

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 275/2010

Km. Vijaya Punetha

.... Appellant

Versus

The New India Insurance Company Ltd.
And Another

.... Respondents

Mr. Lokendra Dobhal, Advocate, for the appellant.

Mr. P.C. Maulekhi, Advocate, for the insurance company/respondent no. 1.

Mr. Amit Kapri, Advocate, for the claimant/respondent no. 2.

With

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May 31, 2017

Hon'ble Servesh Kumar Gupta, J.

The appeals duo have arisen out of the same accident, hence are being taken up together by this Court for adjudication.

The facts are that the accident occurred on 3.2.2007 at 8 AM on the serpentine, hilly roads of District Pithoragarh. Taxi Jeep No. UA05/1015 was being driven by Manoj Singh, who had the licence for driving light motor vehicle (transport) valid w.e.f. 18.2.2006 to 17.2.2009. Magan Chand and Bachi Ram, both army pensioners, were travelling as passengers in such jeep. On account of rash and negligent driving, the jeep skidded off from the road

and fell into deep ditch causing injuries to both the claimants. They got their medical treatment done in the army hospital and filed the claim petitions no. 75/2007 and 74/2007 respectively in the Court District Judge, Pithoragarh.

Learned Tribunal passed the impugned judgment on 9.6.2010 granting compensation to the tune of Rs. 20,000/- to Magan Chand and Rs. 15,000/- to Bachi Ram. Insurance company was asked to make the payment to both the injured claimants and the right to recover such compensation was conferred to the insurance company against the jeep owner Km. Vijaya Punetha, who has preferred these appeals.

The premise for conferring such right was that the vehicle was not being driven with a valid driving licence holder because the permit issued from the competent authority made it mandatory that the vehicle shall be driven by a driver having five years' experience to drive the transport vehicle and that too in the hilly regions.

Admittedly, there was no endorsement of the hill driving on the licence and the accident occurred within a year (10 days less than a year) from the date of issuance of licence.

I am of the view that firstly the conditions issued in the insurance policy are not happily legible at all and further these are ex parte in nature. The person who is paying the premium to the insurance company has no liberty even to look for the conditions entailed in such policy and so is the nature of the conditions which are mentioned in the permit issued by the competent authority. The owner has no option to look and ponder over the conditions of such permit.

Needless to add that while issuing the licence to the driver, the competent authority is supposed to test his driving skill and only thereafter the licence is issued to him.

Undoubtedly Manoj Singh was having a valid driving licence. Even it is accepted for a moment that certain conditions of the permit and the policy were violated, then it was for the transport authority to take the appropriate action against the motor owner or the driver concerned, but at all the insurance company cannot shirk its responsibility from making the payment of the compensation.

In view of what has been set forth above, both the appeals are hereby allowed and the liability to make the payment of compensation is fastened absolutely on the insurance company.

The amount deposited by the appellant in both the appeals shall be returned to her along with the interest accrued thereon.

Let the LCR be sent back.

(Serves Kumar Gupta, J.)