

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 340 of 2012

Reliance General Insurance Company Limited

--Appellant

Versus

Smt. Babita and Others

--Respondents

Presence:-

Mr. Pulak Agarwal, learned counsel for the appellant.

Mr. Narendra Bali, learned counsel with Mr. Deepak Petshali,
learned counsel for the respondent nos.1 & 2/claimants.

Mr. Mohd. Safdar, learned counsel for the respondent nos.3 & 4.

With

Appeal From Order No. 410 of 2012

Smt. Babita and Others

--Appellants

Versus

Ansar Ahmad and Others

--Respondents

Presence:-

Mr. Narendra Bali, learned counsel for the appellants.

Mr. Mohd. Safdar, learned counsel for the respondent nos.1 & 2.

Mr. Pulak Agarwal, learned counsel for the respondent no.3.

Hon'ble Siddhartha Sah, J.

By means of the Appeal From Order No.340 of 2012 under Section 173 of the Motor Vehicles Act, 1988, the appellant/insurer has assailed the impugned judgment and order dated 16.05.2012, passed by the learned Motor Accident Claims Tribunal / Additional District Judge/3rd Fast Track Court, Haridwar in MACP No. 64 of 2008 by which an amount of Rs.17,14,475/- was awarded as compensation by the learned Tribunal.

2. By means of the connected Appeal From Order

No. 410 of 2012, the claimants have sought enhancement of the amount of compensation.

3. Since both the appeals emanate out from the same judgment/order, the same are being decided together.

4. Facts of the case necessary for the adjudication of the aforesaid appeals from order are narrated hereunder :-

Motor Accident Claim Petition No. 64/2008, 'Smt. Babita and another versus Ansar Ahmad and others' was filed by the claimants / respondent nos. 1 and 2 in the court of the learned Motor Accident Claims Tribunal, Haridwar / District Judge, Haridwar on account of death of Surendra Kumar, who happens to be the husband of the claimant no.1 and father of the minor claimant no.2. As per the said claim petition, deceased Surendra Kumar met with an accident on 18.04.2008, when he was riding on his motorcycle and was proceeding on duty towards Thana Raiwala, District Dehradun. One vehicle Vikram, bearing registration number UK07 TC 0093, which was being driven rashly and negligently, collided with him, due to which he got seriously injured and subsequently died during treatment in the hospital. Report of the said accident was lodged in Thana Raiwala on 18.04.2008. It is also pleaded in the claim petition that deceased Surendra Kumar was working as a constable in Uttarakhand Police and was posted at Thana Raiwala, District Dehradun and was drawing monthly salary of Rs.9,500/-. It is further pleaded that at the time when Surendra Singh died, the claimant-Smt. Babita was bearing a child and on 28.08.2009, she has given birth to a son, Master Nonu. Thus, on account of the aforesaid pleadings and

averments, made a claim of compensation to the tune of Rs.21,29,000/- along with 12% interest from the date of filing of the claim petition.

5. The defendant no.1 contested the said claim petition by filing his WS and inter alia pleaded that in the accident, the driver of the vehicle had committed no mistake and he had four years experience of driving and never committed any accident before and he is holding a valid driving license. The vehicle is duly insured by the defendant no.3- Insurance Company and all the documents of the vehicle were valid. The claim petition deserves to be dismissed against the defendant no.1.

6. The defendant no.2, who is the driver of the offending vehicle, also contested the claim petition by filing his WS, and inter alia pleaded at the time of the accident, the answering defendant was having a valid driving license and the documents of the vehicle were valid and that he was driving the vehicle carefully without any negligence. He was driving the vehicle very slowly, but the husband of the claimant was riding on his motorcycle at great speed and negligently and the motorcycle of the husband of the claimant no.1 collided with the vehicle of the defendant no.2, due to which the accident occurred. He further pleaded that the vehicle is insured with the defendant no.3-Insurance Company, and the liability to satisfy the claim would be of the defendant no.3-Insurance Company.

7. The defendant no.3, insurer, also contested the claim petition by filing its WS and inter alia pleaded that the claim petition is not maintainable and is barred by ESI Act. It was further pleaded that the offending vehicle was not being driven by a driver holding effective and valid driving license and at the time of accident, the

vehicle was not having valid and effective documents and thus sought dismissal of the claim petition.

8. In support of the pleadings, the parties filed their documentary evidence.

9. The claimants proved their case by producing oral evidence through witnesses P.W. 1-Smt. Babita and P.W. 2-Mohammad Sajid. The defendants did not produce any oral evidence.

10. Thereafter, the learned tribunal heard the learned counsel for the parties and proceeded to decide the claim petition by judgment and order dated 16.05.2012.

11. On the rival pleadings of the parties, the following issues were framed by the Motor Accidents Claims Tribunal:-

1. Whether on 18.04.2008 at about 9:30 in the morning, when the deceased was going with Pradeep Chaudhary in his motorcycle at Motichur Phatak within Thana Raiwala, District Dehradun, the driver was driving the Vikram, bearing no. UK07TC0093 rashly and negligently, collided with the motorcycle in which Pradeep Chaudhary and Surendra Singh were injured and during treatment, Surendra Singh succumbed to injuries?

2. Whether the accident occurred on account of the motorcycle being driven rashly and negligently?

3. Whether the defendant no.1 is an unnecessary party, as has been pleaded in paragraph no.15 Kha and para No. 28 of the W.S.?

4. Whether the vehicle-in-question was not

being driven with valid documents and valid driving license?

5. Whether the claimants are entitled to any compensation, if yes, then how much and from which party?

12. Issue No. 1 and 2 were decided together. On Issue No. 1 and 2, the learned Tribunal came to the conclusion that it is proved that the accident occurred on account of vehicle Vikram No. UK-07 TC-0093, driver driving it rashly and negligently and colliding with the motorcycle of the deceased, in which Surendra Singh died on account of the injuries sustained in the accident.

13. Issue No. 3 was decided to the effect that defendant No. 1 was not found to be an unnecessary party.

14. On Issue No. 4, the learned Tribunal came to the conclusion that at the time of the accident, the vehicle was having valid and effective documents and driving license.

15. On Issue No. 5 pertaining to the compensation, the learned Tribunal considered that at the time of the accident, the deceased was drawing a total salary of Rs. 11,075/- per month. However, the trial court declined to grant any compensation on account of future prospects, and on account of the salary of Rs.11,075/- per month, the annual income was determined as Rs.1,32,900/-, and considering that there were four dependents, the learned tribunal proceeded to deduct 1/4th and assessed the annual income at Rs. 99,675/-. It also considered the age of the deceased was 26 years and, therefore, applied the multiplier of 17, and calculated the compensation amount at Rs. 16,94,475/-. It also added Rs. 5,000/- on

the head of funeral expenses, Rs. 5,000/- on the head of loss of estate, and Rs. 10,000/- on account of loss of consortium, and thus proceeded to award an amount of Rs.17,14,475/- along with simple interest @ 6% per annum from the date of claim petition till the date of actual payment as total compensation.

16. Assailing the aforesaid judgment and order dated 16.05.2012 rendered by the Motor Accident Claims Tribunal/ Additional District Judge/ 3rd FTC, Haridwar, the learned counsel for the appellant, Mr. Pulak Agarwal, would submit that the accident is not duly proved. The witness, who has been produced to prove the accident, was not an eyewitness.

17. On quantum, the learned counsel for the appellant would submit that the deduction ought to have been 1/3rd, since there were only two dependents, whereas the learned Motor Accident Claims Tribunal has proceeded for making a deduction of 1/4th. He has drawn the attention of the court to para no. 36 of the impugned judgment/order, wherein while deciding issue no.5, the learned Motor Accidents Claims Tribunal has mentioned the number of dependents as 4. Thus, he would submit that since the accident is not duly proved, therefore, the learned Motor Accidents Claims Tribunal has erred by deciding the issue no.1 in favor of the claimants. He would further submit that on account of deduction of 1/4th, the compensation has been awarded on a higher side, and as such, sought interference of the court on the said premise. He would further submit that in the claim petition itself, the claimants have admitted that there are three dependents and even if that may be taken at its face value, the deduction ought to have been 1/3rd, and not 1/4th, as has been made by the learned

Motor Accidents Claims Tribunal.

18. In reply the counsel for respondents/claimant would submit that disposal of issue nos. 1 and 2 would show that the certified copy of the FIR has been placed on record and the same has been registered as case crime no. 29/ 2008 under Section 279, 337 and 338 of the IPC, and after completion of the investigation, charge sheet has been filed against the defendant no. 2, and its certified copies are on record. After the investigation, the IO, finding the respondent no. 2 responsible for the accident, has filed the charge sheet. In addition to this, the copies of the inquest report and post mortem are also on record, from which, it was revealed that the death occurred on account of the injuries sustained in the accident. These documents have not been disputed by Opposite parties of claim petition. Hence, on account of the aforesaid, the issue nos. 1 and 2 were decided in favor of the claimants.

19. So far as the aspect of deduction, whether it ought to have been 1/4th as has been done by the learned Motor Accidents Claims Tribunal in the Tribunal's order, or it ought to have been 1/3rd as has been submitted by the learned counsel for the appellant, reference needs to be made to judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (SMT) and others versus Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases, 121**, and reference is being made to paragraph no. 30 thereof, which has been extracted hereunder :-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the

general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

20. Perusal of paragraph 30 of **Sarla Verma judgment (Supra)** would show that the Hon’ble Supreme Court has held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd), where the number of dependent family members is 2 to 3. Hence, the learned Tribunal appears to have gone wrong on this count, and this being position of law, the interference in the impugned judgment only to this extent can be made.

21. The impact of aforesaid discussion will be seen at the end of this judgment.

22. Now, the matter is being considered for enhancement, as has been sought by virtue of Appeal from Order No.410 of 2012.

23. Learned counsel for the appellants/ claimants in AO number 410 of 2012, Mr. Narendra Bali, would submit that the learned Motor Accident Claims Tribunal has erred by denying compensation on the head of future prospects to the claimants. He would further submit that the learned Motor Accidents Claims Tribunal has also granted inappropriate compensation on the heads of funeral expenses, loss of estate, and loss of consortium.

24. Learned counsel for the respondent/ insurance company would further would oppose the Appeal No.410 of 2012 for enhancement on the premise that the claimant no.1, Smt. Babita, has already secured a job under Dying and Harness Rules and therefore, no error has been committed by the learned Tribunal by not granting any amount on future prospects.

25. In rejoinder, Mr. Narendra Bali, learned counsel would submit that securing a job under the compassionate appointment rules would not be a bar for compensation on the head of future prospects, and the future prospects would be relatable to the death of the deceased Surendra Kumar.

26. Reference in this regard needs to be made to the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi, reported in (2017) 16 Supreme Court Cases 680**, and paragraph 59.3 thereof would be relevant, which is being extracted hereunder for ready reference.

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

27. A bare perusal of paragraph 59.3 of the judgment in the case of **Pranay Sethi (Supra)** would show that 50% of the actual salary of the income of the

deceased towards future prospects has to be granted where the deceased had a permanent job and was below the age of 40 years. In the present case also, the deceased Surendra Singh, was only 26 years and as such, addition of 50% of actual salary towards future prospects ought to have been granted by the learned Motor Accidents Claims Tribunal.

28. Regarding the compensation on account of loss of estate, loss of consortium and funeral expenses, the learned counsel for the respondent no.1 would draw the attention of the court to Paragraph 59.8 of the judgment in the case of **Pranay Sethi (Supra)**. Paragraph 59.8 of the aforesaid judgment is being extracted hereunder for ready reference.

“59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

29. Perusal of paragraph number 59.8 thereof would reveal that the Hon'ble Supreme Court has concluded that on the figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses, should be Rs.15,000/- Rs.40,000/- and Rs.15,000/- respectively. Since the learned tribunal has only granted amount of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate, and Rs.10,000/- towards loss of consortium, hence, the appeal also deserves to be enhanced on this count.

30. After considering the submissions of the learned counsel for parties in both the aforesaid appeals, the Court comes to the conclusion that:-

(i) the deduction ought to be 1/3rd instead of 1/4th.

(ii) there will be an enhancement on account of future prospects to the tune of 50% of the income of the deceased.

31. Therefore, Appeal from Order No.340 of 2012 preferred by the insurance company is partially allowed only to the tune of reducing the deduction from 1/4th to 1/3rd and the Appeal from Order No.410 of 2012 is allowed to the extent of granting compensation on account of the future prospects also, as also enhancing compensation on account of loss of consortium, loss of estate and funeral expenses.

32. The net result / outcome of the partial allowing of AO No.340 of 2012 and also allowing of AO No. 410 of 2012 would be the following :-

(i) Total salary of the deceased Surendra Kumar	Rs.11075/-
	+
(ii) 50% towards future prospects	Rs.5,537.50
(iii) Total	Rs.16,612.50
(iv) deducting 1/3 rd upon (iii)	Rs.5,537.50
(Net monthly salary)After deduction amount	Rs.11,075/-
(v) Rs.11,075/- multiplied by 12 (Annual Income)	Rs.₹1,32,900/-
(v) Rs.1,32,900/- multiplied by 17 (multiplier) (on age of 26 years)	Rs.22,59,300/-

33. To it, add loss of estate-Rs.15,000/-, loss of consortium-Rs.40,000/- and funeral expenses Rs.15,000/- (total Rs.70,000/-), the final compensation

would be thus (Rs.22,59,300/-+Rs.70,000/-) i.e. total Rs.23,29,300/- instead of Rs.17,14,457/- along with the interest as was awarded by the Motor Accident Claims Tribunal. Both the appeals are thus decided accordingly.

34. The insurance company is directed to deposit the said amount before the concerned Tribunal within 45 days from the date of production of the certified copy of this order after deducting the amount which has already been paid to the claimants.

35. The registry is directed to remit the statutory amount to the Motor Accident Claims Tribunal concerned forthwith. The original records be also transmitted to the concerned Tribunal.

36. Both the appeals stand disposed of accordingly.

(Siddhartha Sah, J.)

13.08.2026

JKJ/