

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

**CIMA No. 51/2007**

**CMP Nos. 169/2008 & 76/2007**

**Date of Decision: 26.12.2008**

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**Oriental Insurance Co. Ltd.                      Vs.                      Jyoti Devi & Ors.**

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**Coram:**

***Mr. Justice J.P.Singh, Judge.***

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**Appearing counsel:**

For Appellant (s)                      : Mr. Amrit Sareen, Advocate.

For Respondent(s)                      : Mr. Rajesh Kumar, Advocate.

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i)        Whether to be reported  
          in Press/Journal/Media        :                      **Yes/No**

ii)       Whether to be reported  
          in Digest/Journal                :                      **Yes/No**

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The Oriental Insurance Company Limited has filed this appeal questioning Commissioner Workmen Compensation Act (Assistant Labour Commissioner), Jammu award of January 23, 2007 directing the appellant to pay an amount of Rs.3,94,120/- to the respondents-claimants, as compensation for the death of Ram Kumar alias Garu Ram, who had been employed as driver by Rahul Gupta, respondent no.5.

Appellant learned counsel, Mr. Amrit Sareen submitted that the findings recorded by the learned Commissioner that Ram Kumar had died during the course of his employment as driver with Rahul Gupta, respondent, was perverse, in that, there was no evidence on



records to support the finding. His further submission is that the Insurance Company was not liable to compensate the claimants because the deceased did not have a valid driving licence at the time when he was driving the insured Car.

Mr. Rajesh Kumar appearing for the claimants, on the other hand, submitted that appellant's appeal is not maintainable as no substantial question of law arises therein. According to him appreciation of evidence, which the appellant seeks in its appeal, may not be permissible. Learned counsel submitted that the findings of the Commissioner are based on evidence available on records and well reasoned judgment of the Commissioner may not require interference in appeal.

Responding to appellant's plea that the deceased did not hold a valid driving licence, learned counsel submitted that the Insurance Company had failed to produce any evidence before the Commissioner on the basis whereof it may be said that the deceased did not possess a valid driving licence and in that view of the matter, the findings recorded by the Commissioner cannot be faulted.

I have considered the submissions of learned counsel for the parties and gone through the records of the Commissioner under Workmen's Compensation Act, 1923.

It is a settled proposition of law that an appeal under Section 30 of the Workmen's Compensation Act would be maintainable only if it raises a substantial question of law. Substantial question of law as contemplated by Section 30 of the Workmen's Compensation Act



carries the same meaning as is ascribed to the expression **substantial** question of law appearing in Section 100 of the Code of Civil Procedure.

A question of law, or a substantial question of law, would arise when the same is not dependent upon examination of evidence or on any fresh investigation of facts. A question of law would, however, arise when the finding is perverse, in that, it was either based on legally impermissible evidence or on absolutely No evidence.

Appreciation of evidence afresh for taking a view other than the one taken by the Commissioner may not however be permissible in an appeal under Section 30 of the Workmen **Compensation Act** which would lie only when a substantial question of law is found to arise in the case.

In order to prove that the deceased had not died during the course of his employment with respondent no.5, the appellant-Insurance Company had produced Rahul Gupta, the person, who had been stated by the claimants to have employed Ram Kumar who had died during the course of his employment with Rahul Gupta. This witness had categorically stated that Ram Kumar had died during the course of his employment with him.

In this view of the matter, appellant **learned counsel** submission that the statement of the owner had not been properly appreciated by the Commissioner, may not merit consideration for entertaining Insurance Company **appeal**, particularly when no other evidence of any type whatsoever had been brought on records by the



appellant to disprove the claimant's version that Ram Kumar had died during the course of his employment with respondent no.5.

All that appellant's learned counsel wants is the re-appreciation of evidence which the Commissioner had considered while recording his categorical finding that Ram Kumar had died during the course of his employment with respondent no.5. This course, in my view, is impermissible, as the appellant cannot wriggle out from the admission that its witness Mr. Rahul Gupta had made during the course of his statement acknowledging that Ram Kumar had been employed by him as driver with his Car no. JK02N-9291.

Appellant's counsel's next submission that the driver of Car no. JK02N-9291 did not hold valid driving licence, is not substantiated as no evidence had been produced by the appellant before the Tribunal to prove the case which it had set up in this behalf.

Findings returned by the Commissioner after appreciation of evidence that the deceased had died during the course of his employment with respondent no.1 cannot thus be interfered with in the appeal.

Insurance Company's appeal, which does not raise any substantial question of law, is, accordingly, dismissed.

**(J. P. Singh)**  
**Judge**

**Jammu**  
**26.12.2008**  
Pawan Chopra

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

**561-A Cr.P.C No. 144/2008  
Cr.M.P No. 162/2008**

**Date of Order: 26.12.2008**

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**Mahant Prabhunand Giri                      Vs.                      State & Ors.**

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**Coram:**

***Mr. Justice J.P.Singh, Judge.***

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**Appearing counsel:**

For Petitioner (s)            : Mr. R.S.Jamwal, Advocate.

For Respondent(s)        :

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This petition under Section 561-A Cr.P.C, filed in the name of Mahant Prabhunand Giri through one Ishwar Dass, without any authority of the petitioner in his favour permitting and authorizing him to file this petition on his behalf, may not be maintainable.

Registry does not appear to have noticed, aforementioned defect in the petition.

Registrar Judicial is, accordingly, required to sound caution to the sub-ordinate staff not to entertain such type of unauthorized petition(s), in the absence of requisite authority in the person filing such petition(s) on behalf of the petitioner(s).

Perusal of 3<sup>rd</sup> Additional Sessions Judge, Jammu's order on petitioner's application too indicates filing of such type of application by Ishwar Dass seeking release of Mahant Prabhunand Giri, on bail. This application too appears to have been filed in the absence of any Vakalatnama of Mahant Prabhunand Giri or any authorization by the Mahant in favour of Ishwar Dass to move the bail application.

The practice of entertaining applications by Courts and Magistrates, on behalf of accused through persons having no authority to move such applications, needs to be discontinued forthwith,



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because such a course is neither countenanced by law nor would it advance the cause of justice.

Dismissing this application, Registrar Judicial is, accordingly, directed to circulate a copy of this order to all Magistrates and Sessions Judges in the State for their information.

**(J. P. Singh)**  
**Judge**

**Jammu**  
**26.12.2008**  
Pawan Chopra