



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 196 of 2016

Reliance General Insurance
Company Limited

.....Appellant

Versus

Smt. Nutan Srivastava and others

.....Respondents

Present:-

Mr. Pulak Agarwal, Advocate for the appellant.
Mr. Tarun Pande, Advocate for the respondents.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the order dated 24.02.2016, passed in Motor Accident Claim Petition No. 99 of 2013, Smt. Nutan Srivastava and others Vs. Reliance General Insurance Company Limited and others, by the MACT/Additional District Judge, Kashipur, District Udham Singh Nagar. By it, total Rs. 36,76,368/- compensation has been awarded to the respondent no.1/claimant Smt. Nutan Srivastava and respondent no.2/claimant Master Aadarsh Srivastava.

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

3. The claimants did file a claim petition on the ground that the deceased Manish Kumar Srivastava was working in the Indian Railways at Kashipur. On 23.01.2013, when he was proceeding for his duty on his motorcycle bearing Registration No. UK-06-U-8389 ("the motorcycle"), near railway station, he was hit

from behind by a Tanker bearing Registration No. PB 13S-0821 ("the Tanker"). The Tanker was being driven in a rash and negligent manner. Due to the collusion, the deceased sustained injuries. He was taken to hospital, but he was declared brought dead. An FIR of the incident was also lodged.

4. In the claim petition, the appellant and the respondent nos. 4 and 5 also filed their objections.

5. Based on the pleadings, four issues were framed by the Tribunal, which are as follows:-

- (i) Whether on 23.01.2013, at about 7:00 a.m. near railway crossing, Police Station Kashipur, District Udham Singh, the Tanker No. PB 13S-0821, being driven in a rash and negligent manner, hit the motorcycle Registration No. UK-06-U-8389 driven by Manish Kumar Srivastava, the husband of the respondent no.1 from behind, due to which, he sustained injuries and subsequently died?
- (ii) Whether at the time of incident, the insurance policy and all other documents of the Tanker No. PB 13S-0821 were valid?
- (iii) Whether at the time of alleged incident, the driving license of the driver of the Tanker No. PB 13S-0821 was valid?
- (iv) Whether the claimants are entitled to any compensation? If yes, from which of the respondents and to what extent?

6. In evidence on behalf of the claimants, PW1 claimant Nutan Srivastava and PW2 Laxman, the eyewitness of the incident, PW3 Sahab Singh Tomar, an employee of India Railways, who proved the salary slip etc. of the deceased were examined. On behalf of the respondents in the claim petition, DW 1 Harveen

Singh, the husband of the owner of the Tanker and DW2 Sandeep Singh, an employee of the Regional Transport Officer were examined.

7. After discussing the material on record, on the issue no.1, the Tribunal held that on the date of incident, the Tanker was driven by its driver in a rash and negligent manner and it hit the motorcycle driven by the deceased Manish Kumar Srivastava, due to which he sustained injuries and subsequently, he died. On issue nos. 2 and 3, the Tribunal held that the Tanker was being driven at the relevant time with all the valid documents and the driver also had a valid driving license. The issue no.4 was with regard to the amount of compensation, which the Tribunal computed as Rs. 36,76,368/-.

8. Learned counsel for the appellant submits that the impugned judgment is bad for the following two reasons:-

- (i) The accident may not be solely contributed to the negligence of the driver of the Tanker, instead it was contributed by the deceased himself. It was a case of contributory negligence; and
- (ii) The respondent no.1/claimant Smt. Nutan Srivastava has been receiving pension, which has not been deducted while computing the compensation.

9. Learned counsel for the appellant submits that the DW1 Harveen Singh, at one stage, stated that the Tanker hit the motorcycle from its front side and in such a situation, according to him, it is a case of contributory negligence.

10. Learned counsel for the respondents/claimants submits that no issue with regard to the contributory negligence has been raised in the claim petition. On issue no.1, the Tribunal has categorically given a finding, after discussing the material on record that the accident took place due the rash and negligent act of the driver of the Tanker. It is not a question of contributory negligence.

11. On point no.2, as raised by learned counsel for the appellant, learned counsel for the respondents/claimants submits that the pensionary benefits may not be taken into consideration, while computing compensation in the matter of motor accident claims, in view of the law, as laid down by the Hon'ble Supreme Court in the case of Vimal Kanwar and Other Vs. Kishore Dan and other, (2013) 7 SCC 476.

12. In the case of Vimal Kanwar (*supra*), the Hon'ble Supreme Court posed first question to the effect as to whether provident fund, pension and insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction? Answering this question, the Hon'ble Supreme Court took reference to the law, as laid down in the case of Helen C. Rebello (Mrs) and others Vs. Maharashtra State Road Transport Corporation and another, (1999) 1 SCC 90 and held that this amount is not liable for deduction.

13. It has been the case of the claimants that at the time of accident, the deceased was riding on his motorcycle, when it was hit from behind by the driver of the Tanker. PW2 Laxman is the eyewitness. He has stated about it. He was not suggested even by

the driver of the Tanker that it is a case of contributory negligence. Insofar as, DW 1 Harveer Singh is concerned, admittedly, he is not eyewitness of the incident.

14. It is admitted that in the instant matter, charge sheet was filed for rash and negligent driving of the driver of the Tanker. It is a case of eyewitness account also. In fact, in the case of Meera Bai and others Vs. ICICI Lombard General Insurance Company Ltd. and another, (2025) SCC OnLine SC 992, the Hon'ble Supreme Court in para 4 of the judgment held that even filing of an FIR and charge sheet against the driver is sufficient to record that finding that the driver was negligent. In Para 4, the Hon'ble Supreme Court 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.”

15. As stated, in the instant case, there is an eyewitness, who states that the accident took place when the driver of the Tanker hit the motorcycle of the deceased from behind. It is not a case of contributory negligence.

16. Insofar as, deduction from pension is concerned, in view of the law, as laid down in the case of Vimal Kanwar (*supra*), such a deduction cannot be made. Similar view has been taken by the Hon'ble Supreme Court in the case of Hanumantharaju B. (dead) by Lr. Vs. M. Akram Pasha and another, 2025 SCC OnLine

SC 1106, where in para 19, the Hon’ble Supreme Court observed as follows:-

“19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as “pecuniary advantage” liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.
.....
.....
.....
.....”

17. In view of it, this Court is of the view that there is no merit in this appeal. Accordingly, the appeal deserves to be dismissed.

18. The appeal is dismissed.

19. Let the statutory amount of Rs.25,000/- deposited by the appellant be remitted to the MACT concerned.

(Ravindra Maithani, J.)
09.07.2026