

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

CIMA No. 319/2010  
CMA No. 922/2011  
And  
CIMA No. 325/2010

**Date of Decision:10.07.2012**

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Oriental Insurance Co. Ltd. v.	Sudesh Sharma and ors.
Sudesh Sharma and ors. v.	Oriental Insurance Co. ltd. & ors.

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### **Coram:**

**Mr. Justice J.P.Singh.**

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#### **Appearing Counsel:**

For the Appellant(s)	: Mr. Baldev Singh, Advocate.
For the Respondent(s)	: Mr. Raghu Mehta, Advocate.

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| i)  | Whether approved for reporting<br>in Press/Media | : | Yes/No. |
| ii) | Whether to be reported<br>in Digest/Journal      | : | Yes/No. |
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### **Judgment**

#### **CIMA No.319/2010:**

The appellant-Oriental Insurance Company limited has filed this Appeal questioning the Award dated 23.01.2010 of the Motor Accidents Claims Tribunal, Jammu whereby an amount of Rs.10,53,000/- (Rupees ten lac fifty three thousand only) was awarded as compensation to the Claimants for the death of Ashwani Kumar, an employee of the State Government in the Education Department, who died as a result of the injuries sustained in the Motor Accident on 06.04.2005.

The Appellant's learned counsel submitted that the insured vehicle having been driven in violation of the terms

and conditions of the Insurance Policy, the Company was erroneously held liable by the Tribunal to satisfy the Award and recover the amount covered thereby from the owner of the vehicle.

*Per contra*, the Claimants' learned counsel, justified the direction issued by the Tribunal to the appellant to satisfy the Award relying on the law laid down by the Supreme Court of India in *Prem Kumari and others verus Prahlad Dev and others*, reported as 2008 AIR SCW, 682.

I have considered the submissions of the learned counsel for the parties and am of the view that the direction issued by the Tribunal to the appellant to satisfy the Award with liberty to recover it from the owner of the Truck involved in the accident, cannot be faulted in view of the legal position settled in *Prem Kumari's* case referred to hereinabove where while dealing with the issue, it was held as follows:-

“It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and driving the vehicle in question completely at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the Insurance Company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive.”

There being no other challenge to the Award and the only plea raised by the Appellant's learned counsel having failed, this Appeal, therefore, deserves to be dismissed.

Ordered accordingly.

Registrar Judicial to release the amount payable to the Claimants in terms of the Award.

**CIMA No. 325/2010:**

During the course of the consideration of the Appeal, appellants' learned counsel did not press the Appeal.

CIMA No. 325/2010 is, therefore, dismissed.

**(J.P. SINGH)  
JUDGE**

JAMMU  
10.07.2012  
Parshant Sharma