IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 72 of 2013
Reserved on: 31.10.2026
Date of decision: 24.11.2026
Date of uploading on website: 24.11.2026

Oriental Insurance Company Ltd. …..Appellant

Versus

Reeta @ Kalawati & Ors. ……Respondents

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?*

For the appellant: Mr. Deepak Gupta, Senior Advocate with Mr. Rahul Sharma, Advocate.

For the respondents: Mr. Rajul Chauhan, Advocate, vice Mr. Ajay Singh Kashyap, Advocate, for respondents No. 1 to 4 & 5(a).

Mr. Sanjay K. Sharma, Advocate, vice Mr. Mohan Singh, Advocate, for respondent No. 6.

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellant/Insurance Company, who was respondent No. 2

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

before the learned Motor Accident Claims Tribunal, Shimla, District Shimla, H.P., (hereinafter referred to as “the learned Tribunal”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’), against impugned award, dated 31.12.2012, passed by the learned Tribunal below, whereby MAC Petition No. 29-S/2 of 2010, filed by the petitioners, under Section 166 of the Act, was partly allowed with costs and they were held entitled for compensation in the sum of Rs. 5,51,500/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till the deposit of the amount and respondent No. 2/Insurance Company was held liable to pay the amount of compensation. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 31.10.2007 at about 9:00 A.M., Raj Kumar Thapa alias Shashi Ram Khatri (since deceased) loaded his vegetables from his village in a vehicle bearing registration No. HP-63-1447 and he was travelling in the said vehicle as owner of goods. When the aforesaid vehicle reached at Fagu, it met with an

accident due to rash and negligent driving of its owner-cum-driver, in which he died at spot. As per the petitioners, at the time of his death, the deceased was 45 years of age and was an agriculturist and his income from the agriculture was Rs. 6,000/- per month. Hence, the petitioners filed the claim petition under Section 166 of MV Act seeking compensation.

3. Respondent No. 1, owner-cum-driver of the offending vehicle, contested the claim petition by filing reply, wherein, it has been stated that the petition is not maintainable. It has been admitted that the deceased was travelling in the offending vehicle. It has been denied that the vehicle was being driven in a rash and negligent manner.

4. Respondent No. 2/Insurance Company in its reply, took preliminary objections qua maintainability and non-joinder of necessary parties. It has been stated that the offending vehicle was being driver in violation of terms and conditions of the Insurance Policy. It has further been stated that driver of the offending vehicle was not having a valid registration-cum-fitness certificate, route permit and driving licence at the time of accident. It has also been stated that

the deceased was travelling in the offending vehicle as gratuitous passenger.

5. On 10.05.2011, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether Sh. Raj Kumar Thapa died on account of rash and negligent driving of vehicle No. HP-63-1447 by respondent No. 1? OPP***
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> ***2. If issue No. 1 is proved to what amount of compensation and from whom petitioners are entitled? OPP***
>
> ***3. Whether claim petition is not maintainable against respondent No. 2 ? OPR-2***
>
> ***4. Whether Sh. Raj Kumar Thapa had been a gratuitous passenger travelling in vehicle No. HP-63-1447 if so with what effect? OPR-2***
>
> ***5. Whether respondent No. 1 had not been in possession of a valid and effective driving licence if so what effect? OPR-2***
>
> ***6. Whether petition is bad for non-joinder of necessary parties? OPR-2***
>
> ***7. Relief."***

6. After the parties led evidence and after hearing the learned counsel for the parties, the petition filed by the petitioners was partly allowed with costs and they were held entitled for compensation in the sum of Rs. 5,51,500/- alongwith interest at the rate of 9% per annum from the date

of filing of the petition till the deposit of the amount and respondent No. 2/Insurance Company was held liable to pay the amount of compensation.

7. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 31.12.2012.

8. I have heard the learned Senior Counsel for the appellant, learned counsel for the respondents and carefully examined the entire record.

9. The learned Senior Counsel appearing on behalf of the appellant first contended that the petitioners had failed to lead any evidence to prove that the accident was a result of rash and negligent driving on the part of respondent No. 1, owner-cum-driver of the offending vehicle. He further contended that the the petitioners have failed to lead any cogent evidence on record qua hiring the offending vehicle for carrying vegetables and the deceased was travelling as an unauthorized/gratuitous passenger.With these averments, he prayed that the impugned award be set aside and the present appeal be accepted.

10. Conversely, learned counsel for the respondents supported the impugned award and prayed for dismissal of the instant petition.

11. The case of the petitioners is that on 31.10.2007 at about 9:00 A.M., Raj Kumar Thapa alias Shashi Ram Khatri (since deceased) had loaded his vegetables from his village in a vehicle bearing registration No. HP-63-1447 and he was travelling in the said vehicle as owner of goods. When the aforesaid vehicle reached at Fagu, it met with an accident due to rash and negligent driving of its owner-cum-driver, in which he died at 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 respondent No. 1-Rajesh Verma.

12. Learned Senior Counsel for the appellant first contended that the petitioners had failed to lead any evidence to prove that the accident was a result of rash and negligent driving on the part of respondent No. 1, owner-cum-driver of the offending vehicle, as such, the findings on the issue of negligence given by the learned Tribunal below

deserve to be set aside.

13. Now the question which arises for consideration before this Court is as to whether deceased Raj Kumar Thapa alias Shashi Ram Khatri had died on account of rash and negligent driving of respondent No. 1, owner-cum- driver of the offending vehicle.

14. To prove the negligence on the part of respondent No. 1, one Aamir Singh has appeared in the witness box as PW-3 and deposed that on 31.10.2007, he was coming from Kotkhai to Shimla in his taxi and reached Fagu at 9:30 A.M. He further deposed that driver of vehicle No. HP-63-1447 was driving the same in a fast speed and he overtook his vehicle and at the time of accident, his vehicle was at a distance of 15-20 feet from the offending vehicle. He also deposed that the offending vehicle was being driven on a curve in negligent manner and high speed. He further deposed that the person, who was travelling in the offending vehicle fell outside due to rash and negligent driving of the driver and struck with bus and died at the spot. This witness was cross-examined at length, however, nothing favourable

could be elicited from his lengthy cross-examination. His testimony is trustworthy, reliable and the same inspires confidence and there is no reason to disbelieve his testimony which is further corroborated by FIR and postmortem report placed on record. He is the eye witness of the accident and cannot be said to be an interested witness. Even PW-1, Dr. Dalip Singh has stated that the deceased had died due to multiple injuries on his head leading to shock and his death. On the other hand, no evidence has been led by the Insurance Company that the accident had not taken place due to the rash and negligent driving of respondent No. 1. Respondents have neither examined any passenger of bus nor the driver and conductor of bus in order to rebut the testimony of PW-3. Thus, it stands duly established on record that the deceased had died on account of rash and negligent driving of respondent No. 1, owner-cum- driver of the offending vehicle.

18. Learned Senior Counsel for the appellant next contended that the learned Tribunal below has erred in fastening the liability on the insurance company as on the relevant date, the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. Now the

question which arises for consideration, is as to whether the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. The burden to prove the breach of the 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. vs. 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."*

19. Applying the ratio of the law laid down by the Supreme Court, as referred to above, the onus to prove that

the deceased was traveling as an unauthorized passenger was upon the insurance company. However, it has failed to lead any satisfactory evidence in order to prove that the deceased was traveling as gratuitous passenger in the offending vehicle without any goods. The Insurance Company has only examined RW-4, N.K. Hazri, Assistant Manager, who stated that the Insurance Company has conducted the investigation of the case through Pritam Chandel, who had found that the deceased was travelling in the offending vehicle as an gratuitous passenger. However, except for the oral statement of this witness, no evidence has been led by the Insurance Company to prove that the deceased was travelling in the offending vehicle as a gratuitous passenger. Moreover, the Insurance Company has also failed to produce Pritam Chandel in the witness box in support of its case. The appellant-insurance company has not been able to discharge the onus placed upon it. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the deceased was traveling as an unauthorized passenger in the offending

vehicle as such this contention raised by the learned Counsel for the Appellant is not tenable and is liable to be rejected outrightly.

20. No other point was urged before me.

21. In view of what has been discussed hereinabove, the impugned award dated 31.12.2012, passed by the learned Tribunal below needs no interference and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

24th November, 2026
(raman)