

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 579 of 2024
Decided on: 07.07.2025

New India Assurance Company Ltd. petitioner

Versus

Ashok Kumar and others
.....respondents

Coram:

Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting? ¹

For the petitioner : Mr. B.M. Chauhan, Sr. Advocate
with Ms. Kamakshi Tarlokta,
Advocate.

For the respondents : Mr. M.C. Bhardwaj, Advocate, for
respondent No.1.
Mr. Vishal Singh Thakur,
Advocate, for respondents No.2 to
4.

Bipin Chander Negi, Judge (oral)

The present petition has been preferred against the order dated 08.07.2024, whereby correction/rectification in order dated 22.10.2022, passed in case No.14/2017 titled “**Shanta Devi Vs. Ashok Kumar**” by Commissioner Employee’s Compensation Act has been permitted to be made.

2. Heard counsel for the parties and perused the pleadings.

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

3. Vide order dated 22.10.2022, passed in Case No.14/2017 titled **“Shanta Devi Vs. Ashok Kumar”**, the Commissioner Employee’s Compensation allowed a claim petition and directed the present respondent No.1 i.e. Ashok Kumar to deposit the compensation amount alongwith interest payable to the present respondents No.2 to 4.

4. In the aforesaid backdrop, respondent No.1 filed an application under Section 151 read with Section 152 of the CPC, seeking an appropriate rectification in the order dated 22.10.2022. The sole contention raised is that from a reading of the order dated 22.10.2022, it is evident that the liability was sought to be fastened on the present petitioner and not the present respondent No.1. Fastening of liability on present respondent No.1 in the context of the contents of order dated 22.10.2022 on present respondent No.1 was stated to be a typographical error. The application so filed was allowed, as according to the Trial Court, the intent/purport of the judgment dated 22.10.2022 was to fasten liability on the present petitioner and not the present respondent No.1.

5. Before the Trial Court, following issues are framed on 02.07.2019:

- 1) Whether the deceased Rajesh Kumar was employee of respondent No.1, as alleged?

- 2) Whether accident occurred during the course of employment of respondent No.1, as alleged?
- 3) Whether the petitioners are entitled for compensation in their favour, as prayed for?
- 4) Whether the present petition is not maintainable, as alleged?
- 5) Whether the present petition is bad for non-joinder of necessary parties, as alleged?
- 6) Whether the instant petition has been filed by the petitioners in collusion of respondent No.1, as alleged?
- 7) Whether the mandatory terms and conditions of insurance policy have violated in this petition, as alleged?
- 8) Relief.

6. It was admitted that the deceased Rajesh Kumar was an employee of present respondent No.1. Before the Trial Court, it was proved that the deceased Rajesh Kumar was present on the spot in his capacity, as a driver of the vehicle, which was insured with the present petitioner. Burden to prove Issue No.7 i.e. whether the mandatory terms and conditions of insurance policy had been violated, in the case at hand, lay squarely upon the present petitioner. No evidence was led on this account and, therefore, the trial Court decided the issue against the present petitioner. In the aforesaid circumstances, it is evident that the effective judicial order dated 22.10.2022, sought to lay liability in

the case at hand, squarely on the shoulders of the present petitioner.

7. For the aforesaid reason, the fastening of the liability in the relief clause of the order dated 22.10.2022 on present respondent No.1 is a mistake which has been correctly been rectified vide the impugned order dated 08.07.2024.

8. Qua scope of 152 CPC, reference can gainfully be made to ***“Dwaraka Dass Vs. State of M.P. and another, 1999 (3) SCC 500 and “Niyamat Ali Molla Vs. Sonargon Housing Cooperative Society Ltd. And others, 2007(13) SCC 421”***,

9. The present petition has been preferred under Article 227 of the Constitution of India. This Court has a restricted and limited jurisdiction to interfere under the correctional jurisdiction vested in it in terms of Article 227 of the Constitution of India, except to set right a grave dereliction of duty or flagrant abuse or violation of fundamental principle of law or justice, miscarriage of justice, un-reasonable conclusion and perversity. On the other hand in the supervisory jurisdiction reviewing or reweighing evidence, substituting conclusions, correcting every error of fact or even a legal flaw when the final finding is justified or can be supported is not permissible. (***See Sadhana Lodh vs. National Insurance Co. Ltd. & another, (2003)3 SCC 524, and Garment Craft vs. Prakash Chand Goel, (2022)4 SCC 181***).

10. In the aforesaid backdrop, I see no infirmity in the impugned order requiring interference under Article 227 of the Constitution of India. Present petition being devoid of any merit is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

July 07, 2025
Rupsi