IN THE HIGH COURT OF SIKKIM
GANGTOK

M.A.C. APPEAL NO.01 OF 2008

1. SONAM BHUTIA
S/O LATE GAYSHING BHUTIA.

2. RINZING ONGMU BHUTIA,
D/O SONAM BHUTIA.

3. DOMA BHUTIA,
D/O SONAM BHUTIA.

4. CHUNNU BHUTIA, (MINOR)
D/O SONAM BHUTIA.

5. KARMA TASHI BHUTIA, (MINOR0
S/O SONAM BHUTIA.

ALL RESIDENTS OF LINGDUM BUSTY,
EAST SIKKIM.
(APPELLANT NOS. 4 & 5 BEING
MINOR ARE REPRESENTED BY THEIR
FATHER, APPELLANT NO.1).

..... ***Appellants***

Versus

1. BHAI TSHERING BHUTIA,
R/O SAZONG BUSTY,
P.O.RUMTEK,
EAST SIKKIM.

2. BRANCH MANAGER,
THE NEW INDIA ASSURANCE
COMPANY LIMITED,
MALHOTRA TOWER,
2ND FLOOR,
PRADHAN NAGA,
SILIGURI. ..... ***Respondents***

FOR THE APPELLANTS : MR. D. R. THAPA, ADVOCATE WITH
MS. KAMAL GIRI AND MS. JAYA CHETTRI,
ADVOCATES.

FOR THE RESPONDENTS : MS. NAVTARA SARDA, ADVOCATE.

PRESENT : THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Date of last hearing : 27th August, 2009
Date of judgment : 1st September, 2009

JUDGMENT

S.P.Wangdi,J.

The short question involved in this appeal is, as to whether the Learned Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, was right in fixing the liability compensation upon the owner of the vehicle in M.A.C.T. Case No.05 of 2004, vide its Order dated 28.12.2006, on the ground that the registration number of the vehicle was not mentioned in the insurance policy, a fact not disputed by the Insurance Company.

2. The undisputed facts of the case is that, the victims had died in a motor vehicle accident while travelling in the ill-fated vehicle being Commander Jeep with registration No.SK 04/2917, on 16.01.2000 and that the accident had occurred due to the rash and negligent driving of the driver and that the insurance policy filed as exhibit 3, pertains to the vehicle which met with the accident.

3. The fact to be noted in this case is that, the learned Tribunal had awarded interim compensation u/S. 140 of the Motor Vehicles Act, 1988 in all 7 claims cases arising out of the same accident which included the present one and that finally in its award u/S 166 in the other 6 claims cases, the learned Tribunal had allowed the claims by fixing the liability for making payment of the compensation upon both the owner as well and insurer i.e., the respondents No.1 and 2.

A copy of the judgment in M.A.C.T. No. 06 of 2004 dated 31.07.2006 which is one of such cases involving the same vehicle, i.e., commander jeep No. SK 04/2917, has been filed as Annexure P2 to the memo of appeal.

4. Mr. D. R. Thapa, the learned Counsel for the appellants submits that the order of the learned Tribunal being inconsistent with the orders passed in other cases referred to above, including the judgment in M.A.C.T.No.06 of 2004 (supra), as those arose from the very same accident giving rise to the claim in the present case, the same deserves to be set aside and the liability of the claim fixed upon both the respondents jointly and severally.

5. Ms. Navtara Sarda, the learned Counsel for the respondent No.2, had limited submissions to make which pertained to the maintainability of the appeal. They were: (a) that the appellants could not be said to be the 'aggrieved persons' since they had been granted the relief of compensation sought for by them and that, the 'aggrieved person,' if any, ought to have been the owner of the vehicle against whom the liability of making payment of the compensation had been fixed by the learned Tribunal in its award; (b) that u/S 173 of the Motor Vehicles Act, 1988, an appeal cannot be maintained without depositing the amounts prescribed in the first proviso thereof, and the appellant having failed to comply with the said provision which is mandatory, the appeal cannot be maintained. Ms. Sarda referred to ***2004 (2) TAC 710 (AP)*** in the matter of ***Bondugula Samyuktha Devi*** vs. ***T. Sreedhar Reddy and Others*** to support her submission that the

claimant was not the 'aggrieved person' as raised in contention (a) by her. In so far as contention (b) is concerned, referring to the provisions of Sections 173 Motor Vehicles Act, 1988 and the first proviso thereto, she submitted that no appeal filed by a person aggrieved by an award of Claims Tribunal would be entertained by the High Court without depositing Rs.25,000.00 or 50% of the amount so awarded.

6. Replying to submission (a) of Miss Sarda, Mr. Thapa placed reliance upon ***AIR 1999 SC 1341*** in the matter of ***Iswar Bhai C. Patel*** vs. ***Harihar Behera*** and submitted that, in a suit for recovery of amount against two defendants where decree has been prayed for against both of them in order to enable the plaintiff to release particular amount from either of the defendants and decree is passed against only one of them, it is open to the plaintiff to invoke jurisdiction of the appellate court, for decreeing suit even against the other. It was submitted by Mr. Thapa that although the Civil Procedure Code is not applicable to proceedings under the Motor Vehicles Act, 1988, its principles would certainly apply where provision to meet a particular situation has not been made in the Act or the rules framed thereunder. In reply to contention (b) raised on behalf of respondent No.2, it was submitted by Mr. Thapa that the deposit of the amounts contemplated in the First Proviso to Section 173 of the Motor Vehicles Act, 1988, pertains to an appeal against an award by which the appellant is a person required to pay an amount. Since the appellant herein does not fall within such category of persons, there is no necessity for him under

the aforesaid provision to make such deposit and the appeal is maintainable for that reason. Mr. Thapa referred to the case of ***Ramesh Singh and Another*** vs. ***Cinta Devi and Others*** : ***AIR 1996 SC 1560*** which as per him, sets out this position of law.

7. Having heard the learned Counsels and after giving my thoughtful consideration to the entire facts and circumstances, I am of the opinion that the Order of the learned Tribunal does not appear to be sound in fixing the liability of payment of the compensation awarded by him upon the owner alone based upon the only finding that the registration number of the vehicle did not find mention in the appropriate column of the insurance policy, when there was no dispute on this, as it was an admitted position that the vehicle was insured under the said policy (Ext.3). The fact has neither been denied in the written objection against the claim filed on behalf of the respondent No.2, nor were witnesses on behalf of the claimants cross-examined on this point. In fact, the only challenge in so far as the policy is concerned, is that, the terms of the policy had been grossly violated. On perusal of the written objections contained in the trial Court records, it appears that, other than raising objections of formal nature, nothing of substance was taken. The Insurance Company chose not to lead any evidence to disprove the case of the appellants. Further more, as noted above, 6 claims in respect of death arising out of the same accident, involving the same vehicle, being Commander Jeep, having registration No.SK 04/2197 against the very same insurance policy, had been allowed making both the insured as well as the insurer

jointly and severally liable for payment thereof. And, I am informed at the bar that the respondent No.2 has in due compliance of the award, made payments of the compensation in all those cases.

8. In the admitted position, therefore, it is not understood as to how the learned Tribunal took a different view in this case and fixed the liability of payment only upon the owner, exonerating the respondent No.2, i.e., the Insurance Company therefrom. Apart from this, I find from the case of the Patna High Court in the matter of ***Narayan Saha*** vs. ***Oriental Fire and General Insurance Company Ltd.*** reported in ***2007 ACJ 597***, that in a case where the insurance policy did not disclose the name and number of vehicle for which the policy was issued, the Tribunal was unjustified in holding the claimant liable to prove the particulars of insurance policy when the Insurance Company did not dispute that it had stood as insurer of the vehicle. Paragraph 8 of the judgment is reproduced below: -

> "8. The issue No.IV is not of much significance because it is largely on account of the important issue No.III that Tribunal has answered issue No.IV holding that the claimant is not entitled to any compensation. But in deciding this issue also the Tribunal has committed an error of law in holding that the insurance company cannot be made liable to pay the compensation although it was admitted that the truck was insured with the insurance company at the relevant time because the claimant has filed a photocopy of the insurance policy, Exh.A, which does not disclose the name and number of vehicle for which the policy was issued. In a summary inquiry, once the insurance company did not dispute that it has stood as insurer of the truck, the Tribunal was unjustified in holding the claimant liable to prove the particulars of insurance policy." (*emphasis supplied*)

Although the above judgment is not binding upon this Court, I have alluded to it and am persuaded to apply the principle enunciated

therein, as the facts in that case appear to be para-materia to the ones in the case at hand. As already indicated, when the fact that the accident vehicle, commander jeep with registration No.SK 04/2917, had been insured under Policy of Insurance Ext.3, has not been disputed by the opposing party, there could not have been any scope for the learned Tribunal to disbelieve such contention.

9. The other contention pertaining to the maintenance of the appeal raised on behalf of the respondent No.2 deserve to be rejected for the reasons stated in seriatim to the contentions as hereafter given: -

Contention (a)

I have no hesitation in agreeing with the submissions of Mr. D. R. Thapa, learned Advocate, that the appellants would fall in the category of 'aggrieved persons' and that it is permissible for them to seek decree against both the respondents in the facts and circumstances of the present case, where relief had been sought for against both, jointly and severally but had been granted only against one, i.e., the respondent No.1, the owner.

Contention (b)

In my view, the contention that in the present case, the appellants not having deposited the amount as required under the First Proviso to Section 173 of the Motor Vehicles Act, 1988, the appeal would not be maintainable, is fallacious in the face of the very provision. To appreciate this, we may extract the relevant provisions of Section 173 below: -

"**173. Appeals.** - .....

> Provided that **no appeal by the person who is required to pay any amount in terms of such award** shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:
> ....." (*highlighting supplied)*

From the words "no appeal by the person who is required to pay any amount in terms of such award" highlighted above, makes it abundantly clear that deposits as contemplated in the First Proviso u/S 173, is to be made only by persons appealing against an award requiring to pay compensation in pursuance thereof. In the present case, as the appellants do not fall in such category, they are not required to make such deposit. The contention, therefore, stands hereby rejected. The judgment of ***Bondugula Samyuktha Devi (supra)*** referred to by Ms. Sarda, is clearly distinguishable from the facts and circumstances of the present case. In that case, the owner, insurer and the driver of the accident vehicle having been impleaded as parties to the proceedings and the tribunal by its award fixing liability of making payment of the compensation upon the owner and the insurer leaving the driver on the principle that in a claim petition filed under the Motor Vehicles Act, 1988 or Motor Vehicles Act, 1939, the owner would be vicariously liable to pay compensation to the claimants under the theory of vicarious liability, the claimants who were the appellants, would not be said to be aggrieved for the award not having been passed against the driver also. That appeal was thus held to be not

maintainable. The following extract of the judgment will substantiate this position:-

> 4. Though, Tribunal held that the accident occurred due to the rash and negligent driving of the first respondent, it passed an award, for the entire amount claimed by the appellant, only against Respondents 2 and 3 i.e. owner and insurer of the jeep involved in the accident but did not fix the liability of the first respondent an so the point for consideration is whether a claimant in a Motor Vehicle Accident Claim, can be said to be aggrieved by the Tribunal not making the driver liable, but passes an award for the entire claim against owner and insurer of the vehicle that caused the accident ?
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> 5. It is well known that in a claim petition filed under the Motor Vehicles Act, 1988 or the Motor Vehicles Act 1939, the driver of the vehicle that caused the accident is not a necessary party. Though the driver is not mad a party, the owner is vicariously liable to pay the compensation payable to claimant(s), under the theory of vicarious liability.
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> 6. In view of Ex.A-14 insurance policy, third respondent insurer also is made liable to pay the compensation payable to the appellant and that award became final.
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> 7. Since the appellant filed the claim petition seeking compensation for the death of her son, but not for punishing the first respondent for his causing the accident, and since the main object in constituting Special Tribunals in motor accident cases is to see that claimants in motor vehicle accident cases receive just compensation for the injuries or death of the victims, and for that reason the Parliament thought it fit to make third party risk compulsorily insurable and made the insurer liable to pay the compensation arrived at by the Tribunal, and since appellant can recover the entire compensation from the insurer as per the award of the Tribunal, appellant cannot be said to be aggrieved by the Tribunal not passing an award against the first respondent, who was driving the vehicle at the time of accident.
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> 8. As per Section 173 of the Motor Vehicles Act, 1988, only a person aggrieved by the award of Claims Tribunal can prefer an appeal. Since appellant cannot be said to be aggrieved by non-passing of an award, by the Tribunal, against first respondent, I hold that this appeal is not maintainable. Point is answered accordingly."
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> (*underlining emphasised*)

10. In the above facts and circumstances, it is hereby ordered that the award of the learned Motor Accidents Claims Tribunal, East

and North at Gangtok, (Annexure P1 to the memo of appeal) hereby stands modified to the extent that the respondents Bhai Tshering Bhutia and the Branch Manager, the New Insurance Company Ltd., Malhotra Tower, Pradhan Nagar, Siliguri who are the respondents No.1 and 2 respectively, shall be held to be both jointly and severally liable for payment of the compensation awarded thereby. The rest of the award having not been challenged remains undisturbed and maintained in the present form.

11. Since considerable time has elapsed even after the payment of the interim award u/S. 140 of the Motor Vehicles Act, 1988, it is directed that necessary payment of the compensation in terms hereof be made within a period of one month from the date of this judgment. Failure to make the payment within that period shall result in the respondents requiring to pay additional interest or 2% cent on the award, making it 12% from the date of default.

No order as to costs.

Records of the lower court be sent forthwith.

(S. P. Wangdi)
Judge
01.09.2009

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