

**IN THE HIGH COURT OF UTTARAKHAND AT**  
**NAINITAL**

**Appeal From Order No. 262 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Smt. Roshan Khan & others ... Respondents

**And**

**Appeal From Order No. 126 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Pushpendra Tyagi & others ... Respondents

**And**

**Appeal From Order No. 127 of 2006**

Pushpendra Tyagi ...Appellant

**Versus**

Smt. Sumitra Negi & others ... Respondents

**And**

**Appeal From Order No. 263 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Smt. Abha Tiwari & others ... Respondents

**And**

**Appeal From Order No. 264 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Smt. Pushplata & others ... Respondents

**And**

**Appeal From Order No. 265 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Smt. Basanti Devi & others ... Respondents

**And**

**Appeal From Order No. 266 of 2006**

National Insurance Company Limited ... Appellant

**Versus**

Sri Iqbal Hussain & others ... Respondents

Sri D.S. Patni, Advocate, for appellant-insurance company  
 Sri P.C. Bisht, learned Standing Counsel, for respondent/State of  
 Uttaranchal  
 Sri B.P. Nautiyal, Advocate, for respondent no. 4.  
 Sri Ramji Srivastava, for respondents no. 1 & 5  
 Sri Tapan Singh, holding brief of Sri Lokpal Singh, Advocate, for  
 claimants-respondents.

**Dated: April 30, 2008**

**Hon'ble B.C. Kandpal, J.**

Since these appeals arise out of same accident and similar controversy is involved, therefore, they are being decided by this common judgment and order.

A.O. No. 262 of 2006, under Section 173 by Motor Vehicle Act, has been preferred against the judgment and award dated 7.2.2006 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 106 of 2004, Smt. Roshan Khan & others versus National Insurance Company & others.

A.O. No. 126 of 2006, under Section 173 of Motor Vehicles Act, has been preferred against the

judgment and award dated 30.11.2005 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 245, of 2004, Sri Pushpendra Tyagi versus Smt. Sumitra Negi & others.

A.O. No. 127 of 2006, under Section 173 of Motor Vehicles Act, has been preferred against the judgment and award dated 30.11.2005 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 245 of 2004, Sri Pushpendra Tyagi versus Smt. Sumitra Negi & others.

A.O. No. 263 of 2006, under Section 173 of Motor Vehicles Act, has been preferred against the judgment and award dated 3.2.2006 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 98 of 2004, Smt. Abha Tiwari & others versus National Insurance Co. Ltd. & others.

A.O. No. 264 of 2006, under Section 173 of Motor Vehicle Act, has been preferred against the judgment and award dated 2.2.2006 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 94 of 2004, Smt. Pushplata & others versus Smt. Sumitra Negi & others.

A.O. No. 265 of 2006, under Section 173 of Motor Vehicles Act, has been preferred against the judgment and award dated 10.2.2006 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T.

Case No. 127 of 2004, Smt. Basanti Devi versus National Insurance Co. Ltd. & others.

A.O. No. 266 of 2006, under Section 173 of Motor Vehicles Act, has been preferred against the judgment and award dated 10.2.2006 passed by Motor Accident Claims Tribunal/Additional District Judge/VI Fast Track Court, Dehradun, in M.A.C.T. Case No. 128 of 2004, Sri Iqbal Hussain & others versus National Insurance Co. Ltd. & others.

Briefly stated the facts giving rise to these appeals are that on 19.3.2004 Imran Khan along with Pushpendra Tyagi, Bhaskar Rawat, Bhagwan Singh, Mathura Prasad, Sunil Chand Tiwari and Arshad Iqbal was coming to Dehradun from Chakrata by Jeep No. UP-32N-5560 which was being driven by Shri Banwari Singh. When the said reached near Shambhu Ki Chowki, Chapnu, Car No. UP-07J-8905 being driven by its driver-Khushi Ram rashly and negligently and against the anti-gate rules came from the direction of Kalsi and hit Vehicle No. UP-32N-5560. With the result, Vehicle No. UP-32N-5560 fell down into Amlawa river, due to which Imran Khan, Sunil Chand Tiwari, Mathura Prasad, Arshad Iqbal Hussain were died on the spot and the driver of Vehicle No. UP-32N-5560 Banwari Singh was died in Lemon (Christian) Hospital, Dehradun. Thus, the claimants filed claim petitions for award of compensation in lieu of deaths of deceased-Imran Khan, Sunil Chand Tiwari, Mathura Prasad, Arshad Iqbal Hussain and driver of Vehicle No. UP-32N-5560-Banwari Singh as well as of injuries sustained by claimant-Pushpendra Tyagi in the accident.

Opposite party no. 1-National Insurance Company Limited filed written statement and alleged that accident occurred due to rash and negligence of driver of Vehicle No. UP-32N-5560 and Vehicle No. UP-07J-8905 is not liable for accident. It also pleaded that at the time of accident driver of offending vehicle was not having valid driving licence, which is breach of conditions of insurance policy. Therefore, the insurance company is not liable to pay any compensation and claim petition filed against it is liable to be dismissed.

The opposite party no. 2-Smt. Sumitra Negi filed written statement and admitted that she is the owner of Car No. UP-07J-8905, which is registered as taxi on the basis of tourist permit. She has pleaded that she is living in Saraswati Bihar Ajabpur Khurd from some time. She has further pleaded that Khushi Ram-driver of Car No. UP-07J-8905 was holding valid driving licence and on 19.3.2004 driver of car gone to Kalsi from Dehradun by said vehicle along with Tourists. She has also pleaded that she had no knowledge that opposite party no. 3 gone to Shambhu Ki Chowki Chaplu on 19.3.2004 at about 6.45 p.m. She further pleaded that though accident occurred due to rash and negligence of driver of Vehicle No. UP-32N-5560, even then if any liability is fixed upon Car No. UP-07J8905, which was insured with National Insurance Co. Ltd., the insurance company is liable to pay compensation.

The opposite party no. 3-Khushi Ram filed written statement denying the contents of claim petition. He has pleaded that neither he was plying

Car No. UP-07J-8905 on 19.3.2004 nor he had gone to Sahiya by vehicle during anti-gate time. He has also pleaded that on 18.3.2004 his car while returning from Chakrauta had developed some mechanical defect and he left the car by the side of the road and vehicle No. UP-32N-5560 being driven rashly and negligently fell down into deep Khad hitting his vehicle No. UP-07J-8905 from the side. He has further pleaded that said vehicle was insured with national Insurance Company Limited and driver was having valid driving licence, therefore, the claim petition filed against opposite party no. 3 is liable to be dismissed.

The opposite party no. 4-Uttaranchal State filed written statement refuting the contents of claim petition. It has pleaded that amount of compensation as claimed by claimants is excessive. It has also pleaded that that accident occurred due to rash and negligence of opposite party no. 3-driver of Car No. UP-07J-8905 and collision with vehicle of opposite party no. 4 i.e. Vehicle No. UP-32N-5560, as opposite party no. 3 was plying the care in violation of anti-gate rules. It has further pleaded that the road where the accident occurred was narrow and only one vehicle could run at a time and therefore there was gate system for coming and going of vehicles. The opposite party no.3 ran away with vehicle before time violating the gate rules due to which accident occurred, for which opposite party no. 3 is liable. It has further pleaded that opposite party no. 4 is not liable for accident, therefore, the claim petition filed against it is liable to be dismissed.

The learned Tribunal on the basis of pleadings of parties framed relevant issues in the claim petition. parties led evidence in support of their cases. The learned Tribunal after having considered the material available before it and hearing learned counsel for the parties decreed the claim petitions and awarded different sums as compensation, in favour of claimants, against National Insurance Company Limited, along with interest @ 5% per annum from the date of filing the petitions till the date of actual payment.

Feeling aggrieved by the aforesaid impugned judgment and award, the appellant-National Insurance Company Limited has filed A.O. Nos. 262/2006, 126/2006, 263/2006, 264/2006, 265/2006 and 266/2006 before this Court.

The claimant-Pushpendra Tyagi has also filed A.O. No. 127/2006 before this Court for enhancement of compensation.

Heard Sri D.S. Patni, Advocate, for appellant-insurance company, Sri P.C. Bisht, learned Standing Counsel, for respondent/State of Uttaranchal, Sri B.P. Nautiyal, Advocate, for respondent no. 4, Sri Ramji Srivastava, Advocate, for respondents no. 1 & 5, Sri Tapan Singh, holding brief of Sri Lokpla Singh, Advocate for claimants-respondents and perused the record.

Firstly I take A.O. No. 262 of 2006 for decision.

The short controversy in this case is as to whether it is a case in which sole responsibility for

rash and negligence is on the part of driver of vehicle No. UP-078905 or it is a case of contributory negligence on the part of drivers of both the vehicles i.e. Car No. UP-07J-8905 as well as Armada Jeep No. UP-32N-5560.

The impugned judgment and award passed by the court below shows that issues no 1, 2 and 3 were framed in order to decide this point which read as follows:

- 1- *Whether the accident occurred due to rash and negligence driving of driver of Car No. UP-07J-8905 and collision with Jeep No. UP-32N-5560, near Shambhu Ki Chowki, Village Chapnu, on 19.03.2004 at 6.45 p.m., due to which Jeep fell down into Amlawa river and Imran Khan travelling in Jeep sustained injures and succumbed to injuries?*
- 2- *Whether driver of car-opposite party no. 3 was driving his car against Gate rules at the time of accident? If yes, its effect?*
- 3- *Whether the alleged accident occurred due to rash and negligence of driver of Jeep-Banwari (deceased)?*

The Tribunal after having discussed the entire evidence available on record came to the conclusion that accident occurred on account of sole rash and negligence of driver of Car No. UP-07J-8905. This finding recorded by the Tribunal appears to be perverse in view of surrounding circumstances



prevailing in this case, as the driver of car-Khushi Ram has filed the written statement in which he has stated that his car had developed some mechanical defect and he left the car by the side of the road in order to get the mechanic and when he came back to this spot then he saw that car already met with an accident with Armada Jeep No. UP-32N-5560. The claimants have produced one eye witness Pushpendra Tyagi and according to deposition of this witness he was travelling in Armada Jeep and he is the person who could survive in the accident. This witness sustained injuries also in the accident and this witness has stated that the car was rash and negligent at the time of accident. Now, in view of the aforesaid evidence it is to be seen as to whether the accident took place on account of rash and negligence on the part of driver of car or on account of contributory negligence on the part of drivers of both the vehicles involved in the accident. Khushi Ram is the driver of the car. He has taken the stand since the very beginning i.e. with effect from the stage of filing the written statement that the car was stationed at the time of accident, but I do not find any reason to believe the stand taken by this witness as he is the driver of a vehicle which is involved in the accident, therefore, he is an interested witness and is trying to conceal the actual facts in order to save his skin. It is an undisputed fact that this man Khushi Ram was driving his car against Gate rules at the time of accident. Further, the evidence of Pushpendra Tyagi, who is an eye witness of the accident, indicates that both the vehicles were in moving condition at the time of accident. This witness is an injured witness, therefore, his version can be taken

into account in order to evaluate the actual situation and in case, if the deposition of this witness-Pushpendra Tyagi is taken into account, then it is a certain case without having any doubt that both the vehicles were moving on the hill road at the time of accident. Now, the most important factor in this case is that Armada Jeep No. UP-32N-5560 which fell down into Khad was going downward on the hill road at the time of accident while Car No. UP-07J-8905 involved in the accident was moving upward. The responsibility of the driver going towards down on the hill road is on greater footing. The driver going towards down on the hill road should be more cautious and should give the side to pass on the road to the vehicle coming from opposite direction and running to upward. In view of the dictum of 'res ipsa loquitur', if the entire circumstances in which the accident took place are taken into consideration, then it leaves no doubt in my mind that it is a case of contributory negligence on the part of drivers of both the vehicles involved in the accident. The rash and negligence on the part of driver of Armada Jeep owned by the State Government cannot be overlooked. Had the driver of Armada Jeep been vigilant at the time of accident, then he could have certainly avoided the accident. It appears to me that the driver of Armada Jeep was also rash and negligent at the time of accident and on account of his own rash and negligence this accident took place. At the same time, the rash and negligence on the part of driver of car also cannot be ignored. The driver of car while driving the vehicle on the hill road to upward direction should have also taken precautions in order to avoid any accident, as I have already observed that he was

driving the car by breaking the Gate rules at the time of accident. Therefore, on the basis of the assessment of entire circumstances in this case it appears to me that both the vehicles involved in the accident are equally responsible for causing the accident. The Tribunal does not appear to be justified in fixing the sole liability of the rash and negligence on the part of driver of Car No. UP-07J-8905. The finding recorded by the Tribunal in this regard is liable to be set aside and I come to the conclusion that the drivers of both the offending vehicles are equally responsible for causing rash and negligence in this case.

I have also gone through the impugned judgment and awards so as to come to the conclusion that quantum of compensation awarded by the Tribunal in the claim petitions is just and proper or not, and I find that the Tribunal has rightly awarded the amount of compensation to the claimants. The finding recorded by the Tribunal is based on materials on record, therefore, I do not find any ground to interfere with this aspect of the matter, so far as the quantum of compensation is concerned.

As I have already observed that the impugned judgment and award passed by the Tribunal relating to other aspects does not require any interference, the amount of compensation awarded by the Tribunal in the case in hand appears to be just and adequate, but in view of the observations made by me in previous paragraphs in which I have held that both the vehicles are equally responsible for rash and negligence due to which accident took

place, the insurance company of Car No. UP-07-J-8905/appellant before this Court as well as owner of Armada Jeep No. UP-32N-5560 i.e. Uttarakhand State through District Magistrate, Dehradun-opposite party no. 4, are liable to pay the amount of compensation (50% of each) to the claimants.

So far as A.O. No. 127 of 2006 is concerned, this appeal has been filed by the claimant-Pushpendra Tyagi for enhancement of amount of compensation against the judgment and award dated 30.11.2005 passed in M.A.C.P. No. 245 of 2004. In view of findings recorded by me while deciding A.O. No. 262 of 2006 arising out of same accident, this appeal has no force, as in the impugned judgment and award the amount of compensation has been rightly assessed by the Tribunal and same does not require any interference. Therefore, this appeal is liable to be dismissed.

With the aforesaid observations, A.O. Nos. 262/2006, 126/2006, 263/2006, 264/2006 265/266 and 266/2006 are partly allowed. The impugned judgments and awards are modified to the extent that amount of compensation awarded by the Tribunal is to be paid in equal portion (50% of each) by the appellant-insurance company of car as well as by owner of Armada Jeep i.e. State of Uttarakhand. The interest indicated in the impugned judgments and award shall remain intact.

A.O. No. 127 of 2006 filed by claimant-Pushpendra Tyagi is dismissed.

Cross objection No. 1980/2008 filed in A.O. No. 266/2006 also stands dismissed.

Let a copy of this judgment be placed in the files of A.O. Nos. 126/2006, 127/2006, 263/2006, 264/2006, 265/2006 and 266/2006.

**(B.C. Kandpal, J.)**

S.P.