

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 357 of 2011

United India Insurance Co. Ltd.

.....Appellant

Versus

Smt. Namita Dubey and Others

.....Respondents

Present:-

Mr. Raunak Pant, Advocate (through video conferencing) holding brief of
Mr. Naresh Pant, Advocate for the appellant.
Mr. Harshpal Sekhon, Advocate for the respondent nos. 1 to 4.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The instant appeal is preferred against the award dated 28.05.2011, passed in Motor Accident Claims Petition No.216 of 2009, Smt. Namita Dubey and Others v. Sandeep Singh and others ("the claim petition"), by the court of Additional District Judge/Motor Accident Claim, Rudrapur, District Udham Singh Nagar. By it, the claim petition filed by the respondent nos. 1 to 4 ("the claimants") has been allowed, and the respondent no.1/ United Insurance Company has been directed to pay the amount of compensation to the claimants, and to recover it from the appellant.

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

3. The claimants filed the claim petition under Sections 140/166 of the Motor Vehicles Act, 1988, seeking compensation from the appellant and the respondent nos. 5 and 6 on the death of Mr. Karun Dubey ("the deceased") in a motor accident. The claimant no.1, Smt. Namita Dubey is the wife of the deceased; claimant nos. 2 and 4, Sristi Dubey and Trshti Dubey, are the daughter of the deceased and claimant no.3, Smt. Shanti Dubey, is the mother of the deceased. According to the claim petition, on 05.03.2009, when the deceased was riding on a motorcycle and was proceeding from Rudrapur to

Chatarapur, near Chatarapur, a Tata Indica bearing Registration No.UA-06H-7128 (“the car”) being driven in a rash and negligent manner, hit motorcycle of the deceased, due to which the deceased died on the spot. According to the claim petition, the deceased was earning Rs. 5,000/- per month; he was self-employed; his age was 25 years.

4. The appellant did file his objections to the claim petition and raised various pleas. It has also been the plea of the appellant that the accident took place due to rash and negligent riding of the motorcycle, as there were three persons riding in the motorcycle.

5. The respondent nos. 5 and 6 did file their joint objections. They also raised various pleas. The respondent no.6 is the driver of the car and respondent no.6 is the owner of the car. According to the respondent nos. 5 and 6, the car was being driven in a very cautious manner, but the rider of the motorcycle was quite rash and negligent. The motorcycle was swinging on the road. It hit the car. Various other pleas have also been taken.

6. Based on the pleadings of the parties, the Tribunal framed six issues. On issue nos. (i) and (ii), which were with regard to the cause of accident, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the car. In the accident, the rider of the motorcycle was not negligent in any manner. On issue no. (iii), the Tribunal held that the driver of the car had all the valid documents, including the driving license. Issue no.(iv) was with regard to non-joinder of necessary parties. The Tribunal held that the motorcycle rider had died in the accident, therefore, it was not possible to make him a party, and the claim petition is not bad for non-joinder of the necessary party. On issue no.(v) with regard to the documents with the motorcycle rider, the Tribunal held that the driver had all the valid documents, including the driving license. On issue no.(vi), compensation has been quantified.

7. Learned counsel for the appellant submits that the grounds for challenging the impugned award is that in the accident, the motorcycle rider had also contributed; there were three persons riding on the motorcycle, and DW1, Raj Kumar Arora, has stated that the cause of accident is rash and negligent riding of the motorcycle. He submits that, in fact, the site plan has not been filed by the claimants.

8. In support of his contentions, learned counsel for the appellant has referred to the judgments in the cases of Mst. Rupsuna Bibi and Others v. New India Assurance Company Limited and Others, 2022 SCC OnLine Cal 3839 and Devi Singh v. Vikram Singh, 2008(1) M.P.L.J 98.

9. The case of Mst. Rupsuna Bibi (*supra*), was a case of head on collision, the Tribunal held driver of both the vehicles contributing the negligence and fixed 50 per cent liability on each of them. This finding was upheld by the Hon'ble Supreme Court.

10. In the case of Devi Singh (*supra*), the Hon'ble Madhya Pradesh High Court, in Para 12, observed as follows:-

“12. A plain reading of Section 128 of the Act quoted above, would show that Sub-section (1) casts a duty on the driver of a two wheeled motor cycle not to carry more than one person in addition to himself on the motor cycle. Similarly, Rule 123 of the Rules quoted above mentions the safety devices to be provided while manufacturing a motor cycle. These provisions obviously are safety measures for the driver and pillion rider and breach of such safety measures may amount to "negligence" but such negligence will not amount to "contributory negligence" on the part of the pillion rider or "composite negligence" on the part of the driver of the motor cycle, unless such negligence was partly the immediate cause of the accident or damage suffered by the pillion rider as would be clear from the authorities discussed above.”

11. A bare reading of the above observation of the Hon'ble Courts reveals that mere riding of three persons on a motorcycle may not amount that it was negligent act contributing to the accident, if any.

12. On the other hand, learned counsel for the claimants submits that the finding recorded by the Tribunal is based on evidence, which does not warrant any interference; the impugned award records that the DW1, Raj Kumar Arora, has not given the

details as to in what manner the accident took place and from which side of the car, the motorcycle hit at the time of the accident.

13. In support of his contention, learned counsel for the claimants has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the case of Mohammed Siddique and Another v. National Insurance Company Ltd. and Others, passed in Civil Appeal No.79 of 2020, the Hon'ble Supreme Court, *inter alia* held that, **“the fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence.”**

14. On behalf of the claimants, two witnesses, namely, PW1, claimant no.1 Smt. Namita Dubey and PW2, Ramesh Mistri, have been examined. PW2, Ramehs Mistri, is the person who was also riding in the motorcycle at the relevant time.

15. On behalf of the respondent nos. 5 and 6, DW1, respondent no.6, Raj Kumar Arora, the driver of the car, has been examined.

16. Fact remains that the site plan of the place of the incident has not been enclosed by any of the parties.

17. PW2, Ramesh Mistri, has stated that the accident took place due to rash and negligent driving of the driver of the car.

18. DW1, Raj Kumar Arora, on the other hand, has stated that the accident was as a result of rash and negligent act of the rider of the motorcycle.

19. This is a claim petition seeking compensation for death arising out of a motorcycle accident. The appreciation of evidence is not as strict as done in criminal cases, which is proved beyond reasonable doubt. In fact, preponderance of probability standards are applicable in such matters.

20. It is admitted that post accident, an FIR was lodged against the driver of the car, and it is also admitted that, in fact,

against the respondent no.6, the driver of the car, chargesheet is filed by the police for offences punishable under Sections 279 and 304 A IPC.

21. In the case of Meera Bai and Others v. ICICI Lombard general Insurance Company Ltd. and Another, 2025 SCC OnLine SC 992, the Hon'ble Supreme Court, in Para 4, in such matters, observed as follows:-

“4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.”

22. PW2, Ramesh Mistri, has categorically stated that the accident was as a result of rash and negligent driving of the driver of the car. The Tribunal has held that the evidence of DW1, Raj Kumar Arora, may not inspire confidence because he himself is an accused in a criminal case pertaining to the accident. There is no other witness of the incident on behalf of the appellant or the respondent nos. 5 and 6.

23. If the deceased had contributed in the accident, even the appellant and the respondent nos. 5 and 6 were free to file such material before the Court including the site plan, which they did not file. Therefore, this Court is of the view that the finding recorded by the Tribunal is based on the evidence available on record, and it does not warrant any interference. Accordingly, the appeal deserves to be dismissed.

24. The appeal is dismissed.

(Ravindra Maithani, J)
21.05.2026

Ravi Bisht