



THE HIGH COURT OF SIKKIM : GANGTOK

M.A.C.T. Appeal No.4 of 2003

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

**(arising out of the order dated 28.5.2003
passed by Shri S. W. Lepcha, Member, M.A.C.T.
(East and North) Sikkim at Gangtok in MACT
Case No.9 of 2002)**

Som Kumar Gurung
S/O Shri B. B. Gurung,
R/O Chisopani,
P.O. & P.S. Singtam,
East Sikkim **Appellant.**

Versus

1. Branch Manager,
National Insurance Co.Ltd.,
Gangtok Branch,
National Highway,
Gangtok, Sikkim.
2. Shri Palzor Wangdi,
S/O Shri Tashi Wangdi,
R/O Simick Lingzey,
P.O. Khamdong,
P.S. Singtam,
East Sikkim **Respondents.**

For the petitioner : B. Sharma, Advocate.

For the respondents : A. K. Upadhyaya, Advocate.

**PRESENT : THE HON'BLE SHRI JUSTICE R. K. PATRA,
CHIEF JUSTICE.**

**THE HON'BLE SHRI JUSTICE N. S. SINGH,
JUDGE.**

Date of hearing and judgment : 12th May, 2004.

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J U D G M E N T

R. K. PATRA, C.J.

Contending that the compensation granted by the Motor Accident Claims Tribunal is inadequate, the claimant has filed this appeal for higher compensation.

2. The appellant filed an application on 12.7.2002 before the Motor Accident Claims Tribunal (East & North) Sikkim at Gangtok (vide MACT Case No.9 of 2002) claiming compensation amounting to Rs.15,22,000/- against the respondents. His case is that, on 17.9.2001 he was travelling from Chisopani to Singtam in a commander jeep bearing registration number SK 04/0583 being driven by one Sanju Tamang. On its way, the vehicle met with an accident near Andheri Khola at about 2.30 hours. As a result of the accident, he sustained injuries on his left arm and left shoulder. He was taken to Singtam hospital for medical treatment and thereafter to STNM hospital, Gangtok where he was admitted for treatment for about 13 days. Due to the accident, his left arm was totally crushed which was ultimately amputated by the surgeon. The appellant asserted that he is a Class IV Contractor registered under the S.P.W.D. and has successfully executed 5 numbers of contract works. On account of amputation of the left arm he has become totally disabled and is not in a position to earn any income. On the above allegations he has claimed compensation amounting to Rs.15,22,000/- which includes the claims towards loss of estate and for medical expenses.

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Respondent No.2 is the owner of the vehicle. After filing the written statement, he did not contest the case. Respondent No.1 is the Insurance Company and contested the matter.

3. In support of his case, the appellant got himself examined as PW1. He also examined the treating Surgeon of STNM hospital, Gangtok. The appellant also produced certain documents in support of his case. On the basis of the evidence on record, the Tribunal held that the appellant has not been able to prove his income, and therefore, his monthly income should be taken as Rs.15,000/- per annum as per the second schedule of the Motor Vehicle Act, 1988. The Tribunal further held that at the time of accident he was aged about 27 years and the relevant multiplier applicable would be 18 as per the said schedule of the Act. It accordingly granted total sum of Rs.2,70,000/- ($\text{Rs.15,000} \times 18 = \text{Rs.2,70,000/-}$). The Tribunal also directed that the aforesaid amount of compensation should be paid to the appellant within 2 months from the date of the order, failing which interest @ 9% per annum shall be payable from the date of filing of the petition till realization.

3. Shri Sharma, learned counsel for the appellant submitted that the appellant is a Class IV Contractor and his monthly income was Rs.10,000/-. The Tribunal has held that the appellant has not been able to substantiate that his monthly income was Rs.10,000/-. We have carefully perused the evidence on record and found that there is no acceptable evidence in support of the monthly income of the appellant. He has not produced any document to show that he had executed 5 contract

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works. He could have produced necessary certificate from the concerned engineer in support of his execution of contract works, but failed to do so. He has also not produced any income tax certificate from the concerned Income Tax officer. The income certificate Ext.P4 granted by the Assistant Collector is of no help to him, inasmuch as, the certificate regarding his agricultural income which was based on the report of the Area Panchayat has no relevancy to judge his total monthly income. Therefore, the Tribunal has rightly held that the appellant can be regarded as a person having no income and as per the second schedule, such persons annual income has to be taken as Rs.15,000/-.

5. Admittedly, the appellant's amputation of left upper limb from mid arm was done. The appellant was admitted in hospital on 17.9.2001 and on the following day the surgeon PW2 amputated the left upper limb. On 7.11.2001, the appellant was discharged from hospital. According to the surgeon, the appellant suffers 70% permanent disablement after amputation of left arm. Shri Sharma also contended that the Tribunal should have granted the medical expenses. Shri Upadhyaya, learned counsel appearing for the Insurance Company submitted that the appellant did not produce any evidence in support of the medical expenses. It is true the appellant has not produced any documentary evidence, but it cannot be denied the appellant must have spent some money for medical treatment. Having regard to the facts and circumstances, we grant a sum of Rs.3,000/- (three thousand) as medical expenses.

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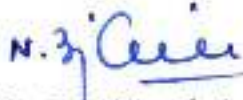


6. Keeping in view the evidence available on record, we are inclined to hold that the Tribunal has granted 'just' compensation to the appellant and we are not inclined to interfere with it.

7. It is admitted that the compensation amount granted by the Tribunal has already been received by the appellant. The appellant is further entitled to get interest @ 9% per annum on the principal amount of Rs.2,70,000/- from the date of application (12.7.2002), to the date of payment. This may be done within a period of two months if not already done. The amount of Rs.3,000/- as mentioned above, towards medical expenses, may also be paid within the same period.

8. The impugned order of the Tribunal is modified to the extent indicated above.

9. The appeal is allowed to the above extent. No costs.


(**N. S. Singh**)
Judge
12.05.2004


(**R. K. Patra**)
Chief Justice
12.05.2004

Dictation taken
&
typed by me
Aunku T. Lepcha