



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No.470 of 2011

Reserved on: 01.04.2026

Date of Decision: 07.04.2026

Amit Enterprises

....Appellant

Versus

Ramawati and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹

For the appellant : Ms. Devyani Sharma, Senior Advocate, with Mr. Shivam Sharma, Advocate.

For the respondents : Mr. Kuldeep Singh, Advocate, for respondents No.1 to 4.
Mr. Rahul Mahajan, Advocate, for respondent No.5.

Sushil Kukreja, Judge

By way of instant appeal filed under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'), challenge has been laid to the orders dated 19.11.2011 & 28.11.2011, passed by the learned Commissioner, Employee's Compensation, Court No.2, Nalagarh, District Solan, HP, in Claim Petition No.9/2 of 2011/07, titled *Ramawati & ors. Vs. Amit Enterprises & anr.*,

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



whereby the claim petition filed by respondents No.1 to 4/ petitioners (hereinafter referred to as the petitioners) under Sections 21 & 22 of the Act, for grant of compensation on account of death of Satish Kumar, who was husband of petitioner No.1 and father of petitioners No.2 to 4, in an accident, was allowed and they were held entitled for compensation of Rs.2,44,024/-, which was to be paid by respondent No.1/ (appellant herein), alongwith interest @ 12% per annum from 30.07.2007 till deposit of the entire compensation amount. In addition, the petitioners were also held entitled to a sum of Rs.36,504/- (15% of compensation amount) as penalty.

2. Precisely the facts of the case, as emerge from the record, are that Satish Kumar was a workman allegedly employed by respondent No.1 (appellant herein) as helper, who had taken a contract from respondent No.2 (respondent No.5 herein). On 30.06.2007, Satish Kumar received a fatal electric shock while performing his duties, which resulted into his death. The deceased was holding a welding set and when he tried to remove the tape, he received an electric shock, due to which, he became unconscious. Thereafter, he was taken to the hospital, where the doctor had declared him brought dead. As per the



petitioners, the accident had taken place during the course of employment of the deceased with respondent No.1/appellant in the premises of respondent No.2 (respondent No.4 herein), due to lack of proper insulating equipment, like gloves which were not provided to him. At the time of his death, the deceased was 25 years of age and his the monthly wages were Rs.5,000/- and the petitioners were totally dependents upon him as he was the only earning member of the family. The petitioners requested the respondents to pay compensation, but no compensation was paid. Hence, the petitioners prayed for compensation to the tune of Rs.5 lacs alongwith interest.

3. The aforesaid claim put-forth by the petitioner, came to be resisted by the respondents by way of filing separate replies. In its reply, respondent No.1 (appellant herein), raised preliminary objections qua maintainability, jurisdiction and that the claim petition is hit by provisions of Section 75, Sub-Sections 2(b) & (3) of the Employees State Insurance Act. On merits, it was averred that the deceased was not its employee and it had no concern with him. It was further averred that the petition was filed just to extract money from respondent No.1 and since the deceased was not its employee, therefore, there was no question of paying the



compensation.

4. In the reply filed by respondent No.2 (respondent No.5 herein), it was averred that the deceased was appointed by respondent No.1 in the premises of respondent No.2 for the execution of electric work, which was given to it on contract. It was also averred that the respondents had supplied all necessary equipment to the deceased, but he negligently tried to do the connections of the welding set. It was averred that the minimum wages was being paid to the deceased and the petitioners were not entitled to any compensation.

5. On the basis of pleadings adduced on record by the respective parties, the learned Commissioner below, vide order dated 08.11.2008, framed the following issues:-

- 1. Whether the application is hit by Section 77(3) & 53 of E.S.I. Act and not maintainable, as alleged ?...OPR-1**
- 2. Whether the deceased was a workman under the respondent No.1 and died during the course of his employment under respondents, as alleged? ...OPA**
- 3. Whether the applicants are entitled for compensation, as alleged, if yes, from whom and to what extent? ...OPA**
- 4. Relief.**



6. After parties led their evidence, the claim petition was allowed and the petitioners were held entitled to compensation of Rs.2,44,024/-, which was to be paid by respondent No.1/ (appellant herein), alongwith interest @ 12% per annum from 30.07.2007 till deposit of the entire compensation amount. In addition, the petitioners were also held entitled to a sum of Rs.36,504/- (15% of compensation amount) as penalty.

7. Feeling aggrieved/dissatisfied, the appellant-respondent No.1 preferred the instant appeal against the impugned orders dated 19.11.2011 & 28.11.2011, passed by the learned Commissioner below, with a prayer to quash and set aside the same and consequently dismiss the application moved by the petitioners under Sections 21 & 22 of the Act.

8. On 10.01.2012, the appeal was admitted for hearing on the following substantial questions of law as well as on additional substantial question of law, formulated vide order dated 13.10.2025:-

“1. Whether the learned Commissioner is right in not dismissing the claim application being not maintainable in view of the specific provision of Section 75(3) and 53 of the Employee’s State Insurance Act?

2. Whether the learned Commissioner is right in imposing penalty under Section 4 A(3)(b) of the Act,



more particularly when employer employee relationship having not been proved, so far appellant is concerned?

3. Whether the learned Commissioner is right in holding that deceased was an employee of the appellant, more particularly, when the evidence of respondents in the form of PW-1 would go to show that it had failed to prove the relationship of employer and employee?"

9. I have heard learned Senior Counsel for the appellant and learned counsel for the respondents No.1 to 4 as well as learned counsel for respondent No.5 and also carefully examined the entire record.

10. Learned Senior Counsel for the appellant contended that the impugned orders are the result of complete misreading, misinterpretation as well as mis-appreciation of the evidence on record. She further contended that the learned Commissioner below had no jurisdiction to entertain the petition in view of the specific bar contained under Sections 75(2)(b), 75(3) & 53 of the Employees State Insurance Act. She also contended that the deceased was never employed by the appellant and, therefore, his name was not there in the list under the Employee's State Insurance Act and there was no occasion for the learned Commissioner below either to have awarded the compensation against the appellant or penalty as imposed by it.



11. On the other hand, learned counsel for respondents No.1 to 4/ petitioners vehemently contended that Satish Kumar was employed as helper by respondent No.1 (appellant herein) and died on 30.06.2007 during the course of the employment due to the fatal electric shock and the petitioners, being the dependents, are entitled for compensation from appellant .

12. Now the first question which arises for consideration before this Court is as to whether there was relationship of employer and employee between the appellant and Satish Kumar (deceased). PW-1 Ramvati, widow of the deceased, has clearly deposed that Satish Kumar was serving with respondent No.1, who had taken the work on contract from respondent No.2 and had died on 30.06.2007 due to the electric shock in the premises of respondent No.2. She was cross-examined at length by the learned counsel for the respondents, however, nothing favourable could be elicited from her cross-examination with regard to the employment of deceased Satish Kumar with respondent No.1. Although, learned Senior Counsel for the appellant contended that it was for the petitioners to prove that there was relationship of employer and employee between the parties and no document has been placed on record by the petitioners to show that Satish



Kumar was working with respondent No.1 as helper. However, in the peculiar facts and circumstances of the case, because of non-production of the documents, it cannot be said that there was no relationship of employer and employee between the appellant and the deceased. From the material available on record, it is manifest that respondent No.2 had given the contract of the work of execution of electric work to the appellant and respondent No.2 admitted that Satish Kumar was appointed by respondent No.1 in its premises. Respondent No.2, in its reply, further stated that it had supplied all necessary equipments to the worker, but Satish Kumar (since deceased) negligently tried to do the connections of the welding set and accordingly accident had resulted due to his own negligence.

13. Respondent No.2-Company also examined one Vivek Sharma, Assistant Manager, as RW-3, who deposed that the contract was given to respondent No.1 and proved on record introduction letter Ext. R-1 and work order Ext. R-2. He further deposed that respondent No.1 was getting the work done through labourer and the work was being supervised by Dinesh Kumar. He also deposed that the liability to compensate was of Amit



enterprises (respondent No.1). He stated that during the course of work, Satish Kumar got electric shock and died and workman was taken to the hospital by Amit and at that time, he was accompanying him.

14. Thus, in view of the entire evidence on record, it has become clear that the deceased was employed by respondent No.1 in the premises of respondent No.2 and he died during the course of employment due to electric shock as he was doing the electric work at the relevant time, i.e. on 30.06.2007. Therefore, it has been established on record there was relationship of employer and employee between the appellant and the deceased.

15. Learned Senior Counsel for the appellant next contended that the claim petition filed by the petitioners is not maintainable in view of specific bar as provided under Section 75(3) & 53 of the Employees State Insurance Act. She further contended that provisions of the Employees State Insurance Act, 1948 are applicable in the present case as respondent No.1 is registered with ESI. The appellant has also examined one Ami Chand, Manager ESI as RW-1, who proved on record ESI letter Ext. DW1/A. However, the appellant had not placed on record the details of the workers serving with it as on 25.06.2007, i.e. on the date of accident or the details of the workers registered with ESI.



Furthermore it is not the case of the appellant that Satish Kumar was insured and covered under the Employees State Insurance Act, 1948. No doubt, Sections 53 & 74 bar the jurisdiction of the Civil Court, but it is not the case of the appellant that Satish Kumar was covered under the Act so as to make out the case for exclusion of the jurisdiction of the Court below under the Workmen Compensation Act. Had it been the case of respondent No.1 that Satish Kumar was its employee and, therefore, covered under the Act, the jurisdiction of Civil Court would have been barred, but there is nothing on record to show that Satish Kumar was insured and covered under the Employees State Insurance Act, 1948, hence, this contention of the learned Senior Counsel, being devoid of any merits, is rejected.

16. Learned Senior Counsel for the appellant next contended that the learned Commissioner below had committed an error by imposing penalty upon it. However, this contention is also devoid of any force as no reason has been assigned by the appellant for not depositing/making payment of the amount of compensation in time as stipulated under the Act. Therefore, the learned Commissioner below has rightly held the appellant liable to pay the amount of penalty @ 15% w.e.f. 30.07.2007 till deposit



of the entire compensation amount. The substantial questions of law are answered accordingly.

17. In view of what has been discussed hereinabove, no interference is required in the impugned orders dated 19.11.2011 and 28.11.2011, passed by the learned Commissioner below and, as such, the appeal, which sans merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

April 07, 2026
(V.Himalvi)