



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA 2025:HHC:39768

FAO (ECA) No. 346 of 2019

Date of decision: 24.11.2025.

National Insurance Co. Ltd.

...Appellant

versus

Seema Devi & others

...Respondents.

Coram:

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

*Whether approved for reporting?*¹

For the appellant : Ms. Seema Sood, Advocate.

For the respondents : Mr. Ashwani K. Sharma,
Advocate, for respondents No. 1
to 3.

Mr. Neel Kamal Sharma,
Advocate, for respondent No.4.

Satyen Vaidya, Judge (oral):

By way of instant appeal, the appellant/insurer has assailed award dated 27.9.2018, passed by the learned Commissioner, Workmen Compensation, Barsar, District Hamirpur, H.P. in WCA Petition No. 01 of 2015.

2. Respondents No. 1 to 3 (hereinafter referred to as the Claimants) had preferred application under Section 22 of the Employees Compensation Act, 1923 (for short the Act) before the learned Commissioner, Workmen Compensation, Barsar, District Hamirpur for

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



compensation on account of death of Ajay Kumar, who allegedly had died on 2.01.2015, as a result of accident involving Bus No. HP-67-2428. The deceased Ajay Kumar was stated to be an employee of respondent No.4 herein (hereinafter referred to as the Employer). It was claimed that the death of deceased Ajay Kumar had taken place during the course of his employment with the employer.

3. The appellant/insurer was impleaded as the insurer of vehicle Bus No. HP-67-2428. As per claimants, deceased Ajay Kumar was being paid Rs. 10,000/- per month as salary and in addition, an amount of Rs. 60/- per day was being paid to him as daily expenses.

4. The employer by way of reply filed to the claim petition raised preliminary objections as to the maintainability, locus standi and estoppel etc. The claim of the claimants that deceased was getting salary of Rs. 10,000/- per month with Rs. 60/- per day as daily allowance was denied. As per employer, the deceased was being paid Rs. 200/- per day besides Rs. 50/- per day as daily expenses. The relationship of employee and employer between the deceased and the employer was not denied.



5. The appellant/insurer filed its separate reply. It was alleged that the vehicle Bus No. HP-67-2428 was not insured with the appellant company. In alternative, it was submitted that the vehicle at the time of accident was being driven in violation of the terms of the policy. The relationship of employee and employer between the owner of the vehicle and the deceased was also denied.

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

- “1. Whether the petitioners are entitled for the compensation to the tune of 15,00,000/-, as prayed for? OPP.
2. Whether the present petition is not maintainable in the present form, as alleged? OPR.
3. Whether the petitioners have no locus-standi to file the present petition, as alleged? OPR.
4. Whether the petitioners are estopped from filing the present petition by their own act and conduct, as alleged? OPR.
5. Whether the present petition is collusive between the petitioners and respondent No. 1 in order to fasten the liability upon the respondent No. 2 as alleged? OPR.
6. Whether the deceased was not holding any valid and effective driving license to drive the bus/vehicle No. HP-67-2428 at the time of accident, as alleged?
7. Whether the petitioners have not approached the Court with clean hands, as alleged? OPR.
8. Whether the respondents are entitled for special costs, as alleged? OPR
9. Final Order”.



Issue No.1 was answered partly in affirmative and all other issues were answered in negative. The claim petition was allowed and the claimants were held entitled to compensation of Rs. 10,17,868/- along with 7% interest per annum from the date of filing of the petition till realization. An additional sum of Rs. 10,000/- was allowed as funeral expenses. The liability to pay the compensation, interest and funeral charges has been fastened upon the appellant/insurer.

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

8. The learned Commissioner has calculated the compensation by considering the income of the deceased as Rs. 11,800/- per month. It has been held that the deceased was getting the salary of Rs. 10,000/- per month and in addition, he was being paid Rs. 60/- as diet money per day by the employer. Thus, by dividing the said amount of Rs. 11,800/- by two, the monthly income of the deceased was assessed at Rs. 5900/-. The age of the deceased was determined as 44 years and factor of 172.52 was made applicable. Accordingly, a sum of Rs.



10,17,868/- was computed as compensation payable to the claimants.

9. The date of accident indisputably is 2.01.2015. On such date, in terms of Notification dated 31.5.2010, the maximum capping on the income of a victim for the purposes of claim under Employees Compensation Act was at Rs. 8000/-. The impugned award reveals that the learned Commissioner has failed to consider this aspect of the matter. Accordingly, the impugned award deserves to be interfered with because the monthly income of the deceased could not have been taken to be more than 8000/- for the purpose of computation of compensation under the Act.

10. Another aspect which makes the impugned award vulnerable to interference is that the learned Commissioner has awarded the interest at the rate of 7% per annum only that too from the date of filing of claim petition which is against the statutory provisions of the Employees Compensation Act. The statutory interest as mandated in the Act is 12% per annum that too from the date of cause of action. In the instant case, the accident



had taken place on 2.01.2015. Therefore, the compensation had become payable immediately on expiry of one month thereafter i.e. w.e.f. 2.2.2015. In this view of the matter, the interest at the rate of 12% will be payable from 2.2.2015.

11. In result, the appeal is accordingly disposed of. The award dated 27.9.2018, passed by the learned Commissioner, workmen Compensation, Barsar, District Hamirpur, H.P. in WCA Petition No. 01 of 2015 is modified to the extent that the claimants are held entitled to compensation of Rs. 6,90,080/- (4000 x 172.52). In addition, claimants shall be entitled to interest at the rate of 12% per annum w.e.f. 2.2.2015 till the date of actual realization of the amount. The remaining award shall remain undisturbed. No orders as to cost. Pending applications, if any, also stand disposed of. Record be sent back forthwith.

24th November, 2025
(kck)

(Satyen Vaidya)
Judge