



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.370 of 2015

Reliance General Insurance Company Limited

--Appellant

Versus

Smt. Surja Devi and Others

--Respondents

Presence:-

Mr. Pulak Agarwal, learned counsel for the appellant.

Mr. M. K. Ray, learned counsel for the respondent nos.1 to 8/claimants.

With

Appeal From Order No.268 of 2015

Smt. Surja Devi and Others

--Appellants

Versus

Ideal Movers Private Limited and Others --Respondents

Presence:-

Mr. M. K. Ray, learned counsel for the appellant nos.1 to 8/claimants.

Mr. Pulak Agarwal, learned counsel for the respondent no.3.

Hon'ble Siddhartha Sah, J.

By means of the Appeal From Order No.370 of 2015 under Section 173 of the Motor Vehicles Act, 1988, the appellant/insurer has assailed the impugned judgment and order dated 07.04.2015, passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Khatima, District Udham Singh Nagar in MACP No.195 of 2012 by which an amount of Rs.9,32,422/- was awarded as compensation by the learned Tribunal.



2. By means of the connected Appeal From Order No.268 of 2015, the claimants have sought the modification of the impugned judgment and order dated 07.04.2015 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. In the claim petition, the claimants have averred that on 11.04.2012 at 5:00 in the evening, when the deceased Suresh and Ramesh were standing at the side of Kiccha-Sitarganj road, then vehicle Canter bearing Registration No.NL-01-G-8830, driven by the driver rashly and negligently on the wrong side, collided with Suresh and Ramesh and after colliding with them, the driver left the vehicle and fled the spot. Both the injured were taken to the Government Hospital, Sitarganj through 108 Ambulance, where Suresh was referred to Bareilly. After being taken to Bareilly, Suresh succumbed to his injuries on 29.04.2012 in the hospital.
- ii. The report of the aforesaid incident was lodged on 14.04.2012 at Police Station Sitarganj against the driver of the said vehicle, registered as Crime No. 51/2012.



It is further averred in the claim petition that the accident occurred due to the rash and negligent driving of the driver of the said vehicle and that the claimants were dependents on the deceased. Therefore, a claim for compensation of ₹10,00,000/- was filed against the opposite parties.

- iii. The aforesaid claim petition was contested on behalf of defendant No.1 by filing a written statement denying the ownership/involvement of the vehicle and the accident. However, it was also admitted that the vehicle was insured. It was *inter-alia* further pleaded that the accident did not occur due to the negligence of defendant No.2 (Driver), but rather due to the negligence of the deceased himself. It was further contended that all documents of the offending vehicle and the driving license of the driver were valid on the date of the accident and the vehicle was duly insured with Reliance General Insurance Company Limited for the period 23.04.2011 to 22.04.2012. Hence, any liability for compensation would lie upon the Insurance Company.
- iv. Defendant No.3, Reliance General Insurance Company Limited, contested the claim petition by filing a written statement, generally denying the claim petition averments and contending that the Insurance Company has no liability for



payment of compensation. It was submitted that if at all any liability arises, it would strictly be as per the terms and conditions of the insurance policy. It was also contended that in the event of non-compliance/violation of any terms and conditions of the policy, there would be no liability on the Insurance Company. It was also contended that the alleged accident, if any, occurred due to the negligence and carelessness of the deceased; hence, the claimants are not entitled to any compensation, and the claim petition should be dismissed.

5. Vide judgment and award dated 07.04.2015, the learned MACT/Additional District Judge, Khatima, District Udham Singh Nagar awarded a total compensation of Rs.9,32,422/- along with 7.5% simple interest per annum.

6. On Issue No.1 regarding rash and negligent driving of Canter No.NL-01-G-8830, the learned Tribunal came to the conclusion that the said vehicle was being driven rashly and negligently, causing injuries to the husband of Claimant No.1, Suresh, who died during treatment on account of the same.

7. Issue No.2 was decided to the effect that the documents of the vehicle involved in the accident were valid on the date of the accident.

8. Issue No.3 was framed to the effect whether on the date of accident, the driver of the vehicle Canter No.NL-01-G-8830 was having a valid driving license, if



not then effect?

9. On Issue No.3, the Tribunal came to the conclusion that defendant No.2, the driver of the vehicle involved in the accident, was not holding a valid driving license on the date of the accident.

10. Relying upon certain case laws, *inter-alia* the judgment of Hon'ble Supreme Court in the case of **“National Insurance Co. Ltd. v. Swaran Singh & Others”**, reported in (2004) 3 SCC 297 and several other judgments of Hon'ble Supreme Court and some judgments of Hon'ble High Courts, the learned Tribunal held that if the documents/license are found invalid, it constitutes a breach of policy conditions. Consequently, the principle of "Pay and Recover" would apply and directed the Insurance Company to pay the compensation to the claimants first and thereafter recover the same from the vehicle owner, as per law.

11. On Issue No.4 regarding quantum of compensation, the learned Tribunal assessed the notionally derived income of the deceased at Rs. 36,000/- per annum relying upon the judgment of Hon'ble Supreme Court in the case of **“Sarla Verma & Others vs. Delhi Transport Corporation & Others”**, reported in (2009) 6 SCC 121. The learned Tribunal came to the conclusion that since the dependents of the deceased were eight in number, therefore, there would be a deduction of 1/6 and the deceased was between the age group of 36 to 40, the multiplier would be 15. On the head of future prospects, the addition was assessed at 50%, on the head of funeral expenses Rs.5,000/-, on the head of loss of consortium Rs.5,000/- and on the head of loss of estate Rs.5,000/- were also granted and the total



compensation awarded was Rs.9,32,422/-.

12. Assailing the aforesaid judgment and order, the learned counsel for the appellant/Insurance Company in AO No. 370 of 2015 would submit that once in the evidence of DW-1, it has come that the driving license was fake and not issued by the licensing authority, therefore, the principle of "Pay and Recover" will not be attracted.

13. On the aspect of quantum, learned counsel for the appellant/Insurance Company would submit that while the income was assessed at Rs.36,000/- per annum, the 50% addition toward future prospects was erroneous because the deceased was not a permanent government employee. As per 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, the addition towards future prospects should only be 25% in this case. Learned counsel for the appellant/Insurance Company would submit that as per the impugned judgment, the age of the deceased was assessed to be 40 years as per the post-mortem report and therefore as per the judgment in the case of Pranay Sethi (supra), the addition of 25% towards future prospects is applicable for self-employed/fixed-salary individuals aged between 40 to 50 years.

14. Learned counsel for the respondents/claimants Mr. M. K. Ray, would submit that as per the settled law in the case of **"National Insurance Co. Ltd. v. Swaran Singh & Others"**, reported in (2004) 3 SCC 297, even if the driving license produced by the driver is fake or invalid, the insurer's liability to pay the



compensation remains under the "Pay and Recover" principle.

AO No.268 of 2015

15. In this appeal, which has been filed by the claimants for the enhancement of the compensation, learned counsel for the claimants/appellants, Mr. M.K. Ray would submit that regarding the income of the deceased, the claimant, Surja Devi had appeared as PW-1 and had deposed before the court that her husband was a sweeper in Nagar Palika and was drawing a monthly salary of Rs.3,000/-, as well as also earning Rs.3,000/- per month from outside work.

16. Learned counsel for the claimants/appellants would submit that the learned Motor Accident Claims Tribunal has not taken into consideration the oral evidence of this claimant and has wrongly concluded the income of the deceased while disposal of issue no.4 and has wrongly returned the finding that the deceased was a rickshaw puller

He would further submit that the Tribunal has granted a very meagre compensation and the same deserves to be enhanced.

17. Learned counsel for the claimants/appellants, Mr. M.K. Ray, has relied upon a judgment of this Court in the case of **"Smt. Basanti Devi & Others"**, rendered in Appeal From Order No.309 of 2012, and has drawn the attention of the Court to page 2 thereof, wherein the Coordinate Bench has held that to find out the notional income, the Tribunal must take into consideration the minimum wages fixed by the State Government for the



unskilled labour. It is also held in the said judgment that as per the MNREGA scheme, the monthly notional income would be Rs.4,500/- per month. Thus, learned counsel for the appellant would submit that the learned Motor Accidents Claims Tribunal has erred by assessing the monthly income of the deceased at Rs.3,000/- per month (Rs.36,000/- per annum).

He would further submit that on account of the aforesaid, the notional income has been wrongly assessed by the learned Motor Accidents Claims Tribunal, and it would be Rs.54,000/- per annum. In fact, he would submit that the notional income as of now would be Rs.6,000/- per month (Rs.72,000/- per annum) and the compensation deserves to be enhanced accordingly.

18. Learned counsel for the respondent/Insurance Company, Mr. Pulak Agarwal, in reply, would submit that the Tribunal has assessed the income of the deceased correctly at that relevant point of time and it does not warrant any interference. However, learned counsel for the respondent/Insurance Company could not dispute the position of law as has been laid down in the case of Smt. Basanti Devi (supra).

19. After considering the rival submissions of the learned counsel for the parties, the key points which fall for determination in these appeals are as follows:-

- i. Whether the Motor Accidents Claims Tribunal has rightly adopted and applied the principle of 'pay and recover'?
- ii. Whether the quantum of compensation, as determined by the learned Motor Accidents Claims Tribunal, requires any interference?



20. On the Point for Determination no.1 as mentioned above, the learned counsel for the Insurance Company has submitted that the principle of 'pay and recover' could not have been adopted by the learned Motor Accidents Claims Tribunal in as much as it is the established case that the driver of the offending vehicle was not having a valid driving license on the date of the accident and it was a fake license. Hence, there is no question of granting any compensation whatsoever by the Insurance Company.

21. On the other hand, learned counsel for the claimants, Mr. M.K. Ray, has drawn the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of **"National Insurance Co. Ltd. v. Swaran Singh & Others"**, reported in (2004) 3 SCC 297, wherein it has been categorically held that even if it is found that the driver was holding a fake license on the date of accident, the insurer is liable to pay the compensation.

22. In view of such settled law, the Court does not find force in the contentions as raised by the learned counsel for the Insurance Company. Therefore, Point for Determination no.1 is answered in favor of the claimants and against the Insurance Company.

23. The Point for Determination no.2 regarding the quantum of compensation is now being decided.

24. On one hand, learned counsel for the Insurance Company would submit that the notional income as assessed by the learned Motor Accidents Claims Tribunal was proper and Rs.3,000/- was the notional income at that relevant point of time when the accident occurred in the year 2012.



He has further drawn the attention of the Court to the position of law as laid down by the Hon'ble Supreme Court in the case of Pranay Sethi (supra) and has submitted that the Motor Accidents Claims Tribunal has erred by granting enhancement for future prospects at the rate of 50%, whereas it ought to have been 25% for a self-employed person of the age of 40.

25. On this aspect, the learned counsel for the claimants does not have anything to contradict the said position of law. Therefore, the enhancement of 50% as has been held by the learned Motor Accidents Claims Tribunal deserves to be reduced to 25% as per the dictum of the Hon'ble Supreme Court in the case of Pranay Sethi (supra).

26. Regarding the compensation on account of loss of estate, loss of consortium and funeral expenses, the learned counsel for the claimants would draw the attention of the court to Paragraph 59.8 of the judgment in the case of **Pranay Sethi (Supra)**. Paragraph 59.8 of the aforesaid judgment is being extracted hereunder for ready reference.

“59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

27. The notional income has been determined to be Rs.3,000/- per month (Rs.36,000/- per annum) by the learned Motor Accidents Claims Tribunal, however, upon considering the judgment of the Coordinate Bench of this Court in the case of Smt. Basanti Devi and Others, it is



clear that for the period 2012 to 2014, the Coordinate Bench of this Court has held that the wages as per the MNREGA in consonance with the MNREGA Act would be the determining factor for the purpose of notional income, and Rs.4,500/- per month has been assessed to be the notional income.

28. The accident in the present case has also occurred during that period; therefore, the judgment in the case of Smt. Basanti Devi and Others (supra) would be applicable in the present case as well. Therefore, this Court finds force in the submissions as advanced by Mr. M.K. Ray, learned counsel for the claimants and the monthly notional income of the deceased is assessed at Rs.4,500/- per month (Rs.54,000/- per annum). As per the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi (supra) compensation for the loss of Estate would be Rs.15,000/-, loss of consortium would be Rs.40,000/- and funeral expenses Rs.15,000/-. The aforesaid Point for Determination no.2 is, thus, answered accordingly.

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

(i) Notional Income	Rs.4500/- x 12 = Rs.54,000/-
(ii) + 25% towards future prospects	= Rs.67,500/-
(iii) Deduction 1/6 th upon (ii)	= <u>Rs.11,250/-</u> Rs.56,250/-
(iv) Rs.56,250/- multiplied by 15	Rs.8,43,750/-
(v) Loss of estate	Rs.15,000/-
(vi) Loss of consortium	Rs.40,000/-
(vii) Funeral expenses	Rs.15,000/-



Sub-total Rs.9,13,750/-

+

Medical Expenses Rs.2,42,422/-

Grand Total Rs.11,56,172/-

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

30. 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.

31. 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.

32. Both the appeals stand disposed of accordingly.

(Siddhartha Sah, J.)

14.08.2026

Akash