**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-39-2018 (O&M)

THE NEW INDIA ASSURANCE COMPANY LTD

..Appellant

Versus

RAKESH AND OTHERS

..Respondents

Reserved on: 13.02.2026
Pronounced on: 12.03.2026
Uploaded on: 18.03.2026

Whether only the operative part of the judgment is pronounced? *NO*
Whether full judgment is pronounced? *YES*

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. K.P.S. Virk, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. Ram Karan Sharma, DAG, Haryana.

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been filed by the appellant-Insurance company against the award dated 18.08.2017 passed in a claim petition filed under Section 166 and 140 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal'), wherein the appellant-Insurance company was fastened with the liability to pay the compensation of Rs.59,821/- to the claimant along with interest @ 9 % per annum from the date of filing of claim petition till recovery.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 17.11.2015 at about 1:00 p.m., Dinesh Kumar, since deceased, was heading from Village Payaga to

Mahendergarh on the motorcycle No. HR34G/7433 being ridden by him on extreme left side of road at moderate speed as per traffic rules. Petitioner Sher Singh was travelling as pillion rider on the said motorcycle. After a short riding towards Mahendergarh - Narnaul road then a Haryana Roadways Bus, Depot Charkhi Dadri bearing Temporary no. HR-99VC(T)/7936 now bearing Regd. No. HR-61C/0566 (in short offending vehicle), being driven by respondent no. 1 at a high speed in rash and negligent and in zig-zag manner, flouting all traffic rules came from Mahendergarh side and hit against the motorcycle in their lane. Consequently, they alongwith the motorcycle fell down on the road causing them multiple and grievous injuries besides damages to the motorcycle. The rider Dinesh Kumar succumbed to the injuries on the spot whereas pillion rider Sher Singh (Petitioner in II petition) was seriously injured and one bystander namely Rakesh (Petitioner in III petition) also received injuries in the accident. After the accident, the respondent no.1 fled from the spot leaving behind the offending bus. The aforesaid accident had taken place due to sole rash and negligent driving of offending vehicle by respondent no. 1. Thereafter, the dead body of Dinesh Kumar was shifted to mortuary and petitioners/injured Sher Singh and Rakesh were shifted in General Hospital, Mohindergarh..

3. Upon notice of the claim petition, respondents therein appeared and contested the claim petition by filing separate written statement denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *"1. Whether petitioners Rakesh and Sher Singh received injuries while Dinesh Kumar died in a motor vehicular*

accident which took place on 17.11.2015 at about 1:00 PM in the area of village Payaga under P.S. Mohindergarh due to rash and negligent driving of Bus no. HR-61-C/0566 by respondent no.1? OPP

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

3. Whether the vehicle in question was being driven by respondent no. 1 in violation of terms and conditions of insurance policy? OPR3

4. Relief."

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimant. However, the liability to pay compensation was fastened upon the appellant-Insurance Company. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. Learned counsel for the appellant–Insurance Company contends that the driver-respondent No. 3 (arrayed as respondent No.1 before the Tribunal), was not holding a valid and effective driving licence to drive the bus at the time of the accident. It is submitted that the driving licence of the said driver did not bear the requisite endorsement for driving a Public Service Vehicle (PSV). Consequently, the offending bus was allegedly being plied in violation of the terms and conditions of the insurance policy. On this premise, it is argued that the learned Tribunal has erroneously fastened the liability upon the Insurance Company, therefore he prays that the present appeal be allowed and the award passed by the learned Tribunal be set aside.

8. Learned counsel for respondent-State contends that the learned Tribunal has rightly passed the award, therefore, he prays that the appeal filed by the insurance company be dismissed.

9. I have heard learned counsel for the parties and perused the whole record of the case with their able assistance.

10. The relevant portion of the award is reproduced as under:-

> *"19. Dinesh Kumar died in this accident and petitioners Bimla Devi and Anju Devi claimed compensation on account of his death being his widow and daughter respectively. At the time of assessing compensation, the Tribunal has to see income and the age of deceased. It has been pleaded that Dinesh Kumar was 54 years of age at the time of his death and he was drawing ₹ 55,000/- per month salary from Forest Department of Govt. of Haryana. In this regard, the evidence of PW-7 Ravinder Pal Yadav, Assistant, DFO, Mahendergarh is relevant. He proved that deceased Dinesh Kumar had worked as forester in his department and getting ₹ 45052/- salary per month at the time of his death. He proved the Service Certificate Ex. PW7/A and Salary Certificate Ex. PW7/B pertaining to deceased Dinesh Kumar. In his crossexamination, this witness testified that date of birth of Dinesh Kumar in their record was 02.03.1961 and was to be retired at the completion of his age 58 years. The widow of the deceased is receiving ₹ 42,238/- per month from the department in lieu of salary of deceased likely to get until retirement age of the deceased. He further admitted that 29,822/- has ₹ been received after deduction by the widow in the month of October, 2015. Thus, it stands proved that petitioner Bimla Devi being widow of deceased Dinesh Kumar is receiving an equivalent amount from the Govt. department in lieu of*

salary of the deceased. Therefore, the amount which the widow would get has to be deducted in view of the latest judgment of ***Reliance General Insurance Company vs. Shashi Sharma 2016 (4) RCR (Civil) 569****.*

20. The deceased's gross salary was 45052/- which can be ₹ rounded off to ₹ 45000/- and addition of 30% has to be made towards future prospects as the deceased was in a permanent job and his GPF was being deducted and he was receiving HRA and DA. Thus, the income would come to ₹ 58,500/- per month. The deceased was married and died leaving the petitioners, who are widow and daughter respectively. The petitioners are two in number, hence 1/3rd of the earning of the deceased is to be deducted towards personal expenses and remaining 2/3rd share shall be considered as loss of dependency to the petitioners. So, after deducting 1/3rd as his personal expenses, his contribution towards his family comes to ₹ 39,000/- per month. The annual contribution comes to ₹ 4,68,000/-The date of birth of Dinesh Kumar in matriculation Certificate Ex. P22 and Ex. PW7/A was 02.03.1961 and the accident occurred on 17.11.2015, therefore, the deceased was 54 years of age at the time of his death. So, just and reasonable multiplier in this case is '11' and amount of compensation comes to be ₹ 4,68,000 x 11 = ₹ 51,48,000/-. The petitioner No.1 Bimla Devi would also be entitled to additional sum of 1,00,000/- for loss of consortium & estate. Both petitioners would ₹ further be entitled to 1,00,000/- for love and affection besides 14,000/- ₹ ₹ towards performance of last rites as so ruled by Hon'ble Supreme Court of India in case titled as Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil) 16. In this manner, petitioners would be entitled to total compensation of (₹ 51,48,000 + 1,00,000 + 1,00,000 + 14,000) = ₹ 53,62,000/-. The widow will get

(45000 x 12 x 4) = ₹ ₹ 21,60,000/- as salary for 4 years under 2006 Rules. Therefore, net amount of compensation payable would be 53,62,000 – 21,60,000 = 32,02,000/-. ₹ ₹ So, the petitioners are entitled to ₹ 32,02,000/- as compensation on account of the death of Dinesh Kumar.

29. As the offending vehicle was being driven by respondent no.1 therefore, primary liability to compensate the petitioners is that of respondent no. 1. As the offending vehicle was also owned by respondents no. 2 & 3 so, they becomes vicariously liable to compensate the petitioners. It is an admitted position on record in view of Ex. R5 that the offending vehicle was insured with respondent no. 4. Therefore, respondent no. 4 becomes contractually liable to compensate the petitioners for the above mentioned amount. The respondent no.1 was having valid driving licence Ex. R2 at the time of accident which was valid upto 09.06.2017 whereas accident occurred on 17.11.2015. valid permit of offending bus is also available on record as Ex. RW1/D. No evidence led to prove violation of terms of insurance policy. Thus, Issue No. 2 & 3 is accordingly decided in favour of the petitioners and against the respondents."

11. A perusal of the award reveals that the learned Tribunal, after appreciating the material available on record, concluded that the driver of the offending vehicle was holding a valid and effective driving licence at the time of the accident. The driving licence (Ex. R2) was valid up to 09.06.2017, whereas the accident occurred on 17.11.2015. The Tribunal also noticed that the valid permit of the offending bus was placed on record as Ex. RW1/D.

12. In view of the said evidence, the learned Tribunal rightly held that there was no violation of the terms and conditions of the insurance

policy. No cogent evidence was led by the Insurance Company to establish that the offending vehicle was being driven in contravention of the policy conditions or that the driver was not duly authorized to drive the vehicle in question.

13. It is well settled that the burden to prove breach or violation of the terms and conditions of the insurance policy lies upon the Insurance Company. Such burden must be discharged by leading convincing and reliable evidence. In the present case, the appellant–Insurance Company has failed to discharge the said burden. Consequently, the finding recorded by the learned Tribunal fastening liability upon the Insurance Company cannot be faulted.

14. Accordingly, this Court finds no illegality or perversity in the findings returned by the learned Tribunal on this aspect, and the same deserve to be upheld.

15. Consequently, the present appeal is hereby dismissed being devoid of any merit.

16. Pending miscellaneous applications, if any, are also disposed of.

12.03.2026 **(SUDEEPTI SHARMA)**
Ayub/Saahil **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No