

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

FAO No. 273 of 2012
Reserved on: 18.06.2026
Date of decision: 06.07.2026
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Oriental Insurance Company Limited.

.....Appellant.

Versus

Kashmira Devi & others.

.....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 respondents No. 1 to 3:

Ms. Dhanwanti Devi, Advocate, vice Mr. Raj Kumar Negi, Advocate.

For respondent No. 4:

Ms. Sunita Sharma, Senior Advocate, with Ms. Harshita Dogra & Mr. Saurav Upadhyay, Advocates.

For respondent No. 5:

Mr. Ankush Thakur, Deputy Advocate General.

Sushil Kukreja, Judge.

The present appeal is maintained by the appellant-Oriental Insurance Company Limited, who was respondent No. 3 before the learned Commissioner below

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

(hereinafter referred to as “the appellant Insurance Company”) against award dated 10.05.2012, passed by learned Civil Judge (Junior Division) Anni, District Kullu, H.P., (hereinafter referred to as “the learned Commissioner below”) in Case No. 17 of 2011, whereby the application filed by the petitioners/claimants (respondents No. 1 to 3 herein), before the learned Commissioner below (hereinafter referred to as “the petitioners/claimants”), under Section 22 of the Workmen Compensation Act (for short “the Act”), was partly allowed.

2. Succinctly, the facts giving rise to the present appeal are that respondent No. 1-Shri Madan Gopal Mehta was awarded the work of road cutting/widening from Neether to Nar, Tehsil Nirmand, District Kullu, H.P. and Shri Surjeet Singh (deceased) was engaged as labourer by respondent No. 1 in the road cutting work at Bushati Dhar. As per the petitioners, on 03.05.2008 when the deceased was working with another labourer, a big boulder fell on him from the *Dhank* and the deceased died on the spot. The petitioners averred that the accident occurred in the course of the employment of respondent No. 1 and the petitioners were the legal heirs of the deceased and totally dependent upon

the earnings of the deceased. The petitioners claimed that the deceased used to get Rs.120/- per day, thus his monthly income was Rs.36,00/- per month. The petitioners sought compensation of Rs.6,00,000/- alongwith interest @ 9% per annum from the date of accident.

3. Respondent No. 1 contested the claim petition by filing reply, wherein he admitted all the averments made by the petitioners in their claim petition. However, the replying respondent averred that the he had informed the respondent No. 3-Oriental Insurance Company Limited (appellant herein) qua the accident immediately, as the deceased-workman was insured with respondent No. 3 for all intents and purposes and thus if the claimants were found entitled to compensation, then respondent No. 3 was only liable to pay such claim.

4. Respondent No. 2, i.e., Executive Engineer, HPPWD, Division Nirmand, District Kullu, H.P., filed separate reply, wherein the fact qua awarding of work to respondent No. 1 and information about the accident was admitted. As per the replying respondent, work was awarded to respondent No. 1 as per the contract, therefore, whole responsibility was of respondent No. 1 and he was liable to

pay the compensation.

5. Insurance company, i.e., respondent No. 3 also filed its separate reply, wherein preliminary objections were taken regarding locus standi, maintainability of the petition on the ground of mis-joinder of respondent No. 3, because, as per the terms and conditions of the W.C. Policy, the company was only liable to indemnify the insured and the insured was required to pay first the claim as per the provisions of the Act to the claimants and thereafter to get it reimbursed from the insurer. The replying respondent also took preliminary objection that respondent No. 1 did not inform them about the accident and also failed to supply the requisite documents which were necessary for settlement of the claim. As per the replying respondent, neither there was relationship of employer and employee between the deceased and respondent No. 1, nor accident in question occurred out of and in the course of employment. It was averred that there were more than 10 labourers working at the time of the accident, but the insured/contractor had obtained policy only for 10 labourers, thus it was not possible to identify the deceased, as the policy obtained by the insured was un-named policy. Lastly, the replying

respondent prayed for dismissal of the claim petition.

6. On the basis of the pleadings of the parties, on 14.10.2011, the learned Court below framed the following issues for determination and adjudication:

- “1. Whether the petition is maintainable? OPA**
- 2. Whether the deceased died during the course of his employment under respondent No. 1? OPA**
- 3. Whether the applicants are entitled to compensation, as claimed and if so, thus to what amount? OPA**
- 4. Whether the application is not maintainable? OPR**
- 5. Whether petitioners have no locus standi to file present application? OPR**
- 6. Whether application is bad for mis-joinder of necessary parties? OPR**
- 7. Whether respondent No. 1 did not supply requisite documents to respondent No. 3 well in time. If so, its effect? OPR**
- 8. Relief.”**

7. After hearing the learned counsel for the parties and considering the evidence on record, the learned Commissioner below partly allowed the petition and held the petitioners/claimants entitled for compensation etc. as under:

- “1. Respondent No. 1 shall pay the penalty @ 25% on the Principal compensation amount of Rs.3,93,246/- which comes out to Rs.98,312/- and he shall pay that amount of penalty to the applicants/claimants within a**

period of two months from the date of the Award, failing which, he shall also pay simple interest @ 9% per annum on the amount of that penalty till its payment;

2. Respondent No. 3, i.e., Oriental Insurance Company Ltd. shall pay whole of the principle amount of compensation alongwith simple interest @ 12% per annum from one month after the date of the accident till its payment and that sum as calculated above upto the date of award comes out to Rs.3,93,246+1,85,657=5,78,903/-. It is also clarified that respondent No. 3, i.e., the Insurance Company shall also pay the simple interest @ 12% per annum on the principal amount of compensation i.e., 3,93,246/- or its balance to the applicants/claimants till the date of the payment of whole of the sum; &
3. Respondent No. 2 is not held liable to pay any sum to the applicants/claimants as it has already been established that he was not the employer of the deceased at the time of the accident.”

8. The appellant-Insurance Company feeling aggrieved preferred the instant appeal with a prayer that the instant appeal be allowed and the impugned award be quashed and set-aside or in the alternative the same be modified by awarding reasonable amount of compensation to the petitioners/claimants.

9. The learned Senior Counsel for the appellant-Insurance company contended that the liability of the insurer

qua the indemnification of the insured, which was contractual, as per the insurance policy, was limited to the extent of number of employees declared and their wages on the basis of which the premium was paid and the liability of payment of amount as compensation to the claimants over and above the insured amount, was that of the employer. He further contended that the insurer had charged the premium at prescribed rates on estimated annual wages for the declared number of employees and its liability of indemnification of insured was restricted to that extent only. He also contended that as per the contract of insurance, liability of payment of interest on the compensation amount under Workmen Compensation Insurance Policy was specifically excluded, therefore, the insured was not entitled for indemnification of the said amount as such there was no justification in awarding interest on compensation amount, as ordered to be payable by the insurance company.

10. Conversely, the learned Senior Counsel/vice counsel/counsel for the respective parties supported the impugned award and contended that the learned Commissioner below had passed a well reasoned award and the same does not need any interference.

11. I have heard the learned Senior Counsel/vice counsel/counsel for the respective parties and carefully examined the entire records.

12. It is an admitted fact that at time of the accident, deceased-Surjeet Singh was the employee of respondent No. 1-Shri Madan Gopal Mehta (respondent No. 4 herein) and he had died during the course of employment.

13. The instant appeal has been admitted for hearing on 16.07.2012 on the following substantial questions of law:

“1. Whether the liability of payment of amount as compensation to the claimants over and above the insured amount was that of the employer and not of the appellant?

2. Whether the appellant was wrongly held liable for interest?”

14. Now, the first question, which arises for consideration before this Court is as to whether the liability of payment of amount of compensation to the petitioners/claimants over and above the insured amount was that of the employer and not of the insurance company?

15. The learned Senior Counsel for the insurance company contended that the insurance company is not liable to pay the compensation to the petitioners/claimants over and above the insured amount and the liability to pay the

same was that of the employer and not of the insurance company.

16. To the contrary, the learned counsel for the respondents contended that the appellant-insurance company never took the aforesaid ground before the court of Commissioner below and now the appellant-insurance company is precluded from taking the above ground in the present appeal.

17. After going through the reply filed on behalf of the appellant-insurance company before the learned Commissioner below, it is revealed that the appellant-insurance company had not taken the aforesaid ground before the learned Commissioner below. In fact in the reply, no averments to this effect have been made by the appellant/Insurance Company before the learned Commissioner below. In ***Rajesh Kumar alias Raju vs. Yudhvir Singh & Another, (2008)7 SCC 305***, Hon'ble Supreme Court dealt with a similar circumstance and observed as follows:

"11.It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's Compensation Act which, in our opinion, ex facie has no application, the

same, in our opinion, cannot be permitted to be raised for the first time."

18. In ***Modern Insulators Ltd. vs. Oriental Insurance Co. Ltd, (2000)2 SCC734***, Hon'ble Supreme Court while again considering the fact of a new ground raised in appeal held as follows:

"10. We may refer to the next ground on which the appeal has to be allowed. It is a settled position of law that in an appeal the parties cannot urge new facts. From the pleadings of the respondent before the State Commission it is found that the respondent pleaded that the property damaged was not covered under the insurance policy. This plea was given a go- by before the National Commission and a new plea was taken up in the grounds of appeal that the terms and conditions of the insurance policy were violated by the appellant by using used kiln furniture. The National Commission accepted this new ground and allowed the appeal, which in our opinion is not sustainable in law."

19. In view of the settled position of law as expounded by the Supreme Court hereinabove, it needs no reiteration that a new ground cannot be urged in appeal when it was not raised before the court of learned Commissioner. Hence, the contention that the insurance company is not liable to pay the compensation to the petitioners/claimants over and above the insured amount and the liability to pay the same was that of the employer and not of the insurance company, is not sustainable in the eyes of law and the same is accordingly rejected.

20. Now, the next question which arises consideration before before this Court is whether the

appellant-insurance company was wrongly held liable to pay interest, as contended by the learned Senior Counsel for the appellant-insurance company. In support of his contention, the learned Senior Counsel has placed reliance on endorsement of the terms and conditions of the insurance policy, mark 'R',

21. In order to prove its case, respondent No. 3-Insurance Company has examined Shri Ram Mohan Negi, the then Administrative Officer, as RW-2, who had adduced in evidence copy of the insurance policy as Ex. RW-2/B, but terms and conditions have not been exhibited and the same have only been marked as mark 'R'. This witness, in his cross-examination, admitted that as per the insurance policy, deceased-Surjeet Singh was insured with the insurance company. The perusal of the insurance policy, Ex. RW-2/B, shows that number of employees covered under the insurance policy was ten for an amount of Rs.2,70,000/- and the premium in the sum of Rs.7,884/- was paid. At this stage, it would be relevant to reproduce the terms and conditions of the insurance policy, mark 'R', which reads as under:

"It is hereby understood and agreed that the cover provided under this Policy shall not extend to indemnify

the Insured/Insureds in respect of any interest and/or penalty which may be imposed on him/them on account of his/their failure to comply with the requirements laid down under the Workmen's compensation Act, 1923 and subsequent amendments of the said Act."

23. However, the learned counsel for the respondents had disputed the terms and conditions of the insurance policy, as according to them, the terms and conditions do not form part of the insurance policy, Ex. RW-2/B, and the same have not been proved by the insurance company in accordance with law. After going through the insurance policy as well as the alleged terms and conditions of the insurance policy, this court is of the opinion that this contention raised by the learned counsel for the respondents is not devoid of any force, as while appearing in the witness-box as RW-2, the Administrative Officer of the insurance policy has adduced in evidence copy of the insurance policy as RW-2/B, whereas terms and conditions of the insurance policy have not been exhibited and this document has only been marked as mark 'R'. The appellant-insurance company has failed to explain as to why this document was not exhibited alongwith the insurance policy and why the same has only been marked. Since the alleged terms and conditions of the insurance policy, mark 'R', have not been proved in accordance with law, therefore, no

reliance can be placed upon the same. No other document has been placed on record by the appellant-insurance company in support of its case that it is not liable to pay any interest. Hence, it cannot be said that the insurance company was wrongly held liable to pay interest to the claimants.

24. In view of what has been discussed hereinabove, the substantial questions of law are answered accordingly and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

6th July, 2026
(virender)