

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 8187 of 2011

Decided on : 29.4.2017

Oriental Insurance Company

...Petitioner

Versus

Smt. Poonam Kumari & others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting? No

For the petitioner

Mr. Lalit K. Sharma, Advocate.

For the respondents :

**Mr. Anil Kumar, Advocate, vice
counsel, for respondent No. 1.**

Per Justice Ajay Mohan Goel, Judge

By way of present petition, the petitioner has challenged the award dated 30.4.2011 passed by the Court of learned Motor Accidents Claims Tribunal, Una in MAC No. 27 of 2009, *inter alia* on the quantum. Petitioner herein was respondent No. 2 before the learned Motor Accidents Claims Tribunal in Claim Petition.

2. Mr. Anil Kumar, learned vice counsel appearing for respondent No. 1 has submitted that in view of the law laid down by the Hon'ble Supreme Court in **United India Insurance Company Ltd. Versus Shila Dutta and others**, (2011) 10 SCC 509, which has been followed by this Court in **Oriental Insurance Company Ltd. Vs. Sh. Vikas Bhopal & others**,

C.W.P. No. 1749 of 2007, decided on 28th March, 2016, the present petition is not maintainable.

3. The contention of the learned counsel for respondent No. 1 is that the present petitioner being the contesting respondent before the learned Motor Accidents Claims Tribunal, has in law the right to challenge the award passed by the Motor Accidents Claims Tribunal on the grounds available to it, but the remedy is by way of filing an appeal under the Motor Vehicles Act and not by way of filing writ petition.

4. According to Dr. Lalit Sharma, learned counsel for the petitioner, the legal position as it existed when the writ petition was preferred by the petitioner, did not permit the insurer to assail the quantum by way of filing an independent appeal under the provisions of the Motor Vehicles Act and therefore writ petition was maintainable at the time when the same was filed. He further prayed that in order to do substantive justice to the parties, the petitioner may be permitted to withdraw the present petition with liberty to avail legal remedy available to him as per law.

5. I have heard the learned counsel for the parties and also gone through the judgments relied upon by them.

6. The fact is that the present writ petition was filed in the year 2011. Faced with this situation, Dr. Lalit Sharma, learned counsel for the petitioner submits that he may be

permitted to withdraw the present writ petition with liberty to pursue legal remedy available to the petitioner in law.

7. In my considered view, there is substance in the submission being made by Dr. Lalit Sharma and accordingly, the present petition is permitted to be withdrawn by the petitioner with liberty to challenge the award passed by the learned Motor Accidents Claims Tribunal, Una dated 30.4.2011, in accordance with law. It is made clear that the petitioner shall be at liberty to move an appropriate application for the purpose of computing limitation praying therein that the period spent by the petitioner pursuing this petition be condoned for the purpose of limitation.

8. With the said observations, the present petition is dismissed as withdrawn with liberty granted to the petitioner, as prayed for. No order as to costs.

(Ajay Mohan Goel)
Judge

April 27, 2017
(kalpana)

