

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****F.A.O.(WC). No. 295 of 2023****Reserved on: 12.11.2025****Decided on: 25.11.2025**

Future Generali India Insurance Company Ltd.

.....Appellant

Versus

Smt. Kamla and another

.....Respondents

*Coram:***The Hon'ble Mr. Justice Satyen Vaidya, Judge****Whether approved for reporting?¹ No**

For the appellant: Mr. Chandan Goel, Advocate.For the respondents: Mr. Karan Singh Kanwar, Advocate
with Mr. Ashok Kumar, Advocate, for
respondent No.1.Mr. Raj Kumar Negi, Advocate, for
respondent No.2.

Satyen Vaidya, Judge

The instant appeal has been filed under Section 30 of the Employees Compensation Act against award dated 25.08.2022, passed by learned Commissioner, under Workmen's Compensation Act, Anni, District Kullu, H.P. in CIS Case No. 02/2021.

2. Respondent No.1 herein (hereinafter referred to as the "Claimant") had preferred an application under Employees

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*



Compensation Act for grant of compensation on account of death of her son named Lucky, during the course of his employment as driver with respondent No.2 herein (hereinafter referred to as the “Employer”).

3. It was alleged that the claimant being mother of deceased Lucky was dependent on him for livelihood. The deceased Lucky was stated to have been working with the employer as driver for driving vehicle No.HP-35-2744 (Bolero Camper), his monthly salary was claimed to be Rs.7000/-. In addition, a daily subsistence allowance of Rs.50/- was also stated to have been paid by the employer to the deceased.

4. As per the claimant, the vehicle No.HP-35-2744 had met with an accident at Samari Dhank, Tehsil Nirmand, District Kullu, H.P. on 03.03.2015 at about 8.20 p.m. At the time of accident, the vehicle was being driven by deceased Lucky during the course of his employment with the employer.

5. It was also stated by the claimant that she had been paid Rs.25,000/- as relief by the employer immediately after the death of deceased Lucky.

6. The employer in his reply filed to the claim petition admitted the factum of accident. It was also admitted that the



deceased Lucky was the driver employed by the employer on vehicle. As per the employer, deceased Lucky had been employed by him as driver after checking his licence which was valid and effective. The employer also admitted that he had been paying Rs.7,000/- per month salary to the deceased. The factum of payment of daily subsistence allowance was, however, denied.

7. The appellant-insurer contested the claim petition on the ground that deceased Lucky was not travelling in the vehicle as driver and the vehicle at the time of accident was being driven by Satpal, who was not holding valid and effective driving licence. The deceased Lucky was stated to be a gratuitous passenger. The relationship of employee and employer between the deceased and employer was also put to question. The appellant-insurer had sought to absolve itself from liability of indemnification by raising plea of violation of terms and conditions of the policy of insurance.

8. Learned Commissioner had framed the following issues:-

1. Whether deceased Lucky was employee of respondent No.1 as alleged? OPP



2. Whether the deceased Lucky died during the course of employment with respondent No.1? OPP
 3. Whether the petitioner is legal heirs of deceased Lucky, as alleged? OPP
 4. Whether the petitioner is entitled for compensation, as prayed for? OPP
 5. Whether the petition filed by the petitioner is not maintainable, as alleged? OPR
 6. Whether the deceased was not holding valid driving licence, as alleged? OPR
 7. Whether the petition is bad for non-compliance of Section 10 of the Employees Compensation Act, as alleged? OPR
 8. Relief.
9. Issues No. 1 to 4 were answered in affirmative, whereas all other issues were answered in negative. The claim petition has been allowed by awarding compensation of Rs.8,90,840/- alongwith interest @ 12% per annum w.e.f. 04.04.2015. The appellant and employer have been held jointly and severally liable to pay the compensation.
10. The appeal was admitted on 24.11.2023 on the following substantial questions of law:
- (i) *Whether the learned Commissioner has erred in fastening the liability upon the appellant holding*



that there was relationship of employer and employee between the owner of the vehicle and the deceased.

(ii) Whether the learned Commissioner erred in fastening the liability to pay the penalty jointly and severally upon the appellant and the owner of the vehicle.

11. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

12. Learned Commissioner on appreciation of evidence has held that deceased Lucky was an employee of the employer. Reliance has been placed on the testimony of the claimant (PW-1) and employer as RW-1. In addition, the statement of PW-2 has also been taken into consideration.

13. The employer had not denied his relation with the deceased Lucky to be that of employer and employee. There was a clear admission to this effect in the reply of the employer. The employer has appeared as his own witness as RW-1 and has made a statement on oath reiterating that deceased Lucky had been employed by him as a driver. Before employing Lucky as a driver, his driving licence have been checked which was found to be valid and effective. He also admitted to have paid Rs.25,000/- to the claimant for funeral etc. of deceased Lucky.



PW-2 has also corroborated the version of the claimant and employer by making deposition as PW-2. This witness was the Vice President of Gram Panchayat, Tunan. According to him, employer Noop Ram was known to him as he was resident of Tunan Panchayat. He supported the version that deceased Lucky was driver in the vehicle of employer Noop Ram, who was an old and illiterate person. According to this witness, the deceased Lucky was known to him, who used to drive commercial vehicle in Rampur before being employed by employer Noop Ram.

14. It has been established on record that employer had paid Rs.25,000/- to the claimant immediately after the death of deceased Lucky as relief. That being so, it will not be unreasonable to infer that had the deceased Lucky been not the employee of employer Noop Ram, he would not have paid this amount to the claimant.

15. The appellant-insurer did not lead any evidence and thus, the findings recorded by learned Commissioner with respect to the relationship between the deceased Lucky and employer to be that of employee and employer cannot be faulted with. Though, in FIR Ext.PW-1/B, it was mentioned



that Satpal was the driver of the vehicle, but said fact has not been proved by any cogent evidence. Even the author of the contents of FIR Ext.PW-1/B has not been examined.

15. It was not in dispute that deceased Lucky had died in the accident of vehicle No.HP-35-2744 having taken place on 03.03.2015.

16. The learned Commissioner has assessed the compensation by considering the monthly income of deceased Lucky at Rs.8,000/- by taking into consideration the fact that he was being paid salary of Rs.7000/- per month, besides, subsistence allowance @ Rs.50/- per day. Though, in the reply filed by the employer, it has been stated that the deceased was being paid salary of Rs.7,000/- only and in addition to that nothing was paid, but while being cross-examined, the employer admitted that he was paying Rs.50/- per day as subsistence allowance to deceased Lucky in addition to Rs.7,000/- as salary. Thus, the assessment of Rs.8,000/- as monthly income of deceased is reasonable and justified. The age of deceased was 20 years and thus, the factor of 222.71 was rightly applied. The calculation of compensation has been made by learned Commissioner on the basis of 50% of the



monthly income of deceased multiplied by the relevant factor.

The statutory interest has also rightly been awarded.

17. In result, substantial questions of law, as noticed above, are decided against the appellant-insurer. There is no merit in the appeal and the same is dismissed.

18. The appeal stands disposed of, so also the pending application(s) if any.

25th November, 2025
(GR)

(Satyen Vaidya)
Judge