

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Appeal against Order No. 205 of 2026**

The Oriental Insurance Co. Ltd.

..... Appellant

Vs.

Sarita Bisht and Another

..... Respondents

Present:

Mr. M.K. Goyal, Advocate for the appellant, through video conferencing..

JUDGMENT**Hon'ble Siddhartha Sah, J. (Oral)**

The instant appeal has been preferred against judgment and order dated 02.04.2026, passed in Workmen Compensation Petition No.03 of 2024, Sarita Bisht v. Virendra Chauhan and another, by the Employee's Compensation Commissioner/Chief Judicial Magistrate, Uttarkashi ("the claim petition"). By it, the appellant was directed to pay Rs. 13,38,675/- as compensation to the respondent no.1, the claimant, with interest.

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

3. The respondent no.1, Sarita Bisht, the claimant, filed the claim petition seeking compensation from the appellant and the respondent no.2. According to the claimant, her husband, Late Bam Bahadur alias Bam Bahadur Bisht ("the deceased") was employed as a driver by the respondent no.2, the owner, in his vehicle bearing Registration No.UK 10 CA0972 ("the vehicle"). Their relationship was of employer-employee. The salary of the husband of the claimant was Rs. 20,000/- per month with Rs. 50/- per day as allowance. On 09.07.2024, at 08:15 p.m., when

the vehicle was returning to Barkot, it met with an accident near Vajri Madhya Silai Turn and fell 200 metres deep in the river Yamuna, due to which the deceased died. The claimant claimed Rs.19,46,400/- as compensation.

4. The respondent no.2, the owner of the vehicle, filed objections to the claim petition. According to him, the deceased was not driving vehicle under his instructions. It is the specific case of the respondent no.2 that he never appointed the deceased as driver for driving the vehicle. There was no employer-employee relationship. He has never paid salary to the deceased. According to the respondent no.2, the owner of the vehicle, he had appointed one Vishal Thappa as driver of the vehicle. He does not know as to how the deceased took charge of the vehicle. Vishal Thappa ought to have been impleaded as a party by the claimant, which she did not make a party and the claim petition is bad for that reason also.

5. In addition to it, it has been the pleaded case of the respondent no.2, the owner of the vehicle, that the vehicle was insured with the appellant. Hence, if there is any liability, it is with the appellant.

6. The appellant has also filed its objections to the claim petition, and has taken multiple grounds. One of them was that the deceased was not the driver of the vehicle. There was no employer-employee relationship between the respondent no.2, the owner of the vehicle, and the deceased. Therefore, the claimant is not entitled to any maintenance.

7. On behalf of the appellant, total four witnesses, PW1, Sarita Bisht, the claimant, PW2, Ram Bahadur, PW3, Vishal Thappa and PW4, Bharat Singh, have been examined.

8. On behalf of the respondent no.2, the owner of the vehicle, himself appeared as a witness. He did file his affidavit on

04.10.2025, and his cross-examination was done on 14.10.2025. He has been wrongly named as PW5. In fact, he was DW1. But it makes no difference.

9. No witness was examined on behalf of the appellant.

10. Parties also filed documents in support of their claim. After hearing the parties, by the impugned judgment and order, the appellant was directed to pay Rs. 13,38,675/- as compensation to the claimant, with interest. It is impugned.

11. Learned counsel for the appellant submits that the impugned judgment and order is bad in the eyes of law. He raised the following points in his submission:-

i) In order to get compensation under the provisions of the Employee's Compensation Act, 1923 ("the Act"), there should be employer-employee relationship, which, it is argued, is not established in the instant case.

ii) The respondent no.2, the owner of the vehicle, has stated that the deceased was not the driver engaged by him. His driver was Vishal Thappa. If Vishal Thappa had given control of the vehicle to some other person, in that case the employer would not be liable to pay any compensation. He has referred to the provisions of Section 3 Proviso b(ii) of the Act, which reads as follows:-

"3. Employer's liability for compensation.—(1)

Provided that the employer shall not be liable-

(a).....

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to—

(i)

.....
 (ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employee's, or

(iii)

iii) In the impugned order, the version of the respondent no.2, the owner of the vehicle, has not been considered. It raises a substantial question of law.

12. An appeal under the provisions of the Act can be entertained under Section 30 of the Act, if a substantial question of law is involved.

13. Mere wrong appreciation of evidence does not give rise to substantial question of law. It may perhaps involve substantial question of law if the courts below have ignored material evidence or considered irrelevant material or the courts have drawn wrong inference from the proved facts by applying the law erroneously, and/or the courts have wrongly cast the burden of proof. There may be another situation when the decision is based on no evidence.

14. The claimant, Sarita Bisht, has appeared as a witness. She has stated that her husband was the driver appointed by the respondent no.2, the owner of the vehicle.

15. PW2, Ram Bahadur, has also stated that on the date of incident, the deceased was driving the vehicle when the vehicle met with the accident.

16. Most important is PW3, Vishal Thappa, who, according to the respondent no.2, the owner of the vehicle, was the driver appointed by him. PW3, Vishal Thappa, has categorically stated that though he had worked as a driver with the respondent no.2, the owner of the vehicle, but on 08.07.2024, he had handed over all the documents and key of the vehicle to its

owner, and the deceased was appointed as the driver by the respondent no.2, the owner of the vehicle.

17. PW4, Bharat Singh, is the witness of inquest.

18. The respondent no.2, the owner of the vehicle, has been examined in the claim petition. He has been termed as PW5, though it should be DW1. In his affidavit filed in the examination in chief, he records that he had appointed PW3, Vishal Thappa, as the driver of the vehicle, and he does not know as to how the deceased was driving the vehicle. According to him, he never appointed the deceased as the driver. But in his cross examination, he admits that on the date of incident, the deceased was driving the vehicle. In Para No.6 of his cross examination, DW1 records that prior to the incident, Vishal Thappa was his driver, who was driver with him for a long. This is the evidence.

19. The question is as to whether in the impugned judgment, discussion and appreciation of evidence has been made? Or as to whether any irrelevant material has been considered? Or material evidence has been ignored? Or as to whether the findings are based on no evidence?

20. The impugned judgment records as to what has been stated by the witnesses in the claim petition. Issue no.1 has been framed in the claim petition with regard to the relationship of the deceased with the respondent no.2, the owner of the vehicle, as to whether the deceased was the driver employed by the respondent no.2, the owner of the vehicle. The impugned judgment records extensive discussion on the evidence on this aspect and took note of the objections as well as the evidence of the respondent no.2, the owner of the vehicle.

21. It is not a case where material evidence has been ignored or irrelevant material has been considered. It is also not a case that the finding is not based on any evidence. In fact, after

careful appreciation of evidence, right conclusion has been drawn in the impugned judgment. Therefore, this Court is of the view that no substantial question of law is involved in this appeal. Accordingly, the appeal deserves to be dismissed at the stage of admission itself.

22. The appeal is dismissed *in limine*.

(Ravindra Maithani, J.)
03.07.2026

Ravi Bisht