

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

**A.O. No. 420 of 2006**

National Insurance Company Ltd. .... Appellant.

Vs.

Smt. Janaki Devi and 4 others .. Respondents.

Mr. Prabhat Pande, learned counsel for the appellant.  
Mr. P.S. Rawat, Advocate for respondents 1 to 4.  
Smt. Pushpa Joshi, Advocate for respondent No.5.

**Dated: 30-4-2008**

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

This appeal, under section 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 22.4.2006, passed by Motor Accident Claims Tribunal/District Judge, Nainital, in MACP No. 159 of 2005.

2- Brief facts of the case are that on 22.5.2005, at about 11 A.M. Suresh Chandra Upreti was going to Ramnagar from Kaniya riding in Tempo No. U.A.04-A-7788. In the way suddenly the Tempo overturned due to which Suresh Chandra Upreti sustained grievous injuries and he was brought to Community Health Centre Ramnagar for treatment, but looking the precarious condition he was admitted in Sushila Tewari Hospital, Haldwani, where he died during the treatment. According to the claimants the deceased was doing the job of Manager in City-Heart Restaurant, Hapur and was getting salary of Rs. 4,500/- per month. Therefore, the claimants filed claim petition for compensation, in lieu of death of deceased.

3- The Opposite Party No.1 owner of the Tempo filed his written statement and alleged that the Tempo had fallen at the spot in order to save the Motorcycle

coming from the front side and the passengers of the Tempo sustained injuries. The owner also alleged that the Tempo was insured with National Insurance Company and its driver had valid driving license. Therefore, the liability to pay compensation is upon the shoulder of the insurer.

4- The Opposite Party No.2, National Insurance Company also filed written statement and alleged that the owner of the Tempo has to establish this fact that the Tempo at the time of accident was being driven with valid documents.

5- The Tribunal framed issues in the claim petition. Parties led evidence in support of their cases. Thereafter, the learned Tribunal after hearing counsel for the parties and considering the material on record, awarded a sum of Rs. 6,55,000/- as compensation against the National Insurance Company, along with interest @ 6% per annum from the date of filing the claim till the date of actual payment.

6- Feeling aggrieved the National Insurance Company has preferred this appeal, before this Court.

7- Heard learned counsel for the parties and perused the record.

8- The learned counsel for the appellant has submitted that the Tribunal has wrongly assessed the monthly income of the deceased as Rs. 4,500/- and the multiplier has also been adopted on higher side, therefore, the amount of compensation should be reduced.

9- Perusal of record reveals that according to the claimants the deceased was employed Manager in City Heart Restaurant, Hapur, and his monthly salary was Rs. 4,500/-. Besides this, he also used to do the work of screen printing and photo printing and from this work his approximate monthly income was Rs. 2,000/-. The opposite parties did not controvert the factum of employment of the deceased, by adducing reliable and cogent evidence. The Tribunal has taken the monthly income of the deceased as Rs. 4,500/- and in my opinion the tribunal has rightly accepted the same for purposes of calculating the dependency of the claimants and after deducting 1/3<sup>rd</sup> towards personal expenses, the annual dependency comes to Rs. 36,000/-. The deceased was aged about 28 years at the time of accident and the Tribunal adopted the multiplier of '18', which in my opinion is certainly on higher side, in view of the decisions of the Hon'ble Apex Court in the case of **Tamil Nadu State Transport Corporation Ltd. vs. S. Rajapriya & Ors**, reported in **2005(4) Supreme 87**, in which the Hon'ble Supreme Court has adopted the multiplier of '12' where the deceased was 38 years of age, and in the case of **The Managing Director, TNSTC Vs. Sripriya & Ors.**, reported in **2007(5) Supreme 301**, in which the Hon'ble Apex Court applied the multiplier of '12' where the deceased was 37 years of age.

10- In the instant case, keeping in view the age of the claimant, the multiplier of '15' in the light of the judgments of the Hon'ble Apex Court cited above, would be just and proper. As stated earlier, the Tribunal has assessed the annual dependency of the claimants upon the deceased for Rs. 36,000/- after deducing the 1/3<sup>rd</sup> towards personal expenses. Therefore, after adopting the multiplier of '15' the total amount comes to Rs. 36,000/-

X 15= Rs. 5,40,000/-. The Tribunal also awarded Rs. 5,000/- for loss of love and affection and Rs. 2,000/- towards funeral expenses and same is not to be disturbed. Therefore, the total compensation comes to Rs. 5,40,000/- + Rs. 5,000/-+Rs. 2,000/- = Rs.5,47,000/-. The interest indicated in the impugned judgment shall remain intact.

11- For the discussion made above, the appeal is liable to be partly allowed.

12- Accordingly, the appeal is partly allowed. The impugned judgment and award dated 22-4-2006 is modified upto the extent that the claimant shall be entitled to get a sum of Rs. 5,47,000/- as compensation instead of Rs. 6,55,000/-, as has been awarded by the Tribunal. The interest part shall remain intact.

13- The statutory amount of compensation, if any, deposited at the time of filing the appeal, be remitted to the Tribunal concerned.

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

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