

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No.218/2015
IA No.1/2015

Oriental Insurance Company Limited,
T.P. Hub, Town Hall, Jammu through
Sh. Hari Ram, Manager Incharge

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishnu Gupta, Advocate

Vs

1. Anju Devi W/o Ashok Kumar
2. Ashok Kumar S/o Shankar Dass
3. Rahul S/o Ashok Kumar
4. Puja D/o Ashok Kumar
All residents of H.No.37, Resham Ghar
Colony, Jammu
5. Brij Kumar S/o Sita Ram R/o Dogra Hall,
Near Govt. Girls High School, Jammu
(Owner of Mini Bus No.JK02S/4912)
6. Inderjit Singh S/o Kala Singh, Bakshi
Nagar, Near Police Station, Jammu
(Driver of Mini Bus No.JK02S/4912)

..... Respondent(s)

Through: Ms. Meenakshi Salathia, Advocate for R-1 to
4

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER

24.12.2024

1. This appeal by the Oriental Insurance Company Limited filed under Section 30 of the Employees Compensation Act [“the Act]”is directed against award dated 31.07.2015 passed by the Commissioner under Employees Compensation Act [“Commissioner”] in claim petition titled *Anju Devi and others v. Brij Kumar and others.*, whereby the Commissioner has awarded a sum of Rs.6,21,607/- inclusive of interest as compensation in favour of respondent Nos. 1 to 4.

2. The impugned award is challenged by the appellant-Insurance Company primarily on the ground that the accident in question took place on 10th July, 2008 whereas the claim petition was filed by respondent Nos. 1 to 4 before the Commissioner on 14.11.2011 i.e. beyond the period of limitation prescribed therefor. It is submitted by the learned counsel for the appellant that despite the appellant having taken specific objection of limitation, the Commissioner neither framed issue of limitation nor decided the same. He, therefore, submits that the Commissioner had no jurisdiction to entertain a belated claim petition more particularly when it was not accompanied by any application for condonation of delay.

3. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the issue raised by the learned counsel for the appellant has substance, in that, the Commissioner ought not to have entertained the claim petition, which was filed beyond the limitation period prescribed without insisting for application for condonation of delay. It is true that the appellant in its objections took a preliminary objection to the maintainability of the claim petition on the ground that it was barred by limitation. However, it is also a fact that when issues were framed, the issue of limitation was not framed. The appellant ought to have objected to the failure of the Commissioner to frame the issue of limitation but participated in the proceedings without any protest, which ultimately culminated into passing of the impugned award.

4. I am aware that the plea of limitation, based purely on law, can be raised at any stage even before the appellate forum, yet in the given facts and circumstances and due to the long time lapse from the date of accident, I am not

inclined to entertain the plea of limitation at this stage. The accident in question took place on 10.07.2008 in which the private respondents lost their breadwinner. It would be travesty of justice, if this Court remands the case back to the Commissioner to decide upon the question of limitation raised by the appellant.

5. Therefore, without going into the issue raised by learned counsel for the parties and in the larger interest of justice, the impugned award to the extent of Rs.6,18,228/- instead of 6,21,607/- is upheld. The appellant is stated to have deposited the entire amount before the Registry of this Court, which shall be released in favour of respondent Nos. 1 to 4 along with interest earned on the said amount as a full and final settlement of claim of the respondent Nos. 1 to 4.

6. With the aforesaid modification, the order of the Commissioner is confirmed and the appeal is disposed of.

Jammu
24.12.2024
Vinod.

(SANJEEV KUMAR)
JUDGE

Whether order is reportable: Yes/No