IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.451 of 2018

Reliance General Insurance Co. Ltd. -- Appellant

Versus

Smt. Neelam Negi and others --Respondents

Present:-
Mr. Pulak Agarwal learned counsel for the appellant.
Mr. D.C.S. Rawat, Mr. Harshit Bisht and Mr. Kamal Pandey, learned counsel for the respondents/claimants.

Hon'ble Siddhartha Sah, J. (Oral)

By means of this appeal filed under Section 173 of the Motor Vehicles Act, the insurer/appellant has assailed the judgment and order dated 24.09.2018 passed by the Motor Accident Claims Tribunal / 4th Additional District Judge, Dehradun, in M.A.C.P. No. 80/2017, Smt. Neelam Negi and others vs. Jagmal Singh and others, by which an amount of Rs. 74,71,288/- with interest at the rate of 6% has been awarded as compensation by the learned Tribunal.

2. Facts necessary for the adjudication of the present appeal are as follows:

i. The claim petition under Section 166 of the Motor Vehicles Act, 1988, was filed by the claimants/respondents on account of the death of Narendra Singh Negi in a motor accident which occurred on 25.03.2017 near Rawat Medical Store, Haridwar Road, Dehradun. In the claim petition, it has been averred that the deceased, Narendra Singh Negi, aged 35 years, while on duty as a policeman on 25th March, 2017, was riding his motorcycle bearing registration number UK-07BU-0912, when a bus bearing number HP-17D-5124, which was going towards Haridwar from Dehradun and was being driven rashly and negligently by its driver, hit the motorcycle, as a result of which the deceased sustained injuries and died on the way to the hospital. In the claim petition, it has been averred that the deceased was serving in the Uttarakhand Police and was drawing a monthly salary of Rs. 37,000/-, and compensation was sought on account of his accidental death.

ii. The claim petition was opposed by the insurance company as well as the bus driver and the bus owner, and the averments made in the claim petition were largely refuted. Inter alia, it was contended by the insurer that the accident occurred on account of contributory negligence.

iii. The claim petition was finally adjudicated by the Motor Accident Claims Tribunal / 4th Additional District Judge, Dehradun, vide judgment and order dated 24.09.2018, wherein, on Issue No. 1, the learned Tribunal came to the conclusion that the accident occurred on account of the driver of bus number HP-17D-5124 driving rashly and negligently and hitting the motorcycle of the deceased from behind, and that the deceased died on account of the injuries sustained in the said accident on 25.03.2017.

iv. On Issue No. 2, the learned Tribunal came to the conclusion that, on the date of the accident, i.e., 25.03.2017, all the documents of the bus, i.e., the RC, permit, fitness certificate, temporary permit, tax, etc., were valid, and the bus was being driven with all valid documents.

v. Issue No. 3, pertaining to compensation, was decided to the effect that the annual income of the deceased would be Rs. 3,08,387/-, and, on account of the age of the deceased, a multiplier of 16 was applied. The compensation was assessed at Rs. 49,34,192/- and, after adding the other heads and making an addition on account of future prospects, etc., the total compensation was assessed at Rs. 74,71,288/- along with interest at the rate of 6% per annum.

3. Assailing the aforesaid judgment and order dated 24.09.2018, learned counsel for the appellant, Mr. Pulak Agarwal, would submit that it is a case of contributory negligence. The contention with regard to contributory negligence was, in fact, raised in para 7 of the WS. He further submitted that the deceased, who was riding the motorcycle, was not wearing a helmet and that it was a clear case of contributory negligence on the part of the deceased. Hence, the Tribunal erred in not

deducting the appropriate amount on account of contributory negligence.

4. Also assailing the quantum of compensation, learned counsel for the appellant/insurer, Mr. Pulak Agarwal, would submit that the wife of the deceased was getting a family pension; hence, the addition of 50% towards future prospects to the income of the deceased was inappropriate. He would thus submit that the appeal deserves to be allowed on the aspect of the quantum of compensation as well as on the aspect of contributory negligence, and that the compensation deserves to be reduced accordingly.

5. Per contra, learned counsel for the claimants/respondents, Mr. D.C.S. Rawat, would submit that no specific issue was framed regarding contributory negligence, though the same was raised in paragraph 7 of the W.S. He would further submit that no issue regarding contributory negligence was pressed on behalf of the insurance company; therefore, it is not open to the insurer/appellant to raise the issue of contributory negligence at the appellate stage. He would further submit that the motorcycle on which the deceased was riding was hit from behind by the offending school bus.

6. He would refer to the testimony of PW-3, which has been taken note of by the learned Tribunal while disposing of Issue No. 1, stating that PW-3 was an eyewitness who stated that on the date of the incident i.e. 25.03.2017, when he was passing by on his motorcycle from the place of the incident, he saw that the driver of a yellow-coloured school bus bearing number HP-17D-5124 was driving the bus and that it hit the motorcycle of the deceased from behind. He would thus submit that there is evidence regarding the accident and the manner in which it occurred. He would further submit that it is clear from the record, and he would draw the attention of the Court to para 11 of the impugned judgment, wherein, inter alia, the charge sheet has been brought on record along with the list of documents. He would submit that the charge sheet was submitted by the police after a thorough investigation of the aforesaid accident.

7. Learned counsel for the claimants/respondents has also drawn the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of Ranjeet and another vs. Abdul Kayam Neb and another, reported in 2025 SCC OnLine SC 497, and

has drawn the attention of the Court to para 4 thereof, which is being extracted hereunder for ready reference:

> *"4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver."*

8. Learned counsel for the claimants/respondents has also drawn the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of Meera Bai & Ors. v. ICICI Lombard General Insurance Co., reported in 2025 SCC OnLine SC 992, and has drawn the attention of the Court to para 4 thereof, which is being extracted hereunder for ready reference:

> *4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.*

9. While placing reliance upon the judgment in the case of Ranjeet and another (supra), learned counsel for the claimants/respondents would submit that it is settled law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was negligently driven by the bus driver. He would further submit that even if the eyewitnesses are not examined, that would not be fatal to proving the death of the deceased due to the negligence of the bus driver. Hence, he would submit that the aspect of contributory negligence, as is being tried to be raised by learned counsel for the insurance company, is not worthy of acceptance.

10. In rejoinder, learned counsel for the insurer/appellant would submit that in para 7 of the W.S., a specific plea regarding contributory negligence was taken by the insurance company at the very inception. Para 7 of the W.S. is being extracted hereunder for ready reference:

> *"7. That as is evident from the pleadings there were two vehicles involved in the alleged accident therefore the alleged accident if any occurred due to*

the contributory negligence of the alleged deceased."

11. He would further submit that the plea of contributory negligence was considered while deciding Issue No. 1, and he has drawn the attention of the Court to para 16 of the impugned judgment. He would submit that, in para 16 of the impugned judgment, the learned Tribunal had the occasion to deal with the aspect of contributory negligence, and the learned Tribunal has returned a finding that though PW-3 Pankaj Rawat is stated to be an eyewitness, his name does not find a mention in the list of witnesses in the charge sheet, and, therefore, it would not be justified in relying upon the testimony of PW-3 Pankaj Rawat.

12. He would further submit that, in para no. 16 of the said judgment, it has been specifically adverted to by the learned Tribunal that, regarding contributory negligence, the relative contributory negligence ought to have been determined. However, a close scrutiny of paragraph number 16 of the impugned judgment would reveal that the contentions regarding contributory negligence, as raised by learned counsel for the insurer/appellant, did not find favour with the learned

Tribunal, and the learned Tribunal has returned a finding that, though the contention regarding contributory negligence has been raised by the insurance company, no evidence has been adduced by the insurer in this regard. The learned Tribunal has also relied upon a judgment of the Hon'ble Supreme Court in the case of Dinesh Kumar J. v. National Insurance Company Limited, reported in 2018 (1) SCC 750, stating therein that if the insurance company does not adduce any evidence regarding the contributory negligence of the deceased, then it would be deemed that the deceased did not have any contributory negligence in the accident.

13. On account of the rival submissions of the learned counsel for the parties, the main points for determination that arise for determination before this Court are as follows:-

> *i. Whether there was any contributory negligence of the deceased? If yes, its effect?*
>
> *ii. Whether the 50% addition in the income towards the future prospects granted by the learned tribunal is inappropriate as being contended by the insurer?*

14. So far as point for determination No. 1 is concerned, on one hand, learned counsel for the appellant-Insurance Company, Mr. Pulak Agarwal, Advocate, has contended that it is a case of contributory negligence and that the learned Tribunal has not accounted for the contributory negligence of the deceased; hence, there ought to have been a deduction on account of contributory negligence.

15. He has further submitted that, in para 7 of the written statement, a specific plea regarding contributory negligence was taken by the insurer right from the very inception. He has further drawn the attention of the Court to para 16 of the impugned judgment, where the aspect of contributory negligence has been dealt with by the Tribunal. However, learned counsel for the appellant would submit that the said plea has been decided wrongly.

16. On the other hand, learned counsel for the claimants/respondents, Mr. D.C.S. Rawat, would submit that PW-3 has deposed that the bus hit the deceased from behind on the fateful day. He would further place reliance upon the judgments of the Hon'ble Supreme

Court in the cases of Ranjeet & Anr. (supra) and Meera Bai & Ors. (supra).

17. After considering the rival submissions of the learned counsel for the parties, it is evident that, though the plea of contributory negligence was taken at the very inception by the insurer/appellant, the issue of contributory negligence was not specifically pressed; hence, no separate issue was framed regarding the aspect of contributory negligence. However, this aspect of contributory negligence was specifically dealt with by the learned Tribunal while disposing of Issue No. 1, and, on the aspect of contributory negligence, the learned Tribunal did not find favour with the contentions as raised by the insurance company.

18. This Court finds force in the submissions of the learned counsel for the claimants/respondents, particularly in view of the judgments cited in the cases of Ranjeet & Anr. (supra) and Meera Bai & Ors. (supra). From the said judgments, it is clear that, once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being driven negligently by the driver of the offending vehicle. Also, from the judgment of the Hon'ble

Supreme Court in the case of Dinesh Kumar J. (supra), it is clear that, once evidence is not adduced regarding contributory negligence, the aspect of contributory negligence has to be decided against the insurer. In such view of the matter, point for determination No. 1 deserves to be answered against the insurance company.

19. Point for determination No. 2 is regarding the quantum of compensation, wherein the learned Tribunal has granted a 50% addition towards future prospects. Learned counsel for the insurer/appellant has contended that, since the wife of the deceased was getting a family pension, she is not entitled to the 50% addition towards future prospects.

20. This issue is no longer res integra, inasmuch as the Hon'ble Supreme Court, in the case of Sebastiani Lakra v. National Insurance Co. Ltd., reported in 2019 (17) SCC 465, has specifically held that the receipt of pension or employment by the kin of the deceased does not disentitle them to compensation. Hence, in view of the clear position of law as enunciated by the Supreme Court in the case of Sebastiani Lakra (supra), point for determination No. 2 also deserves to be answered against the appellant/insurer.

21. In such view of the matter, since points for determination Nos. 1 and 2 have been decided against the insurance/appellant, the appeal deserves to be dismissed and is dismissed accordingly.

22. The appellant/insurer is directed to remit the balance of the compensation amount to the learned Tribunal within a period of 45 days from today. The Registry is also directed to remit the mandatory deposit to the Tribunal concerned forthwith.

23. The original record be transmitted to the concerned Tribunal.

(Siddhartha Sah, J.)
10.09.2026

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