

HIGH COURT OF UTTARAKHAND AT NAINITAL
DAILY LOK ADALAT

Appeal from Order No. 549 of 2019

Mukesh Giri and another

.....Appellants

Versus

Rashid Ali and another

.....Respondents

Present:

Mr. Nikhil Singhal, Advocate for the appellants.

Mr. Prabhat Pande, Advocate for respondent no.2/Insurance Company.

Daily Lok Adalat Award

Hon'ble Rajesh Tandon, J. (Retd.)

Mahesh Chandra Pant, Advocate / Member

The present appeal has been filed by the owner namely appellant no.1 and 2 praying that the liability be shifted on the respondent no.2 Insurance Company. The tribunal vide its order 23.08.2019 has passed the following orders: -

आदेश

याची द्वारा प्रस्तुत याचिका विपक्षी संख्या 3 श्रीराम जनरल इंश्योरेंस कंपनी लिमिटेड के विरुद्ध मुबलिग 5,35,565/- (पांच लाख पैंतीस हजार पांच सौ पैसठ) रुपये प्रतिकर हेतु स्वीकार की जाती है। याची राशिद अली उपरोक्त धनराशि पर याचिका दायर किये जाने की तिथि से उक्त धनराशि की अदायगी तक 6 प्रतिशत वार्षिक साधारण ब्याज भी प्राप्त करने का अधिकारी होगा। विपक्षी संख्या 3 श्रीराम जनरल इंश्योरेंस कंपनी लिमिटेड को निर्देशित किया जाता है की वह प्रतिकर की उपरोक्त धनराशि मय ब्याज 30 दिन के भीतर अधिकरण में जमा करना सुनिश्चित करें। यह भी स्पष्ट किया जाता है की विपक्षी संख्या 3 श्रीराम जनरल इंश्योरेंस कंपनी लिमिटेड को प्रतिकर की उपरोक्त धनराशि वाहन के पंजीकृत स्वामी विपक्षी संख्या 1 मुकेश गिरी तथा वाहन चालक विपक्षी संख्या 2 रियाज उर्फ लालू से संयुक्ततः व पृथक - पृथक रूप से वसूल करने का अधिकार प्राप्त है। प्रतिकर की उक्त धनराशि मय ब्याज एकाउंट पेयी चेक के द्वारा याची को बाद उचित शिनाख्त अदा की जाएगी।

दिनांक: 23.08.2019

(सुशील तोमर)

मोटरयान दुर्घटना दावा अधिकरण/
प्रथम अपर जिला एवं सत्र

न्यायाधीश,

रुड़की, जिला हरिद्वार।

आज यह निर्णय एवं आदेश मेरे द्वारा हस्ताक्षरित एवं दिनांकित कर
खुले न्यायालय में सुनाया गया।

दिनांक: 23.08.2019

(सुशील तोमर)

मोटरयान दुर्घटना दावा अधिकरण/
प्रथम अपर जिला एवं सत्र न्यायाधीश,
रुड़की, जिला हरिद्वार।

2. In fact, in spite of the liability of the insurance company the liability has been shifted by the tribunal on the owner Rashid Ali. On 06.01.2025 the following order was passed by the Hon'ble Court as will appear from paragraph no.3 that there is possibility of amicable settlement between the parties in view of the judgment of the Hon'ble Supreme Court in the case of ***“Mukund Dewangan vs. Oriental Insurance Company Limited, (2017) 14 SCC 663”***. The judgment and order dated 06.01.2025 passed by the Hon'ble High Court is quoted as hereunder:-

“Mr. Nikhil Singhal, counsel for the appellants.

2. Mr. Prabhat Pande, counsel for the respondent no.2/Insurance Company.

3. Learned counsel for the parties would submit that there is possibility of amicable settlement between the parties in view of the judgment of Hon'ble Supreme Court in the case of ***‘Mukund Dewangan vs. Oriental Insurance Company Limited, (2017) 14 SCC 663’***, therefore, the case may be listed before the Permanent Lok Adalat.

4. In view of the above, parties are directed to appear before the Permanent Lok Adalat on 09.01.2025.

5. Thereafter, **list this matter before this Court on 11.02.2025.**

6. Interim order dated 01.11.2023 to continue till the next date of hearing.”

3. Thereafter another order was passed by the Hon'ble Court on 11.02.2025 to this extent that the dispute remains only between the owner and the insurance company. The order passed by the Hon'ble Court on 11.02.2025 is reproduced below:-

“ Mr. Nikhil Singhal, counsel for the appellants.

2. Mr. Prabhat Pande, counsel for the respondent no.2/Insurance Company.

3. This appeal is preferred against the judgment and award dated 23.08.2019 passed by M.A.C.T/1st Additional District Judge, Roorkee, District Haridwar in M.A.C.P. No. 217 of 2012, whereby the Tribunal has awarded compensation of Rs. 5,35,565/- along with simple interest @6% per annum and respondent no.2 has been given recovery rights to recover the amount of award from the appellant/owner on the ground that the driving license of the driver of the offending vehicle was not valid to ply the mini bus.

4. Counsel for the appellant would submit that on the last date of hearing, this Court on the joint request of the learned counsel for the parties had referred the matter to the Daily Lok Adalat; that, the Daily Lok Adalat vide order dated 09.01.2025 had observed that the notices are needed to be sent to the respondent no.1/claimants.

5. Counsel for the appellants and respondent no.2 would submit that now the dispute remains only between the appellant/owner and respondent no.2/Insurance Company, therefore, there is no need to serve notices to respondent no.1/claimants as the respondent no.1/claimant is not to be affected by the outcome of the present appeal.

6. In view of the above, the service of notice upon respondent no.1 is not required at this stage.

7. Parties are directed to appear before the Daily Lok Adalat on the date fixed i.e. on 06.03.2025.

8. List this case on 11.03.2025.

9. Interim order dated 01.11.2023 to continue till the next date of listing.”

4. On the last date learned counsel for the appellant as well as Shri Prabhat Pande, Advocate for the respondent no.2 insurance company had jointly agreed that the matter be referred to the Daily Lok Adalat.

5. We have gone through the observations of the Hon'ble Supreme Court in the judgment of ***"Mukund Dewangan vs. Oriental Insurance Company Limited, (2017) 14 SCC 663"***, the observations are quoted below: -

58 Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. "Public service vehicle" has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. "Goods carriage" which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54 of 1994.

59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed."

6. Shri Prabhat Pande, counsel for the insurance company has very fairly admitted the legal position in ***Mukund Dewangan vs. Oriental Insurance Company Limited*** as well as the order passed by this Hon'ble Court from time to time i.e. 06.01.2025 and 11.02.2025. He has frankly stated that liability is of the insurance company i.e. respondent no.2 Sriram General Insurance Company Ltd.

7. Both the parties have agreed and settled that in view of the legal position in the case of ***Mukund Dewangan vs. Oriental Insurance Company Limited***, liability shall be shifted on the insurance company.

8. In view of the observations of the Supreme Court as well as fair statement of Shri Prabhat Pande, Advocate. The net result is that the liability of Rs. 5,35,565/- along with the interest of 6 % shall be shifted to the respondent no.2. and the order passed by the Tribunal stands set aside.

9. Both the parties have agreed that the respondent no.2 shall pay the amount within a period of six weeks from the date of receipt of certified copy of the order in performance of the Award passed by the Tribunal.

10. The matter is settled accordingly in the light of the judgment of Hon'ble Supreme Court.

11. The award is passed accordingly.

(Mahesh Chandra Pant, Adv./Member)	(Rajesh Tandon, J (Retd.))
06.03.2025	06.03.2025

Nahid