

the issue before the Hon'ble Apex Court was in regard to opportunity to supply particulars as envisaged under Section 86(5), which the Apex Court allowed.

45. The present case is not for bringing on record material particulars which have been left while filing the election petition, but through proposed amendment, material facts are being brought on record which goes to the root of the case and cannot be allowed at this stage.

46. Section 81 prescribes the time limit of 45 days for presentation of an election petition from the date of declaring of result. The amendment has been sought during the pendency of election petition which cannot be granted as material facts which need to have been pleaded in the election petition under Section 83(1)(a) were left and lacuna cannot be filled subsequently.

47. In view of said fact, the amendment application Paper No. A-34 moved by petitioner for amending the election petition stands dismissed.

48. As the petitioner has not disclosed the material facts in his election petition and had tried to subsequently get the election petition amended, the application moved by respondent no. 1 under Order VII Rule 11(a) CPC being Paper No. A-28 for dismissing the election petition for non disclosure of cause of action stands allowed.

49. As the application under Order VII Rule 11(a) CPC has been allowed, the election petition fails and stands dismissed for non disclosure of cause of action.

50. Let the substance of this decision be intimated to the Election Commission and the Speaker of the Uttar Pradesh Legislative Assembly. A certified copy of this decision be sent to the Election Commission of India forthwith.

(2025) 5 ILRA 1598
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.05.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal From Order No. 217 of 2025

Future General India Insurance Company Ltd. ...Appellant

Versus

Ajay Kumar Singh & Ors. ...Respondents

Counsel for the Appellant:

Tarun Kumar Misra

Counsel for the Respondents:

Vyas Narayan Shukla

Civil Law- The Employee's Compensation Act, 1923-Sections 3 & 4A - The Central Motor Vehicle Rule, 1989 - Rule 18--- Mere

renewal of the license would not be and cannot be indicative of the fact that the claimant does not suffer from the 40 % permanent physical disability as duly certified by the concerned Chief Medical Officer--- Insurance Co. will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Act, 1923 on the conjoint operation of Sections 3 & 4 (A) and sub Section 3 (A) of the Act, 1923--- Owner & the insurance Co. jointly and severally liable to pay the awarded amount.

Appeal dismissed. (E-15)

List of the cases referred-:

Ved Prakash Garg Vs Premi Devi & ors.-AIR 1997 SC 3854

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard Sri Tarun Kumar Mishra, learned counsel appearing on behalf of the appellant as well as Sri V.N.Shukla, learned counsel appearing on behalf of the respondent no. 1.

2. Under challenge is the order dated 05.03.2025 passed by the learned Commissioner under The Employee's Compensation Act, 1923 (hereinafter referred to as 'Act, 1923') whereby the learned Commissioner has awarded a sum of Rs. 13,45,336/- along with interest at the rate of 12 % per annum to the claimant/respondent no. 1 herein.

3. Bereft of unnecessary details, the facts as set forth by the learned counsel for the appellant is that an accident is said to have occurred on 08.10.2022 whereby the claimant who was working as a driver of a petrol tank met with an accident. On account of the said accident, the claimant became 40 percent permanent physically handicapped. The certificate dated 02.01.2024 was issued by the Chief Medical Officer, Amethi, a copy of which is part of annexure 2 to the application for interim relief.

4. Upon filing of a claim application before the learned Commissioner under the Act, 1923, the appellant herein and the other persons put in appearance before the learned Commissioner. The learned Commissioner after examining the evidence as led before it as well as the physical handicapped certificate as issued to the claimant/respondent no. 1 herein as well as

examining the letter sent by the Chief Medical Officer, Amethi dated 05.12.2024 (who had issued the aforesaid disability certificate) which also indicated that the claimant is having 40 percent permanent disability, has awarded the aforesaid amount.

5. Raising a challenge to the aforesaid award, the instant appeal has been filed.

6. The grounds as urged by the learned counsel for the appellant while raising a challenge to the aforesaid award are (a) that the claimant was a holder of the driving license which also included the license for hazardous vehicle. The accident is said to have occurred on 08.10.2022 and subsequent thereto, the claimant has applied for renewal of the license so far as it pertains to driving of a hazardous vehicle which has been renewed by the Regional Transport Officer, Amethi for the period from 18.01.2024 to 08.07.2025. Placing reliance on the provisions of Rule 18 of the Central Motor Vehicle Rule, 1989 (hereinafter referred to as 'Rules, 1989') read with Form (2) and Form 1 (A) which pertains to Rule 18 of the Rules, 1989, the contention is that the form 2 categorically provides for a self declaration as to the physical fitness to be made which stipulates in para (c) as to whether the person applying for renewal of the license has lost either a hand or foot or he suffers from any defects or muscular power which must have been answered in the negative by the claimant to have the renewal done. Likewise, Form 1 (A) provides in Clause 2 (II) (f) which is a medical certificate to be issued by the doctor as to whether the applicant has any defect or deformity or loss of member which would interfere with the efficient performance of his duties as a

driver and obviously the same must have been answered as in negative so as to entail the renewal of the license of the claimant of driving of the hazardous vehicle which aspect of the matter has not been considered by the learned Commissioner in its proper perspective inasmuch as once the renewal of the license for a hazardous vehicle has been done consequently, it cannot be said that the claimant has suffered from any physical handicap which aspect of the matter has not been considered by the learned Commissioner and thus the impugned award merits to be set aside & (b) that in terms of Section 4 A of the Act, 1923, the liability of any compensation is of the employer but the learned Commissioner has patently erred in directing the insurance company i.e the appellant to pay the aforesaid amount.

8. No other ground has been urged.

7. On the other hand, Sri V.K.Shukla, learned counsel for the respondent no. 1 is unable to respond to both the aforesaid arguments as advanced by the learned counsel for the appellant but nevertheless, has supported the order impugned.

8. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

9. From a perusal of records it emerges that an incident is said to have occurred on 08.10.2022 wherein the claimant who was a driver of a hazardous vehicle, met with an accident which has resulted in he developing 40 % permanent physical disability. Permanent physical disability certificate has also been issued to the claimant on 02.01.2024. Subsequent thereto, the claimant had applied for

renewal of his license so far as it pertains to driving of a hazardous vehicle which has been renewed for the period from 18.01.2024 to 08.07.2025.

10. Upon the claim application being filed before the learned Commissioner claiming compensation for the 40 % percent physical disability as suffered by the claimant, the insurance company as well as the owner of the vehicle put in appearance and contested the claim.

11. The sheet anchor of the argument of the learned counsel for the appellant is that once the renewal of a hazardous vehicle license of the claimant has been done subsequent to the accident i.e for the period from 18.01.2024 to 08.07.2025 and the accident itself had occurred on 08.10.2022 while the permanent physical handicapped certificate has been issued on 02.01.2024 accordingly, considering the provisions of Rule 18 of the Rules, 1989 read with form 2 & form 1 (A) which indicates that person claiming renewal should not be suffering from any physical disability which is also a sine qua non to the renewal of the license of a hazardous vehicle on part of the person seeking renewal consequently, the renewal of the license of a hazardous vehicle is itself indicative of the fact that the claimant is not suffering from any physical handicap which aspect of the matter not been considered by the learned tribunal.

12. The other ground as urged by the learned counsel for the claimant is that in terms of Section 4 A of the Act, 1923, the liability to pay the compensation is of the owner of the vehicle but arbitrarily, □ the insurance company has been directed to pay the compensation.

13. The aforesaid grounds are found to be patently fallacious and misconceived.

14. So far as the renewal of the license of the hazardous vehicle which has been done subsequent to the accident which has occurred on 08.10.2022 and the physical handicap certificate having been issued on 02.01.2024 which indicates 40 % physical disability, merely because the renewal of the license of hazardous vehicle has been done by the concerned Regional Transport Office on the basis of an application being filed obviously by the claimant and merely because form (2) along with form 1 (A) indicates that the person seeking renewal has to certify that he does not suffer from any defect of muscular power and for the doctor concerned to indicate that the deformity of the person applying for renewal of the license would not interfere with the efficient performance of his duties the same would not entail that the claimant is not suffering from a physical handicap more particularly when the physical handicap certificate dated 02.01.2024 stands good as of date and has also been certified to be genuine in terms of the letter that has been issued by the office of the Chief Medical Officer, Amethi dated 05.12.2024 as specifically finds placed in internal page 4 of the order passed by the learned Commissioner. It could be that a person aggrieved by the renewal of the license of the claimant for a hazardous vehicle may approach the concerned authorities contending that the license has been renewed erroneously but mere renewal of the license would not be and cannot be indicative of the fact that the claimant does not suffer from the 40 % permanent physical disability as duly certified by the concerned Chief Medical Officer.

15. So far as ground (b) is concerned i.e in terms of Section 4 A of the Act, 1923, the liability for payment of the compensation is of the employer and not of the insurance company, suffice it to say that the aforesaid ground has been considered by the Apex Court in the case of **Ved Prakash Garg Vs. Premi Devi and Ors-AIR 1997 SC 3854** wherein the Apex Court with respect to the provisions of the Act, 1923 as well as the Act, 1988 has held that insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Act, 1923 on the conjoint operation of Sections 3 & 4 (A) and sub Section 3 (A) of the Act, 1923.

16. For the sake of convenience, the relevant observations of the Apex Court in the case of **Premi Devi (supra)** are reproduced below:-

".....In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section Act on the conjoint operation of Section and Section 4A sub-additional amount of compensation y way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4(3)."

17. In this regard, it would be apt to indicate that before the learned Commissioner, the insurance policy which was valid from 06.05.2022 to 05.05.2023 as issued by the appellant herein had been filed, and that the respondent no. 1 with whom the claimant was working as a driver, was duly insured with the

respondent no. 3 therein i.e the insurance company which is the appellant. Moreover, the learned Commissioner has held that owner & the insurance company jointly and severally liable to pay the awarded amount.

18. Accordingly, considering the aforesaid finding as recorded by the learned Commissioner along with the judgment of the Apex Court in the case of **Premi Devi (supra)**, the said ground is also rejected.

19. Keeping in view the aforesaid discussion, no case for interference in the impugned award is made out. Accordingly, the appeal is dismissed.

(2025) 5 ILRA 1602
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.05.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order No. 664 of 2017

Oriental Insurance Company Ltd.
...Appellant
Versus
Dayawati Gupta & Ors. ...Respondents

Counsel for the Appellant:
 Subhash Chandra Gulati

Counsel for the Respondents:
 Priyam Mishra, Anil Kumar Tiwari,
 Sadanand

Civil Law-The Motor Vehicles Act,1988-Sections 169(2) & 173 - The Evidence Act,1872-Section 114(g)--- The eye witness has been produced and nothing could be extracted from him, which may create any doubt about veracity of his evidence and indicate that he had not seen the accident--- Once an eye witness has been produced, who proved the accident, merely because a person

who was in the car has not been produced cannot be a ground for not believing the testimony of the eye witness---The tribunal determined the income of the deceased on the basis of evidence produced before it. Since no contrary evidence could be produced or shown, no illegality or error in the income of the deceased determined by the tribunal--- The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed-- Merely because the application moved by the appellant for summoning and providing copies of the income tax return on the date of judgment was dismissed by the tribunal, it cannot be said that the power has not been exercised by the tribunal because the Court has also to see that process of law may not be misused to delay or stall the proceedings---**Petition dismissed.** (E-15)

List of the cases referred-:

1. Oriental Insurance Co. Ltd. versus Premlata Shukla & ors.; 2007(3) T.A.C. 11 (S.C.)
2. Mangla Ram versus Oriental Insurance Co. Limited & ors.Law Finder Doc Id # 999611 (2018 AIR SC 1900)
3. Anita Sharma & ors.versus The New India Assurance Co. Limited & anr.Law Finder Doc Id # 1779856; (2021 AIR SC 302).
4. Parashuram Pal & ors.versus Ramlakhan & anr.F.A.F.O. No.956 of 2013
5. Shriram General Insurance Co. Limited versus Smt. Hem Lata & ors.
6. Malarvizhi & ors.versus United Insurance Co. Limited & anr.2020 (1) T.A.C. 328 (S.C.)
7. Gopal, Krishnaji Ketkar versus Mahomed Haji Latif & ors. AIR 1968 Supreme Court 1413

(Delivered by Hon'ble Rajnish Kumar, J.)