

**Judgment reserved on: 23.09.2026****Judgment delivered on: 12.10.2026****HIGH COURT OF UTTARAKHAND AT NAINITAL****Appeal From Order No. 559 of 2012**

The New India Assurance Company Limited --Appellant

Versus

Ram Rakhi Devi and Others

--Respondents

Presence:*Mr. P.C. Maulekhi, learned counsel for appellant-Insurance Company.**Mr. Mukesh Singh Rawat, learned counsel for respondent Nos.1 to 4-claimants.***Hon'ble Pankaj Purohit, J. (Per)**

This Appeal from Order has been preferred by appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988, (hereinafter to be referred to as 'the Act'), assailing the judgment and award dated 18.08.2012 passed by learned Motor Accident Claims Tribunal/1st Additional District Judge, Udham Singh Nagar, in M.A.C.P. No.175 of 2009 *Smt. Ram Rakhi Devi and Others Vs. E. Thirumala Naidu and Others*. By the impugned judgment and award, compensation of ₹14,54,056/- was awarded against the appellant-Insurance Company along with interest @6% per annum from the date of filing the claim petition till the actual payment is made.

2. The brief facts of the case are that on 30.04.2009, at about 9:00 p.m., near Anand Dev Shopping Complex, Nainital-Haldwani Road, Rudrapur, District Udham Singh Nagar, deceased Jitendra Prasad Gupta, while going on a bicycle, was hit by Truck No. AP-03-V-8887, allegedly being driven rashly and negligently by its driver. As a result of the injuries sustained in the accident, Jitendra Prasad Gupta was taken for medical treatment,



but succumbed to his injuries. An FIR was thereafter registered at Police Station Rudrapur in connection with the accident. The deceased was stated to be about 46 years of age and was working as a driver in the office of Chief Medical Officer, Udham Singh Nagar, earning a monthly salary of about ₹13,914/-. The claimants, comprising his wife Ram Rakhi Devi, son Shankar Prasad and daughters Lakshmi and Aarti, claimed compensation on account of his death. The Motor Accident Claims Tribunal/1st Additional District Judge, Udham Singh Nagar, after considering the evidence on record, awarded a compensation of ₹14,54,056/- along with interest @6% per annum in favour of the claimants and fastened the liability upon the appellant-Insurance Company. Aggrieved by the said award dated 18.08.2012, appellant-Insurance Company has preferred the present appeal.

3. The claimants pleaded that the deceased Jitendra Prasad Gupta was employed as a driver in the office of Chief Medical Officer, Udham Singh Nagar, and was earning about ₹14,210/- per month. It was pleaded that on 30.04.2009, the deceased was going towards his office when the offending truck, being driven rashly and negligently, hit him, resulting in fatal injuries. The claimants, being the wife, son and daughters of the deceased, claimed compensation on account of his death, contending that they were dependent upon his income.

4. The appellant-Insurance Company, in its written statement, denied its liability to satisfy the claim. It specifically pleaded that the offending truck was being operated in breach of the terms and conditions of insurance policy and driver did not possess a valid and effective driving licence and the vehicle did not have a valid permit and fitness certificate at the time of the accident. It was further pleaded that owner and driver had failed to



produce the relevant documents before the Tribunal and, therefore, appellant-Insurance Company could not be held liable for the compensation. Insurance Company also disputed quantum of compensation claimed by claimants.

5. Respondent Nos.1 and 2 in the claim petition (herein respondent Nos.5 and 6), being the owner and driver of the offending vehicle, did not appear before the Tribunal and were proceeded *ex parte*.

6. On the basis of the pleadings of parties, learned Tribunal framed the following Issues for determination:

- 1) *Whether on 30.04.2009 at about 9:00 p.m., near Angad Dev Shopping Complex, Nainital-Haldwani Road, Rudrapur, District Udham Singh Nagar, the deceased Jitendra Prasad Gupta died on account of the injuries sustained in an accident caused by the rash and negligent driving of Truck No. AP-03-V-8887 by its driver?*
- 2) *Whether the driver of aforesaid Truck No. AP-03-V-8887 possessed a valid and effective driving licence at the time of the accident?*
- 3) *Whether the claimants are entitled to any compensation? If so, to what amount and from whom?*
- 4) *Whether the owner of the Truck No. AP-03-V-8887 had a valid permit and fitness certificate at the time of the accident? If not, its effect?*

7. While deciding Issue No.1, the Tribunal after considering oral and documentary evidence on record, found that accident in-question occurred on 30.04.2009 at about 9:00 p.m. due to rash and negligent driving of Truck No. AP-03-V-8887 by its driver, resulting in the injuries and consequent death of Jitendra Prasad Gupta. Accordingly, Issue No.1 was decided in favour of the claimants.

8. While deciding Issue No.2, with regard to the validity of driving licence, the Tribunal noticed that owner and driver had been proceeded *ex parte* and had not produced the relevant driving licence. The Tribunal held that burden to establish the alleged breach rested upon the Insurance Company. As no evidence was produced by the Insurance Company to establish that the driver did not



possess a valid and effective driving licence on the date of the accident, the Issue No.2 was decided against the Insurance Company.

9. While deciding Issue No.3 on the question of compensation, the Tribunal assessed the deceased's monthly income at ₹13,914/-. After deducting one-third towards his personal expenses, the monthly contribution to the family was assessed at ₹9,276/-. Considering the age of deceased as about 46 years, a multiplier of 13 was applied, resulting in a loss of dependency of ₹14,47,056/-. Adding the amounts awarded under the other conventional heads, total compensation was assessed at ₹14,54,056/-, with interest @6% per annum to be paid from the date of filing of claim petition till actual payment is made.

10. While deciding Issue No.4 in respect of permit and fitness certificate, the Tribunal held that burden to prove the absence of a valid permit and fitness certificate was upon the Insurance Company. Since the Insurance Company failed to produce sufficient evidence to establish that the offending vehicle did not possess a valid permit or fitness certificate at the time of accident, Issue No.4 was decided against appellant-Insurance Company. Consequently, liability to satisfy the award was fastened upon the appellant-Insurance Company.

11. Learned counsel for the appellant-Insurance Company submits that learned Tribunal erred in fastening liability upon the Insurance Company, despite the owner and driver having been proceeded *ex parte* and having failed to produce the valid driving licence, permit and fitness certificate of the offending vehicle. It is contended by him that appellant had pleaded breach of the policy conditions and, therefore, at least a direction to pay and recover ought to have been issued. He placed reliance upon judgment rendered by Hon'ble Apex Court in the



case of ***National Insurance Co. Ltd. v. Swaran Singh*** 2004 (3) SCC 297, ***National Insurance Co. Ltd. v. Challa Bharathamma***, reported in (2004) 8 SCC 517 and ***Amrit Paul Singh v. Tata AIG General Insurance Co. Ltd.***, reported in (2018) 7 SCC 558.

12. It is further submitted by learned counsel for appellant that the compensation awarded by learned Tribunal was excessive, particularly in view of the fact that the deceased was a Government employee, his family was receiving pension and his son had been provided employment on compassionate grounds. He further placed reliance upon the judgment rendered by Hon'ble Apex Court in the case of ***Vishvajit Singh and others v. Cholamandalam MS General Insurance Company Limited and another***, reported in **2025 Supreme (Online) SC 4190**. On these grounds, modification of the impugned award was sought.

13. Having heard learned counsel for the parties and having perused the record, this Court finds that principal question requiring consideration is as to liability of the appellant-Insurance Company. The insurance policy covering the offending vehicle was admittedly operative on the date of the accident. The Certificate of Fitness produced on record was also valid up to 03.06.2009, whereas the accident took place on 30.04.2009. Thus, no breach can be said to have been established on the ground of absence of fitness. However, the Insurance Company had specifically pleaded that the offending vehicle was being plied without a valid permit. The owner and driver, despite being afforded opportunity, remained ex parte and did not produce any permit in support of their case. A permit is a matter of documentary evidence and, where the insured fails to produce any material establishing its existence, the burden cannot be shifted upon the insurer



to prove its non-existence. In the case of **Amrit Paul Singh (Supra)**, Hon'ble Supreme Court has held that plying a vehicle without a permit constitutes a fundamental statutory infraction and in such circumstances, insurer is required to satisfy the award with liberty to recover the amount from owner and driver. The same principle was reiterated in the case of **National Insurance Co. Ltd. v. Challa Bharathamma**.

14. In the present case, therefore, the Tribunal erred in fastening the liability upon appellant without granting it the corresponding right of recovery. At the same time, keeping in view the beneficial object of the Motor Vehicles Act and the rights of third-party claimants, appellant cannot be absolved from satisfying the award in the first instance. Compensation awarded by the Tribunal does not call for interference. Appellant shall accordingly satisfy the award and shall thereafter be entitled to recover the amount so paid from owner and driver of the offending vehicle. So far as quantum of compensation is concerned, it needs no interference, as it is passed on the settled principles as developed by Hon'ble Apex Court in the case of **Sarla Verma v. DTC** reported in **(2009) 6 SCC 121**.

15. Accordingly, the appeal is partly allowed. The award dated 18.08.2012 passed by the Motor Accident Claims Tribunal/1st Additional District Judge, Udham Singh Nagar at Rudrapur in Claim Case No. 175 of 2009, awarding compensation of ₹14,54,056/- along with interest @6% per annum as referred above, is hereby affirmed. Appellant shall accordingly satisfy the award and shall thereafter be entitled to recover the amount so paid from owner and driver of the offending vehicle.

16. The appellant-Insurance Company has already deposited the entire awarded amount of ₹14,54,056/- before the learned Tribunal, out of which ₹9,00,000/- has



already been released in favour of respondent Nos.1 to 4-claimants. The remaining amount of ₹5,54,056/-, as awarded by the Tribunal, as well as the statutory deposit of ₹25,000/- made by the appellant before this Court, shall be released in favour of respondent Nos.1 to 4-claimants in accordance with their respective shares along with interest accrued thereon @6% per annum as awarded by learned Tribunal, within a period of eight weeks from the date of production of a certified copy of this judgment before the learned Tribunal.

17. Let the T.C.R. be immediately sent back to the learned Trial Court for consignment.

18. Pending application(s), if any, stands disposed of.

(Pankaj Purohit, J.)
12.10.2026