



THE HIGH COURT OF SIKKIM : GANGTOK

M.A.C.T. APPEAL NO. 1 OF 2003

In the matter of an appeal under section 173 of the Motor Vehicles Act, 1988.

National Insurance Company Ltd.,
Represented by and through its
Branch Manager, Gangtok Branch,
National Highway,
P.O. & P.S. Gangtok,
East Sikkim.

.... Appellant

VERSUS

1. Shri Anand Swamy,
M. G. Marg (New Market),
Gangtok - 737 101,
East Sikkim.
2. Smt. Mahamaya Paul,
W/o Shri Pankaj Paul,
Merry Park, Bow Bazar,
P.O. & P.S. Chandan Nagar,
Dist. Hooghly,
West Bengal.
3. Shri Jugeswar Mahato,
S/o Sital Mahato,
C/o Shri B. S. Sharma,
Kada Road, G. T. Raod,
Durgapur - 03,
West Bengal.
4. United Insurance Company Limited,
Chinsura Branch,
P.O. & P.S. Chinsura,
Dist. Hooghly,
West Bengal.
5. Shri K. G. Chungyalpa,
S/o late Rinzing Lharipa Chungyalpa,
R/o Chungyal Building,
New Market, M. G. Marg,
Gangtok, East Sikkim.

.... Respondents

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For the appellant : Mr. A. Moulik, Advocate.

For respondent No.1 : Mrs. S. Pradhan, Advocate.

For respondent No.4 : Mr. A. K. Upadhyaya, Advocate.

PRESENT: The Hon'ble Mr. Justice R. K. Patra, Chief Justice.

DATE OF JUDGMENT : 4TH AUGUST, 2003.

R. K. Patra, C.J. This appeal at the instance of the insurer is directed against the award dated 10th October, 2002 rendered by the Motor Accident Claims Tribunal, Gangtok in Motor Accident Claims Case No. 14 of 1999 by which the injured respondent No.1 has been granted a sum of Rs.4,96,359/- as compensation for the injuries sustained by him. The Claims Tribunal, however, has apportioned the liability to pay compensation between the appellant and the respondent No.4, United Insurance Company Limited on 75% and 25% basis respectively.

2. The respondent No.1 filed the aforesaid claim case claiming compensation of Rs.16,16,258.82 (wrongly totaled in the Claim Petition as Rs.19,86,358.82) on different counts. His case is that he is a driver by profession and on 22nd April, 1991 he was driving a Commander Jeep bearing registration No. SK-02/0468 from Calcutta to Gangtok through 34A National Highway carrying his employer

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Mahesh Agarwal and his wife Mridula Agarwal. At about 6 a.m. when they arrived at Gazole in the District of Malda (West Bengal), a Tata truck bearing registration No. WGA 3011 came from behind being driven rashly and negligently and overtook his Commander Jeep. At the time of overtaking, the driver of the truck suddenly swerved his vehicle to left hand side, as a result of which it hit the Commander Jeep on the front side. Its impact was so severe, the Tata truck careened towards its right of its rear side and the front of the truck turned towards the Jeep giving a picture of head-on collision. Due to the accident, he himself was injured besides his employer and his wife. All the injured persons were removed to Gazole Hospital and thereafter to District Hospital, Malda but the relatives of his employer removed him from Malda Hospital to S.V.S. Marwari Hospital, Calcutta for better treatment. Later, he was taken to Peerless Hospitex Hospital and Research Centre Limited, Calcutta on 26th April, 1999 for proper and better treatment. The other occupants viz. his employer Mahesh Agarwal and his wife Mridula Agarwal were also admitted in the Hospital at Calcutta for treatment. According to the respondent No.1 due to the accident he suffered permanent disability and has been incapacitated to drive any type of vehicle thereby he has lost the prospects of future earnings.



3. The respondent No.4, United India Insurance Company in its objection took the plea that due to negligence of the respondent No.1, the accident took place and, therefore, it is not liable to pay compensation, although, the Tata truck bearing registration No. WGA 3011 was insured with it. The appellant in its written objection admitted that the vehicle No. SK-02/0468 was insured with it but denied its liability to pay any compensation and claimed that liability, if any, should be fixed on the Insurance Company with which the offending truck was insured.

4. In support of his case, the respondent No.1 examined himself as PW1 and produced a number of documents. None of the contesting respondents adduced any evidence in support of its respective case.

5. The Claims Tribunal on assessment of the evidence recorded the following findings:-

1. On 22nd April, 1999, the respondent No. 1 was driving the Commander Jeep bearing registration No. SK-02/0468 from Calcutta to Gangtok when it met with the accident at Gazole on account of which he suffered permanent disability, i.e., 65% loco motor disability of permanent nature rendering him incapable of driving any type of vehicle.
2. At the time of accident, he (respondent No.1) was about 40 years, and, therefore, in ordinary course he could have continued to perform

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the job of the driver for another 18 years (till the age of 58 years).

3. His total salary including perks was Rs.2,000/- per month at the relevant time and, therefore, his annual income would be Rs.24,000/- and had the accident not taken place, he would have earned at least Rs.4,32,000/- (Rs.24,000 x 18 years).
4. He has spent Rs.64,359/- towards medical treatment for the injuries sustained by him. Therefore, his total entitlement comes to Rs.4,32,000 + Rs.64,359/- = Rs.4,96,359/-

6. There is no dispute that the respondent No.1 had sustained the following injuries, which is evident from the medical certificate Exhibit P2 granted by Dr. Ronen Roy. As per the above medical evidence, he suffered the following injuries :-

1. Severe commuted fracture right oacelabulum with posterior dislocation right hip (dash board dislocation) requiring major surgery to reconstruct right hip.
2. Chest contusion (from steering wheel).
3. Laceration to chin.
4. Bruising and abrasions both lower lungs.
5. Large laceration @ lower thigh - needed multiple operations before healing.

The doctor opined that the outcome of surgery was unpredictable and he might require future joint replacement.

The respondent No.1 in his evidence deposed that from Malda Hospital he was removed to Calcutta and was

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admitted in S.V.S. Marwari Hospital where remained admitted for 4 days for treatment. Thereafter, he was removed to Peerless Hospitex Hospital and Research Centre Hospital Ltd. on 26th April, 1999 where he was treated for 20 days. He further stated in his evidence that his employer put him in a rented accommodation in Calcutta where the doctor and nurses of the Peerless Hospital used to visit him. According to him, the treatment continued at Calcutta for about one and a half months and thereafter, physiotherapy treatment for another one and a half months. The above evidence has remained unchallenged and uncontroverted.

Besides the above, the Medical Board of STNM Hospital, Gangtok after examining respondent No.1 granted certificate of disability (Exhibit P13). The opinion of the Board reads as follows :-

“The State Medical Board certifies that Anand Swamy S/O Sri (late) Charas Swamy Resident of Jorethang, South Sikkim is having 65% locomotor disability of permanent nature.

He is a Driver by profession and he will not be able to drive any kind of vehicles.”

From the analysis of the evidence made above, I am of the opinion that the compensation awarded by the Claims Tribunal is just which cannot be faulted with.

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7. Mr. Moulik, learned counsel for the appellant seriously contended that the Tribunal erred in fixing liability of 75% on the appellant. I find there is substance in his submission. The Claims Tribunal after perusing the FIR, charge sheets and other documents has observed as follows:-

“Therefore it is not possible to uphold the contention of the petitioner that the accident took place only due to rash and negligent driving on the part of the driver of the truck only. For all these reasons this Tribunal holds that respondent No.5 shall pay 75% of the award where as 25% of the award shall be paid to the petitioner by respondent No.3.”

Having held that negligent driving cannot be solely attributed to the offending truck driver, the Claims Tribunal has clearly feel into error in apportioning the blame of 75% on the appellant.

8. There is no dispute that immediately after the accident, the local people at Gazole gathered at the spot and one of them lodged FIR (Exhibit P7) at Gazole Police Station. On the basis of the said FIR, investigation was taken up and charge sheet was filed (Exhibit P10). The above two documents were marked as exhibits without any objection. On perusal of Exhibit P7 and Exhibit P10, it would appear that the offending truck was proceeding from Siliguri to Calcutta side whereas the Jeep being driven by the

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respondent No.1 was coming from Calcutta side to Siliguri side and there was a head-on collision between the two vehicles resulting in the accident. It is, therefore, a clear case of composite negligence committed by the respondent No.1 and the driver of the offending truck. Therefore, both of them were equally responsible. Accordingly, the apportionment of liability between the two insurers should be fixed on 50:50 basis and the operative part of the award needs modification. In the result, I hold that the compensation awarded by the Claims Tribunal is to be shared between the appellant and respondent No.4, United Insurance Company Limited on 50:50 basis.

9. It appears that pursuant to the interim order of this Court dated 16th April, 2003 the appellant deposited two cheques, one cheque for Rs.1,24,090/- and another cheque for Rs.2,48,179/-, out of which the respondent No.1 has already received the cheque for Rs.1,24,090/- on 1st May, 2003. The compensation awarded being Rs.4,96,360/- (rounded from Rs.4,96,359/-), the appellant is liable to pay a further sum of Rs.1,24,090/- to the respondent No.1. It may, therefore, take return of the cheque for Rs.2,48,179/- which has been kept in the custody of the Claims Tribunal and submit a fresh cheque for Rs.1,24,090/- within 30 days. The respondent No.4 is hereby directed to deposit its share

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of Rs.2,48,179/- with the Tribunal within the same period. In case of default of deposit within the time-frame both of them would be liable to pay interest @ 9% on the amount from the date of the judgment till payment. On deposit of the aforesaid amount as directed, the Claims Tribunal will deposit the said amount in any Nationalised Bank at Gangtok for a fixed period of 5 years in the name of the respondent No.1, who may if he likes withdraw the quarterly interest from the deposited amount.

10. The appeal is partly allowed. There is no order as to costs.


(**R. K. Patra**)
Chief Justice
04.08.2003