

JUDGMENT RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

**Appeal from Order No. 1071 of 2001
(Old No. 948 of 1989)**

Uttar Pradesh Van Nigam through
Divisional Sales Manager, Pithoragarh

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Appellant/Opp. Party

Versus

Sri Sohan Lal S/o Sri Girdhari Lal,
R/o Village Maupatiyal, Tehsil & P.S. Dilari,
Distt. Moradabad, at present Chaukidar/
Sweeper Govt. Higher Secondary School,
Barkote, Distt. Pithoragarh

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Respondents

**Sri V.K. Bisht, Sr. Advocate assisted by Mrs. Seema Sirohi, learned counsel for the appellant,
Sri D.C.S. Rawat, holding brief of Sri R.Dobhal, Id. counsel for the respondents.**

Date: August 31, 2006

Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant under Section 110-D of the Motor Vehicles Act, 1939 ***(hereinafter will be referred to as the Act)*** against the judgment and order dated 28.3.1989 passed by District Judge, Pithoragarh in M.A.C. Case No.6 of 1988, Smt. Kalawati and others Vs. U.P. Van Nigan, Pithoragarh, awarding a sum of Rs. 72,000/- as compensation to the claimants against the appellant alongwith interest @ 12% p.a. from the date of filing of the claim petition.

2. Brief facts of the case giving rise to the appeal are that on 5.8.1987, the Truck bearing No. UTT-7411 of the appellant was carrying wood logs from Tanakpur to

Pithoragarh and at 9:00 A.M., the deceased alongwith Girdhari Ram P.W. 2, one Mahendra Banga, who also died in the same accident and 3-4 more persons who were resident of Moradabad boarded the said Truck at Barkat for Pithoragarh. It was alleged in the claim petition that the truck was being driven rashly and negligently and at a very excessive speed by its driver, as a result of which near a place Ghat, the said Truck went off the road and fell into a *Khudd*. In the said accident, the deceased Girdhari Ram, the driver of the Truck and aforesaid Mahendra Ram died on the spot. The claimants who are legal heirs and dependents of the deceased filed the claim petition for compensation against the opposite parties. It was alleged that the deceased Girdhari Ram was a retired military pensioner drawing pension of Rs. 375/- per month. Apart from it, he was also carrying cultivation and business of readymade garments and from the said profession, he was earning Rs. 1,000/- per month. It was also alleged that on account of the death of the deceased, the heirs of the deceased have received great mental shock and have been deprived of love and affection of the deceased. Therefore, a total sum of Rs.2,70,000/- was claimed by the claimants of the deceased against the appellant department.

3. The opposite party-U.P. Ban Nigam contested the claim petition before the Tribunal and contended that the claim petition was bad for non-joinder of the Divisional Logging Manager, Almora and Divisional Sales Manager-U.P. Ban Nigam Tanakpur. The vehicle involved in the accident was a government vehicle in which the officers and labourers of the department only could travel. No other person had the right to travel in the said vehicle. Further, the passengers only upto certain prescribed limit could travel in the vehicle. The persons

who have violated the aforesaid norms and rules viz. the driver and conductor of the said vehicle were liable and the U.P. Ban Nigam is not liable. The deceased was an unauthorized person and gratuitous passenger in the vehicle and on this account also the petitioners are not entitled to any claim regarding rash and negligent driving. It was also contended that at the time of the accident, the vehicle was stationary on its side. From the front side, a military truck came at a fast and excessive speed, hit the truck resulting in the accident. The driver of the truck died in the accident and F.I.R. was lodged by the cleaner of the truck who fortunately survived in the accident. Accordingly, it was stated that the petitioners were not entitled for any compensation.

5. The Tribunal on the pleadings of the parties framed as many as six issues which are as under:-

1. *Whether the deceased was travelling in the Truck No.UTT 7411 unlawfully and without the permission of the respondent-opp. party, if so, its effect?*
2. *Whether the deceased was gratuitous traveler in the Truck No. UTT-7411 of the opp. party? If so, its effect?*
3. *Whether the claim is bad for non-joinder of Divisional Manager, Almora and Divisional Sales Manager, U.P. Ban Nigam Tankapur? If so, its effect?*
4. *To what amount of compensation, if any, and from whom the claimants are entitled to recover?*
5. *To what relief, if any, is the claimants are entitled to recover?*
6. *Whether the driver of the Truck No. UTT-7411 of 5.8.1987 at about 9:00 A.M. near Ghat on*

Tanakpur-Pithoragarh road was driving rashly and negligently resulting in the accident, if so, its effect?

6. After dealing with all the issues, the Tribunal awarded a sum of Rs.72,000/- to the claimant/appellants alongwith interest @12% p.a. thereon by the impugned award. Feeling aggrieved, the appellant has come up in this appeal.

7. I have heard learned counsel for the parties and perused the entire evidence available on record.

8. Learned counsel for the appellant submitted that no liability could be fastened upon the appellant in view of the admitted position that the truck No.UTT-7411 was meant for transporting the forest produce and not for carrying the passengers and the driver and the cleaner of the Truck were not authorized to take passengers in the truck if driver and cleaner of truck have taken the passengers unauthorizedly. The Tribunal while dealing with Issue No.2 has recorded a finding that the act of servant would otherwise constitute an offence and does not by itself put it outside the scope of employment. If the driver was acting in the course of his employment then the owner would be liable even though he acted against the express conditions of the owner or in violation of the Rules framed under the Statute. The Tribunal has also rightly recorded the finding that at the time of accident, the driver of ill-fated truck was acting in a course of employment. He was carrying wood logs in the truck from Tankapur to Pithoragarh when he lifted the deceased and other passengers and thus the driver acted in the course of employment and hence the Tribunal held that the U.P. Ban Nigam is liable to pay the compensation. Thus, it

was rightly held by the Tribunal that on account of the fault on the part of the driver, the owner of Truck cannot be absolved from his liability. Admittedly, the truck of the U.P. Ban Nigam was not insured, therefore, the Tribunal rightly held that the department-U.P. Ban Nigam was liable to pay the compensation and hence the liability to pay the compensation was rightly payable on the appellant.

9. The deceased was a retired army personnel and he would have contributed Rs.300/- p.m. to his family. The life expectancy was considered by the Tribunal as 70 years on the basis of oral evidence as well as on the basis of the Hon'ble Apex Court judgment in the case of "*Jyotsana Day Vs. State of Assam, 1987 A.C.J. page 172.*" The Tribunal has held that the deceased would have contributed Rs.300/- p.m. to his family for the remaining period of 25 years and the amount was calculated as $\text{Rs.}300 \times 12 \times 25 = \text{Rs. } 90,000/-$ and in view of the judgment of Hon'ble Apex Court in the case of "*Jyotsna Day (Supra)*" 20% amount has been deducted on account of lump sum payment and uncertainties of life. Hence, the compensation was determined as Rs.72,000/- to be paid by the appellant alongwith 12% interest from the date of filing of the claim petition. I find that the amount of compensation awarded by Tribunal is just and proper and not excessive and there is no illegality and infirmity in the impugned award given by Tribunal. I find nothing to disagree with the finding of learned Tribunal. Considering the entire material, I find that the amount of compensation awarded is just and supported by evidence on record.

10. The learned counsel for the appellant lastly submitted that the award of 12% interest is on the higher

side, which may suitably be reduced in view of the Apex Court judgment in *United India Insurance Co. Ltd.etc. Vs. Patricia Jean Mahajan & Ors. Etc.* [2002 (2) Apex Court Judgments, 100 (Supreme Court)].

11. I have considered the Apex Court judgment and the facts and circumstances of the case. Considering the decline in the present rates of interest, I am of the view that the interest @12% p.a. as awarded by Tribunal may be reduced to 9% p.a. To this extent alone, the impugned order dated 28.3.1989 stand modified and the claimant shall be entitled to interest @9% p.a. instead of 12% p.a. from the date of accident as awarded by the Tribunal.

13. The appeal deserves to be partly and is accordingly partly allowed. The amount, if deposited in this Court shall be transmitted to the Motor Accident Claims Tribunal concerned within two months from the date of order, for which the claimants shall be at liberty to withdraw the same.

(B.S. Verma, J.)

August 31, 2006
Rajeev Dang