

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 382 of 2024

Oriental Insurance Company Ltd. Appellant

Versus

Narayan Singh and others Respondents

Present:-

Mr. Deepak Rawat, Advocate for the appellant.
Mr. Harsh Vardhan Dhanik, Advocate for the respondent
nos. 1, 2, 3 and 5.
None for the respondent no.4.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the order dated 12.07.2024, passed in ECA Case No. 17 of 2023, Sri Narayan Singh and others Vs. Sri Ravindra Singh Chauhan and another ("the claim petition") by the court of Employees Compensation Commissioner, Dehradun. By it, the respondent nos. 1, 2 & 3/the claimants have been awarded Rs.16,01,775/- as compensation.

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

3. Notices of the appeal was served on the respondent no.4, but he is not represented.

4. The claimants filed a claim petition on the ground that Tilak Singh (claimant Narayan Singh is father, claimant Km. Karishma Chauhan is unmarried sister and claimant Harish Chauhan is unmarried brother of the deceased Tilak Singh) was driver of the Bolero Vehicle bearing Registration No. UK 16 TA 0334 ("the vehicle") owned by the respondent no.4 Ravindra Singh Chauhan. He was an employee of the respondent no.4. On

31.07.2023, the deceased was driving the vehicle from Village Sarni to Tyuni, when at about 08:30 in the morning, near Village Nayli Daragad Road Tyuni, the vehicle met with an accident and the deceased died. According to the claim petition, the deceased Tilak Singh was getting Rs.15,000/- per month and Rs.200/- per day allowances. Based on these allegations, total Rs. 18 Lakh compensation was claimed.

5. The owner of the vehicle did file his objections in the claim petition. He admitted the employment of the deceased by him and the factum of the accident. According to him, the deceased Tilak Singh had a valid driving license and if there is any liability to pay compensation, it falls with the appellant/Insurance Company.

6. The appellant/Insurance Company has also filed its objections. It has also been pleaded that no FIR of the incident was lodged; there is no material on record which reveals that the deceased was driver with the respondent no.4 and was getting salary as claimed; multiple other grounds were also taken in its objections by the appellant.

7. Based on pleadings of the parties, the following issues were framed in the claim petition:-

- “1. Whether the death of the deceased employee Tilak Singh occurred during the course of employment of respondent no. 1 due to his vehicle Bolero No. UK 16 TA/0334 being uncontrolled and falling in a deep gorge on 31.07.2023 at the time of coming from village Sarni to Tyuni? If yes, then to what benefit/compensation the claimants are entitled to and with which other details?

2. Any other relief?

8. Parties led evidence in the claim petition, after hearing the parties by the impugned judgment and order, the claimants were awarded compensation against which the appeal has been preferred under Section 30 of the Employees Compensation Act, 1923. On 07.10.2024, when the appeal was admitted, the following questions of law were formulated:-

- “(1) Whether the learned Commissioner was justified in granting compensation to the claimants when it was clearly proved that the Driver of the vehicle in question did not have a transport as well as hill endorsement on his driving license which would have authorized him to drive a transport/commercial vehicle?
- (2) Whether the Commissioner was justified in fastening the liability upon the Insurance Company when a similar controversy regarding the issue of transport endorsement in "M/s Bajaj Alliance General Insurance Company Ltd. Vs Rambha Devi and others", in Civil Appeal No.841 of 2018, 2022 Live Law SC 270, has been referred to a bench of five judges and the same is awaiting adjudication?
- (3) Whether the Commissioner was justified in fastening the liability upon the Insurance Company when it was admitted before the learned Commissioner that the owner of the vehicle was the real brother of the deceased 2 and the claimants were the real brother and his children who would not come within the definition of dependent as contemplated under the Employees Compensation Act?
- (4) Whether the learned Commissioner was justified in assessing the income of the deceased at Rs. 15,000 per month for the purposes of granting compensation as the same is clearly on a

higher side and not in consonance of the provisions of the Employees Compensation Act 1923. (5) Whether the learned Commissioner was justified in fastening the liability upon the Insurance company when the employment of the relationship of employer/employee was not categorically established which is a prerequisite for grant of compensation in Employees Compensation Act 1923?"

9. Learned counsel for the appellant/Insurance Company submits that the deceased was driving a transport vehicle, but the driving license did not have the transport and hill driving endorsement on it. Therefore, it cannot be said that the driver has a valid driving license and accordingly, the liability cannot be fastened upon the appellant/Insurance Company. Though, he fairly concedes that post filing of the appeal, the issue with regard to the transport vehicle has already been decided by the Hon'ble Supreme Court in the case of Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and others, (2025) 3 SCC 95 and now it is no more required for a vehicle in the gross vehicle weight under 7,500 Kilograms. He submits that this ground is not available to the appellant/Insurance Company. He also submits that, in fact, the deceased was brother of the respondent no.4, the owner of the vehicle.

10. Learned counsel for the claimants submits that the issue with regard to the endorsement of the transport vehicle is no more available to the appellant in view of the principle of law laid down by the Hon'ble Supreme Court in the case of Bajaj Alliance General Insurance Company Limited (*supra*).

11. Insofar as, hill endorsement on the driving license is concerned, learned counsel for the claimants submits that in the

case of The New Assurance Co. Ltd. Vs. Smt. Kala Devi alias Kala Devi and others, 2008 (2) UC 821, this Court has already held that the driving license cannot be invalidated merely on the ground that it has not recommended for driving in hills. He submits that this has been so quoted in the impugned judgment.

12 This Court has to record the finding on the questions of law. Question nos. 1 and 2 are co-related, they are as follows:-

- “(1) Whether the learned Commissioner was justified in granting compensation to the claimants when it was clearly proved that the Driver of the vehicle in question did not have a transport as well as hill endorsement on his driving license which would have authorized him to drive a transport/commercial vehicle.
- (2) Whether the Commissioner was justified in fastening the liability upon the Insurance Company when a similar controversy regarding the issue of transport endorsement in "M/s Bajaj Alliance General Insurance Company Ltd. Vs Rambha Devi and others", in Civil Appeal No.841 of 2018, 2022 Live Law SC 270, has been referred to a bench of five judges and the same is awaiting adjudication.”

13. The question no.1 relates to what is the effect if the driver of the vehicle in question did not have a transport as well as the hill driving endorsement on his driving license and question no.2 is with regard to the judgment in the case of Bajaj Alliance General Insurance Company Limited (*supra*), which then was referred to the Larger Bench.

14. Insofar as transport vehicle is concerned, in the case of Bajaj Alliance General Insurance Company Limited (*supra*), the

Hon'ble Supreme Court has settled the law and in para 181.1 has held as follows:-

“181.1. A driver holding a licence for light motor vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7500 kg, is permitted to operate a “transport vehicle” without needing additional authorisation under Section 10(2)(e) of the MV Act specifically for the “transport vehicle” class. For licensing purposes, LMVs and transport vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.”

15. In view of the law laid down by the Hon'ble Supreme Court, this ground is no more available to the appellant and merely because the transport vehicle endorsement is not made on the driving license of the deceased, his driving license cannot be said to be invalid.

16. Insofar as, the hill endorsement is concerned, the impugned judgment itself records that in the case of Kala Devi (*supra*), this Court has held that merely because hill endorsement is not made on the driving license, it does not invalidate the driving license. Therefore, question nos. 1 and 2 are decided accordingly.

17. Question no.3 is with regard to the fact that the owner of the vehicle was the real brother of the deceased and claimants include the real brother and his children would not come within the definition of dependent.

18. Learned counsel for the appellant/insurance company submits that this question of law was formulated to rule out any collusion between the claimants *inter se*.

19. Merely because the owner of the vehicle happens to be the brother of the deceased does not make a ground for rejection of the claim. It has been proved that the deceased was employee of the respondent no.4, the owner of the vehicle.

20. A substantial question No.4 is to the effect that as to whether the income of the deceased has rightly been assessed at Rs. 15,000/- per month on its higher side. It has been the case of the claimants that the deceased Tilak Singh was working as driver on a vehicle owned by the respondent no.4 at a salary of Rs.15,000/- per month. It has been admitted by the respondent no.4. There is no evidence adduced on behalf of the appellant to doubt it. Therefore, this Court does not find any error in the impugned judgment, which holds that the income of the deceased was Rs.15,000/- per month for the purpose of granting compensation.

21. Substantial question of law no.4 is decided accordingly.

22. Respondent no.1 Narayan Singh is the claimant, who is father of the deceased and he was 70 years of age when the claim was filed. Respondent no.2/claimant Km . Karishma Chauhan was 24 years of age, who was unmarried sister of the deceased. Respondent no.3/claimant Harish Chauhan was 20 years of age and unmarried brother of the deceased. The respondent no.5 in the appeal has been shown as opposite party no.3 in the claim petition, she is mother of the deceased of 68 years of age.

23. Learned counsel for the appellant submits that under Section 2 (1) (d) of the Employees Compensation Act, 1923 only minor brother would fall under the definition of dependant.

Whereas, the appellant no.3, Harish Chauhan, the brother of the deceased was 20 years of age when claim was filed. He is not entitled to compensation. This is not disputed by learned counsel appearing for the respondent nos. 1, 2, 3 and 5. Therefore, while affirming the impugned judgment and order, slightest modification is to be done with regard to the entitlement and apportionment of the amount of compensation.

24. The impugned judgment and order is upheld insofar as it fastens liability on the appellant to pay Rs. 16,01,775/- as compensation to the claimants @ 12% interest w.e.f. the date of death of the deceased.

25. The respondent no.1 Narayan Singh, respondent no.2 Km. Karishma Chauhan and respondent no.5 Smt. Urmilla are entitled to the compensation. Out of the entire amount of compensation, the respondent no.5 Smt. Urmilla, the mother of the deceased shall get 50% of the amount of compensation; respondent no.1 Narayan Singh, the father of the deceased shall get 30% of the amount of compensation amount and respondent 2 Km. Karishma Chauhan shall get 20% of the amount of compensation.

26. The impugned judgment and order is modified to the extent, as indicated above.

27. The appeal stands disposed accordingly.

(Ravindra Maithani, J.)
30.05.2026