

**(2013) 01 JH CK 0021**

**Jharkhand High Court**

**Case No:** LPA No. 307 of 2012

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Shabbir Hussain and Others

RESPONDENT

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**Date of Decision:** Jan. 24, 2013

**Citation:** (2013) 3 JLJR 31

**Hon'ble Judges:** Prakash Tatia, C.J; Jaya Roy, J

**Bench:** Division Bench

**Advocate:** Alok Lal, for the Appellant; Ananda Sen, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Heard the counsel for the parties. The appellant-insurance company is aggrieved against the judgment dated 19.6.2012 by which the writ petition of the petitioner, dependent of one employee, Md. Isha was allowed and it has been directed that the claim of the petitioner will be paid to the petitioner with 12 percent interest per annum. Learned counsel for the appellant has submitted that the writ petition was not maintainable in view of the fact that it was not statutory contract and it has been submitted that the claim was barred by the time. It is submitted that there was M.O.U. between the C.C.L. and the Insurance Company. It was specifically provided that the claim will be submitted within 90 days from the time of the occurrence of the event. In this case, however, the claim has been submitted after six years. Therefore, in all counts, the Insurance Company was not liable.

2. We are of the considered opinion that as per the document placed on record by the Insurance Company Annexure-1 itself it is clear that in spite of the M.O.U., containing the period of limitation of 90 days for submitting claim to the Insurance Company, yet there was decision taken by the Insurance Company itself that they will extend the period of limitation and by this Annexure-1 dated 25.6.2003, it was decided that all prior claim can be submitted up to 15.8.2003. Therefore, in these

facts and circumstances, it cannot be said that the period of limitation prescribed is mandatory condition and may not have been relaxed in any circumstances. Therefore, we are not impressed by the arguments that the claim became barred by time merely because so has been provided in the contract between the insurance Company and the CCL. The contract was of the insure, to give the benefit to the employees and it was not only for the benefit of the employer, therefore, in the background of these facts, the fixation of the time in the M.O.U. as well as by communication dated 25.6.2003 was as term in terrorum so as to see that the matter should not be delayed.

3. In view of the above, we cannot hold that the claim became barred by time so as to deprive the benefit of the insurance for which there was no dispute that the premium was already paid. Therefore, in view of the above reasons, we do not find any reason in the L.P.A. and hence the L.P.A. is dismissed, and the stay petition is also dismissed.