2026:UHC:1230

Reportable

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 505 of 2011

State Of Uttarakhand --Appellant

Versus

Umesh Chandra Pandey and Ors. --Respondents

With

Appeal from Order No.7 of 2018

Umesh Chandra Pandey --Appellant

Versus

State of Uttarakhand --Respondent

Presence:

Mr. Tej Singh Bisht, learned D.A.G. for State of Uttarakhand/appellant in AO/505/2011 and respondent in AO/7/2018.

Mr. Lalit Belwal, learned counsel for respondent-claimant No.1 in AO/505/2011 and appellant in AO/7/2018.

Mr. Ravi Bisht, learned counsel holding brief of Mr. Aditya Pratap Singh, learned counsel for respondent No.2.

Mr. J.C. Belwal, learned counsel for respondent No.3-driver of the vehicle, appeared through V.C.

Hon'ble Pankaj Purohit, J. (Oral)

The appeal from order No.505 of 2011 has been preferred by the State of Uttarakhand under Section 173 of the Motor Vehicles Act, 1988, assailing the judgment and award dated 27.10.2010 passed by learned Motor Accident Claims Tribunal/Additional District Judge, Udham Singh Nagar, in Motor Accident Claim Petition No. 102 of 2006 *Umesh Chandra Pandey Vs. U.P. Seeds and Tarai Vikas Nigam and Ors.*, whereby, compensation to the tune of Rs.7,24,000 with interest @6% p.a. from the date of filing of the claim petitioner till actual payment, has been awarded in favour of the respondent–claimant.

2. The case of the respondent-claimant, in brief, is that on 14.01.2006 at about 7:15 p.m., the respondent-claimant was returning home after duty from Rudrapur towards Devriya, while sitting on the pillion seat of a motorcycle bearing registration No.UK-06-5172. When the motorcycle reached near Lalpur petrol pump, before the Dharamkanta, the motorcycle slowed down on account of traffic conditions. At that point of time, a Jeep bearing

registration No.UK-04-1698 came from the side of Kichha and collided with the motorcycle. It was alleged that the said Jeep was being driven in a rash and negligent manner, as a result of which the respondent-claimant sustained injuries. The injured respondent-claimant was taken for medical treatment and subsequently a First Information Report was lodged in respect of the said accident. Claiming that the accident occurred solely due to the rash and negligent driving of the Jeep, respondent-claimant filed a claim petition before the Tribunal seeking compensation.

3. In the claim petition, respondent-claimant asserted that the accident occurred due to the rash and negligent driving of the Jeep bearing registration No. UK-04-1698. It was pleaded that respondent-claimant sustained serious injuries and incurred medical expenses and loss of income on account of the accident. The respondent-claimant further stated that he was earning prior to the accident and due to the injuries suffered, his earning capacity had been adversely affected. On these grounds, compensation was sought from the owner, driver and insurer of the offending vehicle.

4. The respondent-claimant also filed a cross objection for enhancement of compensation awarded by learned Claims Tribunal in AO No.505 of 2011, which was registered as AO No.07 of 2018. The respondent-claimant, by way of cross-objections, contends that compensation awarded by the learned Tribunal is wholly inadequate and does not satisfy the statutory requirement of “just compensation” under the Motor Vehicles Act. It is submitted that despite clear evidence on record establishing permanent disability to the extent of 90%, learned Tribunal failed to assess the true impact of such disability on the claimant’s earning capacity, future prospects and overall quality of life. The respondent-claimant asserts that the injuries have rendered him dependent on assistance for the rest of his life, a factor which was not properly accounted for while

determining compensation. It is further submitted that the learned Tribunal erred in not awarding compensation under several mandatory heads such as pain and suffering, loss of amenities, mental shock, loss of expectation of life and future medical care. The respondent-claimant also assails the award of interest at the rate of 6% per annum as being on the lower side, contending that a higher rate ought to have been granted. On these grounds, the respondent-claimant seeks enhancement of the compensation and suitable modification of the impugned award.

5. The owner and driver of the Jeep filed their written statement denying the allegations made in the claim petition. It was contended that the accident did not occur due to rash or negligent driving of the Jeep. They further pleaded that the Jeep was being driven carefully and in accordance with traffic rules. It was also stated that the vehicle was insured at the relevant time and, therefore, in case any compensation was found payable, the liability would be that of the insurance company.

6. On the basis of the pleadings of parties, the Tribunal framed the following issues:

1. *Whether on 14.01.2006 at about 7:15 p.m., near Lalpur petrol pump, before the dharamkanta, the claimant while sitting on his parked motorcycle by the roadside bearing registration no. UA 06 A 5172 sustained injuries due to an accident caused by rash and negligent driving of Jeep bearing registration No. UK-04-1698? If so, then its effect?*
2. *Whether the claimant is entitled to receive compensation? If so, from whom and to what extent?*

7. While adjudicating Issue No.1, learned Tribunal considered the oral testimony of claimant as well as the documentary evidence placed on record, including the FIR, site plan and medical documents. Learned Tribunal noted that the claimant had consistently stated that Jeep bearing registration No.UK-04-1698 came from the side of Kichha and hit the motorcycle, on which the claimant was travelling, due to rash and negligent driving. Learned Tribunal further observed that no convincing evidence was adduced by the opposite parties to rebut the version put forth by the claimant. The driver of Jeep failed to establish that the

accident occurred due to any fault on the part of the motorcycle rider or due to unavoidable circumstances. On an overall appreciation of evidence, learned Tribunal came to the conclusion that accident in-question occurred due to rash and negligent driving of the Jeep bearing registration No.UK-04-1698. Accordingly, Issue No.1 was decided in favour of the claimant.

8. While deciding Issue No.2, learned Tribunal examined the nature of injuries sustained by the claimant, the period of treatment, and the medical records brought on record. Learned Tribunal also considered the evidence relating to the income of the claimant and his age at the time of the accident. After assessing the material available on record, learned Tribunal computed the compensation under different permissible heads, including medical expenses, pain and suffering and loss of income. On the basis of such assessment, the Tribunal determined the total compensation payable to the claimant. The Tribunal further examined the question of liability and held that the compensation awarded was payable by the parties held responsible for the accident, as per the findings recorded in the claim petition.

9. Accordingly, Issue No.2 was also decided in favour of the claimant and the claim petition was allowed to the extent indicated in the award.

10. The appellant-State has assailed the impugned judgment and award dated 27.10.2010 primarily on the ground that the learned Tribunal has erred in fastening liability upon the State without recording any clear or cogent finding of rash and negligent driving on the part of driver of the vehicle bearing registration no.UP-04-1698. It is contended that learned Tribunal failed to appreciate the evidence on record and mechanically presumed negligence, thereby invoking the principle of vicarious liability against the State in absence of proof of any tortuous act attributable to the driver.

11. According to the appellant-State, such an approach is contrary to settled principles governing adjudication of claims under the Motor Vehicles Act. It is further argued that learned Tribunal committed a serious error in holding the State liable despite the fact that vehicle in-question was not owned by appellant at the relevant time and was, in fact, in the ownership of respondent no.2. The appellant-State also questions the legality of compensation awarded, submitting that the medical evidence was not duly proved, Medical Officer was not examined, and the quantum awarded is excessive and unsupported by reliable evidence. On these premises, the appellant-State prayed for setting aside of the impugned award in its entirety.

12. Having heard the learned counsel for the parties and upon perusal of the material available on record, this Court proceeds to determine these appeals. The principal question which arises for consideration is with regard to liability to satisfy the award as well as the correctness of quantum of compensation determined by learned Motor Accident Claims Tribunal. So far as the question of liability is concerned, it is not in dispute that the vehicle in question i.e. Jeep No. UP-04-1698, was registered in the name of U.P. Seeds and Tarai Development Corporation Ltd. However, the material available on record clearly establishes that on the date of accident, said vehicle had been requisitioned by the District Magistrate, Udham Singh Nagar, and was being utilized for official purposes in connection with the Pulse Polio Programme. The requisition of the vehicle and its deployment for governmental duty has not been disputed. Once vehicle stood requisitioned, the effective possession, command and operational control over the vehicle and its driver vested in the State authorities. The question as to on whom the liability would fall in such circumstances is no longer *res integra*. The Hon'ble Supreme Court in ***Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Ors., (1997) 7 SCC 481***, while dealing with a

similar situation, has authoritatively laid down the governing principle in the following terms:

> *"17. The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete "control" to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill-fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 (supra), which go to show that the owner had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC."*

13. The principle which emerges from the aforesaid authoritative pronouncement is that for the purpose of fastening vicarious liability, the decisive test is that of effective control and command over the vehicle and its driver. Even though the registered ownership may continue with original owner, once the vehicle along with services of the driver is placed under effective control and command of another authority, the latter becomes vicariously liable for the negligent act committed during such period of control. Applying the aforesaid principle to the facts of present cases, it is evident that on the date of accident, vehicle had been requisitioned and placed under the operational control of State authorities for official duty. The driver, though an employee of the Corporation, was operating the vehicle under

directions, control and command of the State authorities. Consequently, State, being the authority having effective control over vehicle at the relevant time, became vicariously liable for the tortious act committed during such period. Learned Tribunal has, therefore, rightly fastened the liability upon the State of Uttarakhand to satisfy the award.

14. Coming now to the question of quantum of compensation, learned Tribunal has assessed the disability of claimant as resulting in complete loss of earning capacity and has applied multiplier of 13 taking into account the age of the claimant. However, while computing compensation, learned Tribunal has failed to add future prospects to income of claimant and has also awarded inadequate compensation under conventional heads. The law relating to assessment of compensation in cases involving permanent disability has been comprehensively laid down by the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343***, wherein, it has been held that where permanent disability results in loss of earning capacity, compensation must be computed on the basis of functional disability affecting earning capacity and not merely the percentage of physical disability. Further, in ***Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121***, Hon'ble Supreme Court has standardized the selection of multiplier based on the age of injured, and for the age group of 46 to 50 years, appropriate multiplier prescribed is 13, which has correctly been applied by learned Tribunal. However, learned Tribunal has omitted to add future prospects, which is now a settled component of compensation. In ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680***, Hon'ble Supreme Court has held that even in cases of permanent disability, future prospects are liable to be added depending upon the age of injured. In the present cases, the claimant being aged 48 years at the time of accident, addition of 25% towards future prospects is warranted. Taking the income of claimant as ₹4,000 per month as assessed by learned Tribunal, the

annual income comes to ₹48,000/-. Adding 25% towards future prospects, annual income becomes ₹60,000/-. Applying multiplier of 13, the loss of earning capacity comes to ₹7,80,000/-. In addition, respondent-claimant is entitled to reasonable compensation under conventional heads including pain and suffering, loss of amenities, attendant charges, medical expenses and special diet and transportation. Upon consideration of the facts and circumstances of the case, total compensation is re-assessed at ₹10,50,000/-.

15. Accordingly, the appeal preferred by the claimant seeking enhancement of compensation is partly allowed. The compensation awarded by the learned Tribunal is enhanced from ₹7,24,000/- to ₹10,50,000/-. The enhanced amount shall carry interest @ 7% per annum from the date of filing of claim petition till the date of actual payment.

16. Accordingly, the appeal preferred by the appellant-State challenging the fastening of liability is dismissed. The appellant-State shall deposit the enhanced amount, after adjusting the amount already paid, within a period of two months from the date of production of a certified copy of this judgment.

17. In view of the foregoing discussion, appeal filed by the appellant-State of Uttarakhand (AO/505/2011) is dismissed and the cross-objection filed by the claimant (AO/7/2018) is partly allowed and the compensation is enhanced as indicated above.

18. Let the T.C.R. be immediately sent back to the learned Trial Court for consignment.

19. Pending application(s), if any, stands disposed of.

(**Pankaj Purohit, J**.)
24.02.2026

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