

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Appeal From Order No.450 of 2019**

IFFCO TOKIO GIC Ltd. ....Appellant

Versus

Smt. Renu and others .....Respondents

Present:- Mr. Pramod Kumar Bailwal, Advocate for the appellant.  
Mr. Rajendra Arya, Advocate holding brief of Mr. Neeraj Garg,  
Advocate for the claimants/respondent nos.1 to 4.  
Mr. Raja Rastogi, Advocate holding brief of Mr. Karan Anand,  
Advocate for respondent nos.5 and 6.

**Hon'ble Ravindra Maithani, J. (Oral)**

Instant appeal is preferred under Section 173 of The Motor Vehicle Act, 1988 ("the Act") against the judgment and award dated 20.07.2019, passed in Motor Accident Claim Petition No.163 of 2016, Ghanshyam and others Vs. Sachendra and others, by the court of Motor Accident Claim Tribunal/Fourth Additional District Judge, Dehradun ("the case"). By it, the claimants have been awarded compensation of Rs.19,61,090/- along with interest.

2. Heard learned counsel for the parties and perused the record.

3. Initially Ghanshyam, the deceased had filed claim petition under Section 166 of Act seeking compensation arising out of an accident, which took place on 26.03.2016. During the pendency of the claim petition, Ghanshyam died and respondent nos.1 to 4 were substituted. The respondent no.1 Smt. Renu is wife of the deceased. The respondent nos.2 and 3 namely, Naman and Aman respectively are children of the deceased and the respondent no.4 Smt. Sushma is mother of the deceased. According to the claimants on 26.03.2016 at 09:50 p.m., the deceased Ghanshyam was riding on a motorcycle bearing Registration No. UK07AV 0923 ("the

motorcycle”). When he reached Tagore Villa, Chakrata Road, Dehradun, the respondent no.6 Karanveer Chhabara while driving a car bearing Registration No.UA07J 5445 (“the car”) in a rash and negligent manner hit the motorcycle driven by the deceased, due to which, the deceased sustained injuries. He was taken to hospital, initially when Ghanshyam was injured. He filed the claim petition. He has claimed the compensation accordingly. Subsequently, on 09.08.2016 he died during treatment.

4. The respondent no.5 Sachendra, who is the owner of the car, had filed his objection to the claim petition. According to it, the car was being driven in a very careful manner, but due to rash and negligent driving of the motorcycle, the accident took place.

5. The appellants also filed objections to the claim petition. According to the objections of the appellants, it appears that motorcycle driver had also contributed in the accident because after sensing fear, the deceased could have slow down the motorcycle or could have stopped it, which he did not do. Subsequently, the respondent no.5 Sachendra, the owner of the car did not appear and the claim petition proceeded *ex parte* against him. In fact, on 08.07.2019, the driver of the car/respondent no.6 remained absent in the claim petition and the claim petition proceeded against him. The appellants did appear and filed their documents.

6. In the claim petition, the following issues were framed.

- 1) Whether the accident took place on 26.03.2016 at 9:50 p.m. at Tagore Villa Chowk, Chakrata Road, Police Station Kotwali Nagar, Dehradun, when the deceased Ghanshyam

was going to his home from Ghantaghar on his motorcycle No.UK07AV 0923, while driving the car bearing Registration No.UA07J 5445 driven in a rash and negligent manner, hit the deceased with great force, due to which the deceased suffered serious injuries and as a result of these injuries, he died during treatment?

- 2) Whether at the time of accident, the vehicle was being driven by the driver of car Registration No.UA07J 5445 with all the valid documents including a valid driving license?
- 3) Whether the alleged accident took place due to the contributory negligence of the driver of the motorcycle No.UK07AV 0923?
- 4) Whether the petitioner entitled to receive any compensation amount? if yes, then how much and from which of the opposite parties?

7. By the impugned order the Tribunal on issue nos.1 and 3 held that the accident took place due to rash and negligent driving of the car driver and the deceased did not contribute in the accident.

8. On issue no.2, the Tribunal held that the car had all the valid documents. Accordingly, compensation was awarded.

9. Learned counsel for the appellant submits that accident took place on 26.03.2016, of which, the FIR was lodged on 28.03.2016 and according to the FIR, the accident took place due to an Alto car. Subsequently, when the claim petition was filed, Santro Hyundai car was involved in the matter. He would submit that it falsifies the claimants' claim. It is also submitted that, in fact, the deceased was also negligent in driving the motorcycle.

10. Learned counsel for the claimants/respondent nos.1 to 4 submits that the award is just and reasonable. It does not warrant any interference.

11. It may be noted that on behalf of the claimants, five witnesses namely, PW1 Smt. Renu, the claimant herself; PW2 Soni Mahipal; PW3 Ajay Kaushal; PW4 Rahul Gupta and PW5 Kamal have been examined. In addition to it, various documents have been filed by the claimants.

12. PW1 Smt. Renu has not seen the incident. She has stated as to how her husband died. She was also asked about the FIR in the matter, when she admits that, in fact, in FIR a Santro car is mentioned without any name.

13. PW2 Soni Mahipal has stated that after lodging of initial FIR, it was revealed that the car involved is not Alto car, but it was Santro Hyundai car bearing Registration No.UA07J 5445.

14. PW3 Ajay Kaushal is an eye witness. He has stated that the car was being driven in a rash and negligent manner and it hit the motorcycle, in which, the deceased sustained injuries.

15. PW4 Dr. Rahul Kumar Gupta is a doctor, who proved the documents.

16. PW5 Kamal is also a Record Keeper of the hospital. He had also proved certain documents.

17. In the impugned order while recording the finding on issue nos.1 and 3, the Tribunal has discussed the effect of non-recording of detail of the car involved in the accident in the FIR.

18. PW2 Soni Mahipal and PW3 Ajay Kaushal are categorical on this point. PW3 is, in fact, an eye witness. The Tribunal has rightly held that the discrepancy in the details of the car in the FIR does not, in any manner, doubt the claimants' case. This finding does not warrant any interference. There are direct witnesses to the fact in terms of PW3 Ajay Kaushal, who has stated as to which car did hit the motorcycle.

19. In so far as contributory negligence is concerned, there is no evidence adduced on behalf of the appellant. On the other hand, the claimants have adduced the evidences that it is the car driver, who was rash and negligent in driving the car. On this issue also, the Tribunal has rightly recorded the finding.

20. In view of the foregoing discussion, there is no reason to make any interference in this appeal. The appeal deserves to be dismissed.

21. The appeal is dismissed.

22. Let the statutory amount deposited in the Court be remitted to the Tribunal concerned.

**(Ravindra Maithani, J.)**  
08.05.2026