



**IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA**

**FAO No. 4229 of 2013**

**Reserved on: 06.04.2026**

**Date of decision: 10.04.2026**

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Oriental Insurance Company Limited .....Appellant.

Versus

Vidya Devi & others .....Respondents.

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*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup>*Whether approved for reporting?*

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

For respondents No. 1 to 4: Mr. Ashwani Kaundal, Advocate.

None for respondent No. 5.

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**Sushil Kukreja, Judge.**

The instant appeal has been maintained by appellant, i.e., Oriental Insurance Company Limited, who was respondent No. 3 before the learned Tribunal below (hereinafter referred to as “the appellant/Insurance Company”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘The Act’) against impugned award, dated 19.08.2013, passed by learned Motor Accident Claims Tribunal-II, Solan, H.P., (hereinafter referred to as “the

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*



learned Tribunal”), whereby the claim petition filed by the petitioners-claimants (respondents No. 1 to 4 herein) under Section 166 of the Act, was allowed and they were held entitled for compensation of Rs.3,63,696/- alongwith interest @ 6% per annum from the date of filing of the petition till the realization of the amount from respondents No. 1 and 2, i.e., driver and owner of the offending vehicle, respectively, and the award amount was to be indemnified by the insurer, i.e., Insurance Company.

2. The brief facts of the case are that the petitioners-claimants, Vidya Devi, widow of Gauri Shankar (deceased), Kumari Ranjana and Gautam Thakur, daughter and son, respectively, and Shanti Devi mother of the deceased, filed a claim petition under Section 166 of the Act before the learned Tribunal below, wherein they sought compensation from respondent No. 1-Hardev Kumar (Driver), Dhani Ram (owner) and Oriental Insurance Company Limited (Insurer), on account of death of Shri Gauri Shankar, which took place on 07.12.2007, due to the rash and negligent driving of auto, bearing registration No. HP-50-0065, by respondent No. 1-Hardev Singh.

2(a). The petitioners averred that on 07.12.2007 the



deceased was travelling in the aforesaid auto, which was being driven by respondent No. 1-Hardev Singh and due to the rash and negligent driving of Hardev Singh the auto fell downhill near Deothi on Solan-Subathu road, resultantly the deceased suffered multiple serious injuries and ultimately died due to the injuries. The offending vehicle was registered in the name of respondent No. 2-Dhani Ram (who died during the pendency of the case before the learned Tribunal below and his cause was/is defended by his legal representatives, who are respondents No. 6 to 9 herein). In fact, respondent No. 2-Dhani Ram had executed a general power of attorney in favour of Shri Manoj Kumar, who was respondent No. 3 before the learned Tribunal and the said respondent was deleted from the array of parties by the learned Tribunal below. As per the petitioners/claimants, the offending vehicle was insured with Oriental Insurance Company (appellant herein) at the time of the accident.

2(b). The petitioners/claimants averred that they were dependents of the deceased and the accident took place due to the rash and negligent driving of respondent No. 1-Hardev Kumar. The petitioners/claimants claimed compensation of rupees twenty lacs alongwith interest from the date of the



accident till the realization of the amount.

3. Respondent No. 1-Hardev Kumar, driver of the offending vehicle, in his reply admitted the accident and the death of the deceased-Gauri Shanker, but he denied other allegations. He averred that the accident took place due to the sudden mechanical defect in the vehicle. He further averred that he had valid and effective driving licence at the time of the accident, thus he had no liability to pay the compensation. He also denied the income of the deceased.

4. Respondents No. 2-Dhani Ram (owner of the offending vehicle) and respondent No. 3-Manoj Kumar (who was later on deleted from the array of respondents) filed joint reply, wherein they averred though the offending vehicle was registered in the name of respondent No. 1-Dhani Ram (one of the replying respondents), but he had executed a general power of attorney in favour of respondent No. 3-Manoj Kumar for maintaining and supervising the vehicle. Thus, respondent No. 3 was plying the offending vehicle, being general power of attorney of respondent No. 2-Dhani Ram. The replying respondents did not deny the occurrence of the accident and death of Gauri Shanker and also the fact that the vehicle was being driven by respondent No. 1-Hardev



Kumar. The income of the deceased was denied. As per the replying respondents, the offending vehicle was comprehensively insured with the Insurance Company, i.e., The Oriental Insurance Company Limited and respondent No. 1 (driver) was having valid and effective driving licence to ply the vehicle, therefore, the insurance company (appellant herein) was liable to indemnify the compensation amount, if any.

5. The insurance company filed its reply, wherein it was denied that firstly offending vehicle was insured with it and secondly the driver was not having valid and effective driving licence, thus there was a breach of the terms and conditions of the insurance policy, if any. It was also averred that the offending vehicle was being plied without valid registration, route permit and fitness certificate. Lastly, it was averred that the compensation amount was highly exaggerated.

6. On 12.07.2010 the learned Tribunal below had framed the following issues for consideration and adjudication:

- "1. Whether the deceased Gauri Shanker died on account of accident due to rash and negligent driving of respondent No. 1? OPP**



2. ***If issue No. 1 is proved in affirmative, to what amount and from whom the petitioners are entitled for compensation? OPP***
3. ***Whether the vehicle in question was driven in breach of terms of policy? OPR-4***
4. ***Whether the driver of the vehicle has not valid driving licence, if so, its effect? OPR-4***
5. ***Whether the claim petition is maintainable as alleged? OPR-4***
6. ***Relief.”***

7. After the parties led evidence and after hearing the learned counsel for the parties, the claim petition was allowed and the petitioners/claimants were held entitled for compensation in the sum of Rs.3,63,969/- alongwith interest @ 6% per annum from the date of filing of the petition till the realization of the amount.

8. Feeling aggrieved and dissatisfied, the appellant-Insurance Company preferred the instant appeal against the impugned award dated 19.08.2013, with prayer to allow the instant appeal by quashing and setting-aside the impugned award and exonerate the appellant-Insurance Company from the liability of payment of the amount of compensation, interest etc..

9. I have heard the learned Senior Counsel for the appellant, learned counsel for respondents No. 1 to 4 and carefully examined the entire records.



10. The learned Senior Counsel for the appellants contended that the learned Tribunal below had wrongly and incorrectly fastened the liability on the insurance company for payment of compensation alongwith interest etc., despite the fact that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. He further contended that the learned Tribunal below had closed the evidence of the appellant-insurance company without affording any reasonable opportunity to it.

11. Conversely, the learned counsel for respondents No. 1 to 4 supported the impugned award and contended that the impugned award is the result of proper appreciation of both law and facts. He prayed that the instant appeal, being devoid of merits, be dismissed.

12. The perusal of the record reveals that the evidence of the petitioner was closed by the learned Tribunal below on 29.11.2010 and thereafter the case was listed for the evidence of the respondents. On 21.03.2013, the appellant-insurance company had filed an application seeking permission to produce its remaining evidence, which was allowed and the case was fixed for remaining evidence of the appellant-insurance company for 23.04.2013. On



23.04.2013 the Presiding Officer was on leave and the case was taken up on 14.05.2013 and thereafter on 01.07.2013 following order was passed:

**"1.7.2013**

**Present:** *Sh. Umed Sharma vice to Sh.B.S. Dogra, Adv, for the petitioner.  
Shri Manoj Verma, Adv, for respondent No. 1.  
Sh. Sunil Sharma, Adv, Court Guardian for LRs of respondent No. 2.  
Shri Ravinder Tikku, Adv, for respondent No. 3.*

*Witness of respondent No. 3 not present summons issued to the respondent not received back served or unserved. Adjournment prayed. Allowed. As last chance is given in the interest of justice. The Insurance Company be (sic) take dasti summons for Licensing Authority Mathura and produce these witnesses on or before next date of hearing on 20.07.2013."*

13. Thereafter on 20.07.2013 the evidence of respondent No. 3 was closed by the learned Tribunal below. For the sake of ready reference order dated 20.07.2013 is reproduced as under:

**"20.7.2013**

**Present:** *Sh. U.S. Rana vice to Sh. B.S. Dogra, Adv,  
for the petitioners.  
Sh. Manoj Verma, Adv, for respondent No. 1.  
Sh. Sunil Sharma, Court Guardian, for LRs of respondent No. 2.  
Sh. Ravinder Tikku, Adv, for respondent No. 3.*

*Evidence of respondent No. 3 has already been recorded. Remaining evidence of respondent No. 3 and other respondents not present. Sufficient time has already been granted. Hence the evidence is closed. But put up on 1.8.2013 for arguments."*

14. Therefore, the perusal of the orders passed by



the learned Tribunal below show that the appellant-Insurance Company has not been afforded proper opportunity for leading its evidence. In a similar situation a Co-ordinate Bench of this Court in **FAO No. 223 of 2015**, titled as **Oriental Insurance Co. Ltd. vs. Ramila & others**, in paras 7 and 8 observed as under:

*“7. A perusal of the orders passed by the learned Tribunal below from time to time would clearly indicate that the appellant in fact has not been afforded a proper opportunity of leading its evidence. In case summons being sent by the learned Tribunal below were not being returned or the witness despite service was not appearing, then it was for the learned Tribunal below to have proceeded in the matter in accordance with order 16 of the Code of Civil Procedure. After all, appellant was only required to submit the list of witnesses, file process fee along with road and diet money for the witnesses proposed to be examined by it. Rest it was for the learned Tribunal which alone is empowered to enforce attendance and compel the appearance of the witnesses and, therefore, the Tribunal was duty bound to do so as the appellant had no authority to enforce the attendance of the witnesses.*

*8. Identical issue came up before this Court in CMPMO No.294 of 2014 titled as ICICI Lombard General Insurance Co.Ltd Vs. Soun Khatun & ors, decided on 14.11.2014, wherein it was held as under:*

*“3. It is established on record that ‘dasti’ summons issued by the Tribunal had been duly served upon Record Keeper, RTO, Mathura for 12.8.2014, but the said witness had not appeared. Now in case the witness was not present despite service, then this in itself could not be a ground to have fastened any blame upon the petitioner. Rather, the Court should have exercised its larger power of enforcing the attendance of the witnesses by resorting to coercive steps. After all the assistance of the Court to examine witnesses is sought because the Courts are vested with the authority to enforce the attendance of the witnesses even if the same be at the cost of his liberty and convenience. In this view of the matter, under no circumstances, whatsoever could the evidence of the petitioner have been closed on this count.*

*4. It must be remembered that the Courts are respected not on account of its power to legalize*



***injustice on technical grounds but because it is capable of removing injustice and is expected to do so and further taking into consideration the fact that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done.”***

15. In the instant case also, when summonses were being sent by the learned Tribunal below and the same were not being returned either served or unserved, then it was for the learned Tribunal below to have proceeded in the matter in accordance with order 16 of the Code of Civil Procedure as the learned Tribunal below was duty bound to do so.

16. Therefore, in this view of the matter, this Court is left with no other option, but to remand the matter back to the learned Tribunal below for deciding issue No. 4 afresh, after giving reasonable opportunity to the appellant-Insurance Company to lead its evidence by providing all necessary assistance of the Court. However, it is made clear that insofar as findings on all other issues, except issue No. 4, are concerned, the same will not be interfered with in any manner whatsoever by the learned Tribunal below and only fresh findings shall be rendered on issue No. 4. It is also made clear that in case witness despite service fails to turn up, the learned Tribunal shall not hesitate to take coercive measures to secure his presence.



17. In view of the matter, the instant appeal is partly allowed in the above terms leaving the parties to bear their own costs.

18. Since the matter pertains to the year 2007, the learned Tribunal below is directed to decide the case as expeditiously as possible and in no event later than 31<sup>st</sup> October, 2026.

19. The parties are directed to appear before the learned Tribunal below on or before **5<sup>th</sup> May, 2026**.

20. Learned Registrar (Judicial) shall ensure that the entire record be remitted to the learned Reference Court forthwith.

The appeal stands disposed of in the above terms. Pending application(s), if any, shall also stand(s) disposed of.

**( Sushil Kukreja )**  
**Judge**

**10<sup>th</sup> April, 2026**  
*(virender)*