



2026:DHC:6098



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.07.2026
Pronounced on : 29.07.2026
Uploaded on : 30.07.2026

+ **FAO 434/2017 and CM APPL. 40402/2017**

UNIVERSAL SOMPO GEN INS CO LTD Appellant
Through: Mr. Mohammad Mustafa, Advocate

versus

REENA KUMARI & ORS Respondents
Through: Dr. Sanjay Kumar Tiwary, Advocate
for Respondent No. 6

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred assailing the order dated 23.05.2017 passed by the learned Commissioner Employees Compensation in Case No. CEC-D/NW/220/2015/220.

Vide the said order, the claim application filed by respondent nos. 1 to 5 (hereinafter the “claimants”) came to be allowed and the appellant, along with respondent no. 6, was held jointly and severally liable to pay compensation of Rs.3,63,846/- along with further simple interest @ 12% per annum w.e.f. 24.05.2017 till its realization.

2. Briefly stated, *Sh. Mahesh Chandra Mishra @ Mahesh Chand* (hereinafter the “deceased”) was employed as a driver on truck bearing registration no. HR-55E-5025 owned by respondent no. 6. On 18.03.2013, the deceased met with an accident out of and during the course of his



employment, resulting in his death. The vehicle in question was returning from *Nepal* when its brakes allegedly failed on a downward mountain road, causing the deceased to lose control of the vehicle, which collided with another vehicle. The deceased succumbed to the injuries sustained in the accident. The claimants, being the dependants of the deceased, thereafter instituted the underlying claim application under the provisions of the Employee's Compensation Act, 1923 (hereinafter the "EC Act").

3. Before the learned Commissioner, the appellant as well as respondent no. 6 resisted the claim application on various grounds. Respondent no. 6 contended that the claimants had not approached the learned Commissioner with clean hands as they had suppressed the fact that they had already received a sum of Rs.4,75,000/- from one NLG Insurance Co. Ltd. under the Motor Vehicle and Management Act, 1993 of *Nepal*. The appellant similarly contended that the claim application was barred under Section 167 of the Motor Vehicles Act, 1988 (hereinafter the "MV Act"), as the claimants had already availed compensation by way of a motor accident claim. The appellant further contended that there was no privity of contract between it and the claimants; that the accident had never been intimated to it despite there being a policy condition requiring immediate intimation; that no additional premium had been paid for plying the insured vehicle outside the territory of *India*, whereas the accident had admittedly occurred in *Nepal*; and that there existed no employer-employee relationship between the appellant and the deceased. It was, accordingly, prayed that the claim application be dismissed.

4. The claimants opposed the aforesaid objections and submitted that they had never filed any application or preferred any motor accident claim



seeking compensation. It was further submitted that the amount received from NLG Insurance Co. Ltd. did not disentitle them from maintaining the present proceedings. Reliance was also placed upon Section 17 of the EC Act to contend that any compensation paid otherwise than by deposit before the Commissioner could not be treated as compensation under the EC Act.

5. Upon consideration of the rival submissions, the learned Commissioner rejected the contentions put forth by the appellant and respondent no. 6. It was held that neither of them had been able to establish that the claimants had instituted any proceedings under the MV Act, either in *India* or abroad, so as to attract the bar contained in Section 167 of the MV Act. The learned Commissioner further held that the mere receipt of amounts from NLG Insurance Co. Ltd. did not debar the claimants from maintaining proceedings under the EC Act. Learned Commissioner relied upon the decision of the Supreme Court in National Insurance Company Ltd. Vs. Sinitha & Ors.¹ and directed that the amount already received by the claimants from NLG Insurance Co. Ltd. be deducted while computing the compensation payable to them under the EC Act. The remaining objections raised by the appellant regarding breach of insurance policy conditions, non-payment of additional premium, and non-intimation of the accident also came to be rejected. Aggrieved thereby, the appellant preferred the present appeal.

6. It is pertinent to note that during the course of hearing the present appeal, this Court, *vide* order dated 19.03.2026, recorded the statement of the learned counsel for the appellant that, in view of the amount of Rs.4,75,000/- already having been deducted from the compensation awarded

¹ (2012) 2 SCC 356



by the learned Commissioner, the appellant did not wish to press its challenge to the maintainability of the claim application. The controversy was, thus, expressly confined to the limited question of the appellant's entitlement to recovery rights against respondent no. 6. Accordingly, the only issue which survives for consideration in the present appeal is whether the appellant is entitled to recover the amount paid by it to the claimants from respondent no. 6.

7. Learned counsel for the appellant contends that the learned Commissioner erred by not granting the insurer/appellant recovery rights against the employer/respondent no. 6. He contends that respondent no. 6 breached the terms and conditions of the insurance policy by permitting the deceased to drive the insured vehicle despite his driving license having expired. It is further submitted that respondent no. 6 also permitted the insured vehicle to ply outside the territorial limits of *India*, despite no additional premium having been paid for such use. It is, therefore, contended that while the appellant may be liable to satisfy the impugned order with respect to the claimants, the principle of "pay and recover" should apply, and the appellant would accordingly be entitled to recover the amount so paid from respondent no. 6.

8. *Per contra*, learned counsel appearing for respondent no. 6 submits that no breach of the insurance policy's conditions warranting grant of recovery rights has been established. He accordingly prays for the present appeal to be dismissed.

9. I have heard the learned counsels for the parties and perused the material placed on record.

10. A perusal of the impugned order shows that while dealing with the



contentions raised by the appellant, the learned Commissioner specifically noted that the driving license of the deceased had expired prior to the date of the accident. The learned Commissioner further observed that, on all such issues, the appellant would only have a remedy against the employer/respondent no. 6 and could not escape its liability of indemnifying the insured for the liability arising on account of injury suffered by the deceased during the course of his employment.

11. This Court finds no infirmity with the view taken by the learned Commissioner insofar as the claimants, being the dependants of the deceased employee, could not be deprived of compensation on account of disputes *inter se* the appellant and respondent no. 6. The direction requiring the appellant to satisfy the impugned order, therefore, warrants no interference.

12. However, with respect to the doctrine of “pay and recover” sought to be relied upon by the appellant, a gainful reference may be made to the decision of the Supreme Court in Rama Bai Vs. Amit Minerals². In the said case, while seized of a dispute arising from a motor accident claim wherein the offending driver did not possess a valid driving license on the date of the accident, the Supreme Court discussed a *catena* of its decisions on the subject of “pay and recover”. It ultimately held that the insurance company has to pay the compensation amount payable to the third party and may thereafter recover the same from the insured. The relevant portion from the said decision is reproduced hereunder:-

“5. The submission on part of the appellant that the High Court ought to have applied the “pay and recover” principle rests on the decision of this Court in Shamanna¹ (supra) and Parminder Singh²

² 2025 SCC OnLine SC 2067



(supra). In *Shamanna*¹ (supra) this Court dealt with the claim of compensation by third party victim of the motor accident. In para 5 of the judgment, this Court referred to its own earlier decision in *National Insurance Co. Ltd. v. Swaran Singh*⁴ to reiterate that the insurer has to pay the compensation amount payable to the third party and the insurance company may recover the same thereafter from the insured.

5.1 In *Shamanna*¹ in which the doctrine of “pay and recover” was considered, the driver had no valid licence and the insurance policy was violated. Similar principle, as applied in *Parminder Singh*² in which the driver of the offending vehicle was found driving the vehicle in breach of the policy conditions, the insurance company was absolved and the principle of ‘pay and recover’ was applied.

5.2 It was pointed out on behalf of respondent No. 3 - Insurance Company that in subsequent decision in *National Insurance Company Limited v. Parvathneni*⁵, this Court doubted the justification of applying the principle of pay and recover on the ground that if the Insurance Company was found not liable in law to pay the compensation, the direction regarding pay and recover can be said to be beyond the legal propriety.

5.2.1 In the earlier decisions in *National Insurance Co. Ltd. v. Yellamma*⁶, *Samundra Devi v. Narendra Kaur*⁷, *Oriental Insurance Co. Ltd. v. Brij Mohan*⁸ and *New India Insurance Co. v. Darshana Devi*⁹ this Court had applied the very principle, about the correctness of which, reservations were expressed in *Parvathneni*⁵.

5.2.2 However, as found in *Shamanna*¹ the reference was not answered and the case was disposed of on 17.09.2013, keeping the question of law open to be decided in an appropriate case.

6. In the present case as stated above, on the date of accident, the driver had no valid license and the licence was not renewed. The insurance company was entitled to take a valid defence in that regard under Section 149 (2)(a)(ii) as the driver of the offending vehicle was not duly licensed, to avoid its liability to pay the compensation. The conditions in law are satisfied to absolve the insurance company from the payment of compensation.

6.1 The High Court in the impugned judgment relied upon the decision in *Ram Babu Tiwari*³ to find that as per the specific provisions of the Motor Vehicles Act, if the driver does not possess a valid and effective driving licence, it results in a breach of conditions of the insurance policy, exonerating the insurer from its liability. But while affirming the order of the High Court, absolving the liability for breach of conditions in the policy, this Court refused to interfere with orders of ‘pay and recover’ as directed by the High Court.

7. In the above circumstances, going by the series of decisions of this Court, it is only proper that the insurer be directed to satisfy the



2026:DHC:6098



award, which however can be recovered by the insurer from the insured-owner of the vehicle. The appeal stands allowed.

Pending application, if any, shall stand disposed of.”

13. In view of the position of law detailed in the above-cited decision, this Court is of the considered opinion that, in the facts of the present case, the appellant is entitled to the relief of “pay and recover”. To this limited extent, the impugned order calls for modification.

14. Accordingly, the impugned order is modified insofar as the appellant shall be entitled to recover from respondent no. 6 the amount paid by it towards satisfaction of the impugned order.

15. It is clarified that the rights of the claimants under the impugned order shall remain unaffected.

16. If the compensation deposited by the appellant before the learned Commissioner has not already been released in favour of the claimants, the same be done expeditiously, along with the interest accrued thereon, if any.

17. The present appeal, along with the pending application, is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

JULY 30, 2026

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