

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.379 of 2025

Manju Devi and others Appellants/Claimants

Versus

National Insurance Company Limited and another.....Respondents

Present:- Mr. Manindra Singh Bhandari, Advocate for the appellant/claimants.
Mr. M.K. Goyal, Advocate for the National Insurance Company Limited/respondent no.1.
Mr. Himanshu Joshi, Advocate holding brief of Mr. Prashant Khanna, Advocate for respondent no.2.

Judgment

Hon'ble Ravindra Maithani, J. (Oral)

Present appeal is preferred under Section 30 of The Employee's Compensation Act, 1923 ("the Act") against the judgment and order dated 21.08.2025, passed by Employees' Compensation Commissioner/Chief Judicial Magistrate, Rudraprayag, in Employee Compensation Case No.01 of 2025, Manju Devi and others Vs. National Insurance Company Limited and another ("the case"), by which, the application seeking compensation under Section 22 of the Act filed by the appellants has been dismissed.

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

3. Briefly stated, the appellants filed an application under Section 22 of the Act seeking compensation on the death of Suresh Lal, who was husband of appellant no.1 and father of remaining appellants. According to the claim petition, the deceased was 28 years of age and was a driver in the vehicle registration No.UK13TA 0685 ("the vehicle") owned by the respondent no.2/Surat Singh

Bhandari. The deceased was the employee of the respondent no.2/Surat Singh Bhandari. On 07.07.2017, at 11:00 a.m., when the vehicle was proceeding towards Rudraprayag, it met with an accident and fell into a deep gorge, due to which, some of the passengers spilled out from the vehicle and some of the passengers immersed in the river along with the vehicle. The deceased Suresh Lal was one of them, who was never traced. The claim petition records that the deceased was getting Rs.15,000/- per month salary. Based on these facts Rs. 30,00,000/- compensation was sought.

4. The respondent no.2, the owner of the vehicle filed objections to the claim petition. He admits most of the averments made in the application filed by the appellants for claiming compensation, but according to the respondent no.2/the owner of the vehicle, the deceased Suresh Lal was being paid Rs.8,000/- per month salary.

5. The respondent no.1/National Insurance Company Limited ("insurance company") has also filed its objection in the claim petition. The monthly salary and factor of employment, as stated in para 5 and 9 of their application by the appellants has been denied by the insurance company. It has been the case of the insurance company that the alleged incident was not an accident as has been envisaged/defined under the Act. There is no casual connection between the accident and employee; hence appellants are not entitled for any compensation.

6. Based on the averments made by the parties in the case, six issues were framed, which are as follows:-

- i. Whether on 07.07.2017 at about 11:00 in the morning, at Jawadi bye-pass near forest department vehicle registration No. UK13TA 0685 went out of control and fell into the river and some of the passengers spilled out from the vehicle and some of the passengers immersed in the river along with the vehicle including the deceased?
- ii. Whether on 07.07.2017 at about 11:00 a.m. at Jawadi bye-pass near forest department vehicle bearing registration No. UK13TA 0685 went out of control and fell into the river, thereafter the deceased Suresh Lal was not traceable for about 07 years after the incident and thereafter the court of Civil Judge (Sr. Div.) Rudraprayag presumed his civil death?
- iii. Whether on 07.07.2017 on the death of the deceased Suresh Lal [the presumption made by the court of Civil Judge (Sr. Div.) Rudraprayag], was under the employment of the respondent no.2/Surat Singh Bhandari as a driver in vehicle registration No. UK13TA 0685 and was getting salary?
- iv. Whether the vehicle registration No. UK13TA 0685 was insured with the insurance company?
- v. Whether the claimants are dependents?

7. On behalf of the appellants, appellant Manju Devi was examined as PW1, the respondent no.2/Surat Singh Bhandari also examined himself as DW1. On behalf of the insurance company no witness was examined.

8. By the impugned judgment and order, issue nos.(i) and (ii) were decided in favour of the appellants. On issue no.(iii), it was

held that the appellants have been unsuccessful in proving that on the date of death the deceased Suresh Lal was working as a driver in the vehicle owned by the respondent no.2/Surat Singh Bhandari and even the employer-employee relationship has not been proved.

9. On issue no.(iv), it was held that the vehicle was insured on the date of incident.

10. On issue no.(v), it is held that the appellants falls into the category of dependents.

11. Based on the finding recorded on the issue nos.(i) to (v) it was held that the appellants are not entitled to compensation. In fact, while holding so, in para 23 of the impugned judgment the court also observed that the claim is filed beyond two years and it is barred by limitations.

12. Under Section 30 of the Act appeals are admitted only if there is a substantial question of law. In the appeal itself the appellants have stated, as to what are the substantial questions of law, but they were reformulated by the Court when the appeal was admitted, on 11.12.2025 and these are the following substantial questions of law:-

- (i) Whether the appellants/claimants are entitled to compensation on account of the untimely death of Suresh Lal (husband/father of the appellants), who was declared dead by the Civil Court on 17.12.2024 in O.S. No. 64 of 2024, considering that he had gone missing on 07.07.2017 during the course of his employment as a driver with respondent no. 2, the owner of the vehicle?
- (ii) Whether the learned Commissioner erred in law in holding that the claim petition was barred by limitation on the ground that it was not filed within two years of the death of the deceased, despite the fact

that the Civil Court had declared the deceased to be presumed dead only on 17.12.2024 after completion of the statutory period of seven years of disappearance, and therefore the limitation ought to have been computed from the date of the declaration of civil death?

Findings on substantial question of law no.(i):-

13. This question is on multiple grounds. Whether the death of the deceased Suresh Lal was untimely as he was declared dead by the Civil Court and the death was caused during the course of employment.

14. There is no dispute to the fact that the appellants did file Original Suit No.64 of 2024, Manju Devi Vs. Gram Panchayat and others in the court of Civil Judge (Sr. Div.), Rudraprayag ("the suit") seeking declaration that the deceased Suresh Lal has died. The suit was decreed on 17.12.2024 and the court declared that the civil death of Suresh Lal is presumed.

15. Learned counsel for the appellants submits that Suresh Lal was the driver employed by the respondent no.2/Surat Singh Bhandari in the vehicle. He was then getting Rs.15,000/- per month salary. It is argued that respondent no.2 had admitted that the deceased Suresh Lal was working with him as a driver at a salary of Rs.8,000/- per month. Learned counsel would submit that the appellant Smt. Manju Devi as a witness has stated about it. Not only she, but the respondent no.2/Surat Singh Bhandari had also been examined as a witness. He has stated that the deceased Suresh Lal was his employee as a driver at a salary of Rs.8,000/- per month, who died in an accident. Learned counsel would submit that the respondent no.2/Surat Singh Bhandari has not been

cross-examined by the insurance company on this aspect. His statement with regard to employment of deceased with the respondent no.2/Surat Singh Bhandari as a driver remains un-rebutted.

16. Learned counsel for the insurance company submits that the claimants have not clarified as to why did they file the suit in the year 2024? Why soon after the accident, they did not file the claim petition? Have they concealed anything? Did they file any claim petition earlier, in which it was held that first the claimant has to declare the civil death of the deceased? He submits that these facts are not clear.

17. Learned counsel for the insurance company submits that according to the insurance company, the deceased was not in the employment of the respondent no.2/Surat Singh Bhandari, the owner of the vehicle, therefore, the burden shifts on the claimants to prove the fact that, in fact, the deceased Suresh Lal was under the employment of the respondent no.2/Surat Singh Bhandari, the owner of the vehicle. He would submit that the owner has not been examined.

18. But, when the Court invited the attention of the learned counsel for the insurance company that, in fact, the respondent no.2/Surat Singh Bhandari has been examined and he has admitted this fact, he submits that even if, it is admitted that the deceased was under the employment of the respondent no.2/Surat Singh Bhandari, the appellants are not entitled to the

compensation because the vehicle was overloaded and it is violation of condition of Section 3(b)(ii) of the Act.

19. This is an appeal, which has been admitted on substantial questions of law. The facts pleaded give rise to issues. Finding given by the court below makes grounds for formulating any question of law. The finding of this Court shall confine to the substantial questions of law.

20. As stated, admittedly on 17.12.2024 in the suit a declaration was made with regard to the civil death of the deceased Suresh Lal. It is also admitted that with regard to the accident, some of the occupants did file claim petition under the Motor Vehicle Act, 1988 which were allowed and insurance company has paid the compensation.

21. The accident took place on 07.07.2017, based on which the civil death of the deceased Suresh Lal, the driver of the vehicle was declared in the suit on 17.12.2024. It is true that the employer-employee relationship has to be proved by the appellants. The appellants have stated that the deceased was in the employment of the respondent no.2/Surat Singh Bhandari, the owner of the vehicle and he was getting Rs.15,000/- per month salary. This is so pleaded and deposed by appellant Manju Devi in her affidavit in examination-in-chief.

22. Respondent no.2/Surat Singh Bhandari, the owner of the vehicle has been examined as DW1. He has also stated in paras 1 and 3 of his statement that he is owner of the vehicle and the

deceased Suresh Lal was driver in it for which he was paying him Rs.8,000/- per month salary in addition to other allowances. DW1 Surat Singh Bhandari has been cross-examined by the insurance company, but not even a single suggestion has been given that the deceased was not in the employment of this witness. The statement of DW1 with regard to the employment of the deceased Suresh Lal in the vehicle remains un-rebuttable.

23. The evidence of PW1 Manju Devi with regard to the employment of the deceased with the respondent no.2/Surat Singh Bhandari, the owner of the vehicle is corroborated by the statement of DW1 Surat Singh Bhandari, the owner of the vehicle. The appellants have proved this fact. In the impugned judgment and order in para 17, it has wrongly been recorded that the appellants have not produced any oral or documentary evidence with regard to the employer-employee relationship. In fact, there is oral evidence of the appellant Manju Devi as well as un-rebutted evidence of DW1 Surat Singh Bhandari, the owner of the vehicle on it.

24. Therefore, this Court is of the view that the deceased Suresh Lal died in a road accident on 07.07.2017 while driving the vehicle. At the relevant time, he was in the employment of the respondent no.2/Surat Singh Bhandari. Therefore, this may not be a ground to deny compensation to the appellants.

25. The substantial question of law no.(i) also involves the fact of entitlement of compensation. This Court has noted that the deceased Suresh Lal was in the employment of the respondent no.2/Surat Singh Bhandari at the relevant time when the accident

took place on 07.07.2017. The question of entitlement to the appellants for compensation shall be deliberated after deliberation on substantial question of law no.(ii).

26. Substantial question of law no.(i) is disposed of accordingly.

Substantial question no.(ii):-

27. It relates that whether the claim of the claimants could be denied on the ground that the petition is barred by limitation? In fact, as such no issue was framed in the case. But, while making observation on the relief part on issue no.(vi), it was noted that the claim petition is barred by limitation also. This finding is not in accordance with law. The deceased met with an accident on 07.07.2017. After 07 years, the appellants did file the suit seeking declaration for presumption of the civil death of the deceased Suresh Lal. The civil suit was decreed on 17.12.2024 and soon thereafter, on 17.02.2025 the claim petition has been filed. In fact, the period of two years could have been computed from the date of declaration of the civil death.

28. Therefore, this Court is of the view that the claim of the claimants has not been barred by the limitation.

29. Substantial question of law no.(ii)is decided accordingly.

30. The claim of the appellants was denied mainly on the ground that the employer-employee relationship has not been established. This Court has already held while deciding substantial

question of law no.(i) that the employer-employee relationship has already been established.

31. Further, while deciding substantial question of law no.(ii), this Court has already held that the claim is not barred by the limitation. In view of it, definitely the appellants are entitled for compensation.

32. What would be the amount of compensation? Section 4 of the Act makes provisions with regard to it. According to it, when death results from the injury the compensation shall be an amount equal to 50% of the monthly wages of the deceased employee multiplied by the relevant factor. In the claim petition itself, the claimants have stated that the age of the deceased was 28 years.

33. What was the monthly wages of the deceased? According to the appellants, the deceased was getting Rs.15,000/- per month salary from the respondent no.2/Surat Singh Bhandari as driver of the vehicle, but the respondent no.2/Surat Singh Bhandari has stated that he was paying Rs.8,000/- per month salary. There is no record, as such with regard to the amount of salary. It is nobody's case that at the relevant time the minimum wages for driver was more than Rs.8,000/-. In absence of any record the salary of the deceased may not be considered to be proved as Rs.15,000/- by the appellants. But, in view of the statement that has been given by the respondent no.2/Surat Singh Bhandari, the owner of the vehicle, this Court is of the view that it has been proved by the appellants that the deceased was getting Rs.8,000/- per month salary.

34. Since the age of the deceased was 28 years, the relevant factor is 211.79 as per Schedule IV of the Act. The half of the monthly wages of Rs.8,000/- comes to Rs.4,000/-. Therefore, the compensation i.e. payable to the claimants is Rs.4,000/- x 211.79 = Rs.8,47,160/-.

35. What would be the amount of interest? Section 4A(3) makes provisions that if compensation is not paid within one month from the date it was due, the claimants are entitled to 12% per annum interest. Section 4A(3) is as follows:-

“4A. Compensation to be paid when due and penalty for default.- (1)
.....
(2)
(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—
(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and
(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:
Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

36. Learned counsel for the appellants submits that the compensation falls due from the date when the injuries were sustained and not from the date when the order was passed. He refers to the judgment in the case of Oriental Insurance Company Limited Vs. Siby George and others, (2012)12 SCC 540.

37. In the case of Oriental Insurance Company Limited (*supra*), the Hon'ble Supreme Court has held that, **"There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary."**

38. Learned counsel for the respondent no.1 submits that in so far as the interest is concerned, the owner has to pay it. He submits that the insurance company may not be faulted with it because the appellants did delay in filing the claim. They waited for complete seven years.

39. In support of his contention learned counsel for the appellant has placed reliance on the principle of law as laid down in the case of Ved Prakash Garg Vs. Premi Devi and others, (1997)8 SCC 1 and New India Assurance Co. Ltd. Vs. Rekha Chaudhary and others, 2026 SCC OnLine SC 294.

40. In the case of Ved Prakash Garg (*Supra*), in fact, the Hon'ble Supreme Court discussed the part of the penalty component of the order and exonerated the insurance company of the liability to pay the penalty imposed under Section 4A(3) of the Act. In so far as the liability of the insurance company with regard to the compensation and interest is concerned that was upheld.

41. In the case of Rekha Chaudhary (*Supra*), the Hon'ble Supreme Court, in fact, did not discuss the liability with regard to interest of the insurance company instead the Hon'ble Supreme Court discussed the validity of that part of order by which liability was fastened on the insurance company of paying the penalty component under Section 4A(3)(b) of the Act.

42. This Court has already held that the deceased Suresh Lal died during the course of his employment. He was under the employment of the respondent no.2/Surat Singh Bhandari. He is entitled to compensation.

43. In the case of Oriental Insurance Company Limited (*Supra*), the Hon'ble Supreme Court has interpreted the provision of Section 4A of the Act and held that the compensation becomes due as soon as the injuries are caused.

44. In the instant case, the appellants have not claimed any penalty, as such under Section 4A(3)(b) of the Act.

45. In so far as the compensation and interest part is concerned, Section 4A(3) makes provision that if payment is not made within one month from the date it fell due interest may be awarded under Sub Section (a) @ 12% p.a. or at any higher rate.

46. As stated, in the case of Oriental Insurance Company Limited (*Supra*), the Hon'ble Supreme Court has interpreted as to when the compensation becomes due and held that it becomes due when the injury was caused to the employee and if within one month from that date compensation is not paid the employer has to pay interest @ 12% p.a. or at any higher rate.

47. It has been argued on behalf of the insurance company that it is the appellants, who delayed in filing the claim petition. Therefore, the insurance company should not be burdened with payment of interest.

48. This argument has less force. In the instant case, the dead body of the deceased Suresh Lal was never traced. Unfortunately, he immersed into the river along with the vehicle. The appellants had to seek declaration from the civil court in the suit with regard to the civil death of Suresh Lal. Therefore, this Court is of the view that the appellants are also entitled to get interest on the amount of compensation @ 12% p.a. w.e.f. one month after the date of incident, which means the appellants are entitled to get interest @ 12% p.a. on the compensation amount w.e.f. 06-08-2017.

49. In view of the foregoing discussions, this Court is of the view that the appeal deserves to be allowed and the appellants are entitled for compensation of Rs.8,47,160/- with 12% interest per annum from 06.08.2017.

50. The appeal is allowed.

51. The judgment and order dated 21.08.2025, passed by the Employees' Compensation Commissioner/Chief Judicial Magistrate, Rudraprayag in Employee Compensation Case No.1 of 2025, Manju Devi and others Vs. National Insurance Company and another, is set aside.

52. The respondent no.1/National Insurance Company is directed to pay an amount of compensation of Rs.8,47,160/- with 12% interest per annum with effect from 06.08.2017 to the claimants/appellants.

53. The claim of the appellants is decided in the above terms accordingly.

(Ravindra Maithani, J.)

20.03.2026

Sanjay