In the Court of Dhiru Thakur, Motor Accident Claims Tribunal, Palampur,District Kangra, H.P.

CIS MACT filing No.	:	620/2019.
CNR.	:	HPKA18-001017-2019.
CIS MACT No.	:	36/2019
RBT MACP No..	:	169-P/II/23/2020.
Date of Institution.	:	12.04.2018.
Date of Award.	:	17.11.2025.

Smt.Raksha Devi w/o Sh.Rajinder Kumar Sharma s/o Sh.Raghubir Singh, R/o Village Tambru, P.O. Draman, Tehsil Jaisinghpur, Distt. Kangra, HP.

.........Petitioner/Claimant.

-Versus-

1. Shri Surinder Kumar @ Jonu s/o late Sh.Chaman Lal, R/o Village Maniara, P.O. Pahra, Tehsil Palampur, Distt. Kangra, HP.(Driver)
2. National Insurance Company, Ltd., Branch Office Palampur, Distt. Kangra, HP. (Insurer of Vehicle No.HP-37C-7577).

………Respondents.

Claim Petition under section 166 of Motor Vehicles Act, 1988 for grant of compensation.

For the petitioner. : Shri Kush Patial, Advocate.
For the Respondents No.1. : Shri J.C. Katoch, Advocate.
For the Respondent No.2. : Shri Rajesh Katoch, Advocate.

A W A R D

It is a petition under section 166 of M.V.Act, 1988, for the grant of compensation to the tune of ₹ 60,00,000/- on account of the death of Sh. Davinder Kumar alias Chotu Ram S/o Rajinder Kumar Sharma, doing work of Priest, as preferred by Mother/ claimant(being LR), against driver/ owner Surinder Kumar @ Janu as respondent No.1 and National Insurance Company Ltd, as respondent No.2.

FACTS:

2. For the sake of brevity, brief facts, as averred by the petitioner, are reproduced herein:

- The deceased at the time of the accident was 26 years old. He was engaged in the occupation of Hindu priest performing marriage ceremonies and other Hindu customs. The deceased's monthly income is projected at ₹25,000. It is further stated that on 7th June 2014 at Village Thandoll, Tehsil Palampur, district Kangra, Himachal Pradesh, at about 4:30 pm, an FIR under sections 279, 337, 338, and 304A of the Indian Penal Code has been registered against the deceased. Respondent No. 1, who was driving the Scooter in a rash and negligent manner, was involved in the accident. The accident took place within the jurisdiction of Police Station Palampur, and FIR No. 94/2014 dated 07-06-2014 has been registered against Respondent No. 1, who suffered multiple injuries on account of the accident. He was taken to the Civil Hospital, Palampur, where the deceased was treated and immediately referred to the RPGMC Tanda, where medical officers attended him, and after giving first aid, the deceased was referred to P.G.I Chandigarh for further treatment. On the way to P.G.I Chandigarh, the deceased succumbed to his injuries and died. The deceased was a Hindu priest and performed the marriages, mudan ceremonies, etc., as per the Hindu customs. The deceased was the sole breadwinner of the family, and his father, mother, and brother were totally dependent upon the deceased. Though with these submissions, they prayed for ₹ 50 lakhs in compensation. Hence, prayed for allowing of the petition.

REPLY BY R-1/ CAR DRIVER:

3. In reply by respondent No.1, besides challenging the very locus-standi, maintainability, and want of cause of action, it was further averred that the petition is bad for non-joinder of necessary parties. On merits, it was denied that the deceased was earning ₹ 25000/- per month. That a false case was

registered against respondent No.1 by local police due to Police Political Pressure, and the deceased Scooterist himself died due to his own fault, it was submitted that the deceased was driving Scooter No. HP53-0754 from Tambar to Dramon. At Dramon, the deceased stopped the Scooter, he consumed some drug/ alcohol, and became intoxicated. Thereafter, he was driving the Scooter rashly and negligently. The pillion rider asked him to drive the Scooter slowly, but the deceased was driving the Scooter just like a snake (zig-zag manner) from one corner of the road to another corner. **He rashly and negligently struck his Scooter with the Scooty.** Hence, the accident has taken place due to the rashness and negligence of the deceased. Hence, prayed for dismissing the same.

REPLY BY R-2/INSURER:

4. In reply by respondent No.1, besides challenging the very locus-standi, maintainability and want of cause of action that petition is bad for non-joinder of necessary parties, it is further maintained that the petitioner is estopped by his own act and conduct. The petitioner has not approached the court with clean hands. The driver and owner of the vehicle have not followed the terms and conditions of the insurance policy. On merits, all the averments of the petition were denied in General. It is alleged that, as per the police report and investigation, both the drivers of the vehicles (i.e., Scooter and Scooty) were rash and negligent at the time of the accident.

5. The driver of the vehicle Scooter, Devinder Kumar alias Chotu, now deceased, was driving Scooter No. HP53-0754 at the time of the accident, whereas Surender Kumar, respondent no. 1, was driving Scooty HP37C-7577 at the time of accident. It is alleged that respondent no. 1 was not having a valid driving license to drive the same. The respondent no. 1 has not followed the terms and conditions of insurance policy. As per the police investigation, the accident took place due to

the rash and negligent driving of both the vehicles. It is a case of contributory negligence of both parties. Hence, prayed for dismissing the same.

REJOINDER:

6. In rejoinder, in reply to respondent No.1, while denying the allegations made by respondent no. 1, the facts of petition are re-affirmed and re-asserted. No rejoinder appears to be filed to the reply by respondent No.2.

ISSUES:

7. On 19.05.2022, out of pleadings of the parties, the following issues were framed:-

1. Whether on 7.6.2014 at about 4.30 P.M. at place Thandol, Tehsil Palampur, deceased Davinder Kumar died in a motor vehicle accident on account of rash and negligent driving of the respondent No.1, the driver of vehicle No.HP-37-C-7577, as alleged? OPP
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to compensation, if so, to what amount? OPP
3. Whether the petition is not maintainable, as alleged? OPRs
4. Whether the petition is bad for non-joinder of necessary parties? OPRs
5. Whether the respondent No.1 i.e., driver of the vehicle in question was not having a valid and effective driving license at the time of accident? OPR-2
6. Whether the vehicle in question was being plied in violation of the terms and conditions of the insurance policy, as alleged? OPR-2
7. Relief.

8. I have heard the learned counsels for the parties and gone through the case file carefully.

9. For the reasons to be recorded hereinafter, while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue no.1	:	Yes
Issue no.2	:	Partly yes, as per findings
Issue no.3	:	No.
Issue no.4	:	No.
Issue no.5	:	Yes.
Issue no.6	:	Yes.
RELIEF	:	The petitioner is **PARTLY ALLOWED** as per the operative portion of the judgment.

10. Before advancing on findings on the issues, it is essential to thoroughly evaluate and engage in a detailed discussion regarding the evidence presented by both parties

11. Petitioner tendered her affidavit in the evidence of her testimony which is Ext. PW1/A and also tendered documents Ext. PW1/B (Death Certificate), Ext.PW1/C, Ext. PW1/D, Ext.PW1/E, (medical Bills) Ext.PW1/F and Mark A. She was cross-examined by the counsel for Respondent No. 1.

12. In cross-examination, she admitted that no accident took place before her. She also admitted that she has not got registered the FIR. She admitted that her son is working as a priest. She denied the suggestion that the monthly income of her son was not ₹ 25000/-. She denied that she, along with her husband were not dependent upon the deceased. She admitted that at the time of accident, her son was accompanied by one Sandeep Kumar on the Scooter as pillion rider. She denied that accident occurred due to rash and negligent driving of her son.

13. Counsel Respondent No. 2 has also cross-examined the petitioner. She admitted that the owner of the Scooter is her son-in-law. She feigned ignorance that the Scooter, which is driven by her deceased son was not insured. She denied that

accident took place on account of rash and negligent driving of a Scooter driver Devinder.

14. PW2 ASI Sudarshan testified as a petitioner witness. In his testimony, he stated that he had brought the requisite record. FIR Ext. PW2/A was got registered at the instance of HC Sanjit Kumar. He also admitted the suggestion that, as per Ext. PW2/A, there seems to be negligence on both the drivers of the offending two-wheelers.

15. PW3 Amarnath has issued certificate Ext.PW3/A. When he issued the Ext. PW3/A, he was the Up-Pradhan of Thadol. The counsel cross-examined him for respondent No. 1. He admitted that no accident took place before him. That he reached after-a-while. He admitted that he has not accompanied the injured either to Palampur Hospital, or RPGMC, Tanda hospital, or even PGI hospital. He admitted that Ext. PW3/A is not maintained in the records of the Panchayat. He was cross-examined by Counsel for respondent no. 2. He denied the suggestion that he prepared Ext. PW3/A in connivance with the petitioner.

16. PW4 Sanjay Kumar in his examination-in-chief, has stated that he is working as a Junior Office Assistant (IT) at the Sub-division Officer, Jasingpur. He has brought the record pertaining to the Driving License No. HP5620140017613 and has been authorized to furnish the record of the Driving License. As per his record, license No. HP 5620140017613 is true and correct. He was cross-examined. He denied that Ext. PW4/A is not the extract of the Driving License.

17. PW5 Dr. Sanjeev Sharma stated that he is working as the Head of the Department of Surgery at RPG, MC, Tanda. Davinder alias Chotu was admitted on 7-6-2014. He was admitted on account of a head injury, which he suffered in a road accident. When he was admitted, he was unconscious. His CT scan was conducted, and it revealed from the city scan that

his skull bones were fractured. Given his medical condition, he was administered a breathing tube and referred to PGI Chandigarh for further treatment. A copy of the Discharge Summary is marked as Ext. PW5/A. He was cross-examined by the counsel for the respondents. He admitted that the injuries mentioned in the Discharge Summary, were also possible from the fall.

18. PW6 Smt. Swaran Lata appeared as petitioner witness. In her examination-in-chief, she stated that she was Pradhan of the Gram Panchayat, Dharman, in the year 2015. She had issued the certificate Ext. PW6/A, which bears her signatures. She was cross-examined by counsel for respondent No. 1. She admitted that the Panchayat Secretary issues the death certificates. She also admitted Ext. PW6/A is the photocopy. She was cross-examined by Counsel for respondent No. 2. She admitted that she had issued Ext. PW6/A at the request of the family member of the deceased, i.e., his brother. She further admits that the Secretary of Gram Panchayat maintains the birth and death register-record.

RESPONDENT’S EVIDENCE:

19. To rebut the case of the petitioners and to discharge its own onus, respondent No.1 on the one hand has examined two witnesses including himself, while respondent no.3 has examined its Assistant Manager.

20. Respondent No.1, in his examination-in-chief by way of affidavit, has reiterated the defense as averred in reply. He was cross-examined by the counsel for the petitioner. He denied that he was driving his Scooty bearing No.HP37C-7577 negligently. He denied that due to the high-speed driving of the Scooty, he hit the Scooter no.HP53-0754 driven by Divinder, which led to fatal injuries. He admitted that the FIR was lodged qua accident. He feigned ignorance that Davinder Kumar was admitted to the hospital, and he was taken in the ambulance. He

denied that due to his rash and negligent the death of Davinder Kumar took place in a motor accident. He denied that he used to work as a priest and used to earn ₹ 40000/- to ₹ 50000/- per month. He denied that the family of Divinder was dependent upon his earnings. The counsel for the respondent no.2 cross-examined him. He admitted that he did not have a driver's license. He denied that he was driving this Scooty without a license. He admitted that he had purchased a new Scooty. He denied that he was deposing falsely.

21. RW2 Sanjay Kumar, Record Keeper, Office of Additional Chief Judicial Magistrate, Palampur, appeared as a respondent witness. He stated in his chief that he has brought the summoned record, Case file No. 5/2015, titled as State v. Surinder, Date of decision 19-1-2024, By Ld ACJM Palampur. He has seen the copy of the MLC Ext. PW2/A, which is true and correct. Statement Ext. PW2/B is also true and correct as per the summoned record. The witness was not cross-examined by either of the counsels of the petitioner as well as the respondent No. 2, despite the opportunity.

22. Respondent no. 2 appeared as RW3, and he tendered affidavit Ext. RW3/A. Along with the affidavit, the copy of insurance Ext. RW3/B was also tendered. He was cross-examined by the Counsel for the respondent No.2. He admitted that the vehicle bearing registration No. HP37C-7577 was duly insured with effect from 3-6-2014 to 2-6-2015. He admits that the policy is a comprehensive policy. He denied that the Surender Kumar was not driving rashly and negligently. Voluntarily stated that his version is based on a police chalan. He denied that the rash and negligent driving of Devinder alias Chotu itself has caused the accident Ext.RW1/D is the certified copy of the Judgment. This is the total evidence on record.

FINDINGS ON ISSUES: ISSUE NO. 1 :

23. To adjudicate the issue, the petitioner adduced Ext

PW2/A being the FIR of the accident and the complainant/ informant is HC Sanjit Kumar. It has been mentioned in Ext. PW2/A that,

> ***“When information of one accident was received, Police went to the spot and clicked the photographs of the spot, where a Scooter No.HP-53-0754 was found to have struck against Scooty No. HP-37C-7577 and broken pieces of plastic were scattered on the spot. No one was found to have witnessed the accident, but a total of four people were occupying both vehicles, who were taken for treatment. It has been alleged that the blood stains were also found on the spot, and the accident occurred around 4:30 p.m. It seems that the accident took place due to rash and negligent driving by the drivers of both vehicles.”***

24. Glancing the contents of the FIR Ext. PW 2/A, it is clear that both vehicles i.e. Scooter No. HP-53-0754 and Scooty No. HP-37C-7577, along with its drivers were involved in the accident. Each vehicle also has a pillion rider.

25. Ext PW5/A, is the Discharge Summary, which is duly proved on record. PW5 clearly stated in his statement that the injuries mentioned in the Discharge Card/Treatment Summary are possible in a roadside accident.

26. Ext. RW1/A is judgment of acquittal passed by the Learned Additional Chief Judicial Magistrate, Palampur in FIR No. 94/14. The criminal case involved multiple accusations under the Indian Penal Code (IPC) and the Motor Vehicle Act. Respondent No. 1, was initially tried and subsequently convicted for violating Section 181 of the Motor Vehicle Act, which pertains to driving without a valid license.

27. However, Respondent No. 1 was acquitted of more serious accusations, including those under Sections 279 (rash driving), 337 (endangering human life), 338 (causing hurt by endangering life or personal safety of others), and 304A

(causing death by negligence) of the IPC.

28. The findings in Ext. RW1/A compellingly illustrate Respondent No. 1’s involvement in the vehicular accident. The evidence of Ext. RW1/A coupled with the admission of the respondent No. 1 appearing in the witness box is clear that he did not possess a valid driving license at the time the incident transpired, highlighting a significant aspect of his negligence.

29. Therefore, based on the marshaling of evidence available, it can be reasonably concluded that the petitioner has effectively demonstrated the respondent's negligence. Moreover, the respondent No. 1 has categorically taken the defence that the deceased Devinder Kumar, while driving his vehicle, was under the influence of some drug. However, the alleged plea has not been substantiated by any evidence on record. Further, there is a clear admission on the part of the respondent No. 1 in his reply to the petition, as well as in his examination-in-chief, Ext RW1/A, wherein he clearly and categorically stated that the Scooter had hit the Scooty. This evidence establishes a clear connection between the respondent's negligent and unlawful conduct and the resultant repercussions of the collision, reinforcing the gravity of operating a vehicle without the proper qualifications.

30. The Learned Counsel for the Respondent No.1 strenuously submitted that the petitioner has not been able to prove the rash and negligent act attributable to the Respondent No.1. He highlighted the statement of FIR as well as the petitioner.

> *"……dono vahan sadak me maujud paye dono vahano ke tute hue plastic numa tukde gire pade hue kaafi maatra me maujud paye gaye, jo mauka par gire pade tukde walo jagah par hi dono vahano ki takkar hona pratit ho rahi hai, mauka par durghatna bare koi bhi prataykshdarshi maujud na paya gaya"*
>
> *…….Ye theek hai ki accident mere saamne na hua tha ye theek hai ki maine police me FIR darj na karwayi.”*

To solidify his submissions, he relied upon the judgment of the **Honorable Supreme Court, 2009, AIR**

Supreme Court 1499 [NATIONAL INSURANCE COMPANY LIMITED vs RATNI AND OTHERS.]

> *In this judgment, it has been held that ordinarily an allegation made in FIR would not be admissible in evidence per se. However, the tribunal would be entitled to look into the same where allegations made in the FIR had been made part of the claim petition.*

31. With all humility, the judgment of Hon'ble Apex Court is not going to assist the respondent to substantiate his defense, as there is other evidence on record in the shape of a Discharge Summary as well as the judgment passed by the learned ACJM Palampur, wherein the respondent no. 1 is convicted for driving the vehicle without a valid Driving license. Furthermore, upon carefully examining the details outlined in the First Information Report (FIR) EXT PW2/A at that particular point in time, it becomes evident that the informant lacked clarity regarding both the specific nature and the circumstances surrounding the accident due to the non-availability of an eyewitness. The informant made only a brief mention, suggesting negligence attributed to both drivers involved in the incident. However, this singular reference does not provide sufficient grounds to establish a claim of contributory negligence against the deceased Scooterist, Davinder Kumar alias Chotu. The respondent, no. 1, has not examined his pillion rider or the Investigating Officer of F.I.R. no. 94/2014, and this is without any convincing reason known to respondent no. 1.

32. This court is of the considered opinion that though undoubtedly the yardstick to judge rashness or negligence in a claim petition before MACT is not as strict as before a Criminal Court, and thus, judgment of acquittal by Criminal Court in such accident case, cannot be held as a determining factor to decline relief to claimant by MACT, more particularly, when MVAct, 1988 is a part of welfare legislation.

33. In **BIMLA DEVI VS HRTC**, AIR 2009 SC 2819, wherein it was held by Hon’ble Supreme Court that when the

presence of the offending vehicle is established at the place and time of the occurrence; and when death of the deceased in a road accident case is even confirmed by MLC or PMR, then for the effect of Section 106 of Indian Evidence Act, 1872, while ignoring other discrepancies in the evidences of claimant's witnesses (particularly when complainant as LR are having no occasion to witness the accident), the onus ought to be shifted upon the driver to rule out its involvement in the accident.

34. It is also not disputed that strict proof of an accident, caused by a particular vehicle in a particular manner, may not be possible for the claimants to lead. The claimants, thus, under the law, are merely to establish their case on the touchstone of preponderance of probability. Since the standard of proof beyond a reasonable doubt could not be applied, it has been held in

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PARA NO. 4:

> *As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.*

35. It is important to note that the existence of findings indicating an acquittal in other offenses does not substantiate the defense put forth by the respondent. Such an acquittal does not undermine or invalidate the comprehensive evidence presented by the petitioner, aimed at proving that the respondent no. 1 acted with rashness and negligence while operating his vehicle, in this case, a Scooty, without holding a valid driver's license. Furthermore, Ext PW4/A is the extract of the driving license of the deceased, Davinder Kumar, which clearly validates the fact that he held a valid and effective driving

license to drive vehicle/Scooter no. HP-37C-7577. Thus, issue no.1 is answered in the affirmative and in favour of the petitioner.

ISSUE NO. 2, 5 & 6:

36. Issues no. 2, 5 & 6 require a cohesive assessment of facts and evidence, as they are intrinsically intertwined and thus necessitate collective adjudication. Since issue no. 1 is proved in the affirmative, this court now proceeds to determine the amount of compensation and the party from whom it is payable. The deceased was reportedly a priest earning ₹25,000/- per month from his activities. However, the petitioner has not provided sufficient evidence to prove the actual income of the deceased at the time of the accident. The amount of ₹ 25000/- has not been substantiated through the testimony of PW1.

37. The petitioner (the deceased's mother), who appeared as PW1, made a vague assertion regarding the monthly income of ₹ 25,000/-, but no supporting records were submitted or furnished in evidence. Notably, no documentation has been presented to substantiate this claim, nor has any proof of educational qualification been placed on record indicating that he was working as a president and was earning ₹ 25000/- per month. Additionally, there is no data or evidence on record to verify the educational qualifications of the injured petitioner, which are needed to assess his skill level. Therefore, the court must undertake the task of determining the actual income of the petitioner. The settled benchmark to ascertain the income of the deceased is the official notification regarding the minimum wage, released by the State of Himachal Pradesh, which serves as a crucial reference vide Shram(A)4-8/2006-Partfile, dated *28 May 2014 w.e.f. April 1, 2014*. The wage of the unskilled worker is ₹ 170/- per day or ₹ 5100/- per month. For the purpose of assessing the financial earnings of the deceased in this case,

the notification for the year 2014 is taken into consideration. This notification is instrumental in calculating baseline income levels applicable at that time.

38. Thus, from the notification mentioned above, the monthly income of the petitioner is taken to be ₹ 5100/- per month. Now, this court proceeds to determine the other components of the compensation. The age of the injured petitioner was stated to be 26 years old at the time of the accident. The petitioner has not submitted a formal document, such as a birth certificate, to establish his date of birth and confirm his age.

39. In evaluating the facts of the case and in light of the existing evidence, the age of the deceased for the purposes of calculating compensation will be considered as 26 years. Conversely, it is significant to point out that the respondents have not presented any counter-evidence to challenge the claim regarding the deceased’s age at the time of the incident. No cross-examination on the point has been conducted to disprove or question the age of the petitioner.

In **SUBBULAKSHMI & ANR.** 2024 0 INSC 886, held that

> *“...The concept of just compensation rests on the principle of restitutio ad integrum which means restoration to the original condition, as far as possible, taking the person to whom damages are awarded, to a position as if the incident or in this case, the accident, had never occurred. While this is a well-recognized and positive principle of law, we must also recognize its limitations. The award of compensation, however much it may be, does not give back to the person who affected their life but only alleviates the worry of being able to secure the required amenities. 2. In awarding non-pecuniary damages, this Court has often highlighted the difficulty in computation, for there is no manner in which such determination lends itself to formulaic ciphering. Every person in life has undertaken certain steps towards the realization of dreams, held goals and aspirations, and when they land up in such an unfortunate situation, where, for no fault of theirs, the trajectories of their lives are forever*

altered. Although, abstract in the written word, these factors form a large part of the 'pain and suffering' one undergoes apart from the manifested disability, which may be visible to another person."

40. It is significant to note that this tribunal has acknowledged the profound loss of love, affection, and the emotional and mental state that the petitioner has suffered as a direct consequence of her son's untimely death, in a road accident. This loss transcends mere financial considerations; it encapsulates the deep emotional void left in the petitioner's life, reflecting the enduring bond between a mother and her son. The absence of their shared experiences, the support she once received, and the dreams she held for their future together all contribute to the gravity of this tragedy. These multifaceted losses underscore the significant impact of grief on the petitioner's well-being. Thus guided by the principles of **SARLA VERMA vs DTC** AIR 2009 SC 3104 & **NATIONAL INSURANCE Co. LTD. Vs PRANAY SETHI** AIR 2017 SC 5157, **MAGMA INSURANCE vs NANU RAM** 2020 SC

The loss of income is calculated as such: Monthly income of the deceased ₹ 5100/-. Addition to income future prospect (@40% deceased being less than 40 years)

Annual income of the petitioner: (5100+2040)= 7140 X 12 = ₹ 85,680/-

Since the deceased was a bachelor. Thus, in view of the guidelines laid down in Sarla Verma, 50% deduction is made towards the income of the deceased, ₹ 85,680/-, 50% =₹ 42,840/-.

The multiplier applied, taking into account the deceased's age, who was 26 years old at the time, is set at 17. i.e. ₹ 42,840/- x 17 = ₹ 7,28,280/-. The medical bills are Ext Pw1/C to Ext PW1/E and its total comes to ₹ 1655/-

DETAILS OF AMOUNT OF COMPENSATION	
Name-:	*Davinder Kumar (deceased)*
Age-:	*26*
Monthly Income-:	*5100(self–employed)*
Addition to income to future prospect(@40% deceased being less than 40 years)	*(5100+2040)=7140*
Annual income(7140X12)	*₹ 85680*
Deduction towards personal & Living Expenses(50%)	*(₹ 85,680-50%=₹ 42,840*
Multiplier based on age of 26 years	*17*
Amount of compensation	*₹ 7,28,280/-*
Medical Bills Ext Pw1/C to Ext PW1/E	*₹ 1655*
Loss of Estate	*₹ 15000*
Loss of consortium	*₹ 40000*
Funeral Expenses	*₹ 15000*
Expenses shall be enhanced @10% in every three years (base year 2017)	*₹14000*
Total	*₹ 8,13,935/-*

41. The petitioner is entitled for a sum of ₹ *8,13,935/-/-* (Rupees Eight Lakhs Thirteen Thousand Nine Hundred and Thirty Five only). The aforesaid amount shall carry interest @ 9% from the date of filing of the petition.

ISSUES NO.5&6:

42. Now, this court will adjudicate the issue nos. 5 and 6. From the findings of issue No. 1, it is clear that it is the respondent No. 1 who was driving the vehicle/Scooty bearing registration No. HP-37-A-7577, and he is the registered owner of the vehicle.

43. Respondent No. 1, while appearing in court, has categorically admitted that a case has been registered against

him (Respondent No. 1), vide FIR No. 94/2014 dated 7-6-2014 Ext. PW2/A. He further admits that he was not holding a valid driving license at the time of the accident. There is also an admission in the cross-examination to this effect.

44. In the testimony of and RW1 And RW3, it has been established that the vehicle involved was insured with respondent No. 2, and Ext. RW3/B contains the policy of insurance along with its terms and conditions. Ext RW3/B is a comprehensive Policy.

45. Based on a thorough analysis of the evidence on record, it is evident that respondent No. 1 was driving the vehicle; however, he did not have a valid driving license at the time of the accident. Consequently, issues No.s 5 and 6 are answered in favor of the respondent no. 2. However, it is undisputed that the insured has paid the premium of the insurance policy (Ext. RW3/B).

SADDLING OF THE LIABILITY:

46. In situations involving motor vehicle accidents where the driver of the at-fault vehicle lacks a valid driving license, a legal concept known as "Pay & Recover" comes into play. This principle operates under the premise that, despite the absence of a valid license, the insurance company associated with the offending vehicle is obligated to provide compensation to the injured party. This principle ensures that the victim or dependents receive the necessary financial support without undue delay, even though the driver was not legally permitted to operate the vehicle.

47. Once the insurance company fulfills the immediate responsibility of compensating the victim, it is not left bearing the financial burden permanently. The insurer retains the right to initiate recovery proceedings against either the owner of the vehicle or the driver themselves. The rationale behind this is straightforward: since the driver was unauthorized to drive, the

insurer can seek reimbursement for the amount disbursed to the victim party. This balanced approach not only facilitates timely relief for the victim, who may be facing loss of estate and other damages, but also allows the insurance company to hold the responsible parties accountable and reclaim the funds it has paid out.

The Hon'ble Apex Court in SHAMANNA AND ANOTHER vs THE DIVISIONAL MANAGER THE ORIENTAL INSURANCE CO. LTD. AND ORS. (2018 9 SCC 650), has observed that "...

> *6. In the case of third party risks, as per the decision in NATIONAL INSURANCE COMPANY LTD. V. SWARAN SINGH AND OTHERS (2004) 3 SCC 297 , the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered. In para (110), the Supreme Court summarised its conclusions as under: "110. The Summary of our findings to the various issues as raised in these petitions is as follows: (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object. (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act. (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. (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 wherefore would be on them, (v) The court cannot lay down any criteria as to how the said burden would be Discharged, inasmuch as the same would depend upon the facts and circumstances of each case. (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. (vii)The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case. (viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree . (ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to *decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants. (x)Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal. (xi) The provisions contained in sub section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication claims inter se might of delay their the adjudication of the claims of the victims," (Underlining added) 7. As per the decision in Swaran Singh case, 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.*

The Hon'ble Apex Court has further reiterated this principle of pay and recover in PARMINDER SINGH vs NEW INDIA ASSURANCE CO. LTD. & ORS.(2019 7 SCC 217)

7.1. This Court in SHAMANNA & ORS. V. THE DIVISIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD. & ORS.,,(2018) 9 SCC 650 held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.

The Hon'ble SUPREME COURT OF INDIA In CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 1175 OF 2025 (Arising out of SLP(C) No.377/2023) in M. ANANTHI & ORS. APPELLANT(S) vs P. VENKATESAN & ANR. RESPONDENT(S) decided on 29-1-2025 has held:

"...7. In so far as the liability on the Insurance Company is concerned, the Courts below have rightly held that since the driver of the offending vehicle was not having any license to drive the same, the Insurance Company cannot be held liable to compensate. 8. We find no error or illegality in the said part of the order also. However, while granting the compensation of ₹ 10,36,000/-(Rupees Ten lakhs thirty Six Thousand) with interest, the High Court has not directed the Insurance Company to pay the sum and to recover the same from the owner/driver. 9. In the case of ***NATIONAL INSURANCE CO. LTD. VS. SWARAN SINGH AND ORS.*** *(2004) 3 SCC 297, it has been laid down that the claimant should not be allowed to suffer and run about to release the compensation awarded and that, it is in the fitness of things that the Insurance Company in such cases should first pay and then recover the amount. 57. For the reasons outlined above, the insurance company, respondent No. 3, shall deposit the total amount of compensation due, including interest, to the petitioner. Ergo, Respondent No. 3 has the right to recover this amount from the owner or driver of the vehicle, either jointly or severally, in accordance with the law.*

The Hon'ble Apex Court in

CIVIL APPEAL NO. 9669 OF 2024 date of decision 24 September 2025 in case titled as RAMA BAI versus M/S AMIT MINERALS THROUGH INCHARGE OFFICER/ COMPETENT OFFICER & ANRS.

5.2.1 In the earlier decisions in National Insurance Co. Ltd. v.

Yellamma6, Samundra Devi v. Narendra Kaur, Oriental Insurance Co. Ltd. v. Brij Mohan and New India Insurance Co. v. Darshana Devi this Court had applied the very principle, about the correctness of which, reservations were expressed in Parvathneni.

5.2.2 However, as found in ***Shamanna*** *the reference was not answered and the case was disposed of on 17.09.2013, keeping the question of law open to be decided in an appropriate case.*

6. In the present case as stated above, on the date of accident, the driver had no valid license and the licence was not renewed. The insurance company was entitled to take a valid defence in that regard under Section 149 6 (2008) 7 SCC 526 7 (2008) 9 SCC 100 8 (2007) 7 SCC 56 9 (2008) 7 SCC 416 Page 8 of 10 (2)(a)(ii) as the driver of the offending vehicle was not duly licensed, to avoid its liability to pay the compensation. The conditions in law are satisfied to absolve the insurance company from the payment of compensation.

6.1 The High Court in the impugned judgment relied upon the decision in Ram Babu Tiwari to find that as per the specific provisions of the Motor Vehicles Act, if the driver does not possess a valid and effective driving licence, it results in a breach of conditions of the insurance policy, exonerating the insurer from its liability. But while affirming the order of the High Court, absolving the liability for breach of conditions in the policy, this Court refused to interfere with orders of 'pay and recover' as directed by the High Court.

7. In the above circumstances, going by the series of decisions of this Court, it is only proper that the insurer be directed to satisfy the award, which however can be recovered by the insurer from the insured-owner of the vehicle. The appeal stands allowed.

Thus, Issues No.5&6 are decided in favour of respondent No.2.

ISSUE NO. 3 & 4:

48. The onus to prove both issues is upon the respondents. The respondents have not presented any evidence to prove these issues, and from the available evidence, it cannot be inferred that the petition is not maintainable further. The issue of non-joinder of parties has not been proved by the respondents by leading cogent or convincing evidence. Hence, these issues are answered in the negative and against the respondents.

FINAL ORDER/RELIEF:

49. As a net result of my findings made hereinabove the petition **PARTLY SUCCEEDS**, and the petitioner is entitled to compensation of **₹ 8,13,935/-/- (Rupees Eight Lakhs Thirteen Thousand Nine Hundred and Thirty Five Only)** along with interest @ 9% p.a. from the date of filing of the petition till actual payment to the petitioner. The respondent no. 1, is hereby held liable to pay the compensation to the petitioner. The respondent no. 2 is directed to deposit the award amount along with the updated calculated interest within a period of 30 days from the date of this order, directly into the savings bank account of the claimant, and in case there is no such account, then strictly as per rules. Ergo, Respondent No. 2 has the right to recover this amount from the owner/ driver of the vehicle, in accordance with the law under the principle of pay and recover. No order as to Costs. File after its due completion be consigned to the record room.

Announced and signed in the open court on this 17th day of November, 2025.

Dhiru Thakur
Motor Accident Claims Tribunal,
Palampur, District Kangra, H.P.

Form-A

List of Witnesses

Sr. No.	Names of Witness	Whether the witness is of petitioner or respondents.
1.	2.	3.
PW1	Raksha Devi	petitioner’ witness.
PW2	HASI Sudarshan	petitioner’ witness.
PW3.	Amar Nath	petitioner’ witness.
PW4.	Sanjay Kumar	petitioner’ witness.
PW5.	Dr.Sanjeev Sharma	petitioner’ witness.
PW6.	Swarn Lata	petitioner’ witness.
RW1	Surinder Kumar	Respondent No.1.
RW2.	Sanjay Kumar	Witness of respondent No. 1.
RW3.	Vinod Gautam	Witness of respondent No. 2.

List of Exts **Form-B**

Ext.No./Mark	Date of Ext.	Description of the Ext.
1.	2.	3.
Ext.PW1/A	15.06.2023	Affidavit of PW-1
Ext.PW1/B	-do-	Death Certificate
Ext.PW1/C to E	-do-	Medical Bills
Ext.PW2/A	-do-	Copy of FIR
Ext.PW3/A	-do-	Copy of Certificate
Ext.PW4/A	06.10.2023	Copy of Driving Licence
Ex.PW5/A	20.02.2024	Discharge Card
Ext.PW6/A	-do-	Copy of Certificate
Ext.RW1/A	27.05.2024	Affidavit of RW-1
Ext.RW1/B	-do-	Copy of R.C.
Ext.RW1/C	-do-	Certificate of Insurance
Ext.RW1/D	-do-	Copy of judgment
Ext.RW2/A	11.07.2025	Copy of MLC
Ext.RW2/B	-do-	Copy of statement
Ext.RW3/A	11.07.2025	Affidavit of RW-3
Ext.RW3/B	-do-	Certificate of Insurance

Dhiru Thakur
Motor Accident Claims Tribunal,
Palampur, District Kangra,H.P.