

CASE NO.:
Appeal (civil) 5067 of 2007

PETITIONER:
New India Assurance Co. Ltd

RESPONDENT:
Kendra Devi & Ors

DATE OF JUDGMENT: 31/10/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(c) No. 7686 of 2006)
P.Sathasivam, J

- 1) Leave granted.
- 2) Questioning the orders of the High Court of Uttaranchal at Nainital dated 24.08.2004 in A.O. No. 436 of 2001 and dated 27.10.2005 in R.A. No.8 of 2005, New India Assurance Company Ltd. through its Regional Manager, New Delhi has filed the above appeal.
- 3) Brief facts are as follows:
Smt. Kendra Devi, respondent No.1 herein, filed Claim Petition - M.A.C. No.4 of 1994, before the Motor Accident Claims Tribunal, Uttarkashi, claiming compensation of Rs.4,67,000/- on account of death of her husband in a motor vehicle accident. According to respondent No.1 herein, her husband, Prakash Singh Parmar, was the owner and driver of Taxi No. UMX 491. On 10.11.1993 while her husband was going from Matali to Uttarkashi, he lost control over the vehicle and met with an accident due to which the vehicle rolled into the river Bhagirathi near Barrthi. Her husband sustained fatal injuries in the accident and succumbed to the injuries at the spot. According to respondent No.1, at the time of the accident her husband was earning Rs.3000/- per month.
- 4) Before the Tribunal, the appellant, New India Assurance Co. Ltd. contended that the vehicle was insured only for five persons whereas it was carrying eight passengers, therefore, the owner and driver of the vehicle violated the terms and conditions of the Insurance Policy, in view of the same, they are not liable to pay compensation to the claimants. The Tribunal, based on the materials before it, after finding that the driver of the vehicle had valid licence and taking note of the age of the deceased i.e., 50 years, by applying multiplier of ten, awarded a total compensation of Rs.1,25,000/- along with interest @ 12%. Aggrieved by the said award, the Insurance Company filed an appeal before the High Court. The High Court, after finding no infirmity and illegality in the order passed by the Motor Accident Claims Tribunal, dismissed the appeal and the review application filed by the Insurance Company was also dismissed. Against the said orders of the High Court, the New India Assurance Company Ltd. filed the present appeal.
- 5) Heard learned counsel appearing for the appellant-New India Assurance Company as well as the respondents-claimants.
- 6) The only contention of the learned counsel for the appellant-Insurance Company, is that inasmuch as the insurance policy was issued for \023paid driver\024 and not for \023owner\024 who also happened to drive the vehicle himself at the

time of the accident. In support of his contention, learned counsel drew our attention to the Insurance Policy(Annexure P-3). Perusal of the Schedule of Premium mentioned in the Insurance Policy, shows that apart from liability to public risk, the owner has paid premium only for "paid driver and/or conductor". By contending that in the case on hand, the deceased being the owner-cum-driver and without additional premium/coverage for owner-cum-driver, the insurance company is not liable to pay any compensation for death of the deceased who was owner-cum-driver and not paid driver as mentioned in the Schedule of Premium. In support of his contention, learned counsel for the appellant heavily relied on Section 147 of the Motor Vehicles Act, 1988 which speaks about the statutory liabilities and a decision of this Court in New India Assurance Co. Ltd. Vs. Meera Bai & Ors., (2006) 9 SCC 174.

7) We have carefully considered the above provision as well the decision of this Court. Taking note of the peculiar fact that the claimants have lost their only breadwinner, we are not inclined to interfere with the concurrent orders of the Tribunal as well as the High Court. Consequently, the appeal fails and the same is dismissed.