IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No.50 of 2013
Reserved on: 20.06.2026
Date of decision: 21.07.2026
Date of uploading on Website:21.07.2026

Shriram General Insurance Company

...Appellant

Versus

Rasina and others

…Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

[1] *Whether approved for reporting?*

For the appellant:	Mr. Jagdish Thakur, Advocate.
For the respondents:	Mr. Kulwant Chauhan, Advocate, for respondents No.1 to 3 Mr. Nand Lal Thakur, Advocate, for respondents No.4(a) to 4(d).

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-Shriram General Insurance Company (hereinafter referred to as the appellant), under Section 173 of the Motor Vehicles Act (for short "MV Act"), against award dated 15.10.2012, passed by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, HP, in MAC Petition No.29-MAC/2 of 2010, with a prayer to quash and set aside the impugned award.

---

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

2. The brief facts giving rise to the present appeal are that respondents No.1 to 3/petitioners (hereinafter referred to as the petitioners) filed a claim petition under Section 166 of MV Act, whereby they sought compensation to the tune of Rs.21,00,000/- on account of death of Abdul Jabbar, who was husband of petitioner No.1, father of petitioner No.2 and son of petitioner No.3. It was averred in the claim petition that on 05.06.2010, Abdul Jabbar, who was a partner in M/s Rajesh Tractor Workshop at Bhupper and a trained mechanic of Road Roller, JCB Pockland as well as other heavy machinery and vehicles, was going to Rajgarh via Dadahu-Bacher Bag alongwith his spare parts, tools and other instruments in order to repair the Road Roller of respondent No.1-Dalel Singh [since deceased through LRs, i.e. respondents No.4(a) to 4(d) herein], in vehicle (Pick-Up) of respondent No.1 bearing registration No.HP-17B-1900. When the said vehicle reached at place Pathna on Dadahu-Bacher Bag road, respondent No.1-Dalel Singh, who was driving the vehicle, could not control the same, due to which, it went off the road and rolled down the hill as a result of which, Abdul Jabbar received fatal injuries on his person and subsequently died. The offending vehicle was insured with Shriram General Insurance Company

(appellant herein).

3. As per the petitioners, at the time of his death, Abdul Jabbar was aged about 22 years and he was earning Rs.15,000/- per month as partner in the repair shop and as a skilled mechanic. The accident had taken place due to the rash and negligent driving of the vehicle in question by its driver/respondent No.1, hence, they sought compensation to the tune of Rs.21,00,000/-.

4. Respondent No.1/driver, in his reply, admitted that the vehicle in question was being driven by him, however, he denied the fact that the accident had taken place on account of his rash and negligent driving. It was averred that the accident had occurred due to sudden mechanical defect as the tie-rod of the vehicle was broken, due to which, it could not be controlled.

5. Respondent No.2-Insurance Company (appellant herein), in its reply, raised preliminary objections qua maintainability, the driver was not possessing a valid and effective driving licence and the vehicle was being plied in violation of the terms and conditions of the insurance policy. On merits, it was averred that the deceased was an unauthorized passenger in the goods vehicle and that the amount claimed was highly exaggerated.

6. On the basis of the pleadings of the parties, the learned Tribunal below framed the following issues on 13.09.2011:-

> ***"1. Whether Abdul Jabbar died on account of rash and negligent driving of offending vehicle, i.e. Pick-up No.HP-17B-1900, by respondent No.1 Dalel Singh on 05.06.2010 at about 9:00 AM, near Village Pathna, Sub-Tehsil Dadahu, as alleged? OPP***
>
> ***2. In case issue No.1 is determined in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP***
>
> ***3. Whether the driver of the offending vehicle did not possess a valid and effective driving licence and that vehicle was being plied for hire and reward in violation of terms and conditions of the insurance policy, as alleged? ...OPR-2***
>
> ***4. Whether the petition has been filed in collusion with respondent No.1, as alleged? ...OPR-2***
>
> ***5. Whether the petition is not maintainable, as the deceased was traveling in the vehicle in question as an unauthorised passenger, as alleged? ...OPR-2***
>
> ***6. Relief."***

7. After parties led their evidence, the claim petition was allowed alongwith costs and the petitioners were awarded compensation to the tune of Rs.8,67,400/- alongwith interest @ 7.5 % per annum from the date of filing of the petition upto the date of payment against respondent No.1. However, respondent No.2 was directed to indemnify the award, being insurer of the offending vehicle.

8. Feeling aggrieved and dissatisfied, the appellant-insurance company preferred the instant appeal against the

impugned award dated 15.10.2012, with a prayer to quash and set-aside the same.

9. Learned counsel for the appellants/Insurance Company contended that the learned Tribunal below has wrongly held that the deceased was traveling in the offending vehicle as owner of the goods as on the relevant date, the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. He, therefore contended that the liability to pay the compensation amount can not be fastened upon the insurance company.

10. On the other hand, learned counsel for respondents No.1 to 3 supported the award passed by the learned Tribunal below and contended that the impugned award has been passed by the learned Tribunal below after appreciating the evidence in its proper perspective, hence, prayed for dismissal of the instant appeal.

11. I have heard the learned counsel for the appellant as well as learned counsel for respondents No.1 to 2 and respondent No.4(a) to 4(d) and also carefully examined the entire record.

12. The case of the petitioners is that on 05.06.2010, the deceased was going to Rajgarh via Dadahu-Bacher Bag in the

vehicle of respondent No.1-Dalel Singh, bearing registration No.HP-17B-1900 alongwith his spare parts, tools and other instruments, in order to repair the Road Roller of Dalel Singh and when the said vehicle reached at place Pathna on Dadahu-Bacher Bag road, the driver (respondent No.1) could not control the vehicle, due to which, it went off the road and rolled down the hill, as a result of which, Abdul Jabbar received fatal injuries on his person and subsequently died. The learned Tribunal below has specifically given findings on issue No.1 that the accident had occurred due to the rash and negligent driving on the part of respondent No.1. So far as the findings on issue No.1 qua negligence is concerned, neither the appellant/Insurance Company, nor the owner-cum-driver of the offending vehicle had assailed the said findings, as such, the same has attained finality.

13. Learned counsel for the appellant has vehemently contended that the learned Tribunal below has erred in fastening the liability on the insurance company as on the relevant date, the deceased was traveling in the offending vehicle as an unauthorized/gratuitous passenger. Now the question which arises for consideration, is as to whether the deceased was traveling in the offending vehicle as an unauthorized/gratuitous

passenger. The burden to prove the breach of a terms of insurance policy rests squarely on the party which complains of such breach. The test which can be applied in such a situation would be that which party would fail if no evidence is led or the onus is not discharged. In the present case, the answer would be the appellant-Insurance Company. In this behalf, reference can be made to the judgment passed by the Hon'ble Supreme Court in ***National Insurance Co.Ltd. v. Swaran Singh, (2004) 3 SCC 297,*** wherein the Hon'ble Supreme Court has observed as under:

> *"110. The summary of our findings to the various issues as raised in this petition is as follows:*
>
> *((i)***********
>
> *(ii)* **************
>
> *(iii)**************
>
> *(iv)The Insurance companies are, 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 wherefor would be on them.*
>
> *(v)The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case."*

14. Applying the ratio of the law laid down by the Supreme Court, as referred to above, the onus to prove that the deceased was traveling as an unauthorized passenger was upon the insurance company. However, it has failed to lead any evidence

in order to prove that the deceased was traveling as gratuitous passenger in the offending vehicle without any goods. As per the petitioners, the deceased was traveling in the offending vehicle alongwith his spare parts, tools and other instruments in order to repair the road roller of respondent No.1-Dalel Singh, who while appearing in the witness box as RW-1, had also admitted the said fact that the deceased was traveling in the vehicle alongwith the tools etc, for the repair of his road roller. The appellant-insurance company has not been able to discharge the onus placed upon it. In the absence of any evidence led by the insurance company, the version of the claimants and the owner of the offending vehicle has to be believed. Therefore, in the absence of any evidence on record, it cannot be said that the deceased was traveling as an unauthorized passenger in the offending vehicle as such the sole contention raised by the learned Counsel for the Appellant is not tenable and is liable to be rejected out-rightly.

15. Hence, in view of my aforesaid discussion, no error has been committed by the learned Tribunal below in coming to such conclusion and, therefore, matter does not call for any interference. The appeal filed by the appellant/insurance Company, being devoid of any merits, is dismissed and the

impugned award dated 15.10.2012, passed by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, HP, is upheld.

Pending miscellaneous application(s), if any, shall stand disposed of.

(Sushil Kukreja)
Judge

July 21, 2026
(V. Himalvi)