



2025:UHC:8351

Reserved on 04.09.2025

Delivered on 18.09.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 318 of 2023
(Under Section 173 of the Motor Vehicle Act, 1988)

The New India Assurance Company Limited

.....Appellant

Versus

Smt. Sajiya Khanam and Others

.....Respondents

With

CROSS Objection No. 1 of 2023

Smt. Sazia Khanam and Others

.....Appellants

Versus

The New India Assurance Company Limited

.....Respondent

Presence:-

Mr. V.K. Kohli, learned Senior Counsel assisted by Mr. Kanti Ram Sharma and Mr. I.P. Kohli, learned counsel for the appellant/Insurance Company

Mr. Z.U. Siddiqui, learned counsel for respondent nos. 1 to 7/claimants.

Mr. Pradeep Chamyal, learned counsel for respondent no.8.

Hon'ble Mr. Alok Mahra, J. (Per.)

The present appeal has been filed against the judgment and award dated 29.03.2023 passed by the Motor Accident Claims Tribunal/1st Additional District Judge, Haldwani, District Nainital in M.A.C.P. No. 36 of 2021, whereby a total compensation of ₹52,70,000/- was awarded in favour of the claimants and against the appellant/Insurance Company. The award was subsequently reviewed on 17.11.2023 and 14.05.2024, resulting in the enhancement of the compensation to



₹65,53,300/-.

2. The brief facts of the case, as per record are that on 21.12.2019 at approximately 11:30 a.m., the deceased, Imran Khan, was riding his motorcycle bearing registration number UP26AC5836 near SIDCUL Police Chowki, Sitarganj, at a slow speed. At that time, a tractor trolley bearing registration number UK06CB3952 approached at a very high speed and, while overtaking another vehicle, came in the wrong direction and collided with the motorcycle resulting in the death of husband of respondent no.1. The driver of the tractor trolley failed to apply brakes, and due to its high speed, the collision could not be avoided. The accident was thus attributed to the negligence of the tractor trolley driver. The police promptly reached the scene, and the deceased was taken to Government Hospital, Sitarganj. Thereafter, the body was sent to Government Hospital, Khatima, where the postmortem examination was conducted. The police promptly reached the scene, and the deceased was taken to Government Hospital, Sitarganj. Thereafter, the body was sent to Government Hospital, Khatima, where the postmortem examination was conducted. The deceased subsequently underwent a post-mortem examination. At the time of his death, the deceased, aged 37 years, was a healthy civil engineer engaged in contracting work at SIDCUL. The claimants produced Income Tax Returns for the years 2018-19 and 2019-20 reflecting an annual income of ₹3,51,329/- and ₹3,58,488/- respectively. The deceased was the sole earning member of his family. Accordingly, his widow, children, mother, and unmarried sisters filed a claim petition seeking compensation of ₹85,00,000/-.



3. The claimants produced documentary evidence including photocopies of the insurance policy, panchanama of the deceased, copy of the FIR, death certificate, Aadhar card, driving license, birth certificates, educational qualification certificates, handicap certificate of claimant no.6 (sister), income tax records of the deceased, and post-mortem report. Oral evidence was led by claimant no.1 (wife) and PW2, Sehnewaj Hasmi.

4. On behalf of the appellant/Insurance Company, documentary evidence was filed, including the registration certificate of vehicle UK06CB3278, insurance certificate, certified permit, driving license, fitness certificate, and Aadhar card of the vehicle owner.

5. On the basis of the pleadings and evidence, the Tribunal framed the following issues:

i) Whether the deceased, riding his motorcycle on 21.12.2019, collided with a trolley driven rashly and negligently by its driver while overtaking another vehicle, resulting in fatal injuries?

ii) Whether the accident occurred due to the deceased's own rash or negligent driving, or whether contributory negligence was involved?

iii) Whether the claim petition is vitiated by non-impleading of the motorcycle's owner, driver, and insurance company as parties?

iv) Whether the offending vehicle was driven by a valid licensed driver and covered by insurance on the date of the accident?

v) Whether the claimants are entitled to compensation, and if so, to what extent and from whom?

6. The learned Tribunal, after considering the pleadings and evidence held that the accident was



caused by the negligence of the tractor trolley driver and awarded ₹52,70,000/- as compensation to the claimants. Subsequently, by orders dated 17.11.2023 and 14.05.2024, the compensation was enhanced first to ₹65,30,000/- and later to ₹65,53,300/- respectively.

7. Learned senior counsel for the appellant/Insurance Company submitted that the compensation award was wrongly based on photocopies of the Income Tax Returns for the years 2018-19 and 2019-20, which were neither properly proved nor admissible. It was further argued that the tribunal failed to take into account that the income tax amounts for both years had been refunded. It was also contended that the deceased's occupation as a contractor lacked documentary proof and that contributory negligence by the deceased could not be ruled out, as sufficient space on the road existed. The site plan was ignored, and the accident occurred in the middle of the road.

8. Learned Senior Counsel further contended that the Tribunal committed a grave error in reviewing and enhancing the compensation awards on two separate occasions, which was wholly unauthorized and beyond its jurisdiction. It was argued that firstly after passing the award, the Tribunal became functus officio and, in the absence of any statutory provision permitting a review on merits, it lacked the authority to reopen or augment the compensation. Additionally, it was submitted that the Tribunal's reliance on presumptive income for the years subsequent to the date of the deceased's demise was legally untenable, as it was contrary to established principles governing compensation and the determination of income based



solely on verifiable facts available at the time of death.

9. Learned senior counsel also challenged the award of ₹40,000/- towards consortium to each of the claimant separately totaling ₹2,00,000/-, citing the judgment in ***National Insurance Company Limited v. Pranay Sethi & Ors., (2017) 16 SCC 680***, which mandates that the total consortium compensation should be ₹40,000/- for all claimants collectively. Reliance was also placed on ***New India Assurance Co. v. Sonigra Juhi Uttamchand, (2025) 3 SCC 23*** to assert that photocopies of documents are inadmissible unless corroborated and proven.

10. Learned counsel for the claimants, on the other hand, submitted that the Tribunal duly considered the evidence and exercised its discretion lawfully. The review and enhancement orders were justified, as the Tribunal acted upon discovering errors apparent on the record. The photocopies of the ITR were admissible as secondary evidence in light of corroboration and the absence of discrepancies. The Tribunal's findings on contributory negligence and loss of consortium were consistent with the evidence and established legal principles.

11. Heard learned counsel for the parties and perused the material available on record.

12. The principal issues urged by learned counsel for the appellant for determination are: (i) whether the Tribunal was competent to review its award; (ii) whether reliance on photocopies of the Income Tax Returns was permissible or admissible; (iii) whether the compensation



awarded under the head of consortium was justified.

13. Learned Senior Counsel for the appellant drew the attention of this Hon'ble Court to Rule 223 of the *Uttarakhand Motor Vehicles Rules, 2011* (hereinafter referred to as 'the Rules, 2011'), which specifies that the provisions of the Code of Civil Procedure, 1908 (CPC) shall apply to proceedings before the Claims Tribunal, except that Order 47 Rule 1 CPC is not made applicable in such proceedings. He further submitted that the provisions of Order XLVII Rule 1 CPC, which provide for review of judgments, are not applicable to proceedings under the Motor Accident Claims Tribunal (MACT) framework.

14. Review is a creature of status that can be invoked only where the relevant procedural or substantive provisions are expressly applicable. In the absence of such express applicability in MACT proceedings, no inherent power exists to review an award on merits.

15. The Hon'ble Supreme Court delivered a significant judgment in the case of **Malleeswari Vs. K. Suguna and Another, (2025) SCC OnLine SC 1927** wherein the Hon'ble Court emphasized the limited scope of review under Section 114 and Order XLVII of the Civil Procedure Code (CPC). It reiterated that a review is not an appeal in disguise and cannot be used to re-hear a case or substitute one view for another. It is also held that the grounds for review are narrow and include discovery of new and important evidence; a mistake or error apparent on the face of the record; any other sufficient reason analogous to the above.



16. Similarly, the Hon'ble Supreme Court, in ***Kamlesh Verma v. Mayawati & Ors., (2013) 8 SCC 320***, clarified that review is maintainable only in the following circumstances:

“(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the appropriate time;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.”

17. Similarly, in ***Moran Mar Basselios Catholicos and Other Vs. Most Rev. Mar Poulouse Athanasius and Others, (1954) 2 SCC 42***, the Hon'ble Apex Court has enumerated the principles under which a review is not maintainable:

“(i) A mere repetition of old or overruled arguments is not sufficient to reopen concluded adjudications;

(ii) Minor mistakes of inconsequential import cannot justify review;

(iii) Review proceedings cannot be equated with an original hearing of the case;

(iv) Review is not maintainable unless the material error, manifest on the face of the record, undermines its soundness or results in miscarriage of justice;

(v) Review is not an appeal in disguise where erroneous decisions are merely re-heard and corrected, but lies only for patent errors;

(vi) The mere possibility of two views on a subject cannot be a ground for review;

(vii) The error apparent on the face of the record should not be one that requires fishing out or searching into details;

(viii) Appreciation of evidence on record is a matter exclusively within the domain of the appellate court and cannot be revisited in a review petition;

(ix) Review is not maintainable where the same relief sought at the time of arguing the main matter had already been negated.”

18. Furthermore, the Hon'ble Apex has held in numerous cases that a review is maintainable only where



there is an error apparent on the face of the record, and questions of fact cannot be grounds for review. In light of the above principles, the orders dated 17.11.2023 and 14.05.2024 cannot be sustained in the eyes of law and same are deserves to be set aside.

19. Regarding the second point on whether photocopies of the Income Tax Returns (ITRs) can be used as proof of the deceased's income, it is submitted that certified or verified copies of documents are allowed as secondary evidence under the Indian Evidence Act, 1872, if their authenticity can be confirmed. In *State of U.P. Vs. Raj Narain & Others (1975) 4 SCC 428*, the Supreme Court held that secondary evidence can be relied upon when the original document is not available and its genuineness is proven. In the case of *Union of India & Others v. Dhanwanti Devi & Others (1996) 6 SCC 44*, it was confirmed that copies certified by public authorities are admissible as secondary evidence if they are shown to be authentic. Therefore, photocopies of the ITRs, once properly served to the parties and verified, can be accepted as secondary evidence to prove the deceased's income. Any objection to this must be raised at the time the document is being proved and cannot be raised later.

20. In this case, the Insurance Company did not object to the photocopy of the ITR during the proceedings before the Claims Tribunal, and the authenticity of the documents was not challenged. Moreover, the deceased, an Engineer Graduate working as a contractor, had a reasonable income consistent with his work. Accordingly, the second issue regarding admissibility of the ITR copies is decided against the appellant. The claimants'



documentary evidence is accepted as secondary evidence and no further objection can be raised at this stage.

21. As regards the third issue related to the justification award of compensation under the head of consortium was justified. In the case of ***New India Assurance Company Limited v. Somwati and connected appeals, (2020) 9 SCC 644***, wherein Hon'ble Supreme Court after considering *Pranay Sethi v. Union of India* and *United India Insurance Co. Ltd. v. Satinder Kaur alias Satvinder Kaur and others (2020 SCC Online 410)*, has held that compensation under the head of loss of consortium is payable to all eligible dependents, namely, the spouse, children, and parents. The Court clarified that consortium includes spousal, parental, and filial consortium, and each eligible dependent is entitled to a separate award. The relevant observations from paragraphs 31, 32, and 33 are summarized below:

31. In *Magma General Insurance Co. Ltd. v. Nanu Ram and others*, the two-Judge Bench awarded Rs. 40,000 each to the father and sister of the deceased for loss of filial consortium, noting that compensation should be governed by the principles laid down in *Pranay Sethi*.

32. A three-Judge Bench in *United India Insurance Co. Ltd. v. Satinder Kaur alias Satvinder Kaur* reaffirmed the view in *Magma General Insurance Co. Ltd.*, holding that compensation in death cases should be awarded only under three conventional heads:

- (a) Loss of Estate
- (b) Loss of Consortium
- (c) Funeral Expenses

The Court emphasized that these heads cannot be determined on a percentage basis but must be quantified on a reasonable foundation, taking into account factors such as price index fluctuations and bank interest rates.



The recommended compensation amounts are:

Loss of Estate – Rs. 15,000

Loss of Consortium – Rs. 40,000

Funeral Expenses – Rs. 15,000

These amounts should be enhanced by 10% every three years to maintain consistency.

33. The Court elaborated on the concept of consortium:

- *Loss of Consortium was traditionally confined to spousal rights relating to companionship, care, comfort, affection, and sexual relations. The Court expanded this to include parental and filial consortium as well.*
- *Spousal Consortium compensates for the loss of company, care, affection, guidance, and intimacy following the death of a spouse.*
- *Parental Consortium allows children to claim compensation for the loss of care, protection, and guidance upon the premature death of their parents.*
- *Filial Consortium recognizes the profound shock and grief parents suffer when losing a child and compensates for the loss of love, affection, and companionship.*

The Court noted that many jurisdictions globally, including the United States and Australia, recognize such claims as non-pecuniary damages, emphasizing the emotional and psychological loss rather than mere economic detriment. The Motor Vehicles Act, 1988, being beneficial legislation, aims to provide relief to victims or their families in cases of genuine claims. Accordingly, the Court held that:

- Parents are entitled to compensation for the loss of consortium upon the death of minor or unmarried children.
- Children are entitled to compensation for parental loss in accidents.

22. The Hon'ble Apex Court concluded that compensation under the head of 'loss of consortium' should be awarded uniformly in accordance with the recognized principles. Therefore, there is no infirmity in



the award passed by the learned Tribunal in granting compensation under this head separately to each claimant at ₹40,000/- each, amounting to a total of ₹2,00,000/-.

23. In view of the foregoing, the judgments and orders dated 17.11.2023 and 14.05.2024 are hereby set aside. The impugned judgment and award dated 29.03.2023, passed by the Motor Accident Claims Tribunal/1st Additional District Judge, Haldwani, District Nainital in M.A.C.P. No. 36 of 2021, wherein a total compensation of ₹52,70,000/- was awarded in favor of the claimants and against the appellant/Insurance Company, is upheld. The appellant/Insurance Company is directed to pay the compensation to the claimants in accordance with the proportion determined by the trial court's judgment.

24. The appeal is accordingly disposed of.

25. The Appeal from Order No. 318 of 2023 filed by the appellant/Insurance Company is disposed of by upholding the judgment and award dated 29.03.2023 passed by the learned Tribunal. At the same time, the claimants' cross-objection for enhancement of compensation is also examined. The claimants argued that the deceased's income was fully proven and not liable for deductions under income tax, as the exemption limit was ₹7,00,000 and the applicable tax slabs would not reduce the amount. They further contended that the Tribunal's deductions were unfair. Relying on the decision in *Pranay Sethi v. Union of India*, they claimed that compensation should be increased by 10% per year and by 20% from October 2017 onwards. They also challenged the post-claim interest rate, stating that



applying 6.5% interest from the date of filing the claim was improper.

26. After a thorough examination of the case records, this Court finds no merit in the claimants’ submissions. The Tribunal carefully scrutinized the deceased’s income tax returns and, after verification of the documents, correctly applied the requisite deductions in accordance with law. Moreover, the Tribunal’s decision to award post-claim interest at 6.5% per annum is in consonance with established jurisprudence and principles governing compensation awards. No error or infirmity is evident in the judgment and award passed by the Tribunal.

27. Accordingly, CROSS OBJECTION No. 1 of 2023 filed by the claimants for enhancement of compensation is dismissed.

28. Pending applications, if any, are also disposed of.

(ALOK MAHRA, J.)

Dated: 18.09.2025

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