



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 176/2005

Reserved on : **27.11.2025**

Pronounced on : **07 .05.2026**

Uploaded on : **07 .05.2026**

Whether the operative part of judgment
is pronounced

New India Assurance Company Ltd.
through its Sr. Divisional Manager,
Divisional Office No. 1, Shalimar
Road, Jammu

.... Petitioner/Appellant(s)

Through:- Mr. Vipin Gandotra, Advocate

V/s

1. Mohd. Alam S/o Sh. Syed Mohd.
2. Rashida Bi W/o Mohd. Alam
3. Mohd. Khalil S/o Mohd Alam
4. Sakina Kouser D/o Mohd Alam
5. Mohd. Akhlaq S/o Mohd Alam
6. Mohd. alias S/o Mohd Alam
7. Babiya Kouser D/o Mohd Alam
(R3 to R7 through their father Mohd.
Alam all R/o Tehsil Surenkote
8. Chowdhary Mohd. Sarour Hussain
S/o Aziz R/o Talley Tehsil Mahore
District Udhampur

.....Respondent(s)

Through:- None

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. This appeal is directed against the award dated 27.02.2004, passed by the Commissioner under the Workmen's Compensation Act, Jammu (Assistant Labour Commissioner), in File No. 06/WCA/2001 titled "*Mohd. Alam & Ors. v. Chowdhary Mohd. Sarour Hussain & Ors.*" By the said award, compensation amounting to Rs. 2,19,950/-, along with



interest @ 9% per annum from the date of accident till actual deposit, has been awarded in favour of the claimants (respondents herein).

02. Briefly stated the facts arising in this appeal; that the claimants filed an application under Workmen's Compensation Act on 16.01.2001 before the Assistant Labour Commissioner, Jammu seeking compensation on account of death of Maqbool Hussain, who was working as a driver for respondent No. 8. Maqbool Hussain was driving vehicle No. 6838/UGA when it met with an accident near Baroli on Chassana–Gulabpura–Budhal Road on 23.06.2000. The vehicle fell into a *nallah* resulting in the death of the deceased-Maqbool Hussain. The respondents claimed compensation by filing a claim petition under Workmen's Compensation Act on the ground that the deceased, who was driver and earning Rs. 4,500/- per month, died during the course of his employment.

03. The Assistant Labour Commissioner, upon receipt of the claim application, issued notice to the other side, however, despite service of summons besides notice through publication in newspaper, respondent No. 8 did not appear, resulting in ex-parte proceedings being initiated against him. The appellant/Insurance Company appeared before the Assistant Labour Commissioner and objected to the application on the ground that the accident has taken place within the jurisdiction of Police Station Mahore, and the respondents are the residents of Surankote, as such, the Assistant Labour Commissioner lacked jurisdiction to decide the application. It was also submitted stated that the applicant was not a workman as defined under the Act. Statements of the witnesses were recorded and after recording the statements, evidence were closed.



04. The Assistant Labour Commissioner after hearing the parties and considering the evidence passed the impugned award dated 27.02.2004 by holding as under: -

“Therefore, in view of the foregoing conclusions, an award of compensation of Rs.2,19,950/- is passed under sec. 4 read with schedule IV of the Workmen's Compensation Act, alongwith interest @ 9% p.a. from the date of accident i.e., 23.6.2000 till the date of actual deposit in favour of the petitioners and against the respondent No.1. The respondent No. 2 being insurer is liable to indemnify the respondent No. 1 and deposit the awarded amount of compensation together with interest with this Court with this Court within 30 days for disbursement to the petitioners.”

05. The appellant is aggrieved of the impugned award on the ground that there was no cogent evidence before the Assistant Labour Commissioner with regard to the age and dependency of the respondents for awarding compensation. The learned Commissioner did not consider the issue regarding maintainability of the claim petition and also regarding the issue of jurisdiction.

06. Heard learned counsel for the parties and examined the record.

07. The admitted facts in the case are that the deceased-Maqbool Hussain, who was of 23 years of age and working as driver with respondent No. 8 and earning Rs. 4,500/- as wages. The vehicle which he was driving met with an accident on 23.06.2000 which resulted in his death. The deceased was having a valid driving license and the vehicle which met the accident was duly insured with the appellant.

08. The claimants/ respondents led oral and documentary evidence in support of their case whereas the appellant did not lead any evidence in



rebuttal. The statement of the claimant's witness, namely, Mohd Shafiq was recorded along with of the claimant No. 1. The PW, in his statement stated that he knew the deceased who was drive by professions with the Vehicle No. 6838/UGA of the respondent No.8 and that deceased was getting Rs. 4000/- per month, but wages were settled at Rs. 4,500/-p.m. The respondents did not lead any evidence.

09. On the basis of evidence, it was duly established that the deceased was engaged by the respondent No. 8- Chowdhary Mohd Sarour Hussain as driver and died during and in the course of employment on 23.06.2000 and that the vehicle in question at the time of accident was duly insured with the appellant/Insurance Company against a valid insurance policy. It was also established that deceased at the time of accident was 23 years old as per the post mortem report and monthly wages of the deceased were Rs. 4000/-. Since the appellant failed to produce any evidence or show breach of any policy conditions, the Assistant Labour Commissioner awarded an amount of Rs.2,19,950/- along with interest of 9% from the date of accident till actual deposit.

10. It would be appropriate to refer Section 30 of the Workmen's Compensation Act which provides for Appeals. Proviso to Section 30 of the Act provides that no appeal would lie unless there is a substantial question of law.

30. Appeals.— —

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or



otherwise or disallowing a claim in full or in part for a lump sum;

- (aa) an order awarding interest or penalty under section 4A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three thousand rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Limitation Act, 1908 shall be applicable to appeals under this section.

11. Keeping in view the provisions of the Act, the appellant has preferred this appeal on the following substantial questions of law:-

- (i) Whether the vehicle which is not insured, the award can be passed against the Insurance Company under the Workmen's Compensation Act?
- (ii) Whether the documents like FIR, post mortem report and policy can be over looked and award can be passed on the basis of claim petition filed by the claimants?



- (iii) Whether claim under the Workmen's Compensation Act can be awarded in favour of the persons who are not dependents on the deceased?
- (iv) Whether award can be passed against the Insurance Company under Workmen's Compensation Act when the premium with regard to insurance of driver not paid?
- (v) Whether the forum having no jurisdiction can pass the award under the Workmen's Compensation Act?
- (vi) Whether the interest can be awarded against the Insurance Company in violation of the Section 4-A of Workmen's Compensation Act?
- (vii) Whether award can be passed in favour of the claimants when there is no proof with regard to income of the deceased?

12. The aforesaid questions raised in this appeal and having regard to the facts and circumstances of the case, it cannot be said to be questions of law much less substantial questions of law. The questions regarding payment of premium, income of the deceased, documents relied upon relationship of the employer and employee, are all questions of facts which cannot be raised in an appeal under the Act.

13. This Court in **Shree Ram General Insurance Company Ltd. vs. Geeta Sharma & ors.** (JKJ ONLINE 74175) had held that :

09. The other two substantial questions of law according to the appellant were regarding perverse finding on evidence and with regard to the competence of the Commissioner. However, nothing has been brought on record to show such an objection was taken and these issues were never struck by the court below, therefore, the same cannot be considered at this stage. In terms of Section 30 of the Employees Compensation Act, an appeal filed is not to be considered as a regular appeal but in fact the only question is to be considered is, whether any substantial question of law is involved. Hon'ble the Supreme Court in (2019) 11 Supreme Court Cases 514, North East Karnataka Road Transport Corporation vs, Sujatha has held that:

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was



negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LR/s sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.”

10. As regards the plea taken by the appellant regarding that Commissioner had no jurisdiction to try the claim petition, the question of jurisdiction has already been answered by the Punjab and Haryana High Court in case reported as ***Bajaj Allianz General Insurance Company Ltd. vs. Suman Devi, AIR ONLINE 2021 P AND H 688***. In the said case, it has been held that it is only procedural to ensure that the Commissioner of the concerned jurisdiction has also notice of the cognizance taken by another Commissioner and if the same is not followed, the claimant cannot be prejudiced for the irregularity. Relevant portion of the judgment reads as under:-

"7. Therefore, it cannot be said that the Commissioner at Nuh had no jurisdiction as such, if the claimants-dependents are ordinarily residing in the area of Nuh. The only argument available with the appellant is that since the proviso to Section 21(l) of the Act provides that if the Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, has to give a notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and to the State Government concerned.

8. It is pleaded that no notice was given by the Commissioner at Nuh to the Commissioner having jurisdiction over the area in which the accident took place. The said proviso is only procedural to ensure that the Commissioner of the concerned jurisdiction has also notice that the another Commissioner has taken cognizance of the issue and if the



Commissioner at Nuh has not followed the aforesaid procedure, the claimants cannot be prejudiced for any such irregularity, which has taken place."

11. Under the scheme of the Act, the Commissioner is the last authority on facts and the scope of appeal is restricted to substantial questions of law, being a welfare State. Since all the pleas raised by the appellant are only questions of fact which cannot be raised in the appeal as no appeal shall lie under Section 30 of the Act, unless a substantial question of law is involved.

12. The award dated 27.02.2004 is based on correct appreciation of evidence and sound application of law. It suffers from no perversity or legal infirmity warranting interference under Section 30 of the Workmen's Compensation Act, 1923.

13. The appeal is, accordingly, **dismissed**. The award passed by the Commissioner is affirmed.

14. Record of the Authority shall be sent back forthwith.

(SINDHU SHARMA)
Judge

JAMMU
07 .05.2026
RAM MURTI