

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 174 of 2014

Reserved on: 14.07.2026

Date of decision: 16.07.2026

**Date of uploading on website:
16.07.2026**

OIC Ltd.

.....Appellant

Versus

Drompti Devi & Ors.

....Respondents

Coram

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

¹ *Whether approved for reporting?*

For the appellant:

Mr. Ashwani K. Sharma, Senior Advocate with Ms. Mamta, Advocate.

For the respondents:

Mr. H.S. Rangra, Advocate, for respondents No. 1 to 4.

Ms. Suchitra Sen, Advocate, for respondent No. 5.

Sushil Kukreja, Judge

The present appeal has been filed by the appellant/Insurance Company against the impugned award dated 25.02.2014, passed by learned Civil Judge (Sr. Division) Mandi, District Mandi, H.P., in WC Petition No. 71/2011 (hereinafter referred to as "Commissioner below"),

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

whereby the petition filed by the petitioners was allowed and they were held entitled for a compensation of Rs. 5,77,280/-, with interest at the rate of 12% per annum w.e.f. 14.07.2010 till realization of the entire amount, to be paid by respondent No. 2/Insurance Company.

2. The brief facts of the case, as set up by the petitioners, are that Tulsi Ram (since deceased) was employed by respondent No. 1, as driver in his vehicle bearing registration No. HP-01M-4006 on a monthly salary of Rs. 5,500/-. On 15.06.2010, when the deceased was coming back from Kamru Nag towards Mandi side and reached near Kandha-Pandoh, the said vehicle met with an accident and fell down in deep gorge. In the aforesaid accident, Tulsi Ram died at the age of 29 years. Hence, the petitioners being wife, children and mother of the deceased filed the petition under the Workmen's Compensation Act, seeking compensation to the tune of Rs. 10 Lacs with interest.

3. In reply filed by respondent No. 1, it has been stated that the deceased was getting monthly salary of Rs.

3,000/- and in case the petitioners are found entitled for compensation, respondent No. 2 shall be liable to pay the same, as the vehicle was duly insured with respondent No. 2.

4. By filing reply, respondent No. 2/Insurance Company took preliminary objection qua maintainability. On merits, it has been stated that there did not exist any relationship of employer and employee between respondent No. 1 and the deceased. It has been further stated that neither the deceased was holding a valid driving licence nor the vehicle was being driven on the permitted route.

5. On pleadings of the parties, the following issues were framed for determination on 30.07.2012:-

“1. Whether late Tulsi Ram died during the course of employment, if so, its effect? OPP

2. Whether late Tulsi Ram was not having valid and effective licence, as alleged? OPR-2

3. Relief.”

6. After the parties led evidence and after hearing the learned Counsel for the parties, the petition filed by the petitioners was allowed and they were awarded

compensation of Rs. 5,77,280/-, with interest at the rate of 12% per annum w.e.f. 14.07.2010 till realization of the entire amount, to be paid by respondent No. 2/Insurance Company.

7. Feeling aggrieved and dissatisfied by the impugned award, the appellant/Insurance Company preferred the instant appeal, for setting aside the same, which was admitted for final hearing on the following substantial questions of law:-

“(1) Whether in the absence of cogent evidence to prove employer-employee relationship between respondent No. 5 (owner) and deceased (both in fact had father-son relationship), learned Trial Court was justified to conclude that the latter was paid driver of the owner of vehicle at the time of accident?”

“(2) Whether on account of violation of the policy conditions and provisions of the Motor Vehicles Act, as detailed in para 3 of the memorandum of appeal, owner/insured is entitled to indemnification of claim payable to the claimants by the insurer?”

8. I have heard the learned counsel for the parties and have also gone through the material available on record, carefully.

9. Learned Senior counsel for the appellant

contended that learned Commissioner below has erred in law in fastening the liability upon the Insurance Company, as at the time of accident, the vehicle in question was being plied in breach of the terms and conditions of the policy. He further contended that there was no relationship of employee and employer between the deceased and respondent No. 1. With these averments, he prayed for acceptance of the present appeal and dismissal of the impugned award.

10. Per Contra, the learned counsel for respondents/claimants contended that the learned Commissioner below did not commit any error while allowing the petition.

11. The perusal of the material available on record reveals that while filing reply the appellant/Insurance Company has specifically taken preliminary objection that there did not exist any relationship of employer and employee between respondent No. 1 and the deceased. However, despite that the learned Commissioner below has failed to frame a specific issue in this regard and gave findings in a

very slip shod manner that the deceased had been employed, as driver, by respondent No. 1 by observing that respondent No. 2 i.e. appellant has failed to lead any evidence in this respect. Needless to state that onus to establish relationship of employer and employee between the parties is always upon the claimant. Thus, non framing of issue regarding relationship of employer and employee has caused serious prejudice to the appellant/Insurance Company. Therefore, in the facts and circumstances of the present case an additional issue is required to be framed as under:-

“2-A Whether there was a relationship of employer and employee between respondent No. 1 and the deceased? OPP”

12. Hence, impugned award dated 25.02.2014 passed by learned Commissioner below is set aside and the case is remanded back to learned Commissioner below to decide the same afresh, after giving reasonable opportunity to lead evidence to each of the parties on additional issue No. 2-A framed by this Court.

13. It is made clear that not more than two opportunities shall be granted to each of the parties to lead evidence on additional issue No. 2-A.

14. Since the accident pertains to the year 2010, the learned Commissioner below is directed to decide the case as expeditiously as possible and in any event not later than **31.03.2027**. Parties are directed to appear before the learned Commissioner below on **18.08.2026**.

15. Learned Registrar (Judicial) shall ensure that the entire record be remitted to the learned Commissioner below forthwith.

16. The appeal is disposed of in above terms, so also pending application(s), if any.

(Sushil Kukreja)
Judge

16th July, 2026
(raman)