

Reserved on:-19.03.2026

Delivered on:-09.04.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 3 of 2023

The New India Assurance Company Limited

.....Appellant

Versus

Smt. Rani Bharadwaj and Others

.....Respondents

Present:-

Mr. V.K. Kohli, Senior Advocate assisted by Mr. Kanti Ram Sharma,
Advocate for the appellant.

Mr. Hari Mohan Bhatia, Advocate for the claimants.

JUDGMENT

Hon'ble Ravindra Maithani, J.

The instant appeal is preferred against the judgment and award dated 14.10.2022, passed in Motor Accident Claim Petition No. 25 of 2021, Smt. Rani Bhardwaj and others v. Mohd. Salim and others ("the claim petition"), by the court of Motor Accident Claim Tribunal/Additional District Judge, Kotdwar, District Pauri Garhwal ("the Tribunal"). By it, the appellant has been directed to pay Rs. 1,35,46,601.6/- compensation to the respondent nos. 1 to 4 ("the claimants").

2. The claimants filed the claim petition seeking compensation on account of the death of late Pawan Bharadwaj ("the deceased") in a motor accident in the intervening night of 18/19.08.2021. The claimant Smt. Rani Bharadwaj, is the wife of the deceased. The claimants Master Anant Bharadwaj and Kumari Aadya Bharadwaj are the children of the deceased, and the claimant Shri. Bachi Ram Bharadwaj, is the father of the deceased. According to the claim petition, the deceased Pawan Bharadwaj, aged 41 years, was Sub-Inspector in Uttarakhand Police, and at the relevant time, he was posted at Police Station Kotwali-Kashipur, District Udham Singh Nagar, as incharge of City Patrolling Unit, drawing Rs. 94,000/- per month as salary. At the time of accident, the deceased, after his duty,

was proceeding from the police station to his residence in his private vehicle bearing Registration No.UK18 K-7464 (“the car”). On the way at Kashipur-Kundeshwari motor road, in front of Asharam Ashram’s gate, a truck bearing Registration No. UP38 T-1649 (“the truck”), which was being driven in rash and negligent manner, suddenly turned towards its right and hit the car driven by the deceased, due to which the car of the deceased was trapped into the truck. The deceased was taken out with the help of a crane. He was taken to hospital, where he was declared brought dead.

3. The respondent no.5 is the owner of the truck and the respondent no.6 is its driver. Both of them jointly filed their objections to the claim petition. Most of the contents were not admitted for the want of knowledge. It has been objected that the registered owner and insurance company of the car have not been impleaded as parties, which is a defect. In Para 29 of their objections, the respondent nos. 5 and 6 have written that the truck was being driven carefully and that the accident did not take place due to the negligence or rashness of the driver of the truck. Instead, due to rash and negligent driving of the car, the accident took place. Multiple other objections have also been raised.

4. The appellant also filed objections to the claim petition. According to the appellant, it was a head on collision, but the insurance company and the registered owner of the car have not been impleaded as parties. Therefore, the claim petition is bad for non-joinder of necessary parties. The documents of the truck and its driver have also been questioned.

5. Based on the pleadings of the parties, the following issues were framed in the claim petition:-

- (i) Whether on 18/19.08.2021, the deceased, after completion of his police duty, was proceeding from Kashipur city in his personal car Brezza bearing

Registration No. UK18 K-7464, to his government accommodation CPU, Barracks, old IIM Hostel, Kashipur, when, on the way, at Kashipur-Kundeshwari motor road, in front of Asharam Ashram's main gate, in Jaspur, District Udham Singh Nagar, the truck bearing Registration No. UP38 T-1649, being driven by its driver in high speed and in a negligent manner, hit the car of the deceased from opposite direction, due to which the deceased died?

- (ii) Whether on the date and time of the alleged road accident, the truck bearing Registration No. UP38 T-1649 was being driven by its driver with valid documents?
- (iii) Whether on the date and time of the alleged road accident, the car Brezza bearing Registration No. UK18 K-7464, was being driven by the deceased with valid documents?
- (iv) Whether the claimants are entitled to any compensation? If so, to what extent and from which of the respondents?
- (v) Whether the claim petition is bad for non-joinder of necessary parties?

6. The parties filed their documents in the claim petition. In oral evidence, on behalf of the claimants, PW1, Rani Bharadwaj, claimant no.1, PW2, Ranjeet Singh, and PW3 Constable Manoj Prasad, were examined. The Respondent nos. 5 and 6 did not appear in the claim petition. The claim petition proceeded *ex parte* against them.

7. By the impugned judgment and award, it was held that:-

- “(a) The accident took place due to rash and negligent driving of the truck by its driver, who, came from the opposite direction, hit the car of the deceased, driven by the deceased, due to which the deceased died. Issue no. (i) was decided accordingly.
- (b) At the time of accident, the truck had all the valid documents. Issue no. (ii) was decided accordingly.
- (c) At the time of accident, the car had all the valid documents. Issue no. (iii) was decided accordingly.
- (d) The claim petition is not bad for non-joinder of necessary parties. Issue no. (v) was decided accordingly on 30.07.2021, which order was made part of the award.

8. After recording its finding on all the issues, the Tribunal had directed the appellant to pay Rs. 1,35,46,601.6/- compensation to the claimants. Aggrieved by it, the appellant is before this Court.

9. Heard learned counsel for the parties and perused the record.

10. Learned Senior Counsel appearing for the appellant submits that it was a head on collision; as both the car and the truck were coming from the opposite directions. Therefore, it is a case of contributory negligence. Accordingly, the liability of the appellant/Insurance Company should be restricted to the extent it is found that the truck was being driven in rash and negligent manner. The deceased was paying Income Tax, and the deduction from Income Tax ought to have been deducted so as to determine the actual salary. It is argued that “actual salary” means actual salary, less tax.

11. In support of his argument, learned Senior Counsel appearing for the appellant has placed reliance on the principles of law, as laid down by the Hon’ble Supreme Court in the case of Sarla

Verma and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121, and the principles of law, as laid down by the Hon'ble Delhi High Court in the case of Universal Sompo General Insurance Company Ltd. v. Sh. Dinesh Kumar Singh and others, MAC.APP. 106/2025, CM APPL. 7345/2025 & CM. APPL. 7346/2025.

12. In the case of Sarla Verma (*supra*), the Hon'ble Supreme Court, in Para No.24 held that, **"Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax."** This has been so followed by the Hon'ble Delhi High Court in the case of Dinesh Kumar Singh (*supra*).

13. Learned counsel for the claimants submits that the accident took place due to total negligence and rashness of the driver of the truck, who is the respondent no.6. The deceased was not negligent in any manner. He submits that PW2, Ranjeet Singh, has stated as to how the accident took place. In addition to it, the Investigating Officer has also prepared site plan in the investigation of the matter relating to the accident, and the site plan, which is on the record of the Tribunal, reveals that, in fact, the truck went extreme on its right side and hit the car driven by the deceased. It is argued that the finding on Issue No. (i), as recorded by the Tribunal, is based on evidence, which does not warrant any interference.

14. PW1, claimant Rani Bharadwaj, did not see the incident, but PW2, Ranjeet Singh, has stated about the incident. According to him, at the time of incident, he was returning to his home when he saw that the truck was being driven in a very high speed and negligently. It left its left side, crossed the middle white line, and moving on the right side, hit the car, due to which the car trapped below the truck. Next day, he came to know that the driver of the car had died.

15. On behalf of the appellant, PW2, Ranjeet Singh, was cross examined. In his cross examination also, PW2, Ranjeet Singh,

has stated that, in fact, the truck left its own side and hit the car by turning to the wrong side. The site plan prepared by the Investigating Officer in FIR No. 242 of 2021, which is related to the instant accident, under Sections 279 and 304 IPC, is in the record of the Tribunal. It leaves no doubt that, in fact, the truck was being driven in much rash and negligent manner. The truck went towards its right side much deep from the midline and hit the car. The driver of the truck did not appear as a witness to rebut the statement of PW2, Ranjeet Singh. In view of it, this Court is of the view that, in fact, the claimants have established and proved that the accident took place solely due to rash and negligent driving of the driver of the truck. It is not a case of contributory negligence.

16. Second argument has been raised with regard to the deduction of Income Tax. On this aspect, learned counsel for the claimants submits that the claimant was paying Rs. 71,402/- as Income Tax. He admits that this amount has to be deducted from the annual income of the deceased, and accordingly, the calculation has to be made.

17. In fact, in the case of Sarla Verma (*supra*), the Hon’ble Supreme Court has held that “actual salary” means actual salary, less tax.

18. During the course of hearing, learned counsel for the claimants has given a sheet of computation of compensation after deduction of Income Tax from actual salary. This sheet of computation is made part of the record. The calculation of the compensation is as below:-

“COMPUTATION OF COMPENSATION

1. Monthly Income:	Rs. 82,232/- Per Month
2. Annual Income:	Rs. 82,232/- x 12 = Rs.9,86,784/-
3. Income Tax:	Rs. 71,402/-
4. Net Income (Less Income Tax)	Rs.9,86,784/- (-) Rs. 71,402/-= Rs.9,15,382/-
5. Less Deduction 1/4th (Personal Expenses):	Rs.2,28,845.5
6. Annual Income After 1/4th Deduction:	Rs.6,86,536.5
7. Multiplier: 14	
8. Compensation: Rs.6,86,536.5 x 14 =	Rs.96,11,511/-

9. Future Prospects 30%	Rs.28,83,453.30
10. Amount of Loss of Estate, Funeral etc.	Rs.70,000/-
11. 10% Enhancement as awarded by Tribunal over Rs.70,000/-	Rs.7,000/-
12. Total Compensation (8+9+10+11):	Rs.1,25,71,964.30"

19. Learned Senior Counsel appearing for the appellant does not dispute the above calculation. In the impugned award, the Tribunal has not taken note of the Income Tax that was being paid by the deceased. It ought to have been deducted from the actual salary. The above computation has been made after deducting Rs. 71,402/-, the Income Tax that was being paid by the deceased at the relevant time, and after this calculation, the total compensation comes Rs. 1,25,71,964.30/-, and to this amount only, the claimants are entitled to. To that extent, this Court is of the view that the award needs modification.

20. Learned Senior Counsel appearing for the appellant also submits that the interest at the rate of 9 per cent is on the higher side. It should be reduced.

21. This Court is of the view that the interest at the rate of 9 per cent per annum cannot be said to be on higher side.

22. Having considered, this Court is of the view that the claimants are entitled to Rs. 1,25,71,964.30/- as compensation. This amount shall be paid by the appellant to the claimants. The claimants are also entitled to simple interest at the rate of 9 per cent per annum with effect from 21.09.2021, till the final payment is made. Accordingly, the impugned award is modified.

23. The appeal is partly allowed accordingly.

(Ravindra Maithani, J)
09.04.2026

Ravi Bisht