

Court No. 6

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Appeal From Order No. 160 of 2005

The Oriental Insurance Company Limited
Divisional Office, Bhotia Parao, Nainital Road,
Haldwani, District Nainital through its Divisional
Manager.

...Appellant

Versus

- 1- Smt. Ritu Gaba aged about 29 years w/o late
Sh. Rajeev Gaba R/o Gurudwara Road,
Rudrapur, District Udham Singh Nagar
- 2- Kumari Riya Gaba aged about 6 years D/o
Late Sh. Rajeev Gaba.
- 3- Master Rahul Gaba aged about 5 years s/o
Late Sh. Rajeev Gaba
Respondents no. 2 & 3 are minors,
through their mother and Natural
Guardian Smt. Ritu Gaba wife of late Sri
Rajeev Gaba, R/o Gurudwara Road,
Rudrapur, District Udham Singh Nagar.
- 4- Sh. Rajeev Nehra S/o Sh. Premjeet Singh
Nehra R/o Village Bhabba Nagla, Tehsil
Bazpur, District Udham Singh Nagar.
...Respondents

Alongwith
Appeal From Order No. 212 of 2005

- 1- Smt. Ritu Gaba aged about 29 years w/o late
Sh. Rajeev Gaba R/o Gurudwara Road,
Rudrapur, District Udham Singh Nagar
- 2- Kumari Riya Gaba aged about 6 years D/o
Late Sh. Rajeev Gaba.
- 3- Master Rahul Gaba aged about 5 years s/o
Late Sh. Rajeev Gaba
Respondents no. 2 & 3 are minors,
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Guardian Smt. Ritu Gaba wife of late Sri
Rajeev Gaba, R/o Gurudwara Road,
Rudrapur, District Udham Singh Nagar.

...Appellants

Versus

- 1- The Oriental Insurance Company Limited,
Office, Bhotia Parao, Nainital Road,
Haldwani, District Nainital through its
Divisional Manager.
- 2- Sh. Rajeev Nehra S/o Sh. Premjeet Singh
Nehra R/o Village Bhabba Nagla, Tehsil
Bazpur, District Udham Singh Nagar.

...Respondents

Mr. V.K. Kohli, Senior Advocate, assisted by Mr. I.P. Kohli,
learned counsel for the Insurance Company.

Mr. G.C. Lakhchaura, learned counsel for the respondents.

Dated : July 3, 2007

**Coram: Hon. B.C. Kandpal, J.
Hon. Dharam Veer, J.**

Both these appeals arise out of the same judgment and award, therefore they are being decided by this common judgment.

2- These appeals have been preferred by the appellants under Section 173 of Motor Vehicles Act, 1988 against the judgment and award dated 18-2-2005 passed by the Motor Accidents Claims Tribunal/Additional District Judge/F.T.C. District Kashipur, Udham Singh Nagar in M.A.C.P. Case No. 102 of 2002 between Smt. Ritu Gaba & others and Rajeev Nehra & others, whereby the Tribunal awarded the sum of Rs. 4,18,000/- to the claimants/appellants towards the compensation along with 9% interest per annum from the date of filing the claim petition.

3- Brief facts of the case giving rise to the present appeals are that on 17-2-2002 the deceased Rajeev Gaba was coming from Kelakhera to Gadarpur in a Maruti Car bearing Registration No.

UP-78 G/2928, which was being driven by the deceased himself. When he reached near village Motiapur, a vehicle came from the opposite side, the light of which flashed directly in his eyes, due to which he could not see the tractor trolley parked on the road and he was dashed in it. The claimants also alleged that there was no indicator in the tractor trolley which was parked on the side of the road and there was no light in the tractor trolley, which could have shown any indication of its existence. Hence, this accident occurred due to negligence on the part of the driver of tractor trolley. The appellants also alleged that the whole liability is on tractor owner and the Insurance Company. The tractor trolley was standing in the middle on the left side of the road, from which the Maruti car cannot be escaped. Hence, the accident occurred due to negligence on the part of tractor trolley driver. They also alleged that tractor was having registration no. UP-04 C/0828. The claimants also alleged that the deceased Rajeev Gaba was residing at Gurudwara Road, Rudrapur. The report of this accident was lodged in P.S. Gadarpur in G.D. No. 46 at 20.25 on 17-2-2002 and deceased, Rajeev Gaba who died on the spot, whose post mortem was conducted by the doctors at the Government Hospital, Haldwani. The claimants also alleged that deceased Rajeev Gaba was the whole-seller of shoes in Rudrapur and his monthly income was about Rs. 4500/- and annual income was Rs. 53000/-, on the basis of which he used to pay income tax. The deceased paid income tax of Rs. 300/- in the year 1999-2000 and Rs. 100/- in the year 1998-99. The claimants also claimed a loss of Rs. 9,01,000/- due to death of deceased, Rajeev Gaba. The claimants also alleged

that the deceased Rajeev Gaba was not addicted to any bad habits and was spending whole of his income on his family. The claimants deprived of the love and affection of father and husband due to death of deceased, Rajeev Gaba, for which they are entitled to get compensation to the tune of Rs. 10,11,000/-. Besides this, the claimants also claimed a sum of Rs. 10,000/- for funeral expenses of the deceased and also claimed interest at the rate of 12% from the date of filing the claim petition till the payment of compensation.

4- The respondent no. 2 Insurance Company filed written statement 12Kha/1 and submitted that paragraph nos. 1 to 8 of the petition are denied for want of knowledge. Respondent no. 2 also alleged that appellants would have to prove the income of the deceased. The claimants also have to prove that they are the legal heirs of the deceased. Respondent no. 2 denied the contents of paragraph no. 9 of the petition and submitted that the claimants have to prove that the deceased was paying income tax.

5- Respondent no. 2 has also denied the contents of paragraph nos. 10 to 17 of the petition and submitted that the claimants have to prove that the owner of the Maruti Car was deceased and the car was registered for insurance. The respondent no. 2 also denied the contents of paragraph nos. 18, 19 to 22 of the petition and submitted that the claimants also have to prove that the deceased died due to negligence on the part of tractor driver in this accident. Respondent no. 2 also submitted that this court has no jurisdiction to hear this case.

Respondent no. 2 also submitted in his written statement that the case is defective for not making necessary party. They also submitted that in the F.I.R. which was lodged by Rajkumar Gaba, it was stated that tractor trolley was packed with sugar cane and the tractor trolley was parked at its side, hence there is no fault on the part of the tractor trolley. At the time of accident the number was tractor trolley was not clear. They have also alleged that the claimants took this number in connivance with the owner of the vehicle in question.

6- Respondent no. 2 also submitted in its written statement that the deceased Rajeev Gaba died due to fault on his own part, hence, the claimants are not entitled to get any compensation. The respondent no. 2 also submitted that at the time of accident the deceased was not having valid and effective driving licence and the deceased was driving the Maruti car rashly and negligently. The respondent no. 2 also submitted that the owner of Maruti car was also having no valid insurance and respondent no. 2 was wrongly made party.

7- Respondent no. 1/Rajeev Nehra submitted his written statement 15Ka/1. He admitted the contents of paragraph no. 1 to 18 of the petition and denied the contents of paragraph 19 of the petition and also admitted the contents of paragraph nos. 20 and 21. He denied the contents of paragraph no. 22 and submitted that the claim of the appellants for compensation is highly excessive and partly admitted the contents of paragraph no. 23 of the petition.

8- The respondent no. 1 has taken additional plea in his written statement that the tractor trolley, packed with sugarcane, was parked at the road due to some technical fault, but due to mistake the driver could not light the parking indicator, however, there is no mistake on the part of the respondent. He also submitted that the registration of tractor is valid from 22-2-2000 to 22-2-2015 and was also valid on the date of accident. He also submitted that this tractor trolley was being driven by Madan Ram, who was having valid driving licence on the date of accident, which was valid from 10-8-1994 to 16-12-2002 and was also valid on the date of accident.

9- The respondent no. 1 also submitted in his written statement that Tractor No. UP 04 C/0828 was insured with the Oriental Insurance Company, which Cover Note No. 335286 and was valid from 17-12-01 to 16-12-02 and was also valid on the date of accident. Hence, the Insurance Company had liability to pay the compensation, not the respondent no. 1.

10- On the basis of the pleadings of the parties, the Tribunal has framed following issues:-

(1) Whether at about 7:00 p.m. on 17-02-2002 the accident occurred due to parking and non-availability of signal and light of Tractor Holand Ford 2630 Registration No. UP 04 C/0828 at Gadarpur Kelakhera Highway, near Motiapur, P.S. Gadarpur, District

Udham Singh Nagar, resulting into death of Rajeev Gaba?

(2) Whether at the time of accident in question, the driver of Tractor Holand Ford 2630 Registration No. UP 04 C/0828 was having no valid and effective driving licence?

(3) To what amount of compensation the claimants are entitled, if any, how much and from whom?

(4) Whether the owner of tractor in question has paid the premium of trolley to the respondent no. 2 due before the accident or not, as has been stated in the written statement? If no, its effect?

11- Both the parties adduced evidence in their support. The Tribunal concerned after having perused the entire material available before it and after hearing learned counsel for the parties awarded an amount of Rs. 4,18,000/- to the appellants/claimants vide judgment and award dated 18-2-2005. The Insurance Company has filed Appeal No. 160 of 2005 for setting aside the award and the claimants being dissatisfied with the compensation has filed appeal No. 212 of 2005 for enhancement.

12- Feeling aggrieved by the aforesaid judgment and award, the appellants/claimants preferred this appeal before this Court.

13- Heard Mr. V.K. Kohli, Senior Advocate, assisted by Mr. I.P. Kohli, learned counsel for the Insurance Company and Mr. G.C. Lakhchaura,

learned counsel for the respondents and perused the record.

14- First of all, we deal with AO No. 160 of 2005 preferred the insurer of the tractor trolley. The submission on behalf of the insurer was that the accident had taken place with the contributory negligence of the car driver but the Tribunal has committed manifest error in not fastening the liability on the insurer of the car in question.

15- The submission raised by learned counsel for the insurer/appellant has no force. The claim of the claimants is that the tractor trolley had no parking light when the car driver brought its car towards his side in order to save it from the vehicle coming from the opposite direction in a high speed. The tractor trolley standing in the side of road had no light even parking light was not burning and the it was standing due to some technical defects. The owner of the tractor trolley in his written statement has admitted the faults of its driver in the commission of the accident. PW-1, Raj Kumar and PW-2 Smt. Ritu have deposed that the accident was occurred due to the negligence of the tractor driver. Had the driver of the tractor opened the parking light, the accident would not have been occurred.

16- In the facts and circumstances of the case and the manner in which the accident occurred, case of contributory negligence is not made out. The driver of the car had not option but to drive it towards the side of the road in order to save it from the vehicle coming from the opposite direction and the car met the accident from the

standing tractor trolley having no parking light and invisible. The Tribunal was justified in rejecting the claim of the insurer about contributory negligence on the part of the car in question.

17- In view of the above, the appeal filed on behalf of the insurer has no force and is liable to be dismissed.

18- As regards the Appeal filed by the claimants for enhancement of compensation is concerned, the claimants alleged that the monthly income of the deceased was Rs. 4500/-. Income Tax papers were also filed, according to which in the year 1999-2000 the annual income of the deceased was Rs. 53000/-. The Tribunal has fixed the income of the deceased at Rs. 3000/- per month. Looking to the aforesaid circumstances, the monthly income of the deceased from the profession of whole-sale business of shoes would be Rs. 4250/- per month and Rs. 51000/- per annum and after deducting 1/3rd towards personal expenses, the dependency of the claimants comes to Rs. 34,000/- per annum. The deceased was aged about 30 years. The Hon'ble Supreme Court in the case of **New India Assurance Company Ltd. vs. Smt. Kalpana and others, reported in 2007 (1) TAC 795 (SC)** has held that multiplier of 17 between the age-group of 30 to 35 is high and appropriate multiplier of 13 would be proper. Applying the aforesaid principle of law laid down by the Hon'ble Supreme Court in the case (supra), after applying the multiplier of 13 the compensation in the present case comes to Rs. 4,42,000/-. The Tribunal also awarded Rs. 10,000/- towards funeral and other expenses, which the

claimants are entitled to get. In this way, total compensation comes to Rs. 4,52,000/-.

19- Learned counsel for the respondents has submitted that the rate of interest awarded by the Tribunal is high. The rate of interest as awarded by the Tribunal is 12% per annum. We think that the rate of interest is high and the rate of interest at the rate of 9% per annum would be just and proper.

20- The appeal preferred by the claimants for enhancement is liable to be partly allowed.

21- In view of the above, the appeal preferred by the Insurance Company (AO No. 160 of 2005) is hereby dismissed.

22- The appeal of the claimants (AO No. 212 of 2005) is partly allowed. The impugned judgment and award is modified to the extent that the claimants are awarded compensation to the tune of Rs. 4,52,000/- instead of Rs. 4,18,000/- as awarded by the Tribunal. However, the rate of interest awarded by the Tribunal is reduced to 9% per annum in place of 12% per annum.

23- Let a copy of this order be placed in the File of AO No. 212 of 2005.

(Dharam Veer, J)

(B.C. Kandpal, J.)

AO No. 160 of 2005

Hon'ble B.C. Kandpal, J.

(Misc. Application No. 166 of 2008)

Heard learned counsel for the respondents on the misc. application and perused the affidavit filed in support thereto.

The appeal has been finally decided vide judgment and order dated 3rd July, 2007. Therefore, it is directed that the statutory money of Rs. 25,000/- deposited by the appellant at the time of filing the appeal before this Court be remitted to the M.A.C.T. concerned.

According, the misc. application is disposed of.

(B.C.K., J.)

29.02.2008

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