



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA 2025:HHC:40222

FAO (ECA) No. 257 of 2019 a/w

CO No. 41 of 2019

Date of decision: 26.11.2025.

United India Insurance Co. Ltd.

...Appellant

versus

Fulma Devi & others

...Respondents.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

*Whether approved for reporting?*¹

For the appellant : Mr. Ashwani K. Sharma, Sr. Advocate with Mr. Ishan Sharma, Advocate.

For the respondents : Ms. Monika Singh, Advocate, for respondents No. 1 to 4/Cross-Objectors.

Mr. Virender Sharma, Advocate, for respondent No.5.

Satyen Vaidya, Judge (oral):

The instant appeal has been filed under Section 30 of the Employees Compensation Act, 1923 (for short the 'Act') against the award dated 15.5.2018, passed by the learned Commissioner, Employees Compensation, Court No.1, Shimla, H.P. in WCP No. 13-2 of 2014-1.

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



2. Respondents No. 1 to 4 herein (hereinafter referred to as the 'Claimants') had preferred claim petition under Section 22 of the Act for grant of compensation on account of death of Bhoop Ram during the course of his employment as a driver with respondent No.5 herein (hereinafter referred to as the 'Employer'). It was alleged that deceased Bhoop Ram was employed as a driver by the employer to drive vehicle No. HP-51B-7777. His monthly salary was claimed to be Rs. 8000/-. As per claimants, on 19.01.2014 at about 5.45. p.m., vehicle No. HP-51B-7777 being driven by deceased Bhoop Ram, during the course of his employment had met with an accident, which had caused the death of Bhoop Ram.

3. Deceased Bhoop Ram was stated to be 29 years old at the time of his death. The claimants were stated to be totally dependent upon the deceased Bhoop Ram for their livelihood.

4. Vehicle No. HP-51B-7777 was stated to have been insured with appellant/insurer United India Insurance Company Ltd at the time of accident.



5. The employer in her reply before the learned Commissioner had raised objection as to the maintainability of the petition on the ground that the vehicle was insured with the appellant/insurer. The deceased Bhoop Ram was admitted to be the employee of the employer. It was stated that deceased Bhoop Ram had been engaged as a driver on monthly salary at Rs. 8000/- inclusive of personal expenses. The accident of the vehicle, being cause of death of Bhoop Ram, was also not denied.

6. The appellant/insurer in its reply had also raised objection as to the maintainability of petition. It was alleged that the relationship of employee and employer did not exist between deceased and employer. It was also alleged that the driver was not possessing valid and effective driving license. According to the appellant/insurer, even the registration and fitness certificates of the vehicle were not valid.

7. The learned Commissioner had framed the following issues:-

- “1. Whether the deceased Bhoop Ram was working as driver on vehicle bearing No. HP-51B-777? OPP
2. Whether the deceased Bhoop Ram died during the course of employment under respondent No.2? OPP



3. *If above two issues are proved in affirmative, whether the petitioners who are the legal heirs of the deceased Bhoop Ram are entitled for the compensation, as prayed for? OPP*
4. *Whether the petition is not maintainable in the present form? OPR-1.*
5. *Whether the deceased was not having effective driving licence at the time of accident? OPR-1.*
6. *Relief.”*

Issues No.1 to 3 were answered in affirmative and all other issues were answered in negative. The claim petition was partly allowed and the claimants were held entitled to compensation of Rs. 12,57,199.2/-, inclusive of interest. The liability to satisfy the award has been fastened upon the appellant/insurer.

8. The appeal was admitted on 6.9.2019 on following substantial questions of law:-

- “1. *Whether learned Commissioner while passing impugned award erred in awarding huge compensation amount to the claimants/respondents No.1 to 4, payable by the appellant/insurer since no premium in respect of employee-driver was paid and as such no risk of paid employees as per policy of insurance was assumed by the insurer?*
2. *Whether employer-employee relationship between owner-insured and deceased-driver having not been proved on record, the claim made on behalf of the claimants for grant of compensation on account*



of death of Sh. Bhoop Ram was not maintainable and claim petition was liable to be dismissed?” 2025-JHC:40222

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. Mr. Ashwani Kumar Sharma, learned Senior Advocate representing the appellant/insurer would contend that the findings returned by the learned Commissioner on issue No.1 were not supported by the evidence. The relationship of deceased as employee of the employer had not been established. He further contends that the driver of the vehicle was not covered under the policy of insurance purchased by the employer.

11. On the other hand, learned counsel for the respondents have supported the award.

12. By virtue of proviso (i) to Clause (b) of sub-Section 147 of the Motor Vehicle Act, 1988, the driver of the vehicle is entitled for coverage under the policy of insurance to the extent of compensation as provided under the Employees Compensation Act. It has nowhere been the case of the appellant/insurer that the policy of insurance Ext. PW1/B did not provide for coverage under Employees Compensation Act. At no stage had the appellant/insurer



taken such an objection. To support the above view,
reference can be made to the judgment passed by the
Hon'ble Supreme Court in ***National Insurance Company
Ltd. vs. Prembai Patel & others, (2005) 6 SCC 172***, in
which, it has been held as under:-

“12. The heading of Chapter XI of the Act is Insurance of Motor Vehicles Against Third Party Risks and it contains Sections 145 to 164. Section 146(1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a



person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression "such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy)" occurring in sub-section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act."



13. Even otherwise, the driver would be covered in terms of Clause (II) (3) of the terms and conditions of the policy, which reads as under:-

“Section-II Liability to Third Parties:

In terms of and subject to the limitations of the indemnity granted by this section to the insured, the company will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission, provided that such driver shall as though he/she was the insured observe fulfill and be subject terms exceptions and conditions of this policy in so far as they apply.”

14. Since it has not been found that the driver was not qualified to drive the vehicle in question, he would also be covered under the aforesaid clause of the policy.

15. The contention that the relationship of employee and the employer was not established also deserves to be rejected, as the fact has duly been proved on record. The employer in her reply, as noticed above, had categorically admitted that she had employer of deceased Bhoop Ram as driver on the vehicle No. HP-51B-7777. The employer has also appeared as a witness (RW1) and has made the deposition to the same effect on oath. Despite cross-examination by the appellant/insurer, her testimony has not been shattered.



16. Thus, no fault can be found with the findings of fact recorded by the learned Commissioner.

17. As regards the Cross-Objections No. 41 of 2019, filed on behalf of the claimants, learned counsel for the cross-objectors has contended that the learned Commissioner has erred in assessing the age of deceased Bhoop Ram as 30 years, whereas his date of birth was proved to be 9.8.1984 and accordingly, his age at the time of death was 29 years. She further submitted that the applicable factor would be 209.92 instead of 207.98, as applied by the learned Commissioner.

18. Record reveals that copy of school leaving certificate of deceased was proved on record as Ext. PW1/A and Ext. PW3/3. In both these documents, the date of birth of the deceased has been recorded as 9.8.1984. The date of accident was 19.01.2014 and thus, the contention of the claimants is required to be upheld.

19. Accordingly, it is held that the age of the deceased at the time of death was 29 years and by applying the relevant factor of 209.92, the claimants will be entitled to compensation of Rs. 8,39,680/-. The impugned award



is thus modified to the extent that the claimants will be entitled to compensation of Rs. 8,39,680/- along with interest at the rate of 12% w.e.f. 19.2.2014 i.e. on expiry of one month after the date of accident till realization of the compensation amount.

20. In result, substantial questions of law are answered accordingly. The appeal and the Cross-Objections are disposed of. The award dated 15.5.2018, passed by the learned Commissioner, Employees Compensation, Court No.1, Shimla, H.P. in WCP No. 13-2 of 2014-1 stands modified to the extent, as held above. Pending applications, if any, also stand disposed of. Record be sent back forthwith.

26th November, 2025
(kck)

(Satyen Vaidya)
Judge