



2026:HHC:47519

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No.311 of 2023

Reserved on: 05.10.2026

Date of decision: 29.10.2026

Uploaded on: 29.10.2026

New India Assurance Company Limited

...Appellant

Versus

Promila Devi and others

...Respondents

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

For the appellant: Mr. Raman Sethi, Advocate.For the respondents: Mr. Surender Verma, Advocate,
respondents No.1 & 2.Mr. Kanishk Rohal, Advocate, vice
Mr. Vinay Sharma, Advocate, for respondent
No.3.Mr. Vinod Thakur & Mr. Mohar Singh,
Advocates, for respondent No.4.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-
New India Assurance Company, under Section 173 of the Motor
Vehicles Act (for short 'MV Act'), against the award dated
16.08.2023, passed by the learned Motor Accident Claims
Tribunal, Sundernagar, District Mandi, H.P., in case No.53/2017,

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

with a prayer to set aside the impugned award. The parties shall be referred to as they were before the learned Tribunal below.

2. Briefly stated the facts, giving rise to the present appeal, are that the petitioners (respondents No.1 and 2 herein) filed a claim petition under Section 166 of the Act, whereby they sought compensation in the sum of Rs.50,00,000/- on account of death of Trahru alias Kesav, who was husband of petitioner No.1 and father of petitioner No.2. It was averred by the petitioners that on 30.12.2016, Trahru alias Kesav was sitting in a car bearing registration No.HP-12A-4088, being driven by respondent No.1- Dharma in a rash and negligent manner, which was struck by him with the *Dhank* at place *Beh-Ki-Dhar*, at about 8:00 PM and it rolled down in the fields, as a result of which, Trahru alias Kesav suffered head injuries and died on the spot. As per the petitioners, at the time of his death, the deceased was 44 years old and he was a painter and was earning Rs.15,000/- per month. Hence, they sought compensation to the tune of Rs.50,00,000/-.

3. In the reply filed on behalf of respondent No.1/driver, all the averments made in the claim petition were denied. It has been denied that he was driving the vehicle in a rash and negligent manner.

4. Respondent No.2/owner of the offending vehicle, in his reply to the claim petition, raised preliminary objections qua maintainability and suppression of material facts. On merits, it was averred that vehicle No.HP-12A-4088 was sold to Shri Sarwan Kumar on 11.11.2014 and the possession of the vehicle alongwith all relevant documents have also been handed over to the purchaser. It was further averred that the replying respondent was not aware about the alleged accident.

5. In the reply filed by respondent No.3/Insurance Company, preliminary objections to the effect that the driver was not holding a valid and effective driving licence and the vehicle was being driven in violation of the terms and conditions of the policy. On merits, it was averred that the amount claimed was highly excessive.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 26.09.2019:-

- "1. Whether the death of Shri Trahru alias Kesav was caused due to rash and negligent driving of vehicle bearing registration No.HP-12A-4088 by Shri Dharam on 30.12.2016 at about 8.)) PM at Beh-Ki-Dhar, Tehsil Sundernagar, District Mandi, HP, as alleged? ...OPP***
- 2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so to what amount and from whom? ...OPP***

3. ***Whether the driver of respondent No.1 was not holding a valid and effective driving licence to drive the car at the time of accident. ? ...OPR-3***
4. ***Whether the offending vehicle was being plied in violation of the terms and conditions of insurance policy? ...OPR-3***
5. ***Relief."***

7. After parties led their evidence, the claim petition was partly allowed and the respondents were held jointly and severally liable to pay the compensation to the petitioners in the sum of Rs.13,93,100/- alongwith interest @ 6% per annum from the date of filing of the petition till realization/deposit of the amount and respondent No.3, being the insurer, was directed to deposit the amount of compensation.

8. Feeling aggrieved/dissatisfied, the appellant-insurance company preferred the instant appeal against award dated 16.08.2023 passed by the learned Tribunal below, with a prayer to set-aside the impugned award.

9. I have heard the learned counsel for the appellant as well as learned counsel for respondents and also carefully examined the entire record.

10. Learned counsel for the appellant/Insurance Company contended that the Insurance Policy was an Act Policy, which did not cover the risk of death or bodily injuries to the occupant of the

car. He further contended that the liability of the Insurance Company can be determined only on the basis of premium collected and in the absence of additional premium, the Insurance Company is not liable to pay any compensation towards claim of the occupant of the car. He further submitted that since the insurance policy in question was not a comprehensive policy and being only an Act Policy, the appellant-insurance company is not liable to indemnify the owner in respect of any liability towards death/injury caused to the occupant of the private car.

11. On the other hand, learned counsel for respondents supported the award passed by the learned Tribunal below and contended that the learned Tribunal below has correctly fastened the liability to pay the compensation on the insurance company.

12. Perusal of the material on record reveals that the learned Tribunal below has fastened the liability on the insurance company by observing that the insurance policy Ext. R-3 being Liability Only Policy covers the risk of inmates/occupants of the vehicle in question. It further observed that the insurance company has failed to prove that the deceased was carried in the offending vehicle for any hire or reward. It may be pertinent to mention here that while adjudicating the present case, the

Tribunal below has taken into consideration the insurance policy Ext. R-3, which was valid w.e.f. 03.09.2015 to 02.09.2016 whereas perusal of the material on record shows that the date of accident in question was 30.12.2016. While deciding issue No.4 also, the Tribunal below has held that copy of insurance policy Ext. R-3 shows that the offending vehicle was duly insured w.e.f. 03.09.2015 to 02.09.2016, therefore, the vehicle had valid insurance on the date of the accident. Since the date of accident in question was 30.12.2016, therefore, the insurance policy Ext.R-3 could not have been taken into consideration as the same was having no relevance while deciding the instant case. It is the insurance policy Ext. RW1/C, which was in force on the date of the accident being valid from 19.09.2016 to 18.09.2017 and the same had to be taken into consideration while adjudicating the present petition.

13. It is not in dispute that the deceased had been an occupant/passenger of the vehicle and it has been held by the Id. Tribunal below that his death was exclusively caused due to the rash and negligent driving of the vehicle in question by its driver.

14. Now the pertinent question, which requires consideration before this court is as to whether the occupant/

passenger of a private car is a third party within the meaning of MV Act and in case, the occupant of the car is not treated as third party, if the insurance company is liable to indemnify the owner.

15. Respondent No.4/owner has not disputed that the policy Ext. RW1/C issued by the appellant/insurance company is only 'Private Car Liability Policy' i.e. an Act Policy. It is not his case that policy issued by the appellant is comprehensive policy covering the occupant/passenger of the car in question. It is well settled that in an Act Policy, the occupant of the private car is not covered and Insurance Company is not liable to pay compensation for the bodily injuries or towards the death of occupant of the private car. Whether the occupant of the private car is covered under the Act Policy or not was considered by the Hon'ble Apex Court in the Judgment reported in **2006 (4) SCC 404, United India Insurance Co. Ltd. Shimla Vs. Tilak Singh and others**, wherein the Hon'ble Apex Court has held that the policy of insurance must be policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the insurer.

The relevant portion of this judgment is extracted as follows :-

"15. In *Pushpabai Purshottam Udesb and Ors. v. M/s. Ranjit Ginning and Pressing Co. (P) Ltd. and Anr.*, [1977] 2 SCC 745 the insurance company had raised the contention that the scope of statutory insurance under section 95(1)(a) read with 95(1)(b)(i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger and, since there was a limited liability under the insurance policy, the risk of the insurance company would be limited to the extent it was specifically covered. After referring to the English Road Traffic Act, 1960, and Halsbury's Laws of England (Third Edition) this Court came to the conclusion that section 95 of the 1930 Act required that the policy of insurance must be policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the insurer. This Court held as under :

"Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

21. In our view, although the observation made in *Asha Rani's* case (*supra*) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the injuries suffered by the deceased *Rajinder Singh* who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."

16. In yet another case of ***Oriental Insurance Company Limited vs Sudhakaran and Ors.***, reported in AIR 2008 Supreme Court 2729 the Hon'ble Supreme Court has dealt with

the similar issue, the relevant portion of which is extracted as follows:-

"10. The only question which, therefore, arises for our consideration is as to whether the pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act. Indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle.

11. This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. [See New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223]

12. A Division Bench of this Court in United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. [(2006) 4 SCC 404] extended the said principle to all other categories of vehicles also, stating as under:

"In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

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19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

17. In **New India Assurance Company Ltd. vs.**

Sadanand Mukhi and others, (2009) 2 SCC 417, the Hon'ble Supreme Court held that Section 146 of the Act lays down the requirements for insurance against third party risk and where a third party risk is involved, an insurance policy is required to be mandatorily taken out. It further held that the provisions of the Act provide for two types of insurance, one statutory in nature and the other contractual in nature and in case owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property. Relevant portions of the judgment read as under:-

"11. Provisions relating to grant of compensation occurring in Chapter XI and XII of the Act have been enacted by the Parliament in order to achieve the purpose and object stated therein. Section 146 of the Act lays down the requirements for insurance against third party risk. Where a third party risk is involved, an insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been stated in Section 147 of the Act. Section 147(1)(b) of the Act....."

The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property."

18. In **National Insurance Co. Ltd. vs. Balakrishnan and Anr., (2013) 1 SCC 731**, the Hon'ble Supreme Court while

making a distinction between an "Act only policy" and "Comprehensive/package policy" made following observation:-

"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

19. Thus under an Act Policy, the insurance company is liable to compensate third parties but not the occupant of the vehicle unless specifically included in the policy. An Act Policy is designed to cover third-party liabilities arising from death or bodily injury caused by the use of the vehicle, excluding the driver and occupants unless additional coverage is explicitly included. The judgment supra emphasized that the term "third party" under Section 147 of the Act does not automatically extend to occupants

who are not paid passengers or part of a hire service. Therefore, unless the insurance policy is a Comprehensive or Package Policy explicitly covering occupants, the liability remains with the vehicle owner. By delineating the boundaries between Act Policies and Comprehensive Policies, the court has provided a clearer framework for determining insurer liabilities in accidents involving private vehicles.

20. In the instant case, perusal of the insurance policy Ext.RW1/C reveals that only third party premium in the sum of Rs.2,205/- was paid and no additional premium was paid to cover the risk of death or bodily injuries to the occupants of the car. The policy was issued for 'Private Car Liability Policy' i.e. Act Policy and the deceased was an occupant of the car. In view of principles that emerged in the judgments referred to above, since the occupant of a private car does not fall within the definition of third party and he is only a gratuitous passenger, as such, the appellant-insurance company is not liable to pay any compensation to the petitioners as no additional premium was paid to cover the risk of death or bodily injuries to the occupant of the car. Therefore, the learned Tribunal below ought to have exonerated the Insurance Company from the liability of paying

compensation, but it has erroneously come to the conclusion that the insurance company is liable to indemnify the owner.

21. In view of what has been discussed hereinabove, the appeal filed by the appellant-insurance company is allowed and the finding of the learned Tribunal below to the extent that the insurance company was held liable to indemnify the award, is set-aside. Consequently, the impugned award, dated 16.08.2023, passed by the learned Tribunal below stands modified only to the extent that the appellant-insurance company is exonerated from paying the compensation amount. Respondent No.4 herein, who is the owner of vehicle in question is liable to satisfy the award and to pay the compensation to the petitioners (respondents No.1 & 2 herein). The remaining terms of the impugned award including the interest component shall remain the same.

22. Before parting, in the considered opinion of this Court, the award passed by the Tribunal below clearly reflects total non-application of mind by the concerned Judicial Officer. As observed earlier, while adjudicating the present case, the Tribunal below has taken into consideration the insurance policy Ext. R-3, which has no relevance in the present case as the same was valid w.e.f. 03.09.2015 to 02.09.2016, whereas, the date of accident in

question was 30.12.2016. It is quite shocking that the Judicial Officer has adjudicated the case while taking into consideration the insurance policy Ext.R-3, which had no relevance. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. The Judicial Officer now-a-days is the District & Sessions Judge heading District Judiciary and also dealing with MACT cases. Needless to state that the District judiciary is the bedrock of our judicial system and is positioned at the primary level of entry to the doors of justice. The Officer is not even aware about the difference between the Act/Liability only Policy and the Comprehensive/Package Policy and has not even cared to see the insurance policy Ext. RW1/C, which was in force during the relevant period and given the finding that the insurance policy Ext.R-3 (which was not in force during the relevant period) is the Liability only Policy and certainly covers the risk of inmates/occupants of the Jeep (*sic*) without ascertaining as to whether the owner had paid the additional premium to cover the risk of death or bodily injuries to the occupant of the vehicle or not. The Officer has not cared to go through the judgments passed by the Hon'ble Supreme Court (cited *supra*) in this respect. It is not expected from the head of District Judiciary to pass such kind of

award/order which lacks even elementary knowledge of the MV Act. This approach of the Judicial Officer in adjudicating the petition without application of mind is highly objectionable and deserves to be deprecated. Judicial orders cannot be allowed to be passed in a mechanical manner. Such tendency must be deprecated and cannot be allowed to perpetuate. Under these circumstances, it would be appropriate, if the concerned judicial officer undergoes refresher course and further periodical training at Judicial Academy in MACT matters, under the supervision of the Director, H.P. State Judicial Academy.

23. Registrar General of this Court is directed to place one copy of this judgment on the service record of this Judicial Officer and send one copy of this judgment to Director, H.P. State Judicial Academy, for taking necessary action.

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

(Sushil Kukreja)
Judge

October 29, 2026
(V. Himalvi)