



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.207 of 2011

12th August, 2026

The New India Assurance
Company Limited

.....Appellant

Versus

Shri Indu Kumar and others

.....Respondents

Presence:-

Mr. V.K. Kohli, learned Senior Advocate assisted by Mr. Kanti Ram Sharma, learned counsel for the appellant.

Mr. Vishwasth Kandpal, learned counsel holding brief of Mr. S.K. Shandilya, learned counsel for respondent nos.1 and 2.

Hon'ble Pankaj Purohit, J.

The present appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant-Insurance Company against the judgment and award dated 04.03.2011, passed by the learned District Judge/Motor Accident Claims Tribunal, Haridwar in M.A.C.P. No.145 of 2006, whereby the claim petition preferred by the claimants was partly allowed and a sum of ₹1,97,000/-, along with interest @ 7% per annum from the date of filing of the claim petition till the date of actual payment, was awarded against the appellant-Insurance Company.

2. The brief facts of the case are that on 29.05.2006, at about 04:45 p.m., deceased-Km. Krishna, aged about four years, was proceeding near Jatwara Bridge along with PW-2 Gulab Singh, when the offending bus bearing registration No.RJ-12P-0727, being driven by Shree Veer Singh, allegedly in a rash and negligent manner, dashed against her, resulting in fatal injuries. The claimants, being the parents of the deceased, instituted the claim petition seeking compensation on account of her



death. The Tribunal, upon consideration of the evidence on record, allowed the claim petition partly and awarded compensation of ₹1,97,000/- with interest @ 7% per annum, fastening the liability upon the appellant-Insurance Company.

3. The claimants pleaded that the accident occurred due to rash and negligent driving of the offending bus by its driver, Shree Veer Singh, resulting in the death of their minor daughter. It was further pleaded that the deceased was a student and non-earning member of the family and that the offending vehicle was insured with the appellant-Insurance Company on the date of the accident. Accordingly, compensation was claimed from the owner and the Insurance Company.

4. Respondent No.3, Shree Ranjeet Singh Kharol, admitted the factum of the accident but denied liability and pleaded that the offending bus had already been sold by him to Shree Kanhaiya Lal on 03.03.2006, prior to the accident, and possession thereof had also been handed over to him. It was, therefore, pleaded that he was not liable for payment of the compensation.

5. The appellant-Insurance Company contested the claim petition and denied its liability to pay compensation. It was pleaded, *inter alia*, that the offending vehicle was being driven by Shree Veer Singh without a valid driving licence and in violation of the terms and conditions of the insurance policy. It was further pleaded that the vehicle had been sold to Shree Kanhaiya Lal prior to the accident, whereas the insurance policy stood in the name of Shree Ranjeet Singh Kharol, and therefore the appellant was not liable to indemnify the owner or satisfy the award.

6. On the basis of the pleadings of the parties, the learned Tribunal framed, *inter alia*, the following issues:



- a. Whether the deceased Km. Krishna succumbed to the injuries caused in the accident on 29.05.2006 at about 04:45 PM, near 'Jatwara bridge Tiraha', while going from Jwalapur to her village Saray, who was dashed by the bus no.RJ.12P-0727 being driven rashly & negligently by it's driver.
- b. Whether the bus no.RJ.12P-0727 was sold & handed over to Shree Kanhaiya Lal S/o Devi Lal on 03.03.2006 i.e. before the date of accident by the O.P. no.1, as alleged in the W.S. of O.P. no.1, if yes, its effect.
- c. Whether the claim petition is a result of collusion between the claimants & O.P. no.1, as alleged in para no.23 of the W.S. of O.P. no.2?
- d. Whether the bus was being plied by the person not having valid driving license & other relevant papers e.g. registration etc. against the terms & conditions of the policy at the time of accident, as alleged in para no.25 of the W.S. of O.P. no.2?
- e. What amount of compensation, if any, are the claimants entitled to get & from whom?

7. The Tribunal, after considering the pleadings and evidence on record, proceeded to decide the issues as under:

- a. On issue no.1 the Tribunal observed that the accident and the death of the deceased in the accident stand established from the testimony of PW-2, the FIR, site plan and other material on record. The finding of rash and negligent driving was accordingly affirmed against the respondent-owner and Insurance Company.
- b. On issue no.2 the Tribunal observed that even if the vehicle had been sold prior to the accident, the



same does not affect the liability towards the third-party claimants, particularly when the vehicle was insured with the appellant on the date of the accident.

c. On issue no.3 the Tribunal observed that the allegation of collusion has not been established by the Insurance Company by leading any evidence.

d. On issue no.4 the Tribunal observed that the Insurance Company has failed to establish that the driver was not holding a valid driving licence or that there was any breach of the terms and conditions of the policy. Mere pleading of such breach is not sufficient. The finding is accordingly affirmed against Insurance Company.

e. On issue no.5 the Tribunal observed that the claimants are entitled to get compensation amounting ₹1,97,000/- (one lakh ninety seven thousand only) to be paid by Insurance Company.

8. Having heard learned counsel for the parties and perused the record, this Court finds that the present appeal is devoid of merit and does not warrant interference with the impugned judgment and award. So far as the finding regarding rash and negligent driving is concerned, the same is based upon the testimony of PW-2, duly corroborated by the FIR, charge-sheet and other material available on record. No perversity or infirmity has been pointed out in the said finding so as to warrant interference by this Court. The contention regarding prior sale of the offending vehicle also does not absolve the appellant-Insurance Company of its liability towards the third-party claimants. The vehicle was admittedly insured with the appellant on the date of the accident and the alleged transfer of the vehicle, in the facts of the present case,



cannot defeat the statutory liability towards third parties. The finding recorded by the Tribunal on this aspect, therefore, calls for no interference. The allegation of collusion between the claimants and the owner of the vehicle has also not been established by any cogent evidence. The said plea, therefore, rightly failed before the Tribunal.

9. The principal contention of the appellant is that the offending vehicle was being driven without a valid driving licence and in breach of the terms and conditions of the insurance policy. However, the appellant has failed to adduce cogent evidence to establish the alleged breach. Mere pleading that the driver was not holding a valid licence or that the policy conditions were violated is not sufficient to discharge the burden resting upon the insurer. In the absence of any evidence establishing the alleged breach, the appellant cannot be absolved of its liability towards the third-party claimants. As regards the quantum of compensation, the Tribunal assessed the compensation at ₹1,97,000/- by taking the notional income at ₹15,000/- per annum, deducting 1/3rd towards personal expenses and applying multiplier of 18. Though the multiplier so applied may not strictly accord with the principles governing compensation for death of a non-earning child, the overall compensation awarded cannot be said to be excessive or unjust so as to warrant interference at the instance of the appellant-Insurance Company. The award of ₹1,97,000/- is accordingly left undisturbed.

10. For the foregoing reasons, this Court finds no illegality or infirmity in the impugned award warranting interference under Section 173 of the Motor Vehicles Act, 1988.

11. The appeal, being devoid of merit, is accordingly



dismissed.

12. The award dated 04.03.2011 passed by the learned Motor Accident Claims Tribunal/District Judge, Haridwar in Motor Accident Claims Petition No.145 of 2006 is affirmed. The Tribunal shall release 50% of the amount deposited in FDR dated 13.09.2011 in favour of respondent no.1, along with the interest accrued thereon. Statutory deposit made before this Court be remitted to learned Tribunal forthwith.

(Pankaj Purohit, J.)

12.08.2026

SK
SHUBHAM
KAPRUWAN