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2026:UHC:10645

Judgment reserved on:-06.10.2026
Judgment delivered on:-20.11.2026

# HIGH COURT OF UTTARAKHAND AT NAINITAL

## Appeal from Order No.469 of 2012

The New India Assurance Company Ltd. .....Appellant

**Versus**

Kishan Bahadur and others .....Respondents

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Presence:-
Mr. M.K. Goyal, learned counsel for the appellant, through video conferencing.
There is no representation for the respondents.

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**Hon'ble Pankaj Purohit, J.**

The present appeal has been preferred by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988"), assailing the judgment and award dated 02.05.2012, passed by the learned Motor Accident Claims Tribunal/Additional District Judge/III$^{rd}$ Fast Track Court, Haridwar, in M.A.C.P. No.09 of 2005, *Kishan Bahadur and others Vs. Mohd. Asgar Ali and others*, whereby the learned Tribunal awarded compensation of ₹3,78,000/- alongwith interest at the rate of 6% per annum from the date of filing of the petition on account of the death of Smt. Madhumalti in a motor vehicle accident dated 31.12.2004 and fastened the liability to satisfy the award upon the appellant–Insurance Company.

2. The brief facts of the case are that on 31.12.2004, at about 09:30 a.m., Smt. Madhumalti was riding on her bicycle near Jwalapur, District-Haridwar. At that time, a truck bearing registration No.D.I.G.-481, coming from behind, hit her, as a result of which she sustained injuries and subsequently succumbed to them. A claim petition under Section 166 of the Act of 1988, being M.A.C.P. No. 09 of 2005, was instituted before the Motor Accident Claims Tribunal, Haridwar, by Kishan Bahadur, husband of the deceased, along with their three sons, namely Gajendra Prasad, Deepak Prasad and Ravindra Prasad. During the pendency of the

claim proceedings, Kishan Bahadur also died on 06.02.2012. The learned Tribunal vide judgment and award dated 02.05.2012, awarded compensation of ₹3,78,000/- in favour of the claimants and fastened the liability to satisfy the award upon the appellant–Insurance Company. Aggrieved by the said award, the Insurance Company has preferred the present appeal.

3. The claimants, in their claim petition, pleaded that the accident occurred due to the rash and negligent driving of the truck bearing registration No.D.I.G.-481 by its driver, Mohd. Asgar Ali. They stated that Smt. Madhumalti sustained fatal injuries in the accident and that the claimants, being her legal representatives, suffered loss on account of her untimely death. They accordingly sought compensation of ₹10,00,000/- from the owner, driver and insurer of the offending vehicle.

4. The appellant-Insurance Company contested the claim, mainly disputing its liability to indemnify the owner. It pleaded that the insurance policy covering the offending vehicle had expired on 02.11.2004 and that the vehicle was not insured with it on the date and at the time of the accident, i.e., 31.12.2004 at about 09:30 a.m. It was further pleaded that the owner and driver had obtained the insurance policy from appellant's Roorkee office only after the accident, by concealing the factum of the accident. On this basis, the Insurance Company denied its liability to satisfy the award.

5. The owner and driver contested the claim petition by denying the allegations made against them and disputing the claimants' entitlement to the compensation sought. They denied that the accident had occurred due to rash and negligent driving on the part of the driver and resisted the allegations concerning their liability. The owner also disputed the Insurance Company's allegation that the vehicle had been insured after the accident by concealing the occurrence.

6. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues vide order dated

17.02.2011:

1. Whether, on 31.12.2004, at about 9:30 a.m., when the deceased Smt. Madhumalti had reached near Central Bank, Krishnanagar, Tehsil and District Haridwar, while going out from Ramnagar, Jwalapur, District Haridwar, the driver of truck bearing registration No. D.I.G.-481, coming from the Laksar Road side, drove the truck rashly and negligently and hit Smt. Madhumalti, causing her fatal injuries, as a result of which she died during the course of treatment?

2. Whether the claimants are entitled to compensation? If so, how much and from which of the opposite parties?

While deciding Issue No.1 the learned Tribunal, after considering the oral and documentary evidence, particularly the testimonies of the claimants' witnesses, the FIR, site plan and post-mortem report, held that the accident dated 31.12.2004 occurred due to the rash and negligent driving of truck bearing registration No. D.I.G.-481, resulting in the death of Smt. Madhumalti. It also took note of the fact that the driver of the offending vehicle had been charge-sheeted in connection with the accident. The Tribunal found the evidence adduced by the claimants sufficient to establish the negligence of the truck driver and, accordingly, decided Issue No. 1 in their favour.

While deciding Issue No.2, the Tribunal assessed the age of the deceased at 45 years on the basis of the post-mortem report and, in the absence of reliable evidence regarding her income, assessed her notional annual income at ₹36,000/-. After deducting one-fourth towards personal expenses and applying a multiplier of 14, it determined the loss of dependency at ₹3,78,000/-. The Tribunal further held the appellant–Insurance Company liable to satisfy the

award, rejecting its defence that the insurance policy had been obtained after the accident. Accordingly, the claim petition was allowed for ₹3,78,000/- with interest at 6% per annum from 24.07.2009 until actual payment.

7. Learned counsel for the appellant-Insurance Company submitted that the learned Tribunal failed to appreciate that the accident occurred on 31.12.2004 at about 09:30 a.m., whereas the proposal for insurance was received by the appellant only at about 02:00 p.m. on the same day. It was contended that the offending vehicle was not insured at the time of the accident and that the owner had obtained the insurance policy after the occurrence by concealing the factum of the accident. Therefore, the appellant–Insurance Company could not have been fastened with the liability to indemnify the owner. It was accordingly prayed that the impugned judgment and award be set aside to the extent of the liability imposed upon the appellant.

8. Learned counsel for the owner and driver, on the other hand, supported the impugned judgment and award and submitted that the insurance policy expressly recorded the commencement of coverage from 00:00 hours on 31.12.2004, i.e., the date of the accident. It was contended that the Insurance Company could not avoid its liability merely on the basis of the time at which the proposal form was processed, particularly when the policy itself specified that the insurance coverage had commenced from the beginning of that date. Accordingly, the Insurance Company shall be made liable to pay the compensation to the claimants.

9. Having heard the learned counsels and after perusal of the material on record this Court is of the considered opinion that the principal controversy in the present appeal is whether the appellant-Insurance Company can avoid its liability on the ground that the insurance proposal was received at about 02:00 p.m. on 31.12.2004,

whereas the accident had occurred at about 09:30 a.m. on the same day.

10. A perusal of the insurance policy reveals that the period of insurance commenced from 31.12.2004 at 00:00:00 hours and continued up to midnight of 30.12.2005. Thus, the policy expressly records commencement of coverage from the very beginning of the date of the accident. In this regard, the Hon'ble Supreme Court in the case of *New India Assurance Co. Ltd. v. Ram Dayal,* reported in *(1990) 2 SCC 680*, held that where an insurance policy mentions only the date of commencement, without specifying any particular time, the coverage becomes effective from the commencement of that date. However, in *Oriental Insurance Co. Ltd. v. Sunita Rathi* reported in *(1998) 1 SCC 365*, and *National Insurance Co. Ltd. v. Sobina Iakai* reported in *(2007) 7 SCC 786*, the Hon'ble Supreme Court clarified that where a specific time of commencement is mentioned in the policy, the liability of the insurer would be governed by that stipulated time.

11. In the present case, the policy specifically mentions 00:00 hours on 31.12.2004 as the commencement of insurance coverage, therefore, the accident, which occurred at about 09:30 a.m. on the same date, falls within the period of insurance. The decisions in Sunita Rathi (supra) and Sobina Iakai (supra) do not assist the appellant, as in those cases the policies expressly stipulated a commencement time subsequent to the respective accidents. The factual position herein is clearly distinguishable. Consequently, the mere fact that the insurance proposal was received at about 02:00 p.m. cannot, in the face of the express terms of the policy, be a ground to deny the insurance coverage. The appellant has also failed to establish any sufficient ground to invalidate the policy or avoid its contractual obligations.

12. In view of the above, this Court finds no illegality or infirmity in the judgment and award passed by the learned Tribunal fastening liability upon the appellant-Insurance Company.

13. The appeal is accordingly dismissed. The judgment and award dated 02.05.2012 passed by the learned Tribunal is affirmed. The statutory deposit of ₹25,000/-, if not already remitted, shall be remitted to learned Tribunal to be released to the respondents/claimants. The learned Tribunal is directed to release the amount under award to the respondents/claimants along with interest accrued thereon upto date, if deposited by the appellant-Insurance Company in compliance of the order dated 04.01.2013 passed by this Court forthwith. If not deposited, it shall be deposited by the appellant-Insurance Company before the learned Tribunal within a period of eight weeks from today.

14 Learned Tribunal is further directed to inform the respondents/claimants about the judgment.

(**Pankaj Purohit, J**.)
20.11.2026

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