



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 499 of 2016

Reserved on: 20.07.2026

Date of decision: 24.07.2026

Date of uploading on website:
24.07.2026

New India Assurance Co. Ltd.

.....Appellant

Versus

Ram Dassi & Ors.

....Respondents

Coram

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

¹ *Whether approved for reporting?*

For the appellant:

Mr. B.M. Chauhan, Senior
Advocate with Ms. Kamakshi
Tarlokta and Mr. Amit Himalvi,
Advocates.

For the respondents:

Mr. N.D. Sharma, Advocate, for
respondents No. 1 & 2.

Respondent No. 3 ex parte.

Sushil Kukreja, Judge

The present appeal has been filed by the appellant/Insurance Company against the impugned award dated 28.05.2016, passed by learned Civil Judge (Jr. Division), Court No. IV, Shimla, District Shimla, H.P., in Case

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



No. 2-2 of 2015/12, whereby the petition filed by the petitioners was allowed and they were held entitled for a compensation of Rs. 9,05,520/-, alongwith penal interest at the rate of 12.5% on the amount of compensation after 30 days' of accident.

2. The brief facts of the case, as set up by the petitioners, are that on 16.03.2010, while Sunil Kumar, was discharging his duties as Conductor in vehicle bearing registration No. HP-27A-0461, owned by respondent No. 1, Krishan Lal, the said vehicle met with an accident near Morang and body of Sunil Kumar flew away in the river Satluj, which could not be traced and after verification, it was held that the deceased died in the aforesaid accident. According to the petitioners, at the time of his death, the deceased was 18 years old and was drawing salary of Rs. 8,000/- per month. Hence, the petitioners filed the petition under the Employee's Compensation Act, seeking compensation.

3. In reply filed by respondent No. 1, preliminary



objections qua non-maintainability and having valid and effective driving licence have been taken. On merits, it has been averred that since the vehicle in question was duly insured with respondent No. 2/Insurance Company, the compensation, if any, shall be paid by respondent No. 2/Insurance Company.

4. Respondent No. 2/Insurance Company in its reply took preliminary objections qua maintainability, cause of action, no liability of the Insurance Company, as the deceased was travelling in the ill-fated vehicle as an gratuitous/unauthorized passenger, the driver of the offending vehicle was not having a valid and effective driving licence, non-joinder of necessary parties and limitation. On merits, it has been denied that the deceased was employed by respondent No. 1 in his vehicle bearing registration No. HP-27A-0461 on monthly salary of Rs. 5,000/- and Rs. 100/- per day as diet money. Rather, it has been stated that the deceased was travelling in the ill-fated vehicle as an unauthorized/gratuitous passenger and took lift in the



aforesaid vehicle to go to appear in the 10th class examination.

5. On pleadings of the parties, the following issues were framed for determination on 27.11.2012:-

"1. Whether the deceased was drawing the salary of Rs. 5,000/- per month and Rs. 100/- per day as diet money? OPP

2. Whether the deceased died in the course of his employment? OPP

3. Whether the petition is not maintainable? OPR

4. Whether the petition is bad for non-joinder of necessary parties? OPR

5. Relief."

6. After the parties led evidence and after hearing the learned Counsel for the parties, the petition filed by the petitioners was allowed and they were held entitled for a compensation of Rs. 9,05,520/-, alongwith penal interest at the rate of 12.5% on the amount of compensation after 30 days' of accident. The respondent No. 2, being insurer, was directed to pay the compensation.

7. Feeling aggrieved and dissatisfied by the impugned award, the appellant/Insurance Company



preferred the instant appeal, for setting aside the same, which was admitted for final hearing on the following substantial question of law:-

“(1) Whether the findings of the Courts below are result of complete mis-reading, mis-interpretation of the evidence and material placed on record and against the settled position of law?”

8. I have heard the learned counsel for the parties and have also gone through the material available on record, carefully.

9. Learned Senior Counsel for the appellant contended that learned Court below has erred in law in fastening the liability upon the Insurance Company, as at the time of accident, the vehicle in question was being plied in breach of the terms and conditions of the policy. He further contended that learned Court below has gravely erred in not framing issues on the point of employer and employee relationship between the deceased and respondent No. 1, that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and limitation, because the claim petition has not been filed within



two years from the date of accident as provided under Section 10 of the Employee's Compensation Act, 1923, as the deceased had died on 16.03.2010, whereas, the claim petition was filed on 28.05.2012. With these submissions, he prayed for acceptance of the present appeal and dismissal of the impugned award.

10. Per Contra, the learned counsel for respondents No. 1 & 2/claimants contended that the learned Court below did not commit any error while allowing the petition.

11. The perusal of the material available on record reveals that while filing reply the appellant/Insurance Company has specifically taken preliminary objections that there did not exist any relationship of employer and employee between respondent No. 1 and the deceased, petition is barred by limitation and that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. However, despite that the learned Court below has failed to frame the necessary issues in this regard and gave findings in a very slip shod manner. Thus,



non framing of issues regarding relationship of employer and employee, limitation and validity of driving licence have caused serious prejudice to the appellant/Insurance Company. Therefore, in the facts and circumstances of the present case, additional issues are required to be framed as under:-

“5. Whether there existed any relationship of employer and employee between respondent No. 1 and the deceased? OPP

6. Whether the petition is barred by Limitation? OPR-2

7. Whether the driver of vehicle bearing registration No. HP-27A-0461 was not holding a valid and effective driving licence at the time of accident? OPR-2”

12. Hence, impugned award dated 28.05.2016 passed by learned Court below is set aside and the case is remanded back to learned Court below to decide the same afresh, after giving reasonable opportunity to lead evidence to each of the parties on aforesaid additional issues, framed by this Court.

13. It is made clear that not more than two



opportunities shall be granted to each of the parties to lead evidence on additional issues.

14. Since the accident pertains to the year 2010, the learned Court below is directed to decide the case as expeditiously as possible and in any event not later than **31.03.2027**. Parties are directed to appear before the learned Court below on **25.08.2026**.

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

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

(Sushil Kukreja)
Judge

24th July, 2026
(raman)