IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 178 of 2026
Reserved on: 18.11.2026
Date of decision: 24.11.2026
Date of uploading on website: 24.11.2026

New India Assurance Company Ltd. .....Appellant

Versus

Kulbhushan Gupta & Anr. ……Respondents

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

For the appellant: Mr. Praneet Gupta, Advocate.

For the respondents: Mr. Hakam Bhardwaj, Advocate, for respondent No. 1.

Mr. Ashish Verma, Advocate, for respondent No. 2.

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), against impugned award, dated 29.05.2026, passed by the learned Motor Accident Claims Tribunal, Palampur, District Kangra, H.P., (hereinafter referred to as "the learned Tribunal"), whereby MACT No. 175/2019, RBT MACP No. 159-

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

P/II/23/2019, filed by petitioner, Kulbhushan Gupta, under Section 166 of the Act, was allowed and he was held entitled for compensation in the sum of Rs. 4,80,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization and respondents No. 1 & 2 were held liable to pay the compensation jointly and severally. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 19.03.2019, around 7:00 P.M., the petitioner had parked his Scooty bearing registration No. HP-53-5631 near his house at Tharu, Paprola and while he was alighting from the Scooty, a three wheeler auto, bearing registration No. HP-29A-1955, owned and driven by respondent No. 1, came from Palampur side from the wrong side of the road and struck against the Scooty, due to which, the petitioner fell on the road and sustained multiple grievous injuries on various parts of his body. It has been pleaded that the accident had occurred solely due to rash and negligent driving of respondent No. 1. After the aforesaid accident, the petitioner

was initially taken to Ayurvedic Hospital, Paprola and thereafter he was referred to Vivekanand Medical Institute, Palampur, where he remained admitted w.e.f. 19.03.2019 to 26.03.2019. As per the petitioner, he had suffered right sided pneumothorax, multiple rib fractures, small haemorrhagic contusions in the right basi-frontal region, acute subdural haematoma (right side), comminuted fracture of the left maxillary sinus wall, palatal lacerations and avulsion of multiple teeth. After the accident, the petitioner underwent dental treatment, including dentures at Bhatnagar Dental Clinic, Paprola. It has been pleaded by the petitioner that at the time of accident, he was 63 years of age and spent Rs. 5,00,000/- towards treatment. Hence, the petitioner filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 5,00,000/- alongwith interest.

3. Respondents No. 1, by filing reply, contested the petition and took preliminary objections qua maintainability, cause of action, non-joinder and mis-joinder of necessary parties and suppression of material facts. On merits, he

denied the manner of the accident and pleaded that FIR No. 39/2019 had been falsely registered at the instance of the petitioner. He denied the age and income of the petitioner, nature and extent of the injuries suffered by him and expenses incurred by him towards treatment. He also denied driving the vehicle in question at the time of accident and stated that he was not driving the vehicle.

4. Respondent No. 2/Insurance Company, in its reply admitted that vehicle No. HP-29A-1955 was insured under a valid policy. However, it has been stated that respondent No. 1/driver did not possess a valid and effective driving licence at the time of accident, the vehicle did not have a valid registration, fitness and permit and the vehicle was being driven in violation of the policy conditions. It has also been stated that the petition has been filed in collusion with respondent No. 1.

5. On 10.11.2022, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether on 19.03.2019, at about 7:00 p.m., at the place Tharu (Paprola), the petitioner***

suffered multiple injuries on various parts of his body due to the offending vehicle No. HP-29A-1955 being driven by respondent No. 1 in a rash and negligent manner? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP

3. Whether respondent No. 1 was not holding a legal and valid driving licence at the relevant time, as alleged? OPR-2

4. Whether the vehicle in question was being driven in breach of the terms and conditions of the Insurance policy by respondent No. 1, as alleged? OPR-2

5. Relief."

6. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed and the petitioner was held entitled for compensation in the sum of Rs. 4,80,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization and respondents No. 1 & 2 were held liable to pay the compensation jointly and severally.

7. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 29.05.2026.

8. I have heard the learned counsel for the appellant, learned counsel for respondent No. 1, learned

counsel for respondent No. 2 and carefully examined the entire record.

9. The learned counsel for the appellant contended that the driver-cum-owner of the vehicle in question, was under the influence of liquor at the time of accident, as the medical report of the driver annexed with the challan shows an extremely high blood alcohol level (280.92 mg%), which indicates that he was under the influence of alcohol at the time of accident, therefore, Insurance Company cannot be held liable to pay the compensation.

10. On the other hand, the learned counsel appearing on behalf of respondent No. 1 supported the impugned award and stated that the defence that the driver was under the influence of alcohol is not available to the Insurance Company under Section 149 of the Act.

11. The perusal of the material available on record reveals that on 19.03.2019, while the petitioner was alighting from his Scooty after parking the same, a three wheeler auto, bearing registration No. HP-29A-1955, owned and driven by respondent No. 1, came from Palampur side from the wrong

side of the road and struck against the Scooty, due to which, the petitioner fell on the road and sustained multiple grievous injuries on various parts of his body.

12. Now the question which arises for consideration before this Court is as to whether the Insurance Company can be held liable when driver of the offending vehicle was driving the same under the influence of liquor. This issue is no longer *res integra* in view of the decision reported in ***Latest HLJ 2010 HP 1***, ***Khem Chand*** Vs. ***Smt. Uma Devi and others***, wherein, Coordinate Bench of this Court has held that such ground is not available to the Insurance Company as intoxication of the driver is not a ground available to the Insurance Company under Section 149 of the Act. Paragraphs 4 & 5 of the aforesaid judgment are reproduce as under:-

> *"4. The law is very well settled that a claim which falls within the purview of an Act policy i.e. a liability falling within the ambit of Section 147 of the Motor Vehicles Act, 1988 (the Act) can only be contested by the Insurance Company on the grounds available to it under Section 149 of the Act. It is not permitted to contest the proceedings on any other grounds. Intoxication of the driver is not a ground available to the Insurance Company under Section 149 of the Act. Therefore, the liability, which is statutory under Section 147 of the Act,*

has to be satisfied by the insurer. It may be clarified that in case the insurer in addition to the liability which it is bound to cover under the Act covers other liability then in case of such extended liability, it may raise the defences available to it as per terms of the policy, but as far as statutory liability is concerned, the insurer has no authority to incorporate any term in the policy which is not contemplated in terms of Section 149 of the Act. Therefore, the Insurance Company could not have been permitted to raise this defence and it could not be permitted to recover the awarded amount from the insured.

5. In this case, I also find that the clause in the policy relied upon by the insurance company is not applicable. This clause which provides that the insurance company shall not be liable if the person driving the vehicle is intoxicated with the knowledge and consent of the insured is incorporated in Section-I of the policy. This section only deals with own damage claims, i.e. damage caused to the vehicle in question. Section-II of the Act deals with third parties and does not contain a similar clause. Therefore, it is apparent that even the policy did not contemplate the the insurance company would not be liable in case of third parties in case the driver drove the vehicle in an intoxicated condition, with the knowledge of the owner."

13. This legal position was thereafter reiterated in ***Oriental Insurance Company Ltd. vs. Sangeyum, 2016 ACJ 1783.***

14. Adverting to the facts of the present case. It has been duly proved on record, that the vehicle in question was duly insured with the appellant/Insurance Company at the

time of accident, as such, Insurance Company cannot be exonerated from paying the compensation amount, as in view of aforesaid decision rendered by Coordinate Bench of this Court in ***Khem Chand's*** case (supra) and in terms of Section 149 of the Act, ground of intoxication of the driver is not available to the insurer. In view of the above, learned Tribunal has not committed any error in saddling the appellant-insurance company with the liability to pay the compensation to the original claimant.

15. No other point was urged before me.

16. Accordingly, in view of the aforesaid decision, the instant appeal, which sans merit, deserves dismissal and is accordingly dismissed.

Pending application(s), if any, stands disposed of.

(Sushil Kukreja)
Judge

24th November, 2026
(raman)