F/R.

IN THE HIGH COURT OF SIKKIM
GANGTOK

Regular First Appeal No.01 of 2009

New India Assurance Company Ltd.
Barick Bhawan, 4th Floor,
8 C.R.Avenue, Kolkata 700072

Through the Senior Branch Manager,
New India Assurance Company Ltd.
Gangtok Branch, Sikkim. ..... ***Appellant***

Versus

1. Nakul Gurung,
   S/o Late Mahendra Gurung,
   R/o Upper Sichey, below T.N.S.S.
   School, P.O.& P.S.Gangtok,
   East Sikkim.

2. Najali Rai,
   W/o Shri Nakul Gurung,
   R/o Upper Sichey, below T.N.S.S.
   School, P.O.& P.S.Gangtok,
   East Sikkim.

3. Md. M. Burhanuddin Khan,
   S/o Late Md. Alimuddin,
   R/o Lilong Haoreibi Turel Ahanbi,
   P.O. & P.S. Liong, District Imphal,
   Manipur – 795001. ..... ***Respondents***

FOR THE APPELLANT : MR. A. K. UPADHYAYA, SENIOR ADVOCATE
WITH MR. ASHIM CHETTRI, ADVOCATE.

FOR THE RESPONDENT NOS.1 AND 2 : MR. K. T. BHUTIA, SENIOR ADVOCATE
WITH MR. DINESH AGARWAL, ADVOCATE.

FOR THE RESPONDENT NO.3 : NONE

Date of last hearing : 17.08.2009

Date of Judgment : 24.08.2009

PRESENT ; THE HON'BLE MR. JUSTICE SONAM P. WANGDI, JUDGE

JUDGMENT

S.P.Wangdi,J.

This appeal is directed against the impugned judgment passed in M.A.C.T.Case No.21 of 2006 dated 10.09.2007 by the Learned Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, awarding the claimants death compensation of Rs.7,72,500.00 with interest @ 10 per annum from the date of filing of the claim petition.

2. Briefly stated, the facts of the case are that one Kuldeep Gurung died in a motor accident on 30.09.2005 at Traffic Stand, North AOC NH 39, Imphal, Manipur, at around 8.40 p.m. when the vehicle, a canter bus, in which he was travelling, dashed on the traffic stand due to the rash and negligent driving of the driver plying the canter bus, causing the death of the said Kuldeep Gurung and another person named Prasan Pradhan on the spot. Apart from the deceased persons, 15 others also were injured and were evacuated to RIMS Hospital and Raj Poly Clinic, North AOC for medical treatment. It appears that the deceased was one of the 17 badminton players representing the State of Sikkim in a tournament that was being held at D. M. College in Manipur. The unfortunate accident took place on 30.09.2005 as the players were returning from D. M. College to Khuman Lampak aboard the ill-fated bus after participating in the tournament. Claim for compensation under Section 166 of the Motor Vehicles Act, 1988 for

the death of the deceased Kuldeep Gurung was preferred before the Ld. Motor Accident Claims Tribunal, East Sikkim at Gangtok, by the father and mother of the deceased who are the respondents No.1 and 2 herein.

3. The claim was resisted by the appellant, New India Assurance Co. Ltd. before the learned Tribunal as the respondent No.2. The respondent No.1, one Md. M. Burhanuddin Khan, the owner of the vehicle. was proceeded ex-parte having failed to appear despite notice by substituted service. In the written objection that was filed on behalf of the appellant as the respondent No.2, all objections available under the law were taken. Apart from denying the accident having taken place, the appellant disputed the claim made by the claimants that the deceased was a bright student and a sports person. In fact the appellant denied the very existence of both statutory liability and its contractual obligation to pay compensation to the claimants or to indemnify the owner of the vehicle. It appears that in support of their claims, the claimants/respondents had examined two witnesses and exhibited as many as 11 documents. Claimant No.1 examined himself as PW1 and one Shri Samir Gurung, as PW2 who was a co-passenger in the ill-fated vehicle on the day of the accident. The appellant herein chose not to adduce any evidence. On the basis of the pleadings of the parties, the learned Tribunal framed just one issue which is as follows:-

> **"Whether the claimants are entitled to the compensation and if so, to what extent ?"**

4. After considering the pleadings of the parties and the evidence available in the records which included the documents exhibits 1 to 11, the learned Tribunal decided the issue in favour of the claimants, i.e., the respondents herein, and awarded Rs.7,72,500.00 as compensation by the impugned judgment dated 29.08.2007.

5. Before this Court the appellant seeks to assail the said impugned order primarily on the ground that the deceased being a non-earning person prior to the accident, his income ought to have been computed by strictly following the second schedule to the Motor Vehicles Act, 1988. It was the case of the appellant that fixing the notional income of the deceased at Rs.6,000.00 per month was based on mere surmises and conjectures when it ought to have been rational and arrived at by following a judicious approach.

6. At the time of the arguments, Mr. A. K. Upadhyaya, learned Senior Advocate, appearing on behalf of the appellant, submitted that it is a well established position of law that the second schedule ought to be followed while awarding compensation under the Act against death and injuries. It has been laid down by various decisions of the Supreme Court that even in cases under Section 166 of the Motor Vehicles Act, 1988 the multipliers provided in the second schedule to the Motor Vehicles Act, 1988 ought to be followed as guidelines, even though that schedule does not relate the to the claims under Section 166. Mr. Upadhyaya relied upon the case of ***United India Insurance Co.Ltd. vs. Patricia Jean Mahajan and Others***

reported in ***(2002) 6 SCC 281*** in which it has been held that it is for the Tribunal to arrive at an amount of compensation, which it may consider to be just in the facts and circumstances of the case and that the structured formula as provided under the second schedule would be a safe guide to calculate the amount of just compensation and further, that deviation though permissible may only be resorted to for some special reasons so to do. Mr. Upadhyaya also referred to and strongly relied upon a Division Bench judgment of this Court in the case of ***Branch Manager, National Insurance Co.Ltd.*** vs. ***Pavitra Chettri and Another*** reported in ***AIR (2007) Sikkim 1*** in which 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 tribunals laid down in various judgments of this Court, more specifically the common judgment in the cases of ***United India Insurance Company Limited*** vs. ***Chandi Rai and Another*** and ***National Insurance Co. Ltd.*** Vs. ***Bijay Kumar Sharma and Another*** reported in ***AIR (2006) Sikkim 1***, was emphasised. Mr. Upadhyaya laid considerable stress on paragraph 8 of the judgment and upon the extract of paragraph 15 of the judgment in the case of Bijay Kumar Sharma and Another (supra) which is reproduced hereinbelow for the sake of convenience :-

> "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 (reported in AIR 2006 (NOC) 48 (sik)) 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 and Another also disposed of by common judgment dated 26th May, 2005 (reported in AIR 2006 Sik 11). 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 Honb'le 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....."

It was submitted that the learned Tribunal had committed grave error in determining the income of the deceased at Rs.6,000/- per month, as there was no rationale behind such determination and was arrived at most arbitrarily on mere surmises and conjectures amounting to a conclusion arrived at on the basis of whims and wild guesses and arbitrariness. Referring to the case ***of State of Haryana and Another*** vs. ***Jasbir Kaur and Others*** reported in ***(2003) 7 SCC 484***, it was submitted that the Tribunal while awarding compensation

ought to have been just and reasonable, the determination of which has to be rational, arrived at by following a judicious approach. In that case, it was held in paragraph 7 as follows :-

> "7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be kept in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicated that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The express "just" denotes equitability, farness and reasonableness, and non-arbitrary. If it is not so it cannot be just." *(See Helen C. Rebello v. Maharashtra SRTC.)*

7. It was submitted by Mr. Upadhyaya that the respondents have not been successful in proving the assertion that the academic record of the deceased was brilliant and that at the time of death he was a student of tender age having no income of his own. In any case, taking the age of the deceased as a determining factor for calculating the future income of the deceased was erroneous, when it has been laid down that it ought to have been the age of the parents which should in fact have been taken into consideration for the purpose. To

support this contention, Mr. Upadhyaya relied upon the cases of ***New India Assurance Co. Ltd.*** Vs. ***Satender and Others*** reported in ***(2006) 13 SCC 60*** and ***Ramesh Singh and Another*** vs. ***Satbir Singh and Another*** reported in ***(2008) 2 SCC 667***. In paragraph 9 of the judgment in the case of Satender and Others (supra) it has been held as follows :-

> "9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents." (*underlining supplied).*

Similarly, in paragraph 6 in the case of Ramesh Singh (supra), it has been laid down that the choice of multiplier is determined by the age of the deceased or the claimants whichever is higher. For convenience, relevant portion of paragraph 6 reads as under :-

> "6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in *New India Assurance Co.Ltd. vs. Charlie* it is clear that the choice of multiplier is determined by the age of the deceased or the claimants whichever is higher....." *(underlining supplied).*

8. On the other hand, Mr. K. T. Bhutia, learned Senior Advocate appearing on behalf of the respondents submitted that the question of strict application of schedule II of the Motor Vehicles Act would arise only if claims are made under the provisions of Section

163-A of the Motor Vehicles Act, 1988. Since the claim had been preferred under Section 166 of the Act, it was upon the Tribunal to assess the compensation in exercise of its discretion available under Section 168 thereof. It has been further submitted that no formula of the kind provided under schedule II for the purpose of a claim petition under Section 163-A of the Motor Vehicles Act, 1988 has been laid down for determination of compensation in a claim petition under Section 166 of the said Act. It was further submitted that there was no bar for the Court in taking the second schedule as a guiding factor, but it cannot be used as an invariable ready reckoner for determination of just compensation under the Act. In support of this contention, Mr. K. T. Bhutia referred to the case of ***Syed Basheer Ahamed and Others*** v. ***Mohd. Jameel and Another*** reported in ***2009 ACJ 690***. Paragraphs 9, 10 and 11 of which are reproduced for convenience :-

> "9. Section 168 of the Act enjoins the Tribunal to make an award determining 'the amount of compensation which appears to be just'. However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression 'which appears to be just' vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore the settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependants of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

10. In *General Manager, Kerala State Roads Trans. Corpn. V. Susamma Thomas,* 1994 ACJ 1 (SC), *M. N. Venkatachaliah, J.:* (as His Lordship then was) had observed that the determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the 'law values life and limb in a free society in generous scales'. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

11. As noted earlier, in the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life. Though a special provision for assessment of compensation on structured formula basis for the purpose of a claim petition under section 163-A of the Act has been inserted in the Act w.e.f. 14.11.1994, but no such formula has been laid down for determination of compensation in a claim petition under section 166 of the Act, though there is no bar in taking the said Schedule as a guiding factor while determining the just compensation by applying multiplier method. In fact, in *Managing Director, Tamil Nadu State Trans. Corpn. Ltd. V. K. I. Bindu,* 2006 ACJ 423 (SC), it has been observed that the Second Schedule to the Act may serve as a guide but cannot be used as an invariable ready-reckoner. In a catena of decisions of this court, certain broad principles which could be applied for assessing just compensation have been highlighted. It has been observed that in a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered and likely to be suffered by them as a result of abrupt termination of life. The question as to what factors should be kept in view for calculating the pecuniary loss to a dependant came up for consideration before a three-Judge Bench of this court in *Gobald Motor Service Ltd. Vs. R.M.K. Veluswami,* 1958-65 ACJ 179(SC), with reference to a case under the *Fatal Accidents Act,*1855, wherein, *K. Subba Rao, J.* (as His Lordship then was) speaking for the Bench observed thus:

> "In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss of the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained." *(emphasis supplied)*

It was, therefore, contended by Mr. Bhutia that the learned Tribunal had not committed any error in determining the future income of the deceased in the manner it has done. It was further submitted that while doing so, the learned Tribunal had relied upon the evidence on record, more particularly the statements of the witnesses and the exhibits 4, 5 and 7, which lend credence to the claim that the deceased had a sound academic record and that he had good prospects of achieving fame and money as a sportsperson.

9. Referring to the case of ***Kader Kunju and Another*** vs. ***Maheshwaran Pada Nair and Others*** reported in ***(2000) 1 TAC 202 (SC)***, it was submitted that, in that case, the facts of which were similar as the instant one in as much as the age of the victim was 17 years and that of the parents 47 and 45 years respectively, application of multiplier of 16 provided in the second schedule to the Act was held to be reasonable. Since in the present case also, the learned Tribunal had applied 16 as the multiplier where the age of the deceased was 17 and that of the parents 44 and 43 years respectively, no error or illegality had been committed by it. A number of decisions of High Courts on that point were also cited, which in my view, is unnecessary being repetitive and mostly based upon the peculiar facts and circumstances obtaining in those cases.

10. On the above premises, Mr. K. T. Bhutia, learned Senior Advocate, supported the award of compensation vide the impugned judgment and prayed for dismissal of the appeal as being not

maintainable. Replying to the submissions made on behalf of the respondents, Mr. A. K. Upadhyaya, learned Senior Advocate, while reiterating his stand made earlier, submitted that the learned Tribunal while applying the multiplier system in schedule II of the Motor Vehicles Act, 1988 had committed an error in applying 16 as the multiplier which ought to have been 13. This submission to me, appeared to be quite curious as it was the case of the appellant all along that the learned Tribunal did not adhere to schedule II, which ought to have been done in view of the law laid down in various judgments of the Hon'ble Supreme Court as well as our own Court, some of which have been referred to and extracted above. His submission provided a different dimension to the entire case, in as much as, the submission that the learned Tribunal had not applied the second schedule for determination of the compensation stood abandoned and the only question that remained for determination was as to which of the multiplier between 16 and 13 would be applicable in the facts and circumstances of the case.

11. Before dealing with the controversy raised in the case, I feel it essential to put on record certain unpalatable features noticed in matters relating to claims under Motor Vehicles Act. It has been regrettably noticed that the insurance companies invariably as a matter of routine contest claims made by the victims and/or their representatives irrespective of whether the objections raised by them as the basis of such contests are valid and sustainable at all or not. The Motor Vehicles Act, 1988 has taken the present shape and form

with the change in the character of states as welfare states. The history and development of this statute has been well analysed in a Division Bench judgment of the Gauhati High Court in the case of ***United India Insurance Co. Ltd.*** Vs. ***H. Lalhmingliana and Another*** reported in ***2007 (2) TAC 942 (Gau.).*** In this regard specific reference may be made to paragraphs 9 to 35 of the judgment. The source of such analysis and inspiration has been and drawn from the various decisions of the Supreme Court in which the necessity of transforming the Motor Vehicles Act from its earlier character to the present one has been emphasized in order to achieve the object of social justice. I have thought it necessary to refer to the said judgment particularly to emphasize the point that the Act has assumed the present form as a welfare mechanism to mitigate the condition of those persons who are the victims of motor vehicle accidents. Earlier there was no compulsion for owners of vehicles to get their vehicles insured, but later under Section 146 of the Motor Vehicles Act, 1988 and Rules framed thereunder, it has been made essential for them to do so, at least as against third party liability.

12. While introducing Section 92-A in the Motor Vehicles Act, 1939 by the amendment Act number 47 of 1982, (later replaced by Section 140 of Motor Vehicles Act, 1988), the objects and reasons therefor indicated that the purpose of bringing about such amendment was necessitated by the need to secure strict enforcement of road safety measures and also to make, as a measure of social justice,

suitable provisions for compensation without proof of fault or negligence, etc. The relevant portion of the objects and reasons has been cited in paragraph 17 of the judgment in the case of H. Lalhmingliana (supra) which is reproduced below :-

> "17. It may, now, be carefully noted that it was Section 92-A, which introduced, for the first time, the concept of payment of compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, for sub-section (3) of Section 92-A laid down, in clear terms, that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. The object and reasons for such noticeable shift in the settled legal position were summarized by the amended Act 47 of 1982 as follows:
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> > "10. ..... Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate evidence to prove negligence. Further, in what are known as 'hit-and-run' accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claim for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions, first, for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, and secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown."
> >
> > *(emphasis supplied)*

This object of the Act was re-emphasised in the case of ***Gujarat State Road Transport Corporation*** vs. ***Ramanbhai Prabhatbhai and Another*** reported in ***AIR 1987 SC 1690***, which has also been relied upon in the case of H. Lalhmingliana (supra) in paragraph 19 thereof which reads as under :-

> "19. In *Gujarat State Road Transport Corporation* (supra), the Court held a pedestrian entitled to recover damages regardless of the fact as to whether he could prove negligence on the part of the owner or driver of the vehicle involved in the accident or not. Observed the Court, in *Gujarat State Road Transport Corporation* (supra), in this regard:

> "Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all."
>
> *(emphasis supplied)*

13. Benevolent nature of the Motor Vehicles Act as it now stands, has also been re-stated also in the case of ***Shankarayya v. United India Insurance Co. Ltd.*** reported in ***AIR 1998 SC 2968***, of which relevant portion of paragraph 27 is reproduced hereinbelow:-

> "27. .....The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicles accidents and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to defendants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependant of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. In Skandia Insurance Co.Ltd. v. Kokilaben Chandravadan (1987) 2 SCC 654 : (AIR 1987 SC 1184), it was observed thus (para 13) :
>
> "In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an Insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accident are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become in inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the light of the aforesaid perspective." (*emphasis supplied)*

14. In the aforesaid established position, the attitude of the Insurance Companies appears to be incongruous and in direct conflict with the object of the law. Considering the fact that the companies are thriving on the premiums paid against insurance by the public, it is expected that they are more receptive and considerate to those approaching them for relief in the spirit of the law and with the utmost expediency possible in the facts and circumstances, having regard to the procedure laid down for such purpose. The Insurance Companies, particularly those which are the government undertakings, are omnibus bodies expected to possess public oriented view. They survive and flourish on the funds collected from the public, naturally therefore, their actions have public element in their character. They are thus charged with social responsibility which they must endeavour to discharge with honest zeal. Unfortunately, leaving the very rare and exceptional cases, this approach is found to be lacking in most of them.

15. With the optimism that the above message will go down well with those who are concerned, we may now turn to the matters that are in *lis* in the present case. As observed earlier, in claims made under Section 163-A of the Motor Vehicles Act, 1988, the claimants are saved from the rigours of the proof of negligence and fault on the part of the driver of the offending vehicle. On a proof of the accident, the claimants would become entitled to compensation in accordance with the structured formula provided in the second schedule to the Act, existence of a valid contractual obligation notwithstanding. On the

other hand, this is not the case in claims made under Section 166 where the requirement of discharging the burden of proof of rashness and negligence on the part of the offending vehicle is a pre-condition.

16. In the case at hand, the respondents/claimants appear to have successfully discharged such burden by adducing necessary evidence. The appellant who was the only contesting respondent before the learned Tribunal, quite apparently has neither been able to demolish such evidence nor disprove it other than making suggestions to the witnesses of the non-existence of the accident and filing of the FIR. As already indicated above, no evidence was adduced on behalf of the appellant to discredit the evidence of the respondents. In such view of the matter, I have no hesitation in upholding the finding of the learned Tribunal that the accident did take place leading to the subsequent chain of events culminating in the filing of the FIR exhibited as exhibit 1, which is a public document under the seal of a competent authority.

17. I have thought it necessary to highlight the existence of proof of the negligence and fault on the part of the driver of the offending vehicle in the present case in order to set at rest any doubt that may be lurking as regards the proof of such fact which is mandatory under the law for establishing claims for compensation under Section 166. It may be noted that it is also not the case of the appellant that there was no proof of rashness or negligence on the part of the driver which is quite obvious from the pleadings contained in the

memorandum of appeal and also from the submissions made on behalf of the appellant when the appeal was being heard. The only issue that was pressed was the quantum of compensation awarded to the respondents on two aspects as already stated above. They were (i) that the notional expected income of the deceased was arrived at by the tribunal most arbitrarily without any basis and (ii) that the application of the multiplier provided in the second schedule ought to have been 13 and not 16 as was done by the learned Tribunal because as per the appellant, the determining factor for arriving at the notional income of the deceased ought to have been the age of the parents and not that of the deceased. It was alternatively suggested rather feebly that the deceased being a non-earning person, the claimants ought to have been awarded only Rs.15,000/- as provided in clause 6 of the second schedule.

18. While pressing the first ground on the quantum of compensation stated in (i) above, Mr. Upadhyaya made reference to the 3rd last paragraph of the impugned judgment which reads as follows :-

> "Having found the claimants to be entitled to compensation it is to be considered as to the amount of compensation that is to be awarded to the claimants on account of death of their son. The deceased was 17 years old at the time of accident and therefore the multiplier to be adopted in arriving at due compensation to be awarded to the claimants is 16. As the future expected monthly income of the deceased is taken to be Rs.6,000/- and deducting 1/3 of the income which the deceased would have incurred towards maintaining himself had he been alive, the annual pecuniary loss would be Rs.48,000/-. Adopting the multiplier 16 the compensation amount comes to Rs.7,68,000/- (i.e. Rs.48,000/- x 16 = Rs.7,68,000/-). Further the claimants are also entitled to Rs.2,000/- on account of funeral expenses and Rs.2,500/- on account of loss of estate. Thus the total compensation amount stands at Rs.7,68,000/- +2,000/- +

Rs.2,500/- = Rs.7,72,500/- (Rupees seven lakhs seventy two thousand and five hundred) only."

Such reference was made by him to point out that there was no basis at all for the learned Tribunal in arriving at the amount. When the above paragraph is read in isolation, one gets the impression of correctness in the submission of the learned Counsel. But in my view that is not the manner in which a judgment is read. In order to appreciate the substance of a judgment, one is required to read it in its entirety. Bearing this principle in mind, when we read the whole of the judgment, the submissions made by Mr. Upadhyaya do not appear to be correct but rather erroneous as I find that the learned Tribunal in his brief but nevertheless comprehensive judgment, has taken into consideration the evidence of the witnesses and the documents filed as exhibits which is quite apparent on a perusal of the impugned judgment, relevant paragraphs of which are reproduced below :-

"Considering the evidence of claimant No.1 as PW-1 and also the evidence of PW-2 Shri Anand Singh Bista it can be held that the seventeen Badminton players including the deceased Kuldeep Gurung representing the State of Sikkim were returning from D. M. College and going towards Khuman Lampak, Manipur after completion of the Badminton Tournament in a Canter Bus bearing registration No.MN-01/1431. But the said vehicle met with an accident as a result of which the deceased Kuldeep Gurung died on the spot. In support of the claim the claimant No.1 exhibited the following documents:-

i. Copy of FIR marked exhibit-1;
ii. Copy of Post Mortem report of the deceased exhibit-2;
iii. Copy of Birth Certificate of his deceased son marked exhibit-3;
iv. A certificate in respect of the deceased issued by the Principal, Tashi Namgyal Senior Secondary School marked exhibit-4;
v. Certificate issued by the President, Sikkim Badminton Association marked exhibit-5,
vi. Death-cum-Post-mortem Certificate in respect of the deceased marked exhibit-6;

vii. 11 Nos. of sports Certificates in respect of the deceased Kuldeep Gurung marked collectively exhibit-7;
viii. Driving licence of the driver in accident marked 8;
ix. Registration certificate of the vehicle in accident marked exhibit-9;
x. Route permit of the vehicle in accident marked exhibit-10;
xi. Insurance Policy in respect of the vehicle in accident marked exhibit-11.

Further the PW-2 Shri Anand Singh Bista has also corroborated the affidavit evidence of PW-1 in all material facts. In view of the categorical statements of the two PWs and the documents exhibited by the claimant No.1, there can be no manner of doubt that the deceased Kuldeep Gurung was travelling in the ill-fated vehicle at the time of accident of the vehicle. Hence this issue stands decided in favour of the claimants and against the O.Ps.

Now we have to see as to what extent of amount of compensation the claimants will get.

The claimant No.1 as P.W-1 in his affidavit evidence has categorically stated that his deceased son was a bright student studying in class X of Tashi Namgyal Sr. Secondary School and he was also an excellent Badminton player and had participated in various tournaments in Sikkim for which he has exhibited eleven certificates collectively marked exhibit-7. This fact has also been corroborated by the PW-2 in his affidavit evidence."

The third last paragraph referred to by Mr. Upadhyaya reproduced above contains the conclusion of the analysis of the evidence apparent from the portion extracted above whereby the learned Tribunal has accepted that the future expected monthly income of the deceased to be Rs.6,000/- with necessary deductions made thereto. In other words, the conclusion has been arrived at after proper appreciation of the evidence. I, therefore, do not see any reason to interfere with such finding.

19. In so far as the second assertion is concerned, I find some force in the light of the decisions of the Hon'ble Supreme Court in the cases of ***National Insurance Co.Ltd.*** vs. ***Satender*** and ***Ramesh***

Singh and Another vs. ***Satbir Singh (supra),*** in which it has been held that in cases where parents are claimants, relevant factor would be the age of the parents and that the choice of multiplier is determined by the age of the deceased or the claimants whichever is higher. In view of such law laid down by the Hon'ble Supreme Court, I hold that applying 16 as the multiplier taking into consideration the age of the victim appears to be erroneous when it should have been that of the parents which are higher. Following the principle laid down in the aforesaid two cases and taking the age of the parents as the determining factor, the relevant multiplier would be 15 in terms of the second schedule to the Motor Vehicles Act, 1988 as the age of the father is 44 and that of the mother 43 years respectively, as on 3rd August, 2006, as appearing in the form for recording deposition. By this it would mean that on the day of the incident, i.e., 30.09.2005, they were younger by almost 1 year, thereby bringing within the scope of 15 as the multiplier in terms of the second schedule. Having found no basis for applying 13 as multiplier as asserted by Mr. Upadhyaya, the same stands hereby rejected.

20. In so far as the feeble plea of the victim being a non-earning member entitling the claimants compensation of Rs.15,000/- only is concerned, it is to be borne in mind that the claim is made under Section 166 of the Motor Vehicles Act, 1988 and by virtue of Section 168, the Tribunal is vested with the discretion to award just and reasonable compensation against such claim. It is not bound by

the second schedule to the Act which may, however, be considered as a guideline while determining the notional income of the deceased. It is a well settled principle of law that in applying a law like the present one which is a piece of social legislation, the courts shall construe the provisions liberally and wherever in a given situation relief may be given in exercise of its discretion, it shall give the optimum possible under the law. In the present case, the claim being under Section 166 Motor Vehicles Act, the court has the choice to apply the second schedule as a guideline for computing the compensation and that the schedule leaves it upon the Court to adopt either of the two methods provided therein, i.e., either the multiplier system in clause 1 or the fixed compensation or under clause 6 of the second schedule, it shall adopt the one which is more beneficial to the claimant. This appears to have been done in the present case by applying more beneficial multiplier in clause 1. Therefore, the plea stands rejected as untenable.

21. Having held so, we may now proceed to calculate the compensation by applying 15 as the multiplier, which amounts to Rs.7,20,000.00 (48,000.00 x 15 = 7,20,000.00). Adding funeral expenses of Rs.2,000.00 and Rs.2,500.00 on account of loss of estate as awarded by the learned Tribunal, which I see no reason to interfere with, the total compensation now stands at Rs.7,24,500.00 (7,20,000.00 + 2,000.00 + 2.500.00 = 7,24,500.00). Deducting Rs. 50,000.00 awarded as interim measure under Section 140 of the Motor

Vehicles Act, 1988, the respondents would now be entitled to Rs.6,74,500.00 (Rupees six lakhs seventy four thousand five hundred) only. Interest of justice would be served if the claimants are awarded interest @6% per annum on the compensation amount from the date of filing of the claim petition, i.e., 03.08.2006, until it is paid by the appellant which I direct should be done within a period of 90 days from the date of this judgment. The order of the learned Tribunal stands accordingly modified.

No order as to costs.

Records of the lower court be sent forthwith.

(S. P. Wangdi)
Judge
24.08.2009

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