

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

**Appeal from Order No. 117 of 2009  
(Under Section 173 of the M.V. Act, 1988)**

The New India Assurance Company Limited .... Appellant

**Versus**

Smt. Geeta Devi and others ... Respondents

*Mr. T.A. Khan, Sr. Adv. for the appellant.*

*Mr. Dinesh Bankoti, Adv. for the respondent nos. 1, 2 & 3.*

**27<sup>th</sup> February, 2015**

**Hon'ble Servesh Kumar Gupta, J.**

The impugned judgment dated 20.12.2008 rendered by the Motor Accidents Claims Tribunal, Almora has been challenged by the Insurance Company (appellant) mainly on the ground that the death of injured Kailash Singh occurred not on account of the accident by the vehicle (Jeep No. U.A. 04-A-5787) but it was a deliberate murder, wherein the driver of the vehicle as well as other accused persons, sitting in the jeep, were having complicity.

Learned senior counsel for the Insurance Company has submitted his arguments that the incident occurred on 29.11.2005 at 6.30 p.m., when the deceased was returning as a passenger in the jeep, in question, after attending the marriage ceremony. In that vehicle, accused persons, namely, Bahadur Singh, Harish Singh, Rajendra Singh, all residents of the same village Hatola (village of the deceased) were also boarded. Besides, another accused Bhagwan Singh, resident of village Aila and driver Mr. Harish Singh, belonging to self same village Hatola, were also there. As the vehicle arrived at some lonely place during the course of journey, deceased was thrown out from the vehicle by the accused persons. By the time the deceased could take care of himself, the driver of vehicle consciously took the deceased beneath the plying wheel as a result later the deceased succumbed to his injuries. He was shifted to his home by some passersby and then he

narrated the entire incident to his brother Pratap Singh, who lodged the FIR on 30.11.2005 in the morning at the concerned Patwari Circle. The matter was investigated and the charge-sheet was submitted against Mr. Bahadur Singh and Mr. Harish Singh, both young persons, for the offence under Section 302 IPC and the case was tried in the competent court.

Learned senior counsel for the appellant has drawn the attention of this Court to the fact that the petition was instituted under Section 166 of the Motor Vehicles Act and even the averment made in para 23 of petition discloses that it was a deliberate murder by the accused persons and not an accident. Section 166 of the Motor Vehicles Act postulates the application for awarding compensation only for the accident of the nature specified in Sub-Section 1 of Section 165 of the Act.

Section 165 (1) of the Act reads as under:-

*“A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons **arising out of the use of motor vehicles**, or damages to any property of a third party so arising, or both.”*

As the narration of the facts goes, it is evident that the death of Kailash Singh took place not on account of an accident arising out of the use of motor-vehicle but such vehicle was misused as a tool/mean to murder the deceased.

Per contra, learned counsel for the claimants has relied upon the judgment of Hon’ble Apex Court in the case of “*Smt. Rita Devi and others Vs. New India Assurance Company Limited and another*, **2000(2) TAC 213 (S.C.)**” where in Para 10 of the judgment, the Hon. Apex Court has clarified the difference

between the accidental murder and the simplicitor murder in the words that if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

The facts of the instant case as have been highlighted in the First Information Report sufficiently explain that the persons boarding in the jeep as well as the driver on the same, belonging to the selfsame village of the deceased, had their intention to murder Mr. Kailash Singh from the very beginning and in order to carry out their dominant intention of their act of such felony, they committed the incident.

In view of this Court, as regards the fact of the case, the death of Mr. Kailash Singh cannot be attributed on account of the accidental murder.

In view of what has been stated above, the appeal is allowed and the impugned judgment passed by the Tribunal is hereby set aside. The amount which has been deposited by the Insurance Company, including the compulsory statutory deposit, along with entire interest earned by such deposit, shall be returned to the Insurance Company.

It is hereby made that on humanitarian grounds, the amount of Rs.1.00 lakh, which has already been paid to the claimants, shall not be recovered by the Insurance Company.

Any observation or finding of this Court while adjudicating this appeal will not, in any manner, affect the merits of the sessions trial where the charge-sheeted accused persons are being tried or have been tried.

**(Serves Kumar Gupta, J.)**  
**27.02.2015**