2026:UHC:10593

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.108 of 2018

Reliance General Insurance Company Limited

--Appellant

Versus

Murti Singh Bisht and Others

--Respondents

Presence:-

1. Mr. Pulak Agarwal, learned counsel for the appellant/Insurance Company.
2. Mr. Neeraj Garg, learned Senior Advocate assisted by Mr. Pankaj Kumar, learned counsel holding brief of Mr. Rajendra Arya, learned counsel for the respondent nos.1 & 2/claimants.
3. Mr. Subhash Joshi, learned counsel holding brief of Mr. Siddhartha Bisht, learned counsel for the respondent no.4/New India Insurance Company.

With

Appeal From Order No.89 of 2022

Murti Singh Bisht and Anr. --Appellants/claimants

Versus

Vikram Singh Rana and Others --Respondents

Presence:-

1. Mr. Neeraj Garg, learned Senior Advocate assisted by Mr. Pankaj Kumar, learned counsel holding brief of Mr. Rajendra Arya, learned counsel for the appellants/claimants.
2. Mr. Kartikey Maulekhi, learned counsel holding brief of Mr. P. C. Maulekhi, learned counsel for the respondent no.2/New India Insurance Company.
3. Mr. Pulak Agarwal, learned counsel for the respondent no.3/Insurance Company.

Hon'ble Siddhartha Sah, J.

By means of the Appeal From Order No.108 of 2018 under Section 173 of the Motor Vehicles Act, 1988, the appellant/insurer has assailed the impugned

judgment and order dated 05.01.2018, passed by the learned Motor Accident Claims Tribunal/IIIrd Additional District Judge, District Dehradun in MACP No.154 of 2009, Murti Singh Bisht & Anr. vs. Vikram Singh Rana & Others, by which an amount of Rs.18,58,140/- with interest @ 9% was awarded as compensation by the learned Tribunal.

2. By means of the connected Appeal From Order No.89 of 2022, the claimants have sought the modification of the impugned judgment and order dated 05.01.2018 passed by the learned Motor Accident Claims Tribunal/IIIrd Additional District Judge, District Dehradun in MACP No.154 of 2009, Murti Singh Bisht & Anr. vs. Vikram Singh Rana & Others, for allowing the claim of the appellants/claimants in toto as claimed before the learned Claims Tribunal.

3. As both the appeals emanate out from the same judgment/order, the same are being decided together. Since respondent Vikram Singh Rana/owner of offending vehicle has neither appeared nor participated in proceedings before the Tribunal, hence, requirement to issue notice or hear him is dispensed with in view of provisions of Order 5 Rule 4-A CPC.

AO No.108 of 2018

4. Facts of the case necessary for the adjudication of the aforesaid appeals from order are narrated hereunder:-

i. On 06.04.2007, the claimant Murti Singh

Bisht and his son master Ashish Bisht @ Ashish Kumar and one lady were riding a motorcycle vehicle No.UA 07L 4486 and were going from Tehri to Chamba and travelling to Dehradun when at about 9:45 AM in the morning at a place Khari within Police Station Narendranagar, a truck coming from opposite direction bearing No.UA 07D 1579, whose driver was driving it rashly and negligently hit the motorcycle from the front, from which the pillion rider got seriously injured, who was referred to a hospital, where minor Ashish Bisht died on 07.04.2007.

ii. In the accident, the claimant, Murti Singh Bisht, also sustained serious injuries, resulting in permanent disability. Consequently, he was retired from the Indian Army on account of his disability.

iii. The claim petition was filed seeking compensation on account of the death of Master Ashish Bisht as well as the injuries sustained by the claimant in the accident.

iv. The vehicle owner, defendant No.1, despite due service of notice, neither appeared nor participated in the proceedings of the claim petition, nor did he file any written statement. Consequently, the proceedings against respondent No. 1 were directed to proceed *ex-parte* vide order dated 04.04.2011.

5. The defendant No.3/Reliance General

Insurance Company Ltd. contested the claim petition by filing a written statement and, *inter alia*, contended that the driver of the offending vehicle bearing Registration No. UA 07D 1579 was not holding a valid driving license and was driving the vehicle without valid documents. Accordingly, it denied its liability to pay any compensation.

6. Vide judgment and order dated 05.01.2018, the learned MACT/IIIrd Additional District Judge, Dehradun, partly allowed the claim petition and awarded compensation of Rs. 18,58,140/-.

7. On Issue No. 1, the learned Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the truck driver, as a result of which the claimant sustained serious injuries and his son died.

8. On Issues Nos. 2 and 3, the learned Tribunal came to the conclusion that although the driving license and the documents pertaining to the offending vehicle had not been placed on record, the defendant No. 3/Insurance Company had admitted that the vehicle was insured with it on the date of the accident.

9. On the issue of compensation, the learned Tribunal concluded that, since the claimant was serving in the Indian Army, the compensation was assessed on the basis of his last-drawn salary after deducting the pension amount.

10. With regard to the death of the minor child, the compensation was assessed at Rs. 2,50,000/-.

11. Accordingly, the learned Tribunal awarded total compensation of Rs. 18,58,140/-.

12. Assailing the judgment and award dated 05.01.2018, learned counsel for the appellant/Insurance Company has drawn the attention of the Court to the findings recorded by the learned Tribunal while deciding Issues Nos. 2 and 3. He would submit that, since the driving license of the driver was never placed on record, the liability to pay compensation ought to fall upon the owner of the offending truck, as the absence of a valid driving license would constitute a fundamental breach of the insurance policy.

13. To buttress his submissions, learned counsel for the appellant/Insurance Company has relied upon the judgment of the Hon'ble Supreme Court in *Reliance General Insurance Company Ltd. v. Om Parkash and Others*, reported in 2026 SCC OnLine SC 1445. He has drawn the attention of the Court to paragraphs 16, 17, 18 and 19 of the said judgment, which are being extracted hereunder for ready reference:-

> *"16. Here only we may add that the owner has not entered the witness box either to say whether on the date of the accident the driver had a valid license or not, or to say that he had taken steps to ensure that the driver's license was renewed after it had expired.*
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> *17. A question similar to the one in the present case arose in Beli Ram v. Rajinder Kumar, to the effect that if a driving license which was valid at the time of taking the policy, has subsequently expired, does the responsibility of the insurer abate? It was concluded by a three-judge bench in the*

affirmative. In reaching this conclusion, the following observations are instructive:

> *"14. We are of the view that once the basic care of verifying the driving licence has to be taken by the employer, though a detailed enquiry may not be necessary, the owner of the vehicle would know the validity of the driving licence as is set out in the licence itself. It cannot be said that thereafter he can wash his hands off the responsibility of not checking up whether the driver has renewed the licence. It is not a case where a licence has not been renewed for a short period of time, say a month, as was considered in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733 : (2004) 118 Comp Cas 396] where the benefit was given to a third party by burdening the insurance company. The licence in the instant case, has not been renewed for a period of three years and that too in respect of commercial vehicle like a truck. The appellant showed gross negligence in verifying the same."*
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> *(emphasis supplied)*

Beli Ram supra had approved the judgment in National Insurance Co. Ltd. v. Hem Raj7, the observations whereof are relevant for us, given the prima facie similarity of circumstances:

> *"18. When an employer employees a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section-5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfill the requirements of Section 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the license. He must also take reasonable care to see that his employee gets his license renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving license of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had*

either checked the driving license or had given instructions to his driver to get his driving license renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

(emphasis supplied)

18. Following the dictum above, the appeal is allowed. The appellant insurer cannot be held liable to make good the award. The final burden shall be on both the employer and the driver. In the order issuing notice, we had directed that the amount as computed be released in favour of the claimants. In view of the above discussion, we hold the principle of 'pay and recover' to be applicable in this case. The appellant-insurer shall therefore be at liberty to take steps in accordance with law.

19. This Court cannot be oblivious to the fact that asking a driver or an owner to pay such a large amount is a humongous burden upon them. It may throw into disarray, their entire lives all because the driver and the owner did not take adequate precaution to ensure that there was no break in the validity of the driving license. Had that been done, the burden would not have fallen upon them, and the appellant-insurer would have been bound to honour the award. In our view, this underscores the importance of the driving license. It is a document that certifies the ability to drive on the road, and so it stands to reason that all drivers should have it."

14. Placing reliance on the aforesaid judgment in *Reliance General Insurance Company Limited* (supra), learned counsel for the appellant/Insurance Company would submit that if the driver of the offending vehicle was not holding a valid driving license at the time of the accident, the Insurance Company cannot be held liable to indemnify the owner. He would, therefore, submit that, in such circumstances, the liability to pay compensation would rest upon the owner of the offending vehicle.

15. Learned Senior Advocate for the respondents/claimants would submit that the finding on Issue Nos. 2 & 3 is categorical, inasmuch as the Insurance Company has admitted that, on the date of the accident, the offending vehicle was insured with the Insurance Company. Though Mr. Pulak Agarwal, learned counsel for the appellant/Insurance Company, would very vehemently argue that the entire liability would shift to the owner in view of the judgment in the case of *Om Parkash* (supra), this Court is of the view that, in the case of *Om Parkash* (supra) itself, the Hon'ble Supreme Court has held that in a case like the present one, where the driving license of the driver of the offending vehicle were not brought on record, the principle of "Pay and Recover" would be applicable.

16. In the present case also, the same analogy can be drawn. Therefore, in the facts and circumstances of the present appeal, since the driving licence and other documents of the offending vehicle were not brought on record, and despite due service upon the owner, he neither entered appearance nor filed any written statement, this Court is of the view that, in light of the principle of law laid down in the case of *Om Parkash* (supra), the present appeal deserves to be partly allowed to the extent that though the liability to pay compensation is held to be that of the owner of the offending vehicle, however, in view of the principle of "Pay and Recover", the Insurance Company shall first pay the entire amount of compensation to the claimants, and thereafter, it shall be open to the appellant/Insurance Company to recover the amount of compensation so paid

from the owner of the vehicle. The appeal is, therefore, disposed of and decided in the aforesaid terms.

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17. Learned counsel appearing on behalf of the appellants/claimants would submit that the compensation awarded by the learned Tribunal is grossly inadequate. He would submit that, in the case of the deceased minor child, the learned Tribunal erred in awarding a meagre amount of only Rs. 2.5 lakhs, whereas it is settled law that, in the case of the death of a school-going child, compensation of Rs. 5 lakhs ought to be awarded.

18. He would place reliance upon the judgment of the Hon'ble Supreme Court in *Kishan Gopal and Another v. Lala and Others*, reported in (2014) 1 SCC 244, and submit that, in the said case, while dealing with the death of a 10-year-old child, the Hon'ble Supreme Court awarded compensation of Rs. 5 lakhs.

19. Learned counsel appearing on behalf of the appellants/claimants would further submit that no addition towards future prospects has been made while calculating the compensation payable to the claimants.

20. He would place reliance upon the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi & Others*, reported in (2017) 16 SCC 680, and draw the attention of the Court to paragraph 59.3 thereof. He would submit that an addition of 50% towards future prospects ought to have

been made to the actual income of the claimant, which, in the present case, is the pension received by him. This legal position is not disputed by learned counsel for the Insurance Company. Paragraph 59.3 of the said judgment is extracted hereunder for ready reference:-

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."*

21. In view of the settled position of law laid down in *Pranay Sethi* (supra), the compensation payable to the claimant, Murti Singh Bisht, on account of the injuries sustained by him, is liable to be enhanced.

22. Per contra, learned counsel appearing for the respondent/Insurance Company would submit that, in the present case, the claimant/appellant, Murti Singh Bisht, is already receiving pension and, therefore, there is no loss of income on account of the injuries sustained by him. Consequently, no case for enhancement of compensation is made out. Learned Senior Advocate for the appellants/claimants, in response to the submissions regarding the receipt of pension by appellant no. 1, Mr. Murti Singh Bisht, would submit that, in paragraph 27 of the impugned judgment itself, the amount of compensation has been calculated after deducting the amount of pension. Therefore, the receipt of pension by appellant no. 1 would not come in the way of grant of

compensation to the appellants/claimants.

23. Upon hearing learned counsel for the parties and upon perusal of the record, it is evident that, in *Kishan Gopal* (supra), the Hon'ble Supreme Court has held that, in the case of the death of a 10-year-old minor child, just and adequate compensation would be Rs. 5 lakhs. Accordingly, in the present case also, the compensation awarded on account of the death of the 10-year-old minor child is liable to be enhanced to Rs. 5 lakhs.

24. So far as the question of enhancement of compensation on account of the injuries sustained by Murti Singh Bisht is concerned, learned counsel would submit that Murti Singh Bisht sustained grievous injuries, as a result of which he was retired from the Indian Army. He would, therefore, contend that, considering the loss of income and future prospects, an addition of 50% towards future prospects is required to be made in terms of paragraph 59.3 of the judgment rendered by the Hon'ble Supreme Court in *Pranay Sethi* (supra). The enhanced compensation is accordingly computed and quantified as follows:-

(i) Income	Rs.15,823/-
Less pension	Rs. 8,000/-
	Rs. 7,823/-
(ii) + 50% towards future prospects	Rs. 3912/-
	Rs.11,735/-x 12
	Rs.1,40,820/-
(iv) Rs.1,40,820/- multiplied by 15	Rs.21,12,300/-
(v) Loss of estate	Rs.15,000/-
(vi) Loss of consortium	Rs.40,000/-

(vii) Funeral expenses Rs.15,000/-

Grand total **Rs.21,82,300/-**

along with simple interest at the rate of 9% per annum as was awarded by the Motor Accident Claims Tribunal.

25. Further, in view of the judgment of the Hon'ble Supreme Court in the case of Kishan Gopal (supra), the appellants/claimants are also entitled to enhanced compensation of Rs. 5 lakhs, instead of Rs. 2.5 lakhs, on account of the death of their minor son, Ashish Bisht.

26. In such view of the matter, the Appeal from Order No.89 of 2022 is partly allowed only to the extent referred to in para 24 and 25 above.

27. The Insurance Company is directed to deposit the aforesaid 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 deposited.

28. 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.

29. Both the appeals stand disposed of accordingly.

(Siddhartha Sah, J.)
19.11.2026

Akash