Judgment reserved on:-03.09.2025
Judgment delivered on:-26.09.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.338 of 2010

The New India Assurance
Company Ltd. .....Appellant

Vs.

Smt. Laxmi and others .....Respondent

Presence:-
Mr. V.K. Kohli, learned Senior Advocate assisted by Mr. Kanti Ram Sharma, Advocate holding brief of Mr. I.P. Kohli, Advocate for the appellant.
Mr. Rajesh Joshi, Advocate for respondent nos.1 and 2.
Mr. B.D. Pande, Advocate for respondent nos.3/1 to 3/6.

Hon'ble Pankaj Purohit, J.

This appeal has been filed by the appellant–Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), challenging the judgment and award dated 17.08.2010 passed by the Motor Accident Claims Tribunal, Dehradun, in Motor Accident Claim Petition No.378 of 2006, Smt Laxmi and another Vs. The New India Assurance Company Limited and others, whereby compensation of ₹3,89,000/- with interest has been awarded in favour of the claimants on account of the death of one Kusum in a motor accident dated 21.11.2006.

2. The insured/owner (respondent no. 3) has also filed a cross-objection, essentially challenging the Tribunal's finding regarding the validity of the driver's

license and praying that the liability fastened upon him under the doctrine of “pay and recover” be set aside.

3. The brief facts of the case are that on 21.11.2006 at about 04:00 P.M., the deceased-Kusum, aged about 17 years, was walking alongside a road, when a Truck No. UA-12-5156, being driven rashly and negligently, hit her. He sustained grievous injuries and succumbed to death. An F.I.R. was lodged promptly, and the post-mortem report confirmed death due to multiple injuries.

4. The claimants, being the parents of the deceased, filed a Claim Petition No.378 of 2006 under Section 166 of the Act, claiming compensation of ₹15,10,000/- from the appellant/insurer. It was alleged that the deceased was earning about ₹4,500/- per month, by taking tuition classes and knitting-sewing work and was contributing to the family income. The parents were dependent on her.

5. The appellant/insurer submits that the Tribunal erred in fastening liability upon the insurer despite the admitted fact that the driver of the offending truck did not possess a valid driving license at the time of the accident. It is urged that such absence is not a mere technical breach but a fundamental violation of Section 3 of the Act and the terms of the policy. By directing the insurer to satisfy the award, the Tribunal has diluted the contractual obligations under Section 149(2) of the Act. The appellant placed reliance on a judgment rendered by Apex Court in the case of *National Insurance Co. Ltd. v. Kusum Rai* reported in *(2006 (2) TAC 1 SC), Sardari & Ors. Vs. Sushil Kumar & Ors.* Reported in *(2008 ACC 426*

SC), and *National Insurance Co. Ltd. Vs. Rattani & Ors.* reported in *(2009 ACJ 925),* to contend that in cases of a fundamental breach, the insurer cannot be made liable to pay compensation at all.

6. It is further submitted that the Tribunal misapplied the principle laid down by the Apex Court in the case of *National Insurance Co. Ltd. v. Swaran Singh* reported in *(2004 (3) SCC 297),* inasmuch as the said judgment does not lay down a blanket proposition that insurers must invariably satisfy awards in all cases of absence of license. The appellant/insurer submits that the Tribunal's approach wrongly equated a case of wholly unlicensed driving with cases of minor irregularities, thereby undermining the deterrent object of the licensing regime.

7. On the quantum of compensation, the appellant submits that the Tribunal erred in assessing the income of the deceased at ₹3,000/- per month without any documentary proof. At the relevant time, the structured formula in the Second Schedule prescribed notional income at only ₹15,000/- per annum, and thus the award is inflated and contrary to statutory guidance.

8. It is further urged by the appellant that the Tribunal wrongly deducted only one-third amount of salary of the deceased for personal expenses, whereas for an unmarried deceased, deduction of 50% is mandatory as held in *Sarla Verma Vs. DTC* reported in *(2009 (2) TAC 677 SC*. The appellant also submits that the Tribunal adopted a multiplier of "16" based on the age of the deceased, which is contrary to law. In the case of an unmarried deceased, the proper multiplier is to be taken

with reference to the age of the parents. With the parents aged 35 and 40 years, the correct multiplier could not exceed "13" and, as held in the case of *Municipal Corporation of Greater Bombay Vs. Laxman Iyer* reported in *(2004 (1) TAC 1 SC*, the maximum multiplier applicable is "10." The Tribunal also erred in awarding lump sums under conventional heads such as funeral expenses and loss of love and affection, far in excess of permissible limits at the relevant time, resulting in duplication and unjust enrichment.

9. The appellant also contended that the Tribunal awarded interest at 6% per annum from the date of petition, which is excessive given the already inflated computation and prevailing bank deposit rates of 4–5%. It is prayed that the award is arbitrary, contrary to binding precedents, and liable to be set aside or, in the alternative, substantially reduced.

10. The cross-objection filed by respondent no.3 (insured/owner) essentially challenges the finding recorded on Issue No.2 regarding the validity of the driver's license. It is contended that the license of the driver was duly valid and renewed in accordance with Section 15 of the Act, and that the Tribunal erred in holding otherwise.

11. The respondent no.3 points out that renewal documents were on record (Paper Nos. 26Ga/13 and 56/5), which clearly established that the license had been renewed on 18.11.2006 and was valid up to 17.11.2009, thereby covering the date of the accident on 21.11.2006.

12. It is argued by the respondent no.3 that the Tribunal ignored this material evidence, and that fastening liability upon the insured under “pay and recover” is erroneous. Therefore, the respondent no.3 prays that the insurer alone be held liable to satisfy the award without any right of recovery.

13. On the basis of the pleadings of the parties, the Tribunal framed the following issues for determination:

> (i) Whether on 21.11.2006 at around 4 P.M., when the deceased- Kusum was walking near Maheshwari petrol pump, Najibabad road, Kotdwar, Pauri Garhwal, was the truck no. UA-12-5156 being driven by its river in a rash and negligent manner and collided with the deceased-Kusum, causing multiple injuries resulting into her death or not?
>
> (ii) Whether at the time of the accident, the driver of truck no. UA-12-5156 possessed a valid and effective driving licence or not?
>
> (iii) Whether at the time of the accident, truck no. UA-12-5156, the offending vehicle was duly insured with the appellant (Insurance Company) at the time of the accident?
>
> (iv) Whether, on account of the aforesaid accident and death of Kusum, the claimants are entitled to compensation or not? If yes, to what amount and from which of the parties?

14. On Issue No.1, the Tribunal held, on the basis of FIR, testimonies of prosecution witnesses, and the

post-mortem report, that the accident occurred due to the rash and negligent driving of the truck driver and that the deceased-Kusum sustained fatal injuries in consequence thereof..

15. On Issue No.2, the Tribunal found that the driver of the truck driver did not possess a valid and effective driving licence on the date of the accident.

16. On Issue No.3, the Tribunal recorded a finding that the offending vehicle was duly insured with the appellant- insurance company on the date of the accident.

17. On Issue No.4, while rejecting the claim of the income at Rs. 4500/- per month due to lack of documentary proof, the Tribunal assessed the notional income of the deceased at 3000/- per month, deducted one-third towards personal expenses and applied a multiplier of 16. By adding amounts under conventional heads such as funeral expenses, loss of estate and loss of consortium, the Tribunal awarded total compensation of 3,89,000/-. The tribunal directed the insurer to satisfy the award with liberty to recover the same from the owner/insured, having regard to the finding on issue no. 2.

18. After having heard the learned counsels for both the parties and perusal of material on record, this Court is of the considered opinion that as regards to the negligence of the truck driver, the finding of the Tribunal is well supported by F.I.R., eye-witnesses and medical evidence. No contrary material has been shown. This Court finds no infirmity in the conclusion that the

accident occurred due to rash and negligent driving of the truck.

19. The principal controversy relates to liability of the insurer and the doctrine of "pay and recover." The appellant relies on the case of Kusum Rai (*supra*), Sardari *and others* (*supra*), and Rattani (*supra*) to contend that absence of a license is a fundamental breach disentitling claimants to recover from the insurer. The owner, on the other hand, asserts that renewal documents were ignored and seeks exoneration from recovery.

20. The law on this aspect has been settled authoritatively by the Hon'ble Supreme Court in the *National Insurance Co. Ltd. v. Swaran Singh* reported in *(2004) 3 SCC 297*, wherein the Court held that mere absence, fake or invalid license does not, by itself, absolve the insurer of liability towards third-party claimants. To avoid liability entirely, the insurer must not only establish breach of policy conditions but also prove that such breach was fundamental and contributed to the cause of the accident. Even in such cases, the insurer remains liable to satisfy the award and may recover the amount from the insured.

21. These principles were reiterated in the case of *Shamanna Vs. Oriental Insurance Co. Ltd.* reported in *(2018) 9 SCC 650*, wherein the Court affirmed that in third-party claims, the insurer cannot avoid liability altogether and the doctrine of "pay and recover" ensures both social justice and contractual fairness. The Court explained that Chapter XI of the Act must be interpreted to advance the cause of victims, and any breach between

insurer and insured is to be resolved without defeating the rights of claimants. In para 5 of this judgment, the Hon'ble Supreme Court expressly followed the ratio of Swaran Singh (*supra*), affirming that absence of a valid license does not absolve the insurer of liability towards third-party claimants, though it preserves the insurer's contractual right of recovery from the insured:

> 5. In the case of third-party risks, as per the decision in National Insurance Co. Ltd. v. Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, the insurer had to indemnify the compensation amount payable to the third-party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third-party risks, the insurer has to indemnify the compensation amount to the third-party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-à-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered. In para 110, the Supreme Court summarised its conclusions as under : (SCC pp. 341-42)
>
> "*110. The summary of our findings to the various issues as raised in these petitions is as follows:*
>
> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.*

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(*iv*) *Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(*v*) *The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.*

(*vi*) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.*

(*vii*) *The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.*

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third-party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(*x*) *Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third-party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.*

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount

paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

22. However, turning to the facts of the present case, the cross- objection filed by the owner/insured has produced documentary material on record (Paper Nos. 26 Ga/13 and 56/5) establishing that the driver's licence had been renewed on 18.11.2006 and remained valid upto 17.11.2009, thereby covering the date of accident, i.e. 21.11.2006. The tribunal's contrary finding on this aspect is erroneous, having overlooked material evidence. Once it is accepted that the driver was duly licenced on the relevant date, there was no breach of policy conditions at all. Consequently, the insurer's plea of "fundamental breach" must fail and the direction of "pay and recover" cannot be sustained.

23. At this stage, it is also relevant to note that the reliance placed by the learned counsel for the appellant on Municipal Corporation of Greater Bombay v. Laxman Iyer (supra) is misplaced, in as much as the said judgment has subsequently been overruled in ***Sube Singh and another Vs. Shyam Singh and others, (2018) 3 SCC 18***. In Sube Singh (supra), the Hon'ble Supreme Court has categorically held that the appropriate multiplier has to be determined with reference to the age of the deceased and not the age of the dependants.

In the present case, the Tribunal rightly applied the multiplier of "16" on the basis of the age of the deceased (17 years). Therefore, no error can be attributed to the Tribunal in adopting the said multiplier, and the objection raised by the insurer on this score stands rejected. Reliance may be placed on paragraphs 3 and 4 of the judgment, wherein the Hon'ble Supreme Court observed:

> *"3. According to the appellants, the correct multiplier to be applied in the facts of the present case is 18, as the deceased was only 23 years of age on the date of accident. To buttress this submission, reliance is placed on the decision in Sarla Verma v. DTC [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] . Reliance is also placed on the recent judgment of this Court (three-Judge Bench) in Munna Lal Jain v. Vipin Kumar Sharma [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] , which has restated the legal position that multiplier should depend on the age of the deceased and not on the age of the dependants.*
>
> *4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22-9-2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in Ashvinbhai Jayantilal Modi [Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma, (2015) 2 SCC 180 : (2015) 1 SCC (Civ) 792 : (2015) 1 SCC (Cri) 855] held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*

24. Applying the above principles enumerated in paragraph nos.20 and 21 of the present judgment to the present case, this Court holds that the insurer alone remains liable to satisfy the award. The appeal filed by the insurer therefore fails. The cross-objection of the owner is liable is to be allowed, since the Tribunal erred in fastening a liability of recovery upon him despite the existence of a valid licence on the date of accident.

25. On the quantum of compensation, the Tribunal's adoption of ₹3,000/- per month as notional income cannot be termed perverse. Although the insurer has argued for application of the Second Schedule and higher deductions, the Tribunal's computation falls within a reasonable range, particularly keeping in mind that the deceased was 17 years old and allegedly engaged in gainful work. The award of ₹3,89,000/- with 6% interest is neither excessive nor unjust so as to warrant interference in appellate jurisdiction.

26. For the reasons aforesaid, the appeal filed by the Insurance Company is dismissed. Furthermore, the cross objection filed by the counsel for the insured/owner is allowed. The amount of compensation deposited by the Insurance Company before the learned Claims tribunal along with statutory deposit shall be paid to the respondent no. 1 and 2 along with the entire interest accrued around.

(Pankaj Purohit, J.)
26.09.2025

SK