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**(2016) ILRHP 140 : (2016) LatestHLJ(HP) 111**

**High Court of Himachal Pradesh**

**Case No:** FAO No. 122 of 2009

Oriental Insurance  
Company Ltd.

APPELLANT

Vs

Smt. Suman Bala &  
others

RESPONDENT

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**Date of Decision:** Jan. 1, 2016

**Acts Referred:**

Motor Vehicles Act, 1988 â€” Section 173

**Citation:** (2016) ILRHP 140 : (2016) LatestHLJ(HP) 111

**Hon'ble Judges:** Mr. Mansoor Ahmad Mir, C.J.

**Bench:** Single Bench

**Advocate:** Mr. Ashwani K. Sharma, Senior Advocate with Mr. Nishant Kumar, Advocate, for the Appellant; Mr. N.K. Thakur, Senior Advocate with Mr. Rahul Verma, Advocate, Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for the Respondent

**Final Decision:** Disposed off

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**Judgement**

Mansoor Ahmad Mir, Chief J. (Oral) - This appeal is directed against the award, dated 29th November, 2008, made by the Motor Accident

Claims Tribunal, Una, Himachal Pradesh (hereinafter referred to as ""the Tribunal"" ) in M.A.C. Petition No. 21 of 2006, titled Suman Bala and

others v. Naresh Kumar and others, whereby compensation to the tune of Rs. 3,80,000/- with interest @ 7.5% per annum from the date of filing

of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 to 5 herein and the insurer-appellant herein came

to be saddled with liability (hereinafter referred to as the ""impugned award"" ).

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality so far it relates to them.

3. The insurer has questioned the impugned award on the ground that driver Naresh Kumar was not having valid and effective driving licence to

drive Heavy Transport Vehicle, for short HTV/truck/offending vehicle, thus, the owner has committed wilful breach.

4. The owner of the truck is Himachal Pradesh State Electricity Board and in case, it has to appoint a driver to drive HTV/truck/offending vehicle,

it has to ascertain during the selection process - whether the driver is having valid and effective driving licence to drive HTV/truck-offending

vehicle.

5. Admittedly, the driver was not having valid and effective driving licence to drive HTV/truck/offending vehicle. Thus, it cannot lie in the mouth of

the learned Counsel for respondent No. 7-owner that the owner has not committed any wilful breach.

6. Having said so, it is held that the driver was not having valid and effective driving licence to drive the offending vehicle.

7. Keeping in view the facts of the case read with the pleadings and the law laid down by the Apex Court, owner-respondent No. 7 has

committed wilful breach.

8. Viewed thus, the insurer has to satisfy the impugned award, at the first instance, with right of recovery, from the insured.

9. The Registry is directed to release the entire amount deposited by the insurer in favour of the claimants, strictly in terms of conditions contained

in the impugned award, through payees account cheque or by depositing in their account.

10. Respondent No. 7 is directed to deposit the award amount either before the Registry or before the Tribunal, within eight weeks from today. In

default, the insurer is at liberty to lay a motion for recovery.

11. Accordingly, the impugned award is modified, as indicated above and the appeal is disposed of.

12. Send down the record after placing copy of the judgment on the Tribunal's file.