



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.335 of 2016

Reliance General Insurance Company Limited

--Appellant

Versus

Smt. Vimla Devi and Others

--Respondents

Presence:-

Mr. Pulak Agarwal, learned counsel for the appellant.

Mr. Mohd. Azim, learned counsel for the respondent nos.1 to 4/claimants.

With

Appeal From Order No.390 of 2016

Smt. Vimla Devi and Others

--Appellants

Versus

Saleem Ahmad and Anr.

--Respondents

Presence:-

Mr. Mohd. Azim, learned counsel for the appellants.

Mr. Pulak Agarwal, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J.

By means of the Appeal From Order No.335 of 2016 under Section 173 of the Motor Vehicles Act, 1988, the appellant/insurer has assailed the impugned judgment and order dated 29.04.2016, passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Kashipur, District Udham Singh Nagar in MACP No.69 of 2012 by which an amount of Rs.17,96,005/- was awarded as compensation by the learned Tribunal.



2. By means of the connected Appeal From Order No.390 of 2016 for enhancement the claimants have sought the modification of the impugned judgment and order dated 29.04.2016 for allowing the claim of the appellants/claimants in toto as claimed before the learned Claims Tribunal.

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:-

- i. The claim petition was filed under Section 166/140 of the Motor Vehicles Act, 1988 on account of the death of Hira Singh Mehra @ Hari Singh, who was the husband of claimant no.1.
- ii. On 15.09.2011, Hira Singh Mehra @ Hari Singh was coming on his bicycle from Village Peerumadara to Ramnagar. At about 7:30 PM, when he reached between Village Chilikiya and Tanda, an Alto car bearing registration No.UK06S-2569, which was being driven rashly and negligently by its driver, hit him from the back, resulting in an accident in which, he sustained grievous injuries and was taken to the hospital in Ramnagar, where he succumbed to injuries.
- iii. The FIR of the accident was lodged at



Police Station Ramnagar on 18.09.2011. It was registered as FIR No. 187 of 2011, under Sections 279 and 304-A of IPC.

- iv. The deceased was 39 years of age and was serving as a regular IVth class employee in Rajkiya Purva Madhyamik Vidhyalaya, Ramnagar.
- v. A claim for compensation on account of the death of the husband of claimant No.1 was filed.

5. The aforesaid claim petition was contested by the owner of the vehicle no.UK06S-2569, who largely denied the averments of the claim petition and contended that his vehicle was duly insured with Reliance General Insurance Company Limited, and the insurance cover note was valid from 14.02.2011 to 13.02.2012. On the date of the accident, the car's registration was valid and the driver was having a valid driving license; as such, if any liability is there for compensation, it would be of the Insurance Company.

6. The insurer was arrayed as opposite party No.2 in the claim petition, who also contested the claim petition by filing its written statement and largely refuted the claim petition averments and contended that on the date and time of the accident, the driver of the vehicle was not having a valid driving license, and the documents of the vehicle involved in the accident were not valid documents. Since there was contravention of the terms and conditions of the insurance policy, there is no liability of the Insurance Company for payment of compensation.



7. On Issue No.1, the learned Tribunal came to the conclusion that the driver of vehicle No. UK06S-2569 caused the accident while driving the vehicle rashly and negligently, on account of which Hira Singh Mehra sustained grievous injuries and died in the hospital.

8. On Issue Nos.2 and 3, the learned Tribunal came to the conclusion that on the date of the accident, all the documents of car No. UK06S-2569 were valid and the driver was holding a valid and effective driving license.

9. On Issue No.4, pertaining to compensation, the Tribunal came to the conclusion that the claim petition deserves to be allowed for a compensation of Rs.17,96,005/- with 7.5% annual interest.

10. Assailing the aforesaid judgment and order dated 29.04.2016, learned counsel for the appellant, Mr. Pulak Agarwal would submit that the deceased was on a bicycle, which was hit by the offending vehicle No. UK06S-2569. The FIR was lodged against an unknown vehicle, and initially a final report was filed. It was only later on that some evidence was brought that the final report was wrongly filed.

He would further submit that in the finding on Issue No. 1, subsequently, it came to light that vehicle No. UK06S-2569 was involved in the accident. From the subsequent report, the name of the driver came to light. Only Salim Ahmad who was the owner, was arrayed in



the claim petition; the driver was not impleaded. However, the accident itself was doubtful. The second ground agitated on behalf of the appellant is that the widow was getting a family pension and since the deceased was a government employee she also secured compassionate appointment under the Dying-in-Harness Rules.

11. Based on the aforesaid, it is submitted by the learned counsel for the appellant that the claim petition could not have been allowed, and the learned Tribunal wrongly allowed the claim petition.

12. *Per contra*, learned counsel for the claimants/respondent Nos.1 to 4 would submit that after the final report was filed, on a protest petition, further investigation was conducted, and the involvement of the vehicle in question came to light and it also came to light that it was being driven by Nadeem Khan.

He would further submit that it cannot be termed a doubtful accident because after due investigation, the name of the driver as well as the vehicle in question came to light, and the said finding has been duly returned in the disposal of Issue No.1.

He would further submit that the driver had died, so there was no question of impleading him as a party. Dying-in-harness appointment does not affect the claim for compensation.

13. Learned counsel for the claimants would



further submit that so far as family pension is concerned, getting a family pension would not be a ground for denial of compensation. In this regard, he has relied upon the judgment of the Hon'ble Supreme Court in Sebastiani Lakra and Others v. National Insurance Company Limited and Another, reported in (2019) 17 SCC 465, and has drawn the attention of the Court to paragraph 14 thereof. The relevant para 14 of the said judgment is extracted hereunder for ready reference:-

“14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.”

Hence, in view of the judgment of the Hon'ble Supreme Court in Sebastiani Lakra (supra), the amount of pension cannot be deducted.

Appeal From Order No.390 of 2016

14. This appeal from order under Section 173 of the Motor Vehicles Act, 1988 is filed on behalf of the claimants, by means of which the claimants have sought enhancement of the compensation as awarded by the learned Tribunal.



15. Mr. Mohd. Azim, learned counsel for the claimants has sought enhancement on the sole ground that the learned Tribunal has not added any additional amount for future prospects to the income of the deceased.

16. *Per contra*, learned counsel for the Insurance Company, Mr. Pulak Agarwal would submit that since Claimant No.1, Smt. Vimla Devi, has got a job under the Dying-in-harness Rules, there is no question of future prospects.

17. Learned counsel for the claimants draws the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of **“National Insurance Company Limited vs. Pranay Sethi and Others”**, reported in (2017) 16 SCC 680 and invited the attention of the Court to paragraph 59.3 thereof. The relevant para no.59.3 is 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.”

18. Learned counsel for the claimants, while placing reliance upon paragraph 59.3 of the judgment in



the case of Pranay Sethi and Others (supra), would submit that since the deceased was below the age of 40 years, an addition of 50% of the actual salary to the income ought to have been made.

19. Learned counsel for the insurance company does not have any case law to support that if the claimant has got any secured job under the Dying-in-harness Rules, there will be no addition on account of future prospects.

20. Learned counsel for the Insurance Company would submit that the judgment and award of the Tribunal is dated 29.04.2016, whereas the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi (supra) is of the year 2017, and he doubts whether that judgment would be applicable in the present facts and circumstances of the case.

21. In this context, learned counsel for the claimants has relied upon the judgment of the Hon'ble Supreme Court in the case of **'Rajesh and Others v. Rajbir Singh and Others'**, reported in (2013) 9 SCC 54, wherein the same principle was adopted by the three-Judges Bench of the Hon'ble Supreme Court even prior to the judgment in the case of Pranay Sethi (supra). Hence, the objection being taken by the counsel for the insurer is unsustainable.

22. Having heard the learned counsel for the parties and after going through the record, so far as AO No. 335 of 2016 preferred by the Insurance Company is



concerned, the challenge is basically on two grounds: firstly, that the accident itself is doubtful; and secondly, that since Claimant No.1 was getting family pension, granting of compensation would be erroneous.

23. On the other hand, the learned counsel for the claimants has invited the attention of the Court to the finding of the learned Tribunal on Issue No.1, wherein it is clear that from the re-investigation, the facts have come to light about the involvement of the offending vehicle (Alto Car No. UK-06S-2569) in the accident, as well as the name of the driver, Nadeem Khan, has also come to light. Also on the basis of the site plan, the learned Tribunal had come to the conclusion on the disposal of Issue No.1 that the vehicle had hit the cycle from behind while it was being driven rashly and negligently by its driver, in which the deceased sustained grievous injuries and subsequently died. Thus, the contention raised by the learned counsel for the insurance company on this ground fails.

24. So far as the second ground being agitated by the learned counsel for the Insurance Company that Claimant No.1, Smt. Vimla Devi, was getting family pension, and hence, granting of compensation on account of the death of her husband would be erroneous is concerned, on this issue the judgment of the Hon'ble Supreme Court in the case of Sebastiani Lakra and Others (supra) would come in the way of such submission of the learned counsel for the Insurance Company. In the said judgment, the Hon'ble Supreme Court has held that the amount of pension and gratuity



cannot be deducted. Thus, the challenge on this ground also fails. Therefore, the appeal of the Insurance Company (AO No. 335 of 2016) so far as the challenge to the judgment and order dated 29.04.2016 fails, and the APPEAL FROM ORDER No.335 of 2016 is dismissed accordingly.

25. So far as the APPEAL FROM ORDER No.390 of 2016 preferred on behalf of the claimants is concerned, the sole ground on which the enhancement has been sought is on account of the failure of the Tribunal to grant any additional amount for future prospects.

26. The learned counsel for the insurer could not cite any law to the contrary that if a claimant has got a job under the Dying-in-harness Rules, then there is no question of future prospects.

27. In the case of Rajesh and Others (supra), which was holding the field even at the time when the impugned judgment and award dated 29.04.2016 was passed, the Hon'ble Supreme Court had held therein that where the deceased was self-employed or a person with fixed wages and the age of the deceased is up to 40 years, future prospects as 50% of the actual income should be added to the actual income of the deceased. Thus, the Court finds force in the submissions as made by the learned counsel for the claimants.

28. Even otherwise, the Motor Vehicles Act, 1988 is a beneficial legislation, and the provisions have to be interpreted in favor of the claimants. Hence, in view of



the judgment of the Hon'ble Supreme Court in the case of Rajesh and Others (supra) as well as Pranay Sethi (supra), the appeal deserves to be allowed and addition of 50% on account of future prospects is also allowed to the claimants.

29. On the basis of the aforesaid determination, the compensation is being computed and quantified as follows:-

(i) Salary	= Rs.12,563/-
(ii) + 50% towards future prospects	= <u>Rs.6281.50/-</u> Rs.18,844.50/-
(iii) Deduction 1/4 th upon (ii)	Rs.4711.12/- <u>Rs.14133.38/-</u> x 12 Rs. 1,69,600.56/-
(iv) Rs.1,69,600.56/- multiplied by 15	Rs.25,44,008.4/-
(v) Loss of estate	Rs.15,000/-
(vi) Loss of consortium	Rs.40,000/-
(vii) Funeral expenses	Rs.15,000/-
Grand total	Rs.26,14,008.4/-

along with simple interest at the rate of 7.5% per annum as was awarded by the Motor Accident Claims Tribunal.

30. In view of the above discussion and findings recorded hereinabove, this Court does not find any merit in Appeal From Order No.335 of 2016 preferred by the appellant/insurer and the same is, accordingly, dismissed. However, the connected Appeal From Order No.390 of 2016 preferred by the appellants/claimants deserves to be allowed and is, accordingly, allowed.

31. 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.

32. 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.

(Siddhartha Sah, J.)

21.08.2026

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