view of the above discussion, no interference is required in the impugned award dated 27.05.2025 passed by the learned Motor Accident Claims Tribunal, Sarkaghat, District Mandi, HP. Consequently, the instant appeal, being devoid of merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

August 17, 2026
(V. Himalvi)