

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.285 of 2012

Hayat Singh Saun and another Appellants

Versus

Smt. Madhavi Devi and others Respondents

Present:- Mr. Neeraj Uprety, Advocate for the appellants.
Mr. Chandramauli Shah, Advocate for respondent no.1.
Mr. Vinay Bhatt, Advocate for respondent no.2/The New India Assurance Co. Ltd.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against award dated 29.08.2011, passed in Motor Accident Claim Petition No.57 of 2009, Hayat Singh Saun and another Vs. Smt. Madhvi Devi and others, by the court of Motor Accident Claim Tribunal/District Judge, Pithoragarh, by which, the respondent No.2/The New India Assurance Co. Ltd. has been directed to pay compensation of Rs.1,52,000/- along with interest to the appellant no.1 ("the claimant") and respondent nos.4 and 5.

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

3. The appellants did file the claim petition seeking compensation for death caused due to a motor accident. According to the claimants, on 03.08.2009, at about 03:00 p.m., the deceased Smt. Leela Devi was travelling in a vehicle bearing Registration No.UP03 4028, which was being driven by the respondent no.3 in a rash and negligent manner. When this vehicle reached near Kuseri Band at Adkini-Wadda Motor Marg, it met with an accident. The

deceased Smt. Leela Devi sustained serious injuries. She was taken to hospital, where she died during treatment.

4. In the claim petition, the opposite parties filed their objections; pleadings were exchanged; issues were framed and after hearing the parties, the appellants were awarded Rs.1,52,000/- compensation along with interest. It is impugned.

5. Learned counsel for the appellants submits that the main grounds for challenging the award were that the Tribunal had erred in deducting the $\frac{1}{2}$ of the income of the deceased on her personal expenses. But, he submits that this ground is no more available to the appellants in view of the judgment of Hon'ble Supreme Court in the case of Jitender Kumar and another Vs. Sanjay Prasad and others, passed in Civil Appeal No.7199 of 2025 on 22.05.2025 because the claimants were not dependent on the deceased.

6. Learned counsel for the respondent no.1 submits that the deduction of personal expenses as made by the Tribunal is valid in view of the latest judgment of Hon'ble Supreme Court in the case of Jitender Kumar (*Supra*).

7. In fact, the Tribunal had noted that the claimant no.1 Hayat Singh Saun is in Army. He is not dependent on the deceased. The claimant No.2 is his wife. She is also not, as such dependent on the deceased.

8. The Tribunal has also noted that the respondent nos.4 and 5 i.e. the daughters of the deceased were impleaded by order of the Tribunal, but despite service of notice, they did not appear before

the Tribunal and the claim petition proceeded *ex parte* against them. The Tribunal further noted that the indifferent attitude of respondent nos.4 and 5 leads to the inevitable conclusion that perhaps loss of dependency to them is not so large that it would affect them adversely.

9. In the case of Jitender Kumar (*Supra*), the Hon'ble Supreme Court, in para 15 observed as follows:-

“15. Therefore, in view of the above, while the claimant-appellant(s) were not dependent upon the deceased, they are entitled to receive compensation as his legal representatives, in accordance with law. Thus, the deduction towards the loss of personal and living expenses is to be $\frac{1}{2}$ (50% of the income of the deceased) in accordance with law.”

10. In the instant case, the Tribunal has directed $\frac{1}{2}$ of the amount of her pension as her personal expenses. This is in terms of the judgment of the Hon'ble Supreme Court in the case of Jitender Kumar (*Supra*). Therefore, there is no reason to make any interference in the instant appeal. The appeal deserves to be dismissed.

11. The appeal is dismissed.

(Ravindra Maithani, J.)

17.04.2026

Sanjay