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**(2019) 08 UK CK 0046**

**In the Uttarakhand High Court**

**Case No : Appeal From Order No. 513 Of 2015**

Oriental Insurance Company Ltd

APPELLANT

Vs

Gulab Singh And Others

RESPONDENT

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**Date of Decision : 06-08-2019**

**Acts Referred:**

**Citation : (2019) 08 UK CK 0046**

**Hon'ble Judges : Sudhanshu Dhulia, J**

**Bench : Single Bench**

**Advocate : M.S. Dhapola, Pankaj Purohit, Bindesh Kumar Gupta**

**Final Decision : Dismissed**

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## **Judgement**

Sudhanshu Dhulia, J

1. This is an appeal filed by the insurance company against the award dated 22.07.2015 passed by the Motor Accident Claims Tribunal, Nainital in M.A.C.P. No. 41 of 2014, whereby the learned Tribunal has awarded a compensation of Rs. 6,47,000/- (Rupees Six Lakh Forty Seven Thousand only) in favour of the claimants.

2. Brief facts of the case are that Km. Prema Bisht (deceased) was working in Minda Corporation Pvt. Limited. On 24.09.2013 at about 03:30 P.M., she was returning to her residence after her duties were over on a bus bearing registration No. UA 04-E 4826. The bus was private bus of the Corporation. At the time when she alighted from the bus, the driver of the bus without giving any warning started the bus immediately, as a result of which she fell down and sustained grievous injuries and died during treatment.

3. On account of the death of Km. Prema Bisht, a claim petition was filed by claimants claiming a compensation of Rs. 30,50,000/- (Rupees Thirty Lakh Fifty Thousand only). It was alleged in the claim petition that the deceased was well educated. She was doing job in Minda Corporation Pvt. Ltd. and was getting a

monthly salary of Rs. 10,000/- (Rupees Ten Thousand only) per month.

4. Written statements were filed by the owner and the driver of the bus. The owner and driver of the bus admitted the contention of the claimants, however, said that the bus was being driven by the driver who was having a valid licence and permit and the accident was not caused due to rash and negligent driving, but due to mistake of the deceased herself as she was trying to alight from the bus when the bus had not come to halt.

5. The insurance company also filed its written statement and disputed the claim on various accounts.

6. On the basis of rival pleadings of the parties, following issues were framed by learned Tribunal:-

"(1) Whether on 24.09.13 at about 03:30 P.M., when Km. Prema Bisht was coming to her house from Sidcul in the bus of the company bearing registration no. UA 04-E/4826, and when she was alighting from bus near her house, then the bus driver moved the bus ahead rashly and negligently, as a result of which she sustained grievous injuries and died on 01.10.13 during treatment?

(2) Whether at the time of accident, the driver of the bus UA 04-E/4826 was having valid driving licence and all the papers of the vehicle were valid?

(3) Whether the claimants are entitled for any relief, if yes, then to what extent and from which of the parties?"

7. The claimants had examined PW 1 Sher Singh, father of the deceased, PW 2 Smt. Geeta Bisht, who was a co-passenger in the bus and PW. 3 Smt. Rajni Bisht, mother of the deceased.

8. As regarding issue no. 1, the clear cut finding of the learned Tribunal was that the accident occurred due to rash and negligent driving on the part of the driver. PW 2 is the co-passenger, who was going on the same bus as was the deceased on the relevant day and she gave a categorical finding that at the time when the deceased was trying to alight from the bus, immediately the bus started as a result of which she lost her balance and fell from the bus.

9. As regarding issue no. 2, the learned Tribunal recorded a finding that the driver of the bus was having valid driving licence and the bus was being driven as per the conditions of the permit.

10. An objection was raised by the insurance company that the bus was not being driven in the proper route. This objection has been negated by the tribunal. Moreover, this aspect has no relevance in the matter as it is not the case that the accident has occurred when the bus was being driven on the road. The accident occurred when the bus had stopped but then moved ahead rashly and negligently by its driver without giving any warning. It is clearly a rash and negligent act and it has no consequence even if there is slight deviation of the route.

11. While deciding the compensation, the learned claims tribunal on the basis of the evidence available before it in the form of pay-slip determined the monthly income of the deceased as Rs. 6,000/- (Rupees Six Thousand only) i.e. Rs. 72,000/- (Rupees Seventy Two Thousand only) per annum. Out of this annual income of the deceased, the tribunal deducted the one-half of the amount towards personal expenses and calculated the annual income of the deceased as Rs. 36,000/-(Rupees Thirty Six Thousand only) for the purposes of compensation. Thereafter the learned Tribunal keeping in view the age of the deceased at 20 year 6 month applied the multiplier of 17 and calculated the compensation to the tune of Rs. 6,12,000/-. (Rupees Six Lakh Twelve Thousand only). Apart from this the learned Tribunal awarded a sum of Rs. 10,000/- (Rupees Ten Thousand only) towards funeral expenses and a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards loss of love and affection. Thus a total compensation of Rs. 6,47,000/- (Six Lakh Forty Seven Thousand only) has been awarded by the learned Tribunal along with an interest of 7% per annum from the date of filing of the claim petition.

12. This Court is of a considered view that the learned Tribunal while awarding the compensation has taken into consideration all the relevant aspects of the matter and has rightly awarded the compensation.

13. This Court finds no ground for interference with the award passed by the learned Motor Accident Claims Tribunal. Consequently appeal from order fails and is hereby dismissed.

14. Let a copy of this order along with the lower court record be sent to the Tribunal Concerned. The Insurance Company shall deposit the entire amount along with 7 % interest per annum on the amount not deposited as yet, from the date of filing of the claim petition, with the Tribunal concerned after adjusting the amount already deposited, within three weeks from the date of production of a certified copy of this order. Let the statutory amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) be also remitted to the learned Motor Accident Claims Tribunal. After the amount is deposited by the insurance company, the same shall be released forthwith in favour of the claimants.