

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 109 of 2012

Reliance General Insurance Company Limited Appellant

Versus

Javed Ali Khan and Others Respondents

Present:-

Mr. Pulak Agarwal, Advocate holding brief of Mr. Sarvesh Agarwal,
Advocate for the appellant.

Ms. Suriya Naaz, Advocate for the respondent no.1.

Mr. Lalit Samant, Advocate for the respondent no.2.

Mr. Shankar Aggarwal, Advocate for the respondent no.4.

JUDGMENT

Hon'ble Ravindra Maithani, J.

The instant appeal is preferred against the judgment and award dated 15.12.2011, passed in Motor Accident Claim Petition No. 07 of 2009, Javed Ali Khan v. Regional Manager, Uttarakhand Transport Corporation and others ("the claim petition"), by the court of Motor Accident Claim Tribunal/ District Judge, Nainital ("the Tribunal").

2. The respondent no.1/claimant filed the claim petition seeking compensation for the injuries arising out of the motor accident. According to the claim petition, on 28.10.2008, the claimant was travelling from Rudrapur to Lalkuan in a tempo vehicle bearing Registration No.UA-06-F-4485 ("the tempo"). As soon as the tempo reached at Petrol Pump in the SIDCUL road, at 08:00 pm, suddenly, a Roadways bus bearing Registration No.UA-07-S-7027 ("the bus"), being driven in rash and negligent manner, hit the tempo from the wrong side, due to which the claimant and other passengers sustained grievous injuries. The claimant's thumb was amputated. He incurred a lot of expenses in the treatment. He also lodged a report. With these allegations, the claim petition was filed.

3. Objections were filed in the claim petition. Based on the pleadings, the following issues were framed in the claim petition:-

- (i) Whether on 28.10.2008, when the claimant was travelling in a tempo vehicle bearing Registration No.UA-06-F-4485 from Rudrapur to Lalkuan, and when the tempo reached at Petrol Pump in the SIDCUL road, at 08:00 pm, a Roadways bus bearing Registration No.UA-07-S-7027, coming from the opposite direction, in a rash and negligent manner, hit the tempo on the wrong side, due to which the claimant sustained injuries?
- (ii) Whether the accident took place due to rash and negligent act of the driver of the tempo vehicle bearing Registration No.UA-06-F-4485? If so, its effects?
- (iii) Whether the claim petition is bad for non joinder of the owner of the tempo, its driver and the Insurance Company? If so, its effects?
- (iv) Whether at the time of accident, the Roadways bus bearing Registration No.UA-07-S-7027, was not being run in accordance with the terms of insurance?
- (v) What compensation, if any, the claimant is entitled to and from which of the awarding parties?

5. The parties lead their evidence in the claim petition.

6. On the point of negligence, on Issue nos. (i) and (ii), the Tribunal held that the accident was as a result of negligence of the driver of the tempo as well as the driver of the bus, and both were held 50 per cent accountable for the accident. Accordingly, orders were made.

7. Learned counsel for appellant submits that in the tempo, there were other passengers also. They have also filed claim petitions, which were allowed by the Tribunal by some different orders holding the tempo driver and the bus driver equally liable for contributing the accident. Those orders were challenged by the appellant in Appeal

from Order No.389 of 2010, Reliance General Insurance Co. Ltd v. Smt. Hema Devi and others, and Appeal from Order No, 390 of 2010, Reliance General Insurance Co. Ltd. v. Smt. Bhagwati Devi and others, which have been rejected by this Court on 19.08.2016. The Court has found that the Tribunal did not commit any error in fixing liability of the tempo driver and the bus driver in equal proportion.

8. Learned counsel for the appellant also submits that the instant appeal was filed on the ground that the tempo driver was not negligent in causing the accident, and it was 100 per cent liability of the bus driver, but this dispute has been set at rest by this Court in Appeal from Order No.389 of 2010, Reliance General Insurance Co. Ltd v. Smt. Hema Devi and others, and Appeal from Order No, 390 of 2010, Reliance General Insurance Co. Ltd. v. Smt. Bhagwati Devi and others, on 19.08.2016 when the award, arising out from the same accident, was challenged by the appellant.

9. Admittedly, in those awards also, the bus driver and the tempo driver were held equally responsible for the accident.

10. Having considered, this Court is of the view that there is no reason to take any different view in this appeal. The Coordinate Bench of this Court has already affirmed the finding that the tempo driver and the bus driver were equally responsible for the accident. No other point has been raised on behalf of the appellant.

11. In view of the forgoing discussion, this Court does not see any reason to interfere with impugned judgment and award. Accordingly, the appeal deserves to be dismissed.

12. The appeal is dismissed.

(Ravindra Maithani, J)
17.04.2026