IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 303 of 2013
Reserved on: 31.10.2026
Date of decision: 24.11.2026
Date of uploading on website: 24.11.2026

National Insurance Company Ltd. …..Appellant

Versus

Reena Devi & Ors. ……Respondents

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

For the appellant: Mr. Ashwani K. Sharma, Senior Advocate with Ms. Mamta, Advocate.

For the respondents: Mr. Rajesh Verma, Advocate, for respondents No. 1 & 2.

Name of respondent No. 3 stands deleted.

Respondent No. 4 ex parte.

Mr. Ashok K. Tyagi, Advocate, for respondent No. 5.

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellant/Insurance Company, who was respondent No. 3 before the learned Motor Accident Claims Tribunal-I, Sirmaur

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

District at Nahan, 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 30.03.2013, passed by the learned Tribunal below, whereby MAC Petition No. 7-MAC/2 of 2008, filed by the petitioners, under Section 166 of the Act, was allowed with costs and they were held entitled for compensation in the sum of Rs. 5,65,400/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till payment, with a prayer to quash and set aside the impugned award. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 17.03.2007, Jai Singh (since deceased) was coming from Trilokpur on his motorcycle bearing registration No. HP-18A-2278 alongwith a lady pillion rider and when he reached near Village Johron, respondent No. 2, Daljeet Singh came in a JCB Machine/vehicle bearing registration No. HR-04N-0219 in a rash and negligent manner and suddenly moved towards the road and hit against the motorcycle, due to which, Jai

Singh and his pillion rider fell down on the road and suffered grievous injuries. Jai Singh was taken to the hospital, where he succumbed to the injuries. Hence, the petitioners filed the claim petition under Section 166 of MV Act seeking compensation.

3. Respondents No. 2, contested the claim petition by filing reply, wherein, it has been denied that the accident had taken place due to his rash and negligent driving and it has been stated that the deceased was himself negligent in driving his motorcycle.

4. Respondents No. 1 & 4 did not put in appearance to contest the petition, despite their service, hence they were proceeded against ex parte.

5. Respondent No. 3/Insurance Company in its reply stated that the driver of offending JCB was not possessing a valid and effective driving licence at the time of the accident and said vehicle was also being driven in contravention of the terms and conditions of the Insurance Policy. It has further been stated that the present petition has been filed by the petitioners in collusion with respondents

No. 1 & 2 and the deceased was himself negligent in driving his motorcycle.

6. On 27.12.2011, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether Jai Singh died on account of rash and negligent driving of offending vehicle i.e. JCB Machine No. HR-04N-0219 by respondent No. 2 Daljeet Singh on 17.03.2007 at about 12:30 PM, near village Johron, as alleged? OPP***
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> ***2. In case issue No. 1 is determined in affirmative to what amount of compensation, the petitioners are entitled to and from whom? OPP***
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> ***3. Whether the petition is not maintainable, as alleged? OPR-2 & 3***
>
> ***4. Whether the driver of the offending vehicle did not possess a valid and effective driving licence and that vehicle was being plied in violation of the terms and conditions of the insurance policy, as alleged? OPR-3***
>
> ***5. Whether the petition has been filed in collusion with respondents No. 1 & 2, as alleged? OPR-3***
>
> ***6. Relief."***

7. After the parties led evidence and after hearing the learned counsel for the parties, the petition filed by the petitioners was allowed with costs and they were held entitled for compensation in the sum of Rs. 5,65,400/-

alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till payment.

8. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 30.03.2013.

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

10. Learned Senior Counsel appearing on behalf of the appellant/Insurance Company contended that the driver of the offending vehicle (JCB) was not in possession of a valid and effective driving licence at the time of accident. He further contended that since there was breach of the terms and conditions of the policy, hence, the appellant could not have been made liable to pay the compensation.

11. On the other hand, learned counsel for respondents No.1 & 2 supported the award passed by the learned Tribunal below. He 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.

12. The main contention raised by the learned Senior Counsel for the appellant/insurance company is that respondent No. 2, i.e. driver of the offending vehicle (JCB) was not holding a valid and effective driving licence at the time of accident and, therefore, the insurance company is not liable to pay any compensation to the petitioners.

13. Perusal of the record reveals that vide order dated 15.11.2018, passed by the Coordinate Bench of this Court, the present appeal was remanded back for the limited purpose to the learned Tribunal below with a direction to record fresh findings qua issue No. 4 after affording a reasonable opportunity to all the parties, more particularly, the appellant upon which the onus lied to lead evidence. It was made clear that the learned Tribunal shall not disturb the findings on the other issues and only record its findings qua issue No. 4.

14. Pursuant to the aforesaid order passed by the coordinate Bench of this Court on 15.11.2018, the learned Tribunal below had appointed Sh. Jeet Singh Thakur, as

Local Commissioner, who was directed to visit the office of Licencing Authority Agra and to examine Licencing Clerk from Licencing Authority, M.V. Department, Agra, with respect to licence No. 4747/AG/01, issued on 10.04.2001, issued in the name of Daljeet Singh, respondent No. 2, Ext. RW-1/C. The report of the Local Commissioner was received on 06.06.2019 and alongwith the same, photocopy of the relevant page of the licencing register, Ext. LC/A and the statement of witness Pawan Kumar Sharma, Ext. LC/B have been submitted. On perusal of the report of local commissioner, Ext. LC/A, the learned Tribunal came to the conclusion that licence No. 4747/AG/01, issued on 30.03.2001 was in the name of Rajneesh Yadav and licence of respondent No. 2 was not genuine and was not issued by the office of RTO, Agra, as such, the learned Tribunal below had recorded its findings on 12.07.2019 that respondent No. 2 was not possessing valid and effective driving licence and the offending vehicle was being plied in violation of terms and conditions of the Insurance Policy at the time of accident.The aforesaid findings remained unchallenged and

the same has attained finality.

15. Now the question, which arises for consideration, is as to who is liable to pay the amount of compensation. Learned Senior 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.

16. On the other hand, learned counsel for petitioners (respondents No. 1 & 2 herein) contended that appellant/insurance company may be made liable to indemnify the compensation amount awarded by the learned Tribunal below at the first instance and thereafter to recover the same from the owner of the offending vehicle.

17. The concept of pay and recover is of recent origin, meant to take care of the suffering undergone by not only 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.*
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> *(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.*
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> *(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.*
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> *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.*
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> *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 at the first instance and thereafter to recover the same from the owner of the offending vehicle. Consequently, the impugned award dated 30.03.2013, passed by the learned Tribunal below, is modified only to the extent that the awarded amount of compensation shall be first paid to the petitioners by the appellant/Insurance Company, who shall be entitled to recover the same from respondent No.1/owner of JCB

Machine, 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

24th November, 2026
(raman)