F.R.

9/6/06

IN THE HIGH COURT OF SIKKIM

Revision Petition (c) No.08 of 2006

The Branch Manager,
National Insurance Co.Ltd.,
31/A National Highway,
Gangtok. .... ***Petitioner***

Versus

1. Pavitra Chettri,
   W/O Late Do Bahadur Chettri,
   R/O Duga Busty,
   Ragpo, East Sikkim.

2. Ram Narayan Prasad,
   S/O Raghu Nath Prasad,
   R/O Singtam Bazar,
   East Sikkim. ... ***Respondents.***

For the Petitioner : Mr. A. K. Upadhyaya, learned Senior Counsel assisted by Miss Manita Pradhan, learned Counsel.

For the Respondent No.1 : Mr. J. K. Prasad Jaiswal, learned Counsel.

Present : The Hon'ble Mr. Justice N. S. Singh, Acting Chief Justice.
The Hon'ble Mr. Justice A. P. Subba, Judge.

Date of Judgment : 9th June 2006.

JUDGMENT

A.P.Subba, J.

The short question that arises in this Revision Petition is, whether the impugned award passed by the learned Motor Accident Claims Tribunal (East and North), at Gangtok in MACT Case No.3 of 2004, is in conformity with the second schedule appended to the Motor Vehicles Act, 1988.

2. The proceedings in which the learned Tribunal passed the impugned award, was started on a claim petition filed by Smt. Pavitra Chettri, the Petitioner/Claimant, before the learned Motor Accident Claims Tribunal (East and North), at Gangtok. In the said claim petition, the Petitioner/Claimant Smt. Pavitra Chettri had prayed for compensation to the tune of Rs.2,09,000.00 on account of injuries suffered by her son Fauda Singh Chettri, aged 40 years when he was hit by a vehicle belonging to the Respondent No.1 on 23.4.2003 while he was walking on the road.

Both the respondents contested the claim petition by filing written statements. While the Respondent No.1 the owner of the vehicle contended that the vehicle in question having been insured with the respondent No.2 covering third party risk, it was the respondent No.2 who would be liable to pay the compensation if any, the respondent No.2 mainly contended

that there was gross violation of the condition of the policy of insurance including the terms of the road permit and, as such, the respondent No.2 cannot be saddled with any liability under the policy.

3. After hearing the parties, the learned Tribunal awarded an amount of Rs.2,40,000.00 (Rupees two lakhs forty thousand) to the Claimant. Aggrieved by this award, the National Insurance Company the Petitioner herein came up before this Court with a Petition under Article 227 of the Constitution which was registered as Writ Petition (c) No.11 of 2006. However, on hearing the parties on 22.5.2006, the Writ Petition was converted into a Revision Petition under Section 115 of the Code of Civil Procedure and was registered as Revision Petition (C) No.8 of 2006.

4. The case of the Petitioner, i.e., the National Insurance Company, is that, the injuries suffered by the victim being only 40 per cent of the permanent total disablement as held by the learned Tribunal do not come under permanent disability and, as such, the claimant was entitled to only 'general damages' in terms of second Schedule appended to the Act. Even though the learned Tribunal applied the multiplier 16 considering the age of the victim and his notional income for working out the quantum of compensation payable to the victim, it failed to

arrive at the correct amount of compensation payable in such cases as per the second Schedule. It was accordingly contended that the injuries suffered by the victim being only 40 per cent of permanent total disablement, the amount payable as compensation in the case ought to have been only 40 per cent of the total amount payable in case of permanent total disablement. However, the learned Tribunal ignoring the percentage of disablement suffered by the victim awarded compensation which is payable only in case of permanent total disablement, and, as such, the impugned award was liable to be suitably modified so as to bring it in conformity with the second Schedule appended to the Act.

5. Of the two Respondents, the Respondent No.1 alone resisted the present petition and filed her counter-affidavit. In her counter-affidavit filed before the conversion of the Writ Petition into Revision Petition, as stated above, the Respondent No.1 contended that the Writ Petition as filed by the Petitioner National Insurance Company was not maintainable in its present form, in so far as the Petitioner had alternative remedy by way of appeal. It was also contended that the subject matter involved disputed questions of fact, which was beyond the scope of writ jurisdiction of the Court. Further, it was contended that the learned Tribunal had correctly assessed the amount of

compensation and, as such, there was no perversity in the impugned award. Over and above, it was claimed that the victim was entitled to an amount more than what has been awarded, as the amount awarded does not include claim on 'general damages'.

6. Mr. A. K. Upadhyaya, learned Senior Counsel assisted by Miss Manita Pradhan, learned Counsel appearing on behalf of the Petitioner and Mr. J. K. Prasad Jaiswal, learned Counsel appearing on behalf of the Respondent No.1 were heard.

7. It was contended by the learned Counsel for the Petitioner that the injuries suffered by the victim did not fall within the meaning of permanent disability, and, as such, the claimant was entitled to only general damages as provided in the second Schedule. It is his further submission that, though the learned Tribunal followed the second Schedule of the Motor Vehicles Act, 1988 in determining the quantum of compensation, it failed to arrive at the correct compensation amount as the percentage of permanent disability suffered by the victim was overlooked. It was accordingly submitted by the learned Senior Counsel that the learned Tribunal misread and misapplied the provisions of second Schedule of the Motor Vehicle Act, 1988 and the error so committed by the learned Tribunal was apparent on the face of the record resulting in manifest injustice

to the Petitioner, inasmuch as, the compensation awarded comes to more than double the actual amount of compensation payable to the victim.

Mr. Jaiswal, the learned Counsel for the Respondent No.1, on the other hand, contended that the injury suffered by the victim comes within the purview of permanent disability, and, as such, the calculation and the figure arrived at by the Tribunal were correct. The learned Counsel also contended that the table appended in the second Schedule to the Act was only a guideline and the Tribunal had wide powers to arrive at just conclusion while calculating the compensation taking into account the facts and circumstances of each case. It was accordingly contended that as the victim had completely lost his earning capacity, the learned Tribunal had calculated the amount of compensation payable to him, keeping in view the pathetic condition of the victim. Therefore, it was submitted that the award being in order, the petition was liable to be rejected as being devoid of merit.

8. So far as the question of adhering to Second Schedule to the Motor Vehicles Act, 1988 is concerned, Mr. Upadhyaya relied on two decisions of a Single Bench (headed by one of us namely, A.P.Subba, J) of this Court rendered in

M.A.C.Appeal No.1 of 2005 Gopi Krishna Kakrania & Another v.

Mahendra Pradhan & Another and M.A.C.Appeal No.2 of 2005 Gopi Krishna Kakrania & Another v. Mahendra Pradhan & Another, disposed of by a common judgment dated 18th May, 2005 and in ***M.A.C.Appeal No.2 of 2004 United India Insurance Company Limited v. Chandi Rai & Another and M.A.C.Appeal No.3 of 2004 National Insurance Company Ltd. V. Bijay Sharma & Another*** also disposed of by common judgment dated 26th May, 2005. In both the above judgments, the need and importance of adhering to Schedule II of the Motor Vehicles Act and the guidelines laid down by the Hon'ble Supreme Court, keeping in view the desirability of maintaining uniformity and certainty of awards that may be passed by the Tribunals was emphasized. In the common judgment dated 15th May, 2005 it was categorically observed that while computing just compensation, the Tribunals must adhere to the system of multiplier not only to ensure fair compensation, but also to ensure certainty and uniformity of the awards that may be passed in similar cases. In paragraph 15 of the Judgment it was observed as follows: -

> **"15. Thus keeping in view the fact that the schedule II brought into existence by the 1994 Amendment would be a safe legislative guidelines for determining just compensation both in fault claim cases as well as in no fault claim cases and also keeping in view the observation of the Hon'ble Supreme Court in Trilok Chandra's case (supra) that the multiplier method if followed will ensure uniformity and certainty of awards to be made by the**

Tribunals, the importance and desirability of adhering to the second schedule of the Motor Vehicles Act and the guidelines laid down by the Hon'ble Supreme Court in this regard cannot be over emphasized. It thus follows that there can be no departure from the scheduled multiplier in the present cases so as to ensure fair compensation and uniformity and certainty of the awards in similar cases. ....."

9. In the later decision rendered in ***M.A.C. Appeal No.2 of 2004 United Insurance India Co.Limited v. Chandi Rai*** decided on 26th May, 2005 the question that had come up for consideration was whether the compensation awarded under heads not falling within any of the heads specified in the second Schedule was permissible. The contention raised by the learned Counsel for the Petitioner in that case was that even if the Tribunal was right in following the second Schedule, the items of compensation awarded under the heads like extra nourishment and damages of clothing and articles falling outside the scope of the second Schedule were not permissible. Agreeing with such submission of the learned Counsel and following the earlier decision, the learned Single Bench set aside that part of the impugned award which related to head of compensation which did not find place in the second Schedule. Keeping in view the guidelines laid down by the Apex Court in the case relied on we find no ground for any departure from what has been held by the learned Single Bench. Such being the position,

the contention of the learned Counsel for the Respondent No.1 that the Tribunal had wide powers to arrive at just conclusion considering the facts and circumstances of each case even by traveling beyond the ambit and scope of Schedule II, cannot be countenanced. Therefore, the only question that needs to be determined as already noted above, is whether the computation done in the present case is in terms of the second Schedule appended to the Motor Vehicles Act.

10. Admittedly, the learned Tribunal followed the second Schedule and no fault can be found with regard to the amount of Rs.15,000/- taken as the notional income per annum of the victim and adopting figure 16 as the multiplier. However, having held that the injuries suffered by the victim was only 40%, of the permanent total disablement the learned Tribunal ought to have adhered to the provision of Clause 5 (b) of the Second Schedule for calculation of the amount of compensation in such cases. But, instead of doing so, the learned Tribunal worked out the amount payable as in case of permanent total disablement and awarded the same amount without taking into account the specific provision contained in Clause 5 (b) which provides that in case of permanent partial disablement only such percentage of compensation which would be payable in the case of permanent disablement would be payable.

11. For the sake of convenience of reference, Clause 5 of the Schedule is reproduced as follows: -

> **"5 Disability in non-fatal accidents :**
>
> **The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents :**
>
> **Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks. Plus either of the following:**
>
> **(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation; or**
>
> **(b) In the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above**
>
> **Injuries deemed to result in Permanent ......"**

12. That the learned Tribunal failed to adhere to the above guidelines and computed the amount of compensation payable in case of permanent total disablement would be clear from the observation made in paragraph 7 of the impugned award. The relevant observation reads as follows: -

> **"7. Having found the claimant entitled to the compensation it is to be ascertained the quantum of compensation that is to be awarded to the claimant. The injuries sustained**

in the accident has admittedly caused permanent disability to the extent of 40% and the age of the injured is 40 years and he has no fixed income. Therefore his notional income has to be taken to be Rs: 15,000/- (Fifteen thousand) per annum and his age being 40 years the multiplier to be adopted as 16 and adopting this multiplier the amount of compensation that the claimant would be entitled to is Rs: 15,000 x 16 = Rs.2,40,000/- (Rupees two lakhs and forty thousand) only."

13. The above computation done by the learned Tribunal goes to show that the Tribunal did not follow the guidelines contained in Clause 5(b) of the Schedule which applies in the case and provides for percentage of compensation payable in case of permanent partial disablement. The point to be noted is that the finding arrived at by the learned Tribunal itself makes it clear that the permanent disablement in the present case is only 40%. Hence, if the disablement is only 40% of the permanent total disablement, then it is plain that the percentage of compensation that would be payable would also have been only 40% of the total amount payable in case of permanent total disablement. Thus, the manner in which the computation was done in the present case, leaves no room for doubt that the Tribunal has totally overlooked the related provision of the schedule and awarded an amount to the Petitioner/Claimant payable only in a case of permanent

disablement, without taking into account the percentage of disablement suffered by him.

14. Thus, when viewed in the light of Clause 5 of the second Schedule reproduced above it becomes clear that the impugned award suffers from irregularity on account of error committed by the learned Tribunal in the matter of working out the just and fair compensation. Keeping in view the error that is self evident, we find it hardly necessary to go into any further depth for coming to the conclusion that the error committed by the learned Tribunal is apparent on the face of the record and the same needs to be corrected by this Court in exercise of its inherent powers so as to bring it in conformity with related provision of law and also to ensure certainty and uniformity of awards that may be passed by the learned Tribunals in similar cases.

15. Further, on a proper examination of the matter, in the light of the second Schedule of the Motor Vehicles Act, we find that the victim/petitioner would be entitled to compensation on one more head relating to pain and suffering as provided in Clause 4 of the Schedule. According to this Clause which provides for general damages in case of injuries and disabilities, if the injuries suffered is grievous, the amount of compensation is Rs.5,000/- and if the injury suffered is of non-grievous nature, the

amount of compensation is Rs.1000/-.Keeping in view the fact that the injuries sustained by the victim is grievous in nature, we are of the view that the additional amount of compensation payable to the Respondent No.1 under this head would be Rs.5000/-. In this regard, we would like to place it on record that at the hearing, Mr. Upadhyaya, learned Sr. Counsel for the Petitioner in all fairness conceded that the victim was also entitled to such additional payment under the above head.

16. Thus, for the reasons and the observations made above, we are of the view and accordingly hold that the total amount of compensation that would be payable to the victim in the present case would be Rs.1,01,000.00/-(Rs.96,000 + 5,000) and not Rs.2,40,000.00 as awarded by the learned Tribunal.. Accordingly, the impugned award stands modified to this extent.

17. It may be noted that, out of the above amount, the Petitioner Insurance Company has already deposited an amount of Rs.96,000/- in terms of Order dated 12th May, 2006 passed by this Court. Since Smt. Pavitra Chettri, the Respondent No.1, mother of the victim had represented the victim and the payment was made in her name, this Court considered it desirable to ascertain as to whether the amount so deposited was duly received by the victim and sought the willingness of

any member of the Bar to extend necessary assistance in this regard. We wish to place our appreciation on record that Mr. Karma Thinlay, learned Government Advocate who was present in the Court readily volunteered to assist the Court for ascertaining the factum of receipt of the money by the victim. As per the report dated 30.5.2006 submitted by the learned Government Advocate, the victim Shri Fauda Singh Chettri being unable to walk properly on his own is at the mercy of his mother, Smt. Pabitra Chettri. We extract below the relevant part of the report which is self-explanatory.

> **"5. That after visiting the residence of Smt. Pavitra Chettri and Shri Fauda Singh Chettri, I found out that Shri Fauda Singh Chettri cannot walk properly after the accident. Moreover, Shri Fauda Singh is partially deaf and dumb by birth. In other words, Shri Fauda Singh is in complete mercy of his mother.**
>
> **6. Looking at the conditions of Shri Fauda Singh, it would be proper if the money is kept in the custody of his mother. I was also informed by the neighbors that till date the mother is the only person looking after her son.**
>
> .....
>
> **7. It is further submitted that Shri Fauda Singh will face a lot of problems even if the money is deposited in his name for the reasons as stated in paragraph 5 of this report. Furthermore, Central Bank of India is in Rangpo which is about 5 Km away from Duga and one needs to walk uphill for atleast ten minutes from the residence of Shri Fauda Singh to the main road to catch a**

bus to Rangpo which is another more than half an hour journey.

Therefore, Shri Fauda Singh who cannot walk properly will also have to face this problem, whenever the money so deposited in his name is to be withdrawn from the bank. Moreover, Shri Fauda Singh is an illiterate"

Keeping in view the circumstances highlighted above in the report, we are not inclined to effect any change or modification in the orders that have already been passed.

18. As regards the deposit of the money in the concerned bank, it was stated that the bank authorities were yet to credit the account in her name on the date of his visit on 29.5.2006, but he was assured that the bank authorities would be completing the formalities and would be crediting the amount in her account in 4 to 5 days time. We hope and trust that necessary formalities have been completed by now and the amount deposited has been credited in the name of Smt. Pavitra Chettri, mother of the victim Fauda Singh Chettri.

19. Thus, keeping in view the fact that the amount of Rs.96,000/- has already been paid, we direct the Petitioner Insurance Company to deposit the remaining amount of Rs.5000/- in the same manner as before for payment to the claimant/Respondent No.1, within the period of a week from today, failing which the claimant/respondent shall be at liberty to put this award into execution.

20. With the observations and directions made in the foregoing paragraphs of this judgment, this petition stands finally disposed of.

In the circumstances of the case, there shall be no order as to costs.

(A. P. Subba)
Judge
09.06.2006

I agree.

(N. S. Singh)
Acting Chief Justice
09.06.2006