

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (ECA) No.121 of 2018

Date of Decision : 25.09.2026

United India Insurance Company Limited

..... Appellant

Versus

Kanta Devi and others

..... Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellant : Mr. Jagdish Thakur, Advocate.

For the respondents : Mr. Pawanish K. Shukla, Advocate, for respondents No.1 to 3.

Mr. Ramakant Sharma and Mr. Shekhar Badola,
Advocates, for respondents No.4 and 5.

Bipin Chander Negi, Judge (oral)

The present appeal has been preferred by the appellant-Insurance Company against the award dated 13.11.2017, passed by the learned Civil Judge (Senior Division), Hamirpur, in ***Petition No.09/2011***, titled ***Kanta Devi and others vs. Janak Singh and others***, exercising the powers of Commissioner under the Employees' Compensation Act, 1923, whereby the appellant-Insurance Company has been directed to pay a sum of ₹3,37,830/- along with interest at the rate of 12% per annum from 12.03.2000 (date of accident) till the date of payment.

2. The present respondents No. 1 to 3 /claimants had preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988, being *MAC Petition No. 20 of 2002* before the Motor Accidents Claims Tribunal, Hamirpur on 05.03.2002. The said claim petition filed under the Motor Vehicles Act, 1988 was dismissed vide judgment dated 01.12.2004 (pages 107 to 110 of the trial Court record).

3. From a perusal of the same, it is evident that a finding had been returned by the Motor Accidents Claims Tribunal, Hamirpur that the deceased, i.e., Parveen Kumar, was himself driving the tractor bearing registration No. HP-21-1569, hence, under Section 166 of the Motor Vehicles Act, 1988, it was held that the petition would not be maintainable. Besides the aforesaid, a categorical finding had been returned by the Motor Accidents Claims Tribunal that the deceased Parveen Kumar had been engaged 3-4 months prior to the accident as a Driver to drive the ill-fated tractor in question.

4. The appeal preferred against the judgment dated 01.12.2004, passed by the Motor Accidents Claims Tribunal, Hamirpur, registered as *FAO No. 109 of 2005*, was decided on 18.12.2009 by a Co-ordinate Bench of this Court (pages 83–85 of the trial Court record). The finding returned by the trial Court that the deceased Parveen Kumar was himself driving the tractor (bearing No.HP-21-1569), at the time of the accident, was upheld by the Co-ordinate Bench. Further, in appeal, based on the statement of the owner, the finding returned by the MACT,

Hamirpur that the owner had engaged the deceased as a Driver of the tractor, was affirmed.

5. In the aforesaid backdrop, in the judgment dated 18.12.2009, passed in *FAO No. 109 of 2005*, the Co-ordinate Bench of this Court observed that if the deceased was driving the tractor during the course of employment, then the claimants would be entitled to compensation under the Workmen's Compensation Act. However while dismissing the appeal preferred by the claimants, the Co-ordinate Bench observed that no opinion had been expressed, as to whether the claimants would be entitled to compensation under the Workmen's Compensation Act. However, liberty was reserved to the claimants to file proceedings under the Workmen's Compensation Act, if so advised.

6. It is in the aforesaid backdrop, a petition bearing No.09 of 2011 was instituted on 20.06.2011 before the Civil Judge (Senior Division), Hamirpur, H.P., exercising the powers of Commissioner under the Employees' Compensation Act, 1923. The petition so preferred by the present respondents No. 1 to 3/ claimants was allowed vide judgment dated 13.11.2017. The same has been assailed by the Insurance Company in the present appeal.

7. The appeal so preferred was admitted vide order dated 09.11.2021. While admitting the appeal, following three substantial questions of law were framed:-

“1. Whether the findings returned by the learned Commissioner that the claim petition was not time barred are perverse findings?”

2. ***Whether the learned Commission misread the statutory provisions of the Employees Compensation Act while assessing the income of the deceased to be Rs. 3,000/- per month?***
3. ***Whether the learned Commissioner has erred in awarding the interest in favour of the claimants as from the date from which it stands awarded in the impugned order?"***

8. In so far as the first substantial question of law is concerned, the issue qua the petition preferred before the Civil Judge (Senior Division), Hamirpur, H.P., exercising the powers of Commissioner under the Employees' Compensation Act, 1923, being time-barred, was framed as issue No. 1. Qua the petition being filed within time before the Workmen's Compensation Commissioner, it would be relevant to reproduce the relevant portions of the petition so preferred, specifically Paragraphs 18 and 23:-

"18. It is submitted that the petitioners filed petition under section 166 of Motor Vehicle Act and the petition was dismissed and then the petitioners filed FAO No.109/05 titled Kanta Devi etc. Vs.Janak Singh & Ors. before the Honourable High Court of H.P. Shimla and the same was also dismissed on 18.12.2009 with the directions that appellants/petitioners are at liberty to file proceedings under the Workmen's Compensation Act. Hence this petition filed is within time.

23. The applicants filed petition under section 166 of Motor vehicle Act which was dismissed and then the applicants filed FAO no.109/05 titled Kanta Devi Vs. Janak Singh before the honourable High Court of HP which was also dismissed on 18.12.2009 with

the directions that the appellants are at liberty to file proceedings under the Workmen's Compensation Act and thus the present petition is being filed within time."

9. In the response preferred by the Insurance Company/ present appellant before the Workmen's Compensation Commissioner, no objection qua limitation was raised. However, the same was taken by present respondents No. 4 and 5. In the impugned award passed, the issue of limitation has been considered in Paragraph 31. The finding returned is that no evidence in this regard was led, and that the said issue had not been pressed during the course of arguments.

10. Records of judges' are considered to be final. In such a scenario the correctness of the finding returned by the Workmen's Compensation Commissioner in the case at hand to the effect that the issue of limitation had not been pressed during the course of arguments, more so when no plea of limitation had been raised by the appellant-Insurance Company before the Workmen's Compensation Commissioner, can only be considered by the authority which passed the impugned judgement in the case at hand. In this respect reference can gainfully be made to the judgement of the apex court in ***Sunitadevi Singhania Hospital Trust v. Union of India, (2008) 16 SCC 365***, relevant extract whereof reads as follow:

20. While the judges' records are considered to be final, it is now a trite law that when certain questions are raised before the court of law or tribunal but not considered by it, and when it is brought to its notice, it is the only appropriate

authority to consider the question as to whether the said contentions are correct or not.

11. See also **Ram Bali v. State of U.P., (2004) 10 SCC 598**,
relevant extract whereof reads as under:

9. We notice that the High Court specifically records that only two points were urged before it. It has to be noted that the statement of as to what transpired at the hearing, the record in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges who have made the record, to make necessary rectification. That is the only way to have the record corrected. It is not open to the appellant to contend before this Court to the contrary. [See State of Maharashtra v. Ramdas Shrinivas Nayak, Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Roop Kumar v. Mohan Thedani.]

12. It is admitted, in the case at hand, that the workman had expired on 12.02.2000 in an accident involving the ill-fated tractor bearing number HP 21-1569, owned by present respondent No. 4. Respondents No. 1 to 3/claimants are the widowed mother, brother, and sister/dependents of the deceased, Parveen Kumar, in the case at hand.

13. Limitation so prescribed under Section 10 is only with regard to issuance of notice to the Commissioner Workmen and the object and purpose being to enable the Commissioner to take appropriate action against such of those employers, who commit default in complying with the mandatory provisions of Sections 3 and 4 of the Act.

14. From the conjoint reading of Sections 3 and 4 of the Act, it is clear that in the event of injury/death of an employee resulting by virtue of

an accident during the course of employment, duty is cast upon the employer to pay compensation, in the prescribed manner. The employer is under an obligation to deposit the amount, within the stipulated period, with the Commissioner (Workmen's Compensation). Disbursement of the amount of compensation so deposited with the Commissioner has to be under Section 8 of the Act.

15. However, as is evident from the 4th proviso of Clause (b) of Section 10 that even failure on the part of the dependent to serve such notice, is not fatal to the claim for compensation preferred by the dependent if the employer had knowledge of the factum of the accident. [***New India Assurance Co. Ltd. v. Momina Khatum, 2008 ACJ 2734 & Maan Singh alias Man Bahadur v. New India Assurance Co. Ltd., 2005 LAB I.C. 1300***]. Whole purpose and object of the notice is to move the machinery in the office of the Commissioner (Workmen's Compensation) for just and fair determination and quick disbursement of the amount due to the rightful claimants. The idea is to make the employer accountable and not defeat the claim of the dependants. The Commissioner (Workmen's Compensation) is empowered, upon being satisfied with the reasons for delay, in entertaining the claim beyond a period of two years.

16. In this respect, reference can gainfully be made to the decision of a co-ordinate bench of this Court, in ***Smt. Bano Devi vs. Smt. Rashilu Devi & others, 2016 SCC OnLine HP 368 : (2016) 1 Latest HLJ 525***. Besides the aforesaid in ***K. Sivaraman and others vs. P.***

Sathishkumar and another, (2020) 4 SCC 594 the apex court has held that the act in the case at hand is a social beneficial legislation be interpreted to further the object of the act i.e to ameliorate the hardship of economically poor employees. Relevant extract whereof reads as under;

“25. The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits.”

17. Hence, for the aforesaid reasons, the first substantial question of law needs to be rejected.

18. The next question which arises for consideration is, whether the Workman Compensation Commissioner, while assessing the income of the deceased to be Rs.3,000/- per month, misread the statutory provisions. From a perusal of the impugned award, it is evident from Paragraph 22 that the income of the deceased, in the case at hand, has been determined as Rs.3,000/- per month. In Paragraph 29 of the impugned award, Section 4(1)(a) has been reproduced. However, Explanation II appended thereto has been ignored. Explanation II, appended along with Section 4(1)(a), reads as follow:

“Explanation II.- Where the monthly wages of a workman exceed [two thousand rupees], his monthly wages for the

purposes of clause (a) and clause (b) shall be deemed to be [two thousand rupees] only.”

19. In the aforesaid backdrop, for the purpose of calculation of compensation, the income of the deceased, in the case at hand, will have to be taken at Rs.2,000/- and not Rs.3,000/-, as has been erroneously taken by the Workman Compensation Commissioner in the impugned award. In this respect, it would be appropriate to refer to the decision of the Hon'ble Apex Court, in ***Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289***, wherein, a four-judges Bench of the Apex Court held that the liability of an employer to pay compensation is to be determined (rate of compensation) on the date of the accident and not on the adjudication of the claim. [See also ***Kerala State Electricity Board and another vs. Valsala K. and another, (1999) 8 SCC 254; K. Sivaraman and others vs. P. Sathishkumar and another, (2020) 4 SCC 594***].

20. In so far as the grant of interest, in the case at hand, is concerned, suffice it to state that the accident took place on 12.02.2000. Thereafter, respondents No. 1 to 3/claimants filed a claim petition before the Motor Accidents Claims Tribunal, Hamirpur on 05.03.2002. The same was dismissed on 01.12.2004. The appeal preferred there against, i.e., *FAO No. 109 of 2005*, was decided on 18.12.2009. Thereafter, the claim petition, in the case at hand, was preferred by respondents No. 1 to 3/claimants on 20.06.2011. The same was decided on 13.11.2017. Based on the aforesaid, it is contended that the delay in deciding the petition by the Workman Compensation Commissioner was on account of the delay in filing the petition by the claimants in the case at hand.

21. In this respect it would be appropriate to refer to ***Oriental Insurance Co. Ltd. v. Siby George, (2012) 12 SCC 540*** wherein the short question that arose for consideration before the apex court was : when does the payment of compensation under the Workmen's Compensation Act, 1923 (hereinafter "the Act") becomes due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under Section 4-A(3) of the Act?

22. As has already been stated supra the liability of an employer to pay compensation is to be determined (rate of compensation) on the date of the accident and not on the adjudication of the claim. Insofar as the question of payment of interest is concerned the apex court in ***Oriental Insurance Co. Ltd. v. Siby George(supra)*** examined Sections 4-A(1) and (3) of the Act and held that payment of interest is a consequence of default in payment without going into the reasons for the delay. Hence in ordering payment of interest no finding has to be returned that delay in payment of interest due was unjustified. Whereas in case of imposition of penalty a finding to the effect that the delay in payment of the amount due was unjustified is required. Relevant extract whereof reads as under;

7. Sections 4-A(1) and (3) of the Act are as under:

"4-A. Compensation to be paid when due and penalty for default.—(1) Compensation under Section 4 shall be paid as soon as it falls due.

*(2) * * **

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.— * * *

(3-A) * * *

8. It is, thus, to be seen that sub-section (3) of Section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

23. In the aforesaid legal matrix the argument of the appellant-Insurance Company that no one is entitled to take benefit of his own wrong and fastening liability of interest on the appellant-Insurance

Company, in the case at hand, on account of the delayed filing of the claim petition would be wholly unjustified is baseless. Reference in this respect made to the decision of the Co-ordinate Bench of this Court, in **FAO No. 63 of 2009** titled **United India Insurance Company Ltd. vs. Sh. Gian Chand and others** and **FAO (MVA) No.231 of 2022** titled **National Insurance Company Limited vs. Sunil Kumar and another** in petitions preferred under the Motor Vehicles Act seeking compensation is irrelevant.

24. In terms of Section 147 of the Motor Vehicles Act which pertains to requirement of policies and limits of liability a policy of insurance at the time of the accident in the case at hand was required to cover an employee engaged in driving the vehicle qua liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death. Section 147 of the Motor Vehicles Act at the time of the accident is reproduced herein below for a ready reference:-

147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person [, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
 - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

25. The aforesaid provision was considered in **Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428** by the apex court wherein qua the first proviso the apex court held that policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle. Relevant extract reads as under;

13.....The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in

a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage.

15.....The proviso enacts an exemption and carves out an exception to that exemption.

26. Hence the liability of the insurer to indemnify qua the compensation amount determined by the authority and interest payable thereupon by the owner. In the aforesaid backdrop, grant of interest at the rate of 12% per annum w.e.f. 12.03.2000 fastened on the appellant-Insurance Company, in the case at hand, is not modified to the extent sought i.e interest would be payable by the appellant-Insurance Company from the date of filing of the petition before the Workmen Compensation Commissioner till deposit.

27. The present appeal is partly allowed and the impugned award dated 13.11.2017, passed by the learned Civil Judge (Senior Division), Hamirpur, in **Petition No.09/2011**, titled **Kanta Devi and others vs. Janak Singh and others**, is modified to the extent that for the purpose of calculation of compensation, the income of the deceased, in the case at hand, will have to be taken at Rs.2,000/- per month and not Rs.3,000/- per month as has been wrongly determined by the Workmen Compensation Commissioner. Pending miscellaneous application(s), if any, shall also stand disposed of.

September 25, 2026 (KS)

(Bipin Chander Negi)
Judge