

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

FAO No. 234 of 2014

Reserved on: 11.12.2025

Date of decision: 23.12.2025

Oriental Insurance Company Limited

.....Appellant.

Versus

Ram Pyari Gupta (since deceased through her LRs) & others

.....Respondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?* Yes.

For the appellant: Mr. Deepak Gupta, Advocate.

Respondents No. 1(a) to 1(h) already ex parte.

For respondents No. 2, 3 & 4:

Mr. Vikrant Chandel, Advocate.

For respondent No. 5:

Mr. Jai Dev Thakur, Advocate.

Sushil Kukreja, Judge.

The present appeal is maintained by the appellants/petitioners/claimants (hereinafter referred to as “the petitioners”), under Section 30 of the Employees Compensation Act, 1923 (for short “the Act”), against the award dated 10.03.2014, passed by the learned Civil Judge (Senior Division), Mandi, District Mandi, H.P., in W.C. Petition No. 24/2011, whereby the learned Commissioner had

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

allowed the claim petition filed by the petitioners.

2. Succinctly, the facts giving rise to the present appeal are that the petitioners, being the dependants of deceased workman-Shri Sanjay Gupta, filed a claim petition before the learned Commissioner below seeking compensation of Rs.10,00,000/-. As per the petitioners, Sanjay Gupta (the deceased workman), was son of Smt. Ram Pyari Gupta (since deceased, through her LRs), husband of Smt. Asha Devi and father of Ms. Sakshi Devi @ Muskan and Ms. Gungun (all petitioners/claimants). The deceased was employed by respondent-Shri Mahesh Kumar Gupta, who was respondent No. 1 before the learned Commissioner below (respondent No. 5 herein) in his shop situated at Palace Colony, Mandi, on a monthly salary of Rs.20,000/-. On 19.04.2004, the deceased, in connection with the business of respondent No. 1, had gone to Kullu and while returning to Mandi, when he reached near nine-mile, near Pandoh, he met with an accident in which he died. As per the petitioners/claimants, the deceased died on account of accident during the course of his employment with respondent No. 1. The petitioners/claimants were dependents upon the income of the deceased and the

deceased at the time of the accident was only 28 years old. Lastly, the petitioners/claimants prayed that their petition be allowed and compensation of Rs.10,00,000/- be granted in their favour.

3. Respondent No. 1-Shri Mahesh Kumar Gupta filed reply to the claim petition, wherein he admitted that the deceased was his employee and he died during the course of his employment. However, as per the replying respondent, the monthly wages of the deceased were Rs.5000/-. It was also admitted that the motorcycle, which the deceased was driving, met with an accident and it was owned by the replying respondent. The said motorcycle was duly insured with respondent No. 2-Oriental Insurance Company Limited (appellant herein) and in case of any liability towards the petitioners/claimants, respondent No. 2 is liable to indemnify the same.

4. Respondent No. 2-Insurance Company, in its reply, took preliminary objection of maintainability of the petition and on merits averred that the petitioners/claimants neither disclosed the particulars of the insurance policy nor the vehicle was involved in the accident. The replying respondent denied the claim in the absence of particulars of

the insurance policy and non-involvement of the vehicle. It was denied that the deceased had income as alleged by the petitioners/claimants. The deceased was not having a valid and effective driving license. Lastly, it was prayed that the claim petition be dismissed.

5. The petitioners filed rejoinder to the reply filed by the respondent, wherein the averments made in the claim petition were reiterated. On 28.06.2012 on the basis of the pleadings of the parties, the learned court below framed the following issues:

- “1. Whether the petitioners being legal heirs of workman are entitled for compensation, as prayed for? OPP**
- 2. Whether deceased workman Sanjay Gupta was not having valid driving license, as alleged, if so, its effect? OPR-2**
- 3. Relief”**

6. After deciding issue No. 1 in favour of the petitioners (claimants) and issue No. 2 against respondent No. 2, the claim petition was allowed.

7. Feeling dissatisfied, respondent No. 2-Insurance Company (appellant herein) preferred the instant appeal under Section 30 of the Act.

8. On 14.07.2014 the appeal was admitted for

hearing on the following substantial questions of law:

- “1. Whether the findings of the Court below regarding employment of the deceased with respondent No. 5 as also the wages being paid by respondent No. 5 are based upon no evidence?***
- 2. Whether the insurance policy, if any, taken with respect to the Motor Cycle would cover the risk to the employment/workman of the respondent No. 5 in the absence of any WC policy covering the workman at business having not been taken by respondent No. 5?”***

9. The learned counsel for the appellants contended that the claimants/dependents of the deceased have failed to produce any evidence on record to prove the relationship between the deceased and respondent No. 1. He further contended that the insurance policy of the motorcycle will not cover the risk of the workman at business, in absence of any WC policy, which has admittedly not been taken by respondent No. 1.

10. I have heard the learned counsel for the respective parties and carefully examined the entire record.

11. The establishment of following conditions are sine qua non to claim compensation under the Workmen's Compensation Act:

1. That there exists a relationship of employer and employee;
2. That the accident arose out of and during the course of employment.

12. Now, the question which arises for consideration before this Court is as to whether the deceased was the workman of the respondent no.1 and whether the petitioner is entitled to get the compensation from the insurance company

13. The law with regard to the burden of proof for establishing employer-employee relationship is fairly well settled and it has been consistently held that in the proceedings under the Workmen's Compensation Act, the burden to prove the employer-employee relationship is on the worker, particularly in a case where the employer-employee relationship is disputed.

14. Therefore, in the case on hand, the burden to prove that there was a relationship of employee and employer between the deceased-workman and the respondent No.1 was on the petitioners. However, no cogent and satisfactory evidence has been led by the petitioners to prove that the deceased was the workman under respondent no.1 and there was a relationship of employee and employer

between the deceased and the respondent no.1. In order to prove their case, the petitioners/claimants had examined one of the petitioners, i.e., Smt. Asha Devi, as PW-1, who tendered in evidence her affidavit, Ex. PW-1/A wherein she deposed that the deceased used to work in the shop of Shri Mahesh Kumar (respondent No. 1) and on 19.04.2004, the deceased went to Kullu, in connection with the work of Shri Mahesh Kumar, and when he was returning home, around 10 p.m., his motorcycle, bearing registration No. HP33A-4160, met with an accident as a result of which the deceased died.

15. Conversely, respondent No.1-Shri Mahesh Kumar, appeared in the witness-box as RW-1 and deposed that the deceased was his worker and he used to pay him monthly salary of Rs.8000/-. He further deposed that on 19.04.2004 he sent the deceased to Kullu and when he was returning on his bike, bearing registration No. HP33A-4160, which was owned by him, he met with an accident near Nine Mile and he died.

16. Admittedly, the deceased, was the brother of respondent No. 1. There may not be any express prohibition for such employment, but, having regard to the defence of

the appellant/insurance company, if the compensation is claimed by resorting to the provisions under the Workmen's Compensation Act, 1923, the petitioners have to establish that the deceased was employed by the respondent No.1.

17. May be that unfortunate claimants are dependants of the deceased, but in absence of proving employment of the deceased with the owner of the vehicle, they are not entitled to claim any compensation. In the opinion of this court, the claim of employment put forth by the claimants is not *bonafide* and appears to have been put forth only for laying a claim against the insurance company. This court is conscious of the fact that the scheme of the Act is a beneficial legislation. True, the technicalities and niceties cannot be allowed to be raised in order to defeat the purpose of the Act, but when the claim is not genuine, the claimants certainly have to cross the technicalities and niceties of the law, as the accident is not a bonanza for the claimants. In ***Gottumukkala Appala Narasimha Raju & others vs. National Insurance Company Limited & another (2007)13 SCC 446***, the Hon'ble Supreme Court had considered the question of existence of employer employee relationship between the deceased and the owner of the tractor who

were husband and wife and whether the deceased could be termed as a 'workman' within the meaning of the provisions of Section 2 of the Workmen's Compensation Act, 1923 Act. It was held in the facts and circumstances of that case that the question of husband being a workman under his wife is a far- fetched one and the award passed against the insurer despite non- production of a documentary proof to establish contract of employment between wife and husband, was unsustainable. The relevant portion of the judgement reads as under:

- “22. In our considered opinion, it is wholly absurd to suggest that the husband would be a “workman” of his wife in absence of any specific contract. We have no doubt in our mind that only for the purpose of proceeding under the 1923 Act have the appellants concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a “workman” under her appears to be a far-fetched one.**
- 23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.**
- 24. No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known (sic not) borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under the 1923 Act certainly would not lie. Only because Sections 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act,**

proprio vigore would apply in regard to a proceeding for paying under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of the 1988 Act to the provisions of the 1923 Act save and except to the extent noticed hereinbefore."

18. In the case on hand, after closely scrutinizing the entire evidence on record, it has become clear that the petitioners have failed to prove the relationship of employee and employer between the deceased and the respondent No.1. Except for the self serving statements of PW- 1 and RW-1, no other evidence has been placed on record in this respect. The petitioners had failed to produce any documentary evidence to prove that the deceased was an employee of the respondent No.1. In fact, no documentary proof has been placed on record to the effect that the deceased was employed as driver by respondent No. 1. There is no independent evidence on record to prove the employment of the deceased with respondent No. 1, as such, it cannot be said that the deceased was employed by his own brother. No doubt, the blood relationship by itself would not lead to the presumption that there was no such employee and employer relationship, however, in the instant case, the Commissioner below, in absence of any

independent and documentary evidence on record, recorded the finding with regard to employment, on a mere presumption. In that view of the matter, the impugned award of the Commissioner below cannot be sustained and is liable to be set aside. Substantial questions of law are answered accordingly.

19. In view of what has been discussed hereinabove, the instant appeal is allowed. Consequently, impugned award, dated 10.03.2014, passed by learned Commissioner below in W.C. Petition No. 24 of 2011, is quashed and set-aside.

Pending applications, if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

23rd December, 2025
(virender)