
(2019) 10 UK CK 0076
In the Uttarakhand High Court
Case No : Writ Petition No. 619 Of 2019 (M/S)

Geetika Janeja

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 304(2), 304A
Motor Vehicles Act, 1988 — Section 146, 156(6), 158(1), 158(4), 158(6), 166,
166(1), 166(4), 168, 169, 170, 196
Code Of Criminal Procedure, 1973 — Section 173, 174
Uttar Pradesh Police Act, 1861 — Section 23
Evidence Act, 1872 — Section 165
Uttarakhand Motor Vehicles (Fourth Amendment) Rules, 2016 — Rule 205A, 205A(4)

Citation : (2019) 10 UK CK 0076

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Amit Prasad, Raveendra Singh Bisht, M.C. Pande, Yogesh Pande,
Rakesh Thapliyal

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The petitioner is widow of the deceased Veer Pal Singh Janeja, who died in a tragic motor accident, while he was travelling from Moradabad to Nainital in a Ford Endeavour car. The accident occurred at 09:00 PM on 15.12.2017. In all there were four persons travelling in the car, which was being driven by its owner, who was the lone survivor in the accident. Out of the remaining three, two died on the spot, including the husband of the present petitioner and the third passenger passed away while he was being taken to the hospital.

2. The petitioner who is the widow of the deceased Veer Pal Singh Janeja has filed the present writ petition bringing to the notice of this Court various anomalies committed by the investigating agencies and the authorities, which are completely in violation of the law. This is being done with a prayer seeking

proper implementation of the law which is applicable in a motor accident case. The case of the petitioner, inter alia, before this Court is that suitable changes needs to be made in the Uttarakhand Motor Vehicles Rules, 2011 (as amended) which are not in conformity with the parent Act i.e. Motor Vehicles Act, 1988. These changes are also necessary in the wake of the judgment of the Hon'ble Apex Court in the Court of Jai Prakash v. National Insurance Company Limited and others reported in (2010) 2 SCC 607, the learned counsel for the petitioner Sri Amit Prasad would submit.

3. The petitioner and her husband were residents of Kolkata. Her husband was an employee of M/s Julhen International, which is a multinational company engaged in the field of sanitary wares, etc. In one of his business trips, he had gone to Moradabad, from where he proceeded to Nainital, on that ill fated motor vehicle, along with the owner of the vehicle and two other persons. The vehicle met with an accident at about 09:00 P.M. in the night, in District Nainital, Uttarakhand. It has also come in the evidence that a "crash reconstruction test", was conducted by the petitioner herself through a specialized agency, by permission of the Court. This test shows that the impact speed of the vehicle (i.e. speed at which the vehicle was moving at the time of the impact of the accident), was 63 kms per hour. This would mean that the vehicle was actually being driven at a much higher speed and definitely more than 100 kms. per hour, submits the learned counsel for the petitioner. Moreover, the place where the accident occurred is a reserved forest where the maximum speed limit in any case is 45 kms. Per hour. In other words, the learned counsel for the petitioner would argue that there was a rash and negligent driving by the driver of the vehicle, who is the lone survivor of the accident. The driver got his vehicle released in his favour on 26.12.2017, which is again in violation of Uttarakhand Motor Vehicle Rules, 2011, the learned counsel for the petitioner would submit.

4. There are further allegations, such as that although the accident was reported to the nearest police station at "Kaladhungi", yet no effort was made by the police authorities or the investigating officer to prepare even an inquest report, and the vehicle was released without the preparation of the inquest report. In fact there was no investigation in the matter and after the matter was informed formally by the petitioner on 4.01.2018, the FIR was registered under Section 304A and 279 of IPC, although the application for registering the FIR was not under Section 304A of IPC, but under Section 304 Part II of IPC, in which the petitioner had made the driver of the vehicle the accused. Although the petitioner has not filed a claim petition under the MACT as yet and the reasons assigned before this Court for this are that they are still waiting for the investigation, but the alternative submission would also be that under the law since a fatal accident is brought to the knowledge of the police, a duty was cast on the police authorities as well to report the matter to the claims tribunal where automatically it would have been registered as a claim petition. The reference here would be to sub-section (6) of Section 158 and sub-section (4) of Section 166 of the Act, which read as under:-

"158. Production of certain certificates, licence and permit in certain cases. -

(1).....

(2).....

(3).....

(4).....

(5).....

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

"166. Application for compensation. -

(1).....

(2)

(3)

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

5. The learned counsel would also argue that in the present case a grave error has been committed at the hands of the police, inasmuch as no inquest has been prepared under Section 174 of CrPC. Section 174 of CrPC reads as under:

"174. Police to enquire and report on suicide, etc. - (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-Divisional Magistrate.

(3) When -

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do,

He shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate."

6. Admittedly, from the general diary of the police, on 15.12.2017 the bodies were taken out immediately and the postmortem was done and the injured was taken to the hospital. All the same, proper compliance of law has not been made as there is an anomaly in sub-rule (4) of Rule 205-A of the Uttarakhand Motor Vehicles (Fourth Amendment) Rules, 2016. The entire Rule 205-A reads as under:-

"205-A. Duties of Investigating Police Officer. - (1) The Investigating Police Officer shall prepare a site plan, drawn on scale as to indicate the layout and width, etc. of the road/roads or place, as the case may be, the position of vehicle/vehicles, or persons, involved and such other facts, as the case may be, relevant, authenticated by the witnesses and in case no witness is available same shall be recorded, so as to preserve the evidence relating to accident. He shall also get the scene of accident photographed from such angles as to clearly depict the accident, as above inter alia for the purpose of proceeding before the Claims Tribunal.

(2) The Investigating Police Officer shall get full particulars of the insurance certificate/policy in respect of the motor vehicle involved in the accident and to

require the production of documents mentioned in sub-section (1) of Section 158, and thereupon either to take the same in possession against receipt, or to retain the photocopies of the same, after attestation thereof by the person producing them.

(3) The investigating Police Officer may verify the genuineness of the documents gathered under sub-rule (2) by obtaining confirmation in writing from the authority purporting to have issued the same.

(4) The Investigating Police Officer shall submit detailed report regarding the accident to the Claims Tribunal along with site plan and photographs prepared under sub-rule (1), document gathered and verified under sub-rules (2) and (3) or action taken in case of documents found forged, copies of report under Section 173 of the Code of Criminal Procedure, medicolegal reports and postmortem report (in case of death), first information report, by not later than fifteen days of receipt of order/requisition issued by the Claims Tribunal.

Provided that such information may also be furnished to the Insurance Company if required by or through its agent or by the injured/sufferer or next of kin or legal representatives of the deceased of the accident.

The Investigating Police Officers shall submit report under this rule to the Claims Tribunal in Form SR 49-C.

(5) Duties of Investigating Police Officer enumerated in sub-rules (1) to (3) shall be construed as if they are included in Section 23 of UP Police Act, 1861, as applicable in Uttarakhand and any breach thereof, shall entail consequences envisaged in that law."

(Emphasis provided)

7. This learned counsel for the petitioner would argue that sub-rule (4) of Rule 205-A is in conflict with sub-section (4) of Section 158 and sub-section (4) of Section 166 of the Motor Vehicles Act, where the report of the accident has to be treated as an application for motor accident claim compensation, under the Motor Vehicles Act.

8. All the same, this Court has been informed by the learned counsel for the State that this anomaly will shortly be resolved as draft amendments have been prepared to remove this anomaly which only needs the Cabinet's approval as of now.

9. The further argument of the learned counsel for the petitioner is that in such case, even a claim petition need not be filed, as a duty is cast upon the authorities under Section 156 (6) read with Section 166(4), as has already been referred above.

10. Ultimately reliance is placed upon the judgment of Hon'ble Apex Court in the case of *Jai Prakash v. National Insurance Company Limited and others* reported in (2010) 2 SCC 607, where the Hon'ble Apex Court dealing with delay in MACT

cases and what is relevant for our purposes is what has been said in para 9 of the judgment. Para 9 of the judgment passed in the case of Jai Prakash (supra) reads as under:

"9. The legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-section (6) of Section 158 of the Act provides:

"158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

Sub-section (4) of Section 166 of the Act reads thus:

"(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

11. In the said case, the Hon'ble Apex Court had given directions to the Police Authorities as well as to the Claims Tribunal and suggestions were also made to the Insurance Company. The directions given to the police authorities are contained in para 16, 17, 18 and 19, which are as under:-

"16. The Director General of Police of each State is directed to instruct all police stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report ("AIR, for short) in Form No. 54 of the Central Motor Vehicle Rules, 1989 shall be submitted by the police (Station House Officer) to the jurisdictional Motor Accidents Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal:

(i) The age of the victims at the time of accident;

(ii) The income of the victim;

(iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver,

insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/wound certificate (in case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the insurance company concerned to enable the insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

17. To avoid any administrative difficulties in immediate implementation of sections 158(6) of the Act, we permit such implementation to be carried out in three stages. In the first stage, all police stations/Claims Tribunals in the NCT region and State Capital regions shall implement the provisions by the end of April 2010. In the second stage, all the police stations/Claims Tribunals in district headquarters regions shall implement the provisions by the end of August 2010. In the third stage, all police stations/Claims Tribunals shall implement the provisions by the end of December, 2010. The Director General shall ensure that necessary forms and infrastructural support is made available to give effect to Section 158 (6) of the Act.

18. Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may be extended to three months, or with a fine which may extend to Rs. 1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done. Thereby a valuable deterrent is ignored. We therefore direct the Directors General to issue instructions to prosecute drivers and owners of uninsured vehicles under Section 196 of the Act.

19. The Transport Department, Health Department and other departments concerned shall extend necessary cooperation to the Directors Generals to give effect to Section 158 (6)."

12. Thereafter the directions given to the Claims Tribunal as contained in para 20, 21 and 22 are as under:-

"20. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158 (6) of the Act as applications for compensation under Section 166 (4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary registers, forms and other support is extended to the Tribunal to give effect to Section 166 (4) of the Act.

21. For complying with section 166(4) of the Act, the jurisdictional Motor

Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an institution register for recording the AIRs which are received from the Station House Officers of the police stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant(s) appear, the miscellaneous application shall be converted to claim petition. Where a claimant(s) file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any "Police Officer - Advocate - Doctor" nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the Claims Tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176.

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim(s) under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

22. The aforesaid directions to the Tribunals are without prejudice to the

discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation."

13. Thereafter directions were also made to the Insurance Company that all accident victims get compensation in time. In order to make that order effective, consequential directions were given as under:-

"42. The Supreme Court Registry is directed to send copies of this order to (i) the Chief Secretaries and the Directors General of Police of all the States, and

(ii) the Registrars General of all the High Courts, for compliance with the directions. The suggestions made may be placed before the Central Government by the learned Solicitor General. The Registry may receive and put up any other suggestions. List for further directions on 7-1-2010."

14. In the same case, another order was passed by the Hon'ble Apex Court on 13.05.2016 wherein a reference was made of judgment of Delhi High Court in the case of Rajesh Tyagi and Ors. v. Jaibir Singh and Ors. (FAO 842/2003) reported in 2009 SCC Online Del 4302 where the Delhi High Court had formulated a scheme called "Claims Tribunal Agreed Procedure". The said Scheme was held to be a comprehensive scheme and directions were made to circulate the scheme to the Registrar General of all the High Court including the Delhi High Court for its implementation.

15. It appears that these directions of Hon'ble Apex Court have not been followed in letter and spirit and therefore following the order of the Hon'ble Apex Court, the following directions are given:-

The High Court Registry is directed to send a copy of this order to the Chief Secretary and the Director General of Police of the State of Uttarakhand for full compliance of the directions of the Hon'ble Apex Court in the case of Jai Prakash v. National Insurance Company Limited and others reported in (2010) 2 SCC 607.

16. With the directions as above, writ petition stands disposed.