

(2015) 03 UK CK 0005

In the Uttarakhand High Court

Case No : Appeal from Order No. 155 of 2009

The New India Assurance Company Ltd.

APPELLANT

Vs

Kusuma Baluni and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 03 UK CK 0005

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : V.K. Kohli, Learned Senior Counsel, for the Appellant

Final Decision : Disposed off

Judgement

S.K. Gupta, J—This Court has rendered hearing to Mr. V.K. Kohli, learned Sr. Counsel for the appellant/insurance company. None has turned up on behalf of the claimants/respondents No. 1 to 4 in whose favour the award was passed by the learned Tribunal. Learned Sr. Counsel of the insurance company has taken this Court to the spot map, which adverts the road where the accident occurred. Admittedly, the Maruti Van being driven by the deceased was coming from Dehradun to Saharanpur, while the truck was going from Saharanpur to Dehradun. This fact cannot be ignored that Dehradun is at some height. So, the road coming from Dehradun to Saharanpur makes a slope downwards while it is otherwise from Saharanpur to Dehradun. This way, it is difficult to accept that the truck, which was on way to Dehradun, was very very fast. At the same time, the possibility of Maruti Van being driven fast cannot be ruled out.

2. It was the pitch dark of the night. So, it is difficult to accept that even the PW3 Constable Manish Singh, who poses himself to be an eyewitness because being on the petrol duty that night, could have hardly visualised every movement and the manner of the accident. None has been produced on behalf of the claimants to prove the manner in which this accident occurred.

3. Learned Sr. Counsel of the insurance company also drawn attention of this

Court towards the technical inspection done by the authorised police official on 29.5.2005, i.e. on the day which fell just after the night of the accident. This technical inspection postulates the right headlight and the right panel of the truck including the right portion of the bumper were broken. Further, it shows that right wheel box, metal sheet bent as well as right steering arm of the truck were also broken. At the same time, the entire front portion of the body of the van was broken including the right front headlight. This mechanical inspection speaks in so many words that the Maruti Van dashed itself to the right side of the truck with a major portion of the right hand side of the Van.

4. Looking to the above factual position, it would be unjustified to fasten the entire liability on the truck. Rather the case should have been at least of the contributory negligence attributing the liability of fifty percent on each vehicle, if not fastening the whole liability upon the insurer of the Maruti Van.

5. In view of what has been stated above, out of the total amount of award which has been assessed as Rs. 9,04,128/- after applying the multiplier of 12, the claimants shall be given fifty percent thereof i.e. Rs. 4,52,064/-. Claimants shall also be given Rs. 7,000/- in addition, which was awarded towards the funeral expenses, etc. Thus, in total, Rs. 4,59,064/- shall be given to the claimants.

6. Appellant insurance company has deposited 75 percent of the decretal amount as well as rupees twenty five thousand as the compulsory statutory amount. This compulsory statutory amount be remitted to the Tribunal concerned.

7. After deducting the amount, as modified by this Court, the remaining amount including the statutory compulsory deposit shall be returned to the insurance company along with the interest which might have accrued on the deposits made by the company. Rupees four lakhs fifty nine thousand and sixty four rupees shall be released in favour of the claimants in accordance with their share.

8. This appeal stands disposed of accordingly. Let the lower court record be sent back.