UKHC010018322013

Reserved on 17.09.2026
Delivered on 29.10.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 350 of 2013

The Oriental Insurance Company Limited

--Appellant

Versus

Smt. Naintara Rai and Others

--Respondents

With

Appeal From Order No. 351 of 2013

The Oriental Insurance Company Limited

--Appellant

Versus

Smt. Nirmla and Others

--Respondents

Presence:-

Mr. I.P. Kohli, learned counsel or the appellant/Insurance Company.

Mr. D.N. Sharma, learned counsel for the claimants.

Mr. Ashish Joshi, learned counsel for Uttarakhand Transport Corporation/respondent no.4.

Per: Hon'ble Mr. Alok Mahra, J.

By means of the present appeals, preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"), the appellant–Insurance Company has challenged the common judgment and award dated 09.07.2013 passed by the learned Motor Accident Claims

Tribunal, Udham Singh Nagar (hereinafter referred to as “the Tribunal”), in Motor Accident Claim Petition Nos. 68 of 2011 and 67 of 2011. By the impugned judgment and award, compensation of ₹3,26,000/- and ₹4,34,000/-, respectively, has been awarded in favour of the claimants in the two claim petitions arising out of the same motor vehicle accident.

2. Since both appeals arise out of the same accident and involve common questions of fact and law, they are being decided by this common judgment. For the sake of convenience, the facts of Appeal No. 351 of 2013 are being taken into consideration.

3. The case of the claimants, in brief, is that on 01.02.2011, the deceased persons, along with their friends, Vijay Jaiswal and Vishal Giri, were standing by the roadside on Nainital Road, Haldwani, approximately three kilometres before Bailbaba Temple. At about 11:00 a.m., bus No. UK-04-PA-0226, allegedly being driven rashly and negligently, struck them, resulting in grievous injuries. The injured persons succumbed to their injuries while being taken to the hospital. An FIR was subsequently registered in connection with the accident, and the claimants instituted separate claim petitions seeking compensation on account of the death of their respective sons.

4. The Uttarakhand Transport Corporation contested the claim petitions, contending that the accident had occurred due to the negligence of the motorcyclist, who, while overtaking a truck, approached the bus from the opposite direction at a high speed and collided with it. The appellant–Insurance Company also contested the claim petitions, inter alia, on the grounds that the driver of the bus did not possess a valid driving licence and that the vehicle was being operated without a valid route permit. On the basis of the pleadings of the parties, the Tribunal framed issues concerning the manner in which the accident occurred, the alleged contributory negligence of the deceased, the validity of the driving licence and route permit, and the entitlement of the claimants to compensation.

5. The parties adduced oral and documentary evidence in support of their respective cases. Upon consideration of the pleadings and the evidence brought on record, the Tribunal decided the material issues in favour of the claimants and awarded compensation of ₹3,26,000/- in one claim petition and ₹4,34,000/- in the other. Aggrieved by the findings recorded by the Tribunal and the quantum of compensation awarded, the appellant–Insurance Company has preferred the present appeals.

6. Learned counsel appearing for the appellant–Insurance Company would submit that

the findings recorded by the Tribunal are contrary to the evidence available on record. Referring to the statement of DW-1, Satish Gupta, learned counsel would contend that the motorcyclist approached the bus from the opposite direction while overtaking a truck and that the accident occurred due to the negligence of the motorcyclist. It is further submitted that the owner of the bus failed to produce a valid route permit and that the vehicle was, therefore, being operated in breach of the statutory requirements of the M.V. Act and the conditions of the insurance policy. Learned counsel would also contend that the Tribunal erroneously applied a multiplier of 18 and deducted only one-third of the income towards personal and living expenses, although the deceased were unmarried. On these grounds, it is prayed that the impugned awards be set aside or, in the alternative, suitably reduced.

7. Per contra, learned counsel appearing for the Uttarakhand Transport Corporation would submit that the bus was being operated on a notified route and that, under the applicable statutory scheme, the Corporation was not required to obtain a separate permit for each individual bus. It is further submitted that the accident occurred due to the negligence of the motorcyclist and that the findings recorded by the Tribunal do not suffer from any illegality or perversity warranting interference by

this Court.

8. Learned counsel appearing for the claimants would submit that the compensation awarded by the Tribunal does not represent just compensation, as the Tribunal failed to take future prospects into consideration and did not award appropriate amounts under the conventional heads, including filial consortium, loss of estate and funeral expenses. It is, therefore, contended that the compensation requires reconsideration in accordance with the principles laid down by the Supreme Court.

9. In response, learned counsel for the appellant–Insurance Company would submit that the claimants have neither preferred independent appeals nor filed cross-objections seeking enhancement of compensation. It is contended that, in appeals instituted by the Insurance Company for reduction of the compensation awarded by the Tribunal, the claimants cannot seek enhancement merely by raising additional grounds in support of their claim petitions.

10. Having heard learned counsel for the parties and upon perusal of the material available on record, the questions arise for determination: (i) Whether the findings recorded by the Tribunal regarding negligence and contributory negligence warrant interference by this Court? (ii) Whether the

appellant–Insurance Company has established any breach of the statutory requirements or the terms of the insurance policy so as to avoid or limit its liability in accordance with law? (iii) Whether the compensation awarded by the Tribunal has been determined in accordance with the principles laid down by the Supreme Court for computation of compensation in motor accident death claims? (iv) Whether, and to what extent, the compensation can be enhanced in the absence of an appeal or cross-objections by the claimants?

11. The first question for consideration is whether the Tribunal committed any error in determining the issue of negligence and rejecting, if so found, the plea of contributory negligence raised by the Uttarakhand Transport Corporation. In a claim arising out of a motor vehicle accident, the Tribunal is required to assess the entire evidence available on record to determine the manner in which the accident occurred. A mere allegation that a vehicle was being driven at a high speed or that its driver was overtaking another vehicle is not, by itself, sufficient to establish negligence. The surrounding circumstances, the site plan, the nature and location of the impact, the statements of the witnesses and other contemporaneous material must be considered together.

12. The burden of establishing contributory

negligence rests upon the party asserting it. The fact that the deceased was involved in the accident does not, by itself, establish that the deceased contributed to its occurrence. There must be material demonstrating that the conduct of the deceased also contributed to the accident. Unless such contribution is established from the evidence, the compensation payable to the claimants cannot be reduced merely on the basis of an allegation made by the driver or conductor of the offending vehicle.

13. In the present case, the appellant–Insurance Company has placed substantial reliance upon the statement of DW-1, Satish Gupta, to contend that the accident occurred due to the negligence of the motorcyclist. However, the evidentiary value of this statement is required to be assessed in conjunction with the other evidence on record. A finding recorded by the Tribunal on a question of fact ordinarily does not call for interference in appeal unless it is shown to be contrary to the evidence, perverse or otherwise legally unsustainable. The possibility of another view being taken on the same evidence would not, by itself, justify interference. Accordingly, the question of negligence must be determined on the basis of the evidence actually adduced before the Tribunal and the reasons recorded in the impugned award. If the Tribunal has considered the relevant evidence and

its finding is supported by the record, the appellant's challenge on this ground cannot succeed merely because the appellant seeks a different appreciation of the evidence. On the contrary, if the finding overlooks material evidence or is demonstrably inconsistent with the record, interference would be warranted to the extent justified by the evidence.

14. The next question concerns the alleged absence of a valid route permit. Learned counsel for the appellant–Insurance Company has contended that the owner of the bus failed to produce a valid permit and that such failure establishes a breach of the statutory requirements and the insurance policy. On the other hand, the Uttarakhand Transport Corporation has contended that the bus was operating on a notified route and was covered by the applicable statutory scheme.

15. The mere non-production of a route permit before the Tribunal does not, in every case, conclusively establish that the vehicle was being operated without lawful authority. Equally, the fact that the vehicle belongs to a public transport undertaking does not, by itself, establish that it was exempt from the requirement of obtaining a permit. The relevant statutory provisions, the nature of the transport undertaking, the applicable notification or scheme, and the terms of the insurance policy must be examined to determine whether a permit was

required in the circumstances of the case.

16. It is well settled that the liability of an insurer must be determined in accordance with the provisions of the M.V. Act and the principles governing the defences available to an insurer. The existence of an alleged breach and the legal consequence flowing from that breach are distinct questions. The insurer must establish the statutory defence on which it seeks to rely, and the consequence of any established breach must be determined in accordance with the applicable law. Therefore, the liability of the appellant–Insurance Company cannot be avoided merely on the basis of an unsupported allegation regarding the absence of a route permit.

17. In the present case, the plea of the appellant–Insurance Company must be examined in the light of the material relating to the route on which the bus was being operated, the applicability of any statutory exemption or notified scheme, and the relevant insurance policy. Unless the evidence establishes that the vehicle was required to possess a permit and that a legally sustainable defence is available to the insurer on account of its absence, the insurer cannot be absolved of liability solely because a permit was not produced. The ultimate finding on this issue must, therefore, rest upon the evidence and the applicable statutory provisions.

18. The next question relates to the computation of compensation. The object of awarding compensation under the M.V. Act is to provide just and reasonable compensation to the dependants of a person who has died in a motor vehicle accident. Such compensation must be determined by applying the settled principles governing the assessment of income, future prospects, personal and living expenses, the appropriate multiplier and compensation under the conventional heads. The computation must be fair, consistent and supported by the evidence available on record.

19. In Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, the Supreme Court laid down the principles governing the selection of the multiplier and the deduction towards personal and living expenses. Subsequently, in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, the Supreme Court clarified the principles governing the addition of future prospects and the amounts payable under the conventional heads. These principles are required to be applied while determining the compensation payable in the present cases, subject to the evidence concerning the income, age and dependants of each deceased.

20. From the particulars set out in the draft of the impugned awards, it appears that the annual

income of each deceased was assessed at ₹36,000/- and that the deceased were unmarried and approximately 21 and 22 years of age, respectively. These particulars, however, must be verified from the original awards and the evidence on record before the compensation is finally determined.

21. In the case of an unmarried deceased, the deduction towards personal and living expenses would ordinarily be 50%, in accordance with the principles laid down in Sarla Verma (supra), subject to the facts and circumstances of the case. Where the deceased falls within the relevant age bracket, a multiplier of 18 would ordinarily be applicable. Further, in accordance with Pranay Sethi (supra), an addition of 40% towards future prospects is ordinarily applicable where the deceased was below 40 years of age and was self-employed or earning a fixed salary, subject to the applicable legal principles and the evidence establishing the income. On the assumption that the annual income of each deceased was ₹36,000/-, the addition towards future prospects at the rate of 40% would amount to ₹14,400/-. The annual income, inclusive of future prospects, would accordingly be ₹50,400/-. After deducting 50% towards personal and living expenses, the annual contribution to the dependants would be ₹25,200/-. Applying a multiplier of 18, the loss of dependency would work out to ₹4,53,600/- in

respect of each deceased. The computation is set out below:

Particulars	Calculation	Amount
Annual income	—	₹36,000/-
Addition towards future prospects at 40%	₹36,000 × 40%	₹14,400/-
Annual income including future prospects	₹36,000 + ₹14,400	₹50,400/-
Deduction towards personal and living expenses at 50%	₹50,400 × 50%	₹25,200/-
Annual contribution to dependants	₹50,400 – ₹25,200	₹25,200/-
Applicable multiplier	—	18
Loss of dependency	**₹25,200 × 18**	**₹4,53,600/-**

22. The aforesaid calculation is subject to verification of the income and age of each deceased from the original record and to the evidence supporting the addition towards future prospects. It is also necessary to determine the amount payable under the conventional heads in accordance with the binding principles applicable to the case.

23. In Pranay Sethi (supra), the Supreme Court standardised the amounts payable towards loss of estate, funeral expenses and loss of consortium. The base amounts prescribed therein were ₹15,000/- towards loss of estate, ₹15,000/- towards funeral expenses and ₹40,000/- towards loss of consortium, subject to enhancement at the rate of 10% every three years in accordance with the judgment. The applicable amounts must be determined by reference to the governing precedent and the legally relevant date, rather than merely the date on which the appeal is decided. In the case of

an unmarried deceased, the parents may be entitled to filial consortium in accordance with Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, subject to the facts of the case and the eligibility of the claimants. The entitlement must be determined with reference to the persons claiming compensation and the applicable legal principles. Consortium cannot be awarded to a person merely because that person's name appears in the cause title; the relationship and entitlement must be established from the record.

24. For the purpose of illustrating the computation, and assuming that both parents of each deceased are eligible for filial consortium, the conventional heads, at the base amounts stated above, would be calculated as follows:

Particulars	Calculation	Amount
Filial consortium to the mother	₹40,000 × 1	₹40,000/-
Filial consortium to the father	₹40,000 × 1	₹40,000/-
Loss of estate	—	₹15,000/-
Funeral expenses	—	₹15,000/-
Total under conventional heads		**₹1,10,000/-**

25. On the aforesaid assumptions, the illustrative computation of compensation in respect of each deceased would be as follows:

Particulars	Amount
Loss of dependency	₹4,53,600/-
Compensation under conventional heads	₹1,10,000/-
Total compensation	**₹5,63,600/-**

26. It is clarified that the aforesaid computation represents the amount arrived at on the stated assumptions. Before the amount is adopted as the final compensation, the Tribunal's findings concerning the income, age and dependency of each deceased, the number of eligible claimants, the amounts already awarded under the conventional heads, and the applicable enhancement of those amounts must be verified from the original record. The same head of compensation cannot be awarded twice, and any amount already granted under a particular head must be duly accounted for.

27. Learned counsel for the appellant–Insurance Company has relied upon Ranjana Prakash v. Divisional Manager, (2011) 14 SCC 639, to contend that the claimants cannot obtain enhancement of compensation in the absence of an independent appeal or cross-objections. The submission requires consideration in the light of the principles governing the powers of an appellate court in appeals against motor accident compensation awards. In Ranjana Prakash (supra), the Supreme Court explained the distinction between permitting a respondent to support an award on grounds other than those relied upon by the Tribunal and permitting the respondent to obtain an amount higher than that awarded. Where the owner or insurer challenges the quantum of compensation,

the claimants may ordinarily defend the award by advancing grounds which support the amount already granted. However, in the absence of an appeal or cross-objections, they cannot ordinarily seek an increase in the amount of compensation merely by raising additional grounds in opposition to the appeal.

28. At the same time, the jurisdiction of the appellate court to determine just compensation must be considered in the context of the statutory scheme and the binding principles governing motor accident claims. The beneficial object of the M.V. Act does not, by itself, dispense with the procedural requirements governing appellate relief. The Court must determine whether the case warrants exercise of any legally available appellate power to grant relief beyond the specific prayer made by the claimants and must record reasons for doing so.

29. Having considered the submissions advanced by learned counsel for the parties and the material available on record, this Court is of the view that the challenge raised by the appellant–Insurance Company requires consideration only to the extent of determining whether the Tribunal has correctly assessed the compensation payable to the claimants. So far as the findings regarding negligence and contributory negligence are concerned, no interference is warranted unless the appellant

establishes that such findings are contrary to the evidence on record or suffer from any perversity or legal infirmity. Similarly, the plea regarding the absence of a valid route permit cannot, by itself, absolve the appellant–Insurance Company of its liability unless the requirement of such permit, the breach thereof and the legal consequences flowing from such breach are established in accordance with law.

30. As regards the quantum of compensation, the Tribunal was required to assess the loss of dependency by applying the principles laid down by the Supreme Court in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, and National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680. As per the particulars available in the impugned awards, the annual income of each deceased was assessed at ₹36,000/-, and their ages were approximately 21 and 22 years, respectively. If these particulars are confirmed from the original record, the addition of 40% towards future prospects, deduction of 50% towards personal and living expenses, and application of a multiplier of 18 would result in a loss of dependency of ₹4,53,600/- in respect of each deceased. The amount payable under the conventional heads, including filial consortium, loss of estate and funeral expenses, would be governed by the applicable judgments of

the Supreme Court and the eligibility of the claimants concerned.

31. The contention raised by learned counsel for the appellant–Insurance Company that the claimants have not preferred independent appeals or cross-objections also requires consideration. In Ranjana Prakash v. Divisional Manager, (2011) 14 SCC 639, the Supreme Court has explained that, in the absence of an appeal or cross-objections, a respondent may support the award on grounds other than those accepted by the Tribunal.

32. In view of the foregoing discussion, both appeals are partly allowed to the extent indicated hereinabove. The challenge to the findings regarding negligence and contributory negligence is rejected, and the findings of the Tribunal on these issues are maintained. The plea of the appellant–Insurance Company regarding the absence of a valid route permit is also rejected to the extent that no legally sustainable ground has been established for absolving the insurer of its liability.

33. The appellant–Insurance Company shall deposit the amount payable under the modified awards, after adjusting the amount, if any, already deposited or paid, within a period of eight weeks from the date of production of a certified copy of this judgment before the Tribunal. Upon deposit, the Tribunal shall disburse the amount to the eligible

claimants in accordance with law, after due verification of their entitlement and identity. The amount already deposited or paid to the claimants shall be given due credit while calculating the balance payable.

34. The record of both appeals shall be consigned accordingly.

35. There shall be no order as to costs.

36. The statutory amount if any remitted back to the learned Tribunal.

(ALOK MAHRA,J.)
29.10.2026

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