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# IN THE HIGH COURT OF SIKKIM : GANGTOK

## CIVIL REVISION PETITION NO.4 OF 2009

THE BRANCH MANAGER,  
NEW INDIA ASSURANCE CO.LTD.,  
GANGTOK BRANCH OFFICER,  
M. G. MARG,  
GANGTOK, EAST SIKKIM

..... **Petitioner**

### **Versus**

1. SMT. MEENA DEVI,  
W/O LATE DEV BAHADUR
2. SHRI OM BAHADUR,  
S/O LATE DEV BAHADUR
3. MS. HIMA KUMARI,  
D/O LATE DEV BAHADUR
4. MASTER PREM BAHADUR,  
S/O LATE DEV BAHADUR

ALL RESIDENTS OF :  
N.H.P.C. STAFF QUARTERS,  
POWER HOUSE COLONY,  
TEESTA STAGE V. HYDRO  
ELECTRIC PROJECT,  
P.O. & P.S. SINGTAM,  
EAST SIKKIM.

5. THE GENERAL MANAGER,  
TEESTA STAGE V. HYDRO  
ELECTRIC PROJECT,  
NATIONAL HYDRO ELECTRIC  
POWER CORP. LTD.,  
DIPUDARA,  
P.O. & P.S. SINGTAM,  
EAST SIKKIM.

..... **Respondents**

FOR THE PETITIONER : MR. SUDESH JOSHI, ADVOCATE WITH  
MS. MANITA PRADHAN, ADVOCATE.

FOR THE RESPONDENT : MR. AJAY RATHI, ADVOCATE WITH  
NOS. 1, 2, 3 & 4 MS. SUSHMA PRADHAN, ADVOCATE

FOR THE RESPONDENT : MR. A. K. UPADHYAYA, SENIOR  
NO. 5. ADVOCATE WITH MR. DHURBA TEWARI  
AND MR. ASHIM CHETTRI, ADVOCATES:

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**AND**

**CIVIL REVISION PETITION NO.08 OF 2009**

NEW INDIA ASSURANCE CO.LTD.,  
THROUGH THE BRANCH MANAGER,  
GANGTOK BRANCH,  
P.O & P.S. GANGTOK,  
EAST SIKKIM. .... **Petitioner**

**Versus**

- 1.SMT. KHEL LACHI MANGER,  
W/O LT. KATHA KUMAR MANGER (THAPA)  
R/O LOWER KAMLING BUSTY,  
UNDER 32-SULDUNG KAMLING,  
GPU, P.O.RESHI & P.S.  
NAYA BAZAR,  
WEST SIKKIM.
2. MASTER SAROJ KUMAR THAPA,  
S/O LT. KATHA KUMAR MANGER (THAPA)  
R/O LOWER KAMLING BUSTY,  
UNDER 32-SULDUNG KAMLING,  
GPU, P.O.RESHI & P.S.  
NAYA BAZAR,  
WEST SIKKIM.
3. MASTER SAWAN THAPA,  
S/O LT. KATHA KUMAR MANGER (THAPA)  
R/O LOWER KAMLING BUSTY,  
UNDER 32-SULDUNG KAMLING,  
GPU, P.O.RESHI & P.S.  
NAYA BAZAR,  
WEST SIKKIM.
4. SHRI RIFZONG TARGAIN LEPCHA,  
S/O SHRI TARGAIN LEPCHA,  
R/O NAMCHI BAZAR,  
P.O. & P.S. NAMCHI,  
SOUTH SIKKIM.
5. SHRI KISHOR PRADHAN,  
S/O LATE S.C.PRADHAN,  
R/O LOWER KAMLING BUSTY,  
KAMLING, BONG BUSTY,  
AT PRESENT VOK SCHOOL,  
SOUTH SIKKIM. .... **Respondents**



FOR THE PETITIONER : MR. A. K. UPADHYAYA, SENIOR  
ADVOCATE WITH MR. ASHIM  
CHETTRI AND MR. DHURBA  
TEWARI, ADVOCATES.

FOR THE RESPONDENT : NONE  
NOS. 1, 2 AND 3

FOR THE RESPONDENT : MR. D. R. THAPA, ADVOCATE  
NOS. 4 & 5 WITH MR. RAMESH SHARMA,  
ADVOCATE.

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

**Date of last hearing : 08.12.2009**

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**Date of Judgment : 11.12.2009**

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## **J U D G M E N T**

**Wangdi, J.**

These two Revision Petitions have been taken up together for disposal by this common judgment as the question involved for adjudication in them are substantially the same.

**Civil Revision Petition No.04 of 2009.**

This Revision Petition is directed against the award of the Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, dated 23.02.2007, by which the petitioner, New India Assurance Company Limited, Gangtok Branch through its Branch Manager, was made liable for payment of death compensation of Rs.16,31,460.00 (Rupees sixteen lakhs thirty one thousand four hundred and sixty), against the death of the victim, Dev Bahadur, the husband of the respondent no.1 and the father of the respondent nos.2, 3 and 4 respectively.



2. The undisputed facts of the case are that on 03.05.2004 at about 9.35 a.m. bus bearing registration No.SK-04/3889 owned by the respondent no.5 in which the victim Dev Bahadur, S/o Lt. Man Bahadur was travelling as its conductor met with an accident near Traffic Point, Singtam Bazar, PO & PS Singtam, East Sikkim, in which he was fatally injured and was declared dead when brought to the Singtam District Hospital. Joint claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 was filed by the respondent nos.1, 2, 3 and 4 before the Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, registered as M.A.C.T. Case No.23 of 2007, claiming compensation for the death caused to the victim, due to the aforesaid accident against the respondent no.5 as the owner of the accident bus and the petitioner, New India Assurance Company Limited, Gangtok Branch through its Branch Manager with which the bus had been insured. The Accident Claims Tribunal on completion of the due process under Section 166 of the Motor Vehicles Act, 1988, passed the impugned judgment awarding compensation of Rs.16,31,460.00 to be paid by the petitioner with interest @ 10% per annum with effect from the date of the claim petition to be paid within two months from the date of the judgment.

3. In the revision petition, the only ground set up by the petitioner for assailing the impugned judgment was that the Tribunal had wrongly assessed the compensation under the schedule provided in the Motor Vehicles Act when it was quite



well established that the victim was a workman under the respondent no.5 and had died during the course of his employment due to the accident of the vehicle belonging to the respondent no.5 which necessitated assessment of the quantum of compensation as per schedule IV prescribed under the Workmen's Compensation Act, 1923. On account of such erroneous assessment, the amount of compensation arrived at was exorbitantly high and therefore, the award called for being quashed and set aside. Apart from the above, the petitioner also sought to challenge the award of interest @10% as being on the higher side, in view of the prevailing rate of interest in commercial transactions by banks.

4. It may be stated that the revision petition having been filed beyond the period prescribed under the law, an application for condonation of delay under Section 5 of the Limitation Act, 1963 was filed along with the revision petition. This was allowed by this Court vide order dated 23.07.2009 in Civil Misc. Application No.42 of 2009 and the revision petition was taken up for hearing on admission on 05.08.2009. On being admitted, arguments on behalf of the parties were finally heard on 08.12.2009. In the meanwhile, on 20.11.2009, upon hearing the parties, the points for consideration in the case were narrowed down to the following: -

"(i) Whether the delay in filing the Revision Petition can be condoned.

(ii) Whether the Revision Petition is maintainable.



- (iii) Whether the defence of the Insurance Company can be allowed to be raised on the admitted position, that it was neither raised in their written statement nor was it placed orally before the Tribunal.
- (iv) Subject to the finding on the above, whether the defence taken by the Insurance Company of its limited liability is valid in the eye of law.
- ....."

Of the above points, point no. (i) having been already decided by the order of this Court vide order dated 23.07.2009 in Civil Misc. Application No.42 of 2009 was abandoned accordingly and the case was heard on the remaining points which are dealt with hereunder.

4. Before going into that it is of relevance to point out at this stage that at the time of arguments Mr. Sudesh Joshi, learned Counsel representing the petitioner while placing his case in his opening submissions on 22.9.2009, strongly stressed on the grounds set out in the revision petition and submitted that the award passed by the learned Tribunal making the petitioner entirely liable for payment of the compensation was erroneous on the face of the insurance policy under which the respondent no.5 was indemnified. It was submitted that as the respondent no.5 had paid Rs.25/- only as special premium to cover the liability that would be worked out under the Workman's Compensation Act, 1923 under Indian Motor Tariff (IMT) 40, it was erroneous on the part of the learned Tribunal to have fastened the entire liability of the compensation awarded in favour of respondent nos. 1 to 4. It was, therefore,



submitted that the impugned order of the learned Tribunal was liable to be modified to that extent.

5. However, in complete contrast to the aforesaid stand, on 08.12.2009 when the hearing resumed, Mr. Sudesh Joshi submitted that the victim of the accident was not at all covered under the insurance policy for the reason that: -

- (a) The victim was not engaged in driving the vehicle, i.e., the bus which met with the accident in the present case; and
- (b) The bus which met with the accident causing the death of the victim was not a public service vehicle as provided under the proviso to sub-section 1 of Section 147 of the Motor Vehicles Act, 1988 although he was a conductor of that bus.

As per him, having regard to the above facts, the claimants ought to have applied for compensation under the Workmen's Compensation Act, 1923. In support, strong reliance was placed by him upon **2007 (5) SCC 428 : Oriental Insurance Co. Ltd. Vs. Meena Variyal and Others**, more particularly paragraph 12 thereof.

6. It is, therefore, to be seen as to which of the two propositions placed by Mr. Joshi would be applicable, or as to whether any of the two propositions would be applicable in the facts and circumstances of the case. I shall deal with those at a later point of time, but before that it is felt necessary to deal with the point nos. (ii) and (iii) indicated above since that would decide as to whether it would be at all necessary to go into them.



**(ii) Whether the Revision Petition is maintainable.**

7. In order to answer this question it would be essential to examine as to whether the Claims Tribunal constituted under the Motor Vehicles Act is a court subordinate to the High Court as provided under Section 115 of the Civil Procedure Code, 1908. It is also to be seen as to whether the Claims Tribunal is a Civil Court within the meaning of Section 3 of the said Code. When we examine those questions in the light of the provisions of the Motor Vehicles Act, 1988 one would arrive at an irresistible conclusion that the Claims Tribunal under the Motor Vehicles Act, 1988 is not a Civil Court under Section 3 CPC and, therefore, not a subordinate court contemplated under Section 115 of the said Code.

8. Chapter XI of the Motor Vehicles Act, 1988 is a special provision made for providing expeditious relief to the victims of accidents or their representatives. It prescribes a complete mechanism for making claims for compensation, for filing appeals against awards, etc. and, therefore, a complete code by itself. Section 175 of the Motor Vehicles Act, 1988 expressly bars Civil Courts from entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. The powers of Civil Courts vested in the Claims Tribunal are limited. In sub-section 2 of Section 169 of the Act it has been prescribed that the Claims Tribunal shall have "All powers of a Civil Court for the purpose of taking evidence on oath and for enforcing the





attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 of Chapter XXVI of the Code of Criminal Procedure, 1973". Thus by an express provision a clear restriction has been imposed in the application of the CPC.

9. In the case of **V. N. Munegowda vs. Mushraff Ali Baig and Another : 2000 ACJ 1545** a Single Bench of the High Court of Karnataka, while examining the very question before us, held as follows: -

"Though this revision ....., appears to be not maintainable in view of the decision of this Court in *Oriental Insurance Co. Ltd. V. Thibbegowda, 2000 ACJ 438 (Karnataka)*, whereunder this court, ..... Motor Accidents Claims Tribunal cannot be held to be civil court for the purpose of section 115 of *Civil Procedure Code*. ..... This view of this court has been taken after taking into consideration the provisions of the *Motor Vehicles Act, 1939* as well as sections 175 and 173(2) of the *Motor Vehicles Act* as well as provisions relating to the constitution of the Motor Accidents Claims Tribunal which ..... So merely because it is headed by or presided by a Civil Judge or District Judge, that will not make it a civil court because if I apply this principle otherwise for in this case Tribunal is headed by a sitting or retired High Court Judge, question will arise whether it should be taken as a High Court? I answer certainly not, and such a question had been considered by their Lordships of the Apex Court in the context of section 7 of *Andhra Pradesh Land Grabbing Prohibition Act, 1982* in the case of *State of Andhra Pradesh v. K. Mohan Lal, 1998 (5) SCC 468*, where a special court was constituted under that Act and which Act provided that it shall consist of a Judge of the High Court, sitting or retired as its Chairman and two District Judges and two revenue officers. Their Lordships observed even though it is termed as special court, it will not form part of judicature or civil judicature. It held it to be a Tribunal and remedy against the order thereof will be petition under Article 226/227 of the Constitution.

1A. Further section 169 of the *Motor Vehicles Act* reveals that legislature while enacting *Motor Vehicles Act* did not intend or conceive it to be a civil court. It has referred to the Tribunal as the Claims Tribunal and then it



provides by virtue of sub-section (2) that the Claims Tribunal shall have powers of a civil court under Code to take record of evidence on oath as well as to enforce attendance of witnesses. It reveals that the legislature maintained a distinction between the Tribunal and civil court, and legislature specifically enacted the provision in the Act and in absence of provisions of sub-section (2) of section 169 of the Act, it could not exercise those powers of civil court to take evidence on oath or enforce attendance of witnesses, etc. So by sub-section (2) such powers are conferred on the Claims Tribunal which powers are ordinarily vested in the civil court for taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects. The later part of such-section (2) of section 169 further reveals that the legislature for certain special and specific purposes indicated, has incorporated legal fiction of 'the deeming clause' and it has provided that for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, the Claims Tribunal shall be deemed to be civil court. It is one of the well settled principles of law that when effect of deeming clause of legal fiction has to be considered, the court has to take into consideration the purposes for which the legal fiction has been created and legal fiction is to be given effect for only that or those purposes and not beyond that. It means it is deemed to be a civil court only for limited purposes of section 195 and Chapter XXVI of Code of Criminal Procedure.

2. Thus considered in my opinion, the Tribunal cannot be deemed to be or considered to be civil court for the purposes of sections 3, 9 and 115 of Civil Procedure Code. Under Civil Procedure Code, revision lies from a court subordinate to High Court and what courts are subordinate to High Court has been defined under section 3 of the Civil Procedure Code itself. ...."

( underlining supplied )

10. In the case of **National Insurance Co. Ltd. vs. Smt. Florrentina Hilario Gonslaves and Others : 1999 (2) TAC 732** another Single Bench of the Karnataka High Court accepted the principle laid down in the above judgment and held that the civil revision filed under Section 115 of the Civil Procedure Code was not maintainable. Although the aforesaid two judgments were rendered by Benches constituted by Judges sitting singly, I have no hesitation in relying upon the principle enunciated therein that a Claims Tribunal not being a subordinate court under this High Court for the purpose of



Section 115 CPC., the revision petition would not be maintainable and it is accordingly held so.

11. However, there is another aspect of the matter which requires consideration in the light of the decision of the Apex Court in **2002 (2) SCC 265 : *United Insurance Co.Ltd. vs. Bhushan Sachdeva and Others*** wherein after examining the contours of Sections 173, 168 and sub-section 2 of Section 149 of the Motor Vehicles Act, 1988 it was held in paragraph 11 as follows: -

"11. We are, therefore, of the view that the insurance company can fall within the ambit of the words "any person aggrieved by an award of a Claims Tribunal" as used in Section 173(1) of the Act, when the insured failed to file an appeal against the award."

12. It is relevant to note that in the above case as in the one on hand, the insured/owner of the accident vehicle did not prefer to challenge the award of the Claims Tribunal and that the Petitioner Insurance Company had filed a revision petition as it was felt that an appeal could not be filed by the insurer to challenge the award. It has been held in that decision that if the insured fails to prefer an appeal against an award of the Claims Tribunal, that also would amount to failure to contest the claim as contemplated under clause (b) of Section 170 of the Motor Vehicles Act, 1988. In such eventuality, the Act enables the insurer to contest an award on all grounds available to an insured. In the present case the circumstances being identical, it was open for the insurance company to have invoked the right under Section 173 of the Act as the insured had failed to appeal



against the award. Under such circumstances, the revision petition filed by the petitioner in my view deserves to be treated as an appeal petition filed under Section 173 of the Act.

13. Mr. Ajay Rathi, Advocate for the respondents 1 to 4 referred to **2003(3) SCC 524 : *Sadhana Lodha vs. National Insurance Co. Ltd. And Others*** to press the point that the revision petition is not maintainable as a Claims Tribunal was not a Civil Court. I do not think the decision is of any assistance to the respondent nos. 1 to 4 as the question that was in issue before the Court was solely limited to the question as to whether a petition under Article 227 of the Constitution of India was maintainable when a remedy by way of appeal to the High Court was available under Section 173 of the Motor Vehicles Act, 1988. In that case the Apex Court noted the situation where there was collusion between the claimant and the insured or where the insured did not contest the claim or where the tribunal did not implead the insurance company to contest the claim. Under such circumstances it was held that it would be open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom the claim has been made and that, if permission is granted and the insurer is allowed to contest the claim on merit, it was permissible for the insurer to file an appeal against the award of the tribunal on merit. It was, therefore, held in the facts and circumstances obtaining in that case, the remedy of filing an appeal before the High Court was available to the



insurer. The essence of the ratio laid down in the above two cases is that if, in a claims case, the insured does not contest the claim or the award, it would be permissible for the insurer to seek remedy of appeal under Section 173 of the Motor Vehicles Act, 1988 on all grounds available and not restricted to those contained in sub-section 2 of Section 149 of the Motor Vehicles Act, 1988. I, therefore, hold that for this reason also the petitioner has a remedy of appeal and under such circumstances and in the interest of justice this revision petition is hereby treated as an appeal.

14. Having held so in point no.(ii), the petitioner would now be required to cross the hurdle as set out in point no.(iii) in order to succeed in this proceeding which I proceed to deal with hereunder: -

**(iii) Whether the defence of the Insurance Company can be allowed to be raised on the admitted position, that it was neither raised in their written statement nor was it placed orally before the Tribunal.**

As in almost all the appeals filed by the insurance companies that have come before me thus far for adjudication, the grounds raised in the present revision petition had not at all been taken before the Claims Tribunal either in the written objection or in the oral arguments. No evidence at all was led on behalf of the petitioner on any of the averments contained in the written objection, let alone on the grounds that have been raised in the present petition. As held by this Court in ***M.A.C.T. Appeal No.01 of 2009 : Senior Branch Manager National Insurance Co. Ltd. 31 A, National Highway, Opposite***



**Tourism Department, Gangtok, East Sikkim vs. Namita Dixit and Others (para 23)**, the Insurance Policy is a contract between the insurer and the insured. The law enjoins the party raising objections to specifically plead and prove all objections before the Claims Tribunal. This admittedly was not done. As held in the case of **Namita Dixit (supra)** it is impermissible for an appellant to raise a question as an abstract question of law before this Court in the present petition.

15. Nothing has been brought on record by the petitioner to show that the bus that met with the accident in which the victim was engaged as a conductor was not a public service vehicle. As already stated, the petitioner did not adduce any evidence at all apart from filing a formal written objection. Even the insurance policy in question was brought on record and exhibited by the claimants/respondents 1 to 4. Under such circumstances, it is now not permissible for the petitioner to raise the objection at this stage. In a similar situation as in case at hand, it has been held by the Supreme Court in **2008 (7) SCC 305 : Rajesh Kumar @ Raju vs. Yudhvair Singh and Another** as under: -

"11. ....It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time"



Therefore, in answering point (iii) it is held that the ground raised in the petition cannot be allowed to be raised at this stage when admittedly it was neither raised in their written objection nor was it placed orally before the Claims Tribunal by application of the principles of waiver, estoppel and acquiescence.

In view of the findings on point No.(ii) that the Claims Tribunal is not a Civil Court and on point No.(iii) as set out above it is not felt necessary to go into the merit of the petition. Consequently, the impugned award is hereby upheld. Needless to state that the amount paid to the claimants/respondent nos.1 to 4 by the petitioner company in pursuance of the order of this Court dated 04.11.2009 shall be deducted from the amount awarded by the Claims Tribunal.

16. In the result, the petition stands hereby dismissed. The award with necessary deduction shall be paid by the petitioner to the respondents 1 to 4 within a period of one month from this date failing which the petitioner shall be liable to pay an additional interest of 2% over and above the 10% awarded by the Claims Tribunal from the date of the claim. The petitioner shall further pay cost of Rs.10,000/- (Rupees ten thousand), half of the which will be paid to the Bar Association of Sikkim and the other half to the respondents 1 to 4.

17. Records of the Motor Accident Claims Tribunal, East and North Sikkim be sent back forthwith.



18. Before parting with this case it is necessary to deal with the regrettable attitude exhibited by the Petitioner Insurance Company in this case. From the records of the Tribunal, it appears that the claim petition was filed on 22.12.2007 along with an application under Section 140 of the Motor Vehicles Act, 1988. By order dated 21.06.2008, the Claims Tribunal allowed the petition under Section 140 of the Motor Vehicles Act, 1988 for payment of interim relief and directed that a sum of Rs.50,000/- be paid to the claimants within two months from the date of the order. Two months period obviously expired on 20.08.2008, but the order was not complied with. The petitioner neither preferred an appeal against the interim award nor was extension of time for making the payment sought for by the Insurance Company. The situation continued as such even as on 23.02.2009 when the final award was passed by the Claims Tribunal. The petitioner had remained obdurate even during the period when the appeal was pending disposal before this Court. There was, therefore, a deliberate and wilful disobedience of the order dated 21.06.2008 which cannot be ignored by this Court as it amounts obstruction of the due course of justice and an affront to the majesty of law. Such attitude on the part of the Insurance Company not only defeats the object of Section 140 of the Motor Vehicles Act, 1988 of mitigating the plight of the victims of motor accidents or their representatives, but also prima facie amounts to civil contempt as defined under the Contempt of





Courts Act, 1971. Under such circumstances, I direct the Registry to register a suo moto case of civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971 against the Branch Manager, New India Assurance Co. Ltd. Gangtok Branch, and place the file before this Court for necessary orders on 16.02.2010 in view of the intervening winter vacation.

### **Civil Revision Petition No.08 of 2009**

The only question raised before this Court in the Revision Petition is that the award passed by the Claims Tribunal by its judgment dated 03.04.2008 in M.A.C.T. Case No. 17 of 2007, fastening upon the petitioner the responsibility of making the payment of the award, was erroneous and liable to be set aside as the victim of the accident being a gratuitous passengers travelling in a private vehicle was not covered under the terms and conditions of the insurance policy and that no extra premium was paid to cover the risk of such passengers.

2. The objection raised on behalf of the claimants/respondents no.1 to 3 are on two counts. They are: -

(1) The revision petition was barred by the law of limitation having been filed with a delay of 232 days and that there was no satisfactory explanation for it to be condoned; and

(2) That the remedy against the award passed by the Claims Tribunal being provided under Section 173 of the Motor Vehicles Act, 1988 the revision petition was not maintainable.



3. On 20.11.2009, this Court, after hearing the parties, formulated the following points to narrow down the points for consideration for a decision in this case: -

(i) Whether the delay in filing the Revision Petition can be condoned.

(ii) Whether the Revision Petition is maintainable.

(iii) Subject to the finding on the above, whether the Revision Petition would be maintainable on its merits.

....."

**Point (i) Whether the delay in filing the Revision Petition can be condoned.**

4. In considering this point I have perused the averments contained in the application under Section 5 of the Limitation Act, 1963 in order to be satisfied as to whether sufficient cause has been made out for the delay being condoned. It is found that the reasons for the delay has been set out in paragraphs 3 and 4 of the application which are reproduced below for convenience: -

"3. That the Petitioner Company had no knowledge about the pronouncement of Judgment/award passed by the Learned Tribunal due to lack of communication from their conducting counsel, after having come to learn about the Judgment/award on 3/11/2008 from their counsel at Namchi, the Petitioner company immediately applied for certified copy of Judgment/award on 04/11/2008, the certified copy was made ready on 7/11/2008.

4. That after receiving the certified copy on 7/11/2008, the Branch office of the Petitioner Company at Gangtok immediately forwarded the copy of the said order to the Divisional office at Siliguri for further instruction. The Division office in-turn forwarded the said order to the Regional office at Calcutta for further instruction in the matter. The Regional office referred the file to the Legal Department of the Appellant Company. The Legal Department further sought advice from the standing counsel at Calcutta. Ultimately the Branch office at Gangtok receive instructions on 16/11/2008 for preferring a Revision Petition against the Judgment/award. Accordingly the Branch Office contacted Shri Ashim

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Chettri and Dhurba Tewari, the junior counsel, to instructing Sr. Counsel Shri A. K. Upadhyaya for conducting a Revision Petition before this Hon'ble Court. The junior Counsel could finally prepared the Revision Petition by 19/11/2008 and after completing the formality the Revision Petition along with the application for condonation of delay is filed on 22/11/2008. That there has been delay of 232 days in preferring the Revision Petition."

5. Considering the facts and circumstances set out in the application for condonation of delay registered as Civil Misc. Application No.91 of 2008, this Court, in the interest of justice, condones the delay in filing the revision petition. C.M.A. No.91 of 2009 accordingly stands disposed of.

**Point (ii) Whether the Revision Petition is maintainable.**

6. This point has already been decided in Civil Revision Petition No.4 of 2009 which are set out in paragraphs 7, 8, 9 and 10 above. In view of this, it would not be necessary to deal with it further. The point is, therefore, decided against the petitioner as set out above and it is held that the Revision Petition is not maintainable.

**Point (iii) Subject to the finding on the above, whether the Revision Petition would be maintainable on its merits.**

7. Although it has been held that the revision petition is not maintainable, in view of the findings in Civil Revision Petition No.4 of 2009, on its merit also the revision petition would not be sustainable. This aspect of the case is fully covered by the judgment dated 01.12.2009 in M.A.C. Appeal No.01 of 2009 in the matter of **Senior Branch Manager, National Insurance**



**Co. Ltd. Vs. Smt. Namita Dixit and Others** in which this Court, after considering the scope of Section 147 (1)(b)(i) of the Motor Vehicles Act, 1988, has held that in an insurance policy prescribing the limits of liability under Section II (1)(i) of the Tariff Policy, the insurer would be liable for payment of such amount as may be awarded by the Claims Tribunal and that the policy brings within its cover gratuitous passengers also. Paragraph 15 and part of paragraph 22 of the judgement are reproduced below for convenience: -

"15. It is now well settled that Section 147(1)(b)(i) brings within its ambit all persons in the 'third party' category including passengers travelling gratuitously by interpretation of the term 'any person' appearing therein. Under sub-section 2 of Section 147 the limits of liability has been prescribed as the amount of liability incurred under the terms of the policy of insurance involved in the case.

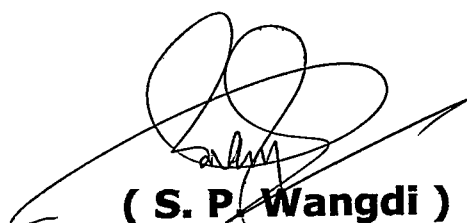
22. . . . . Therefore, it can be seen that in a case like the present one where the insurance policy has specifically incorporated "SECTION II - LIABILITY TO THIRD PARTIES" there can be no room for doubt that the policy also covers gratuitous passengers and the insured who is the respondent no. 3 herein, is fully covered of all risks connected with such category of passengers setting at naught the only ground of appeal set up by the appellant."

9. Against the column for 'Limit of Liability' provided in the insurance cover in the present case, undeniably contains the entry 'Limit of the account of the Company's Liability Under Section II-1 in respect of any one accident : as per Motor Vehicles Act, 1988'. Therefore, the victim of the accident who is a gratuitous passenger, stands fully covered by the insurance policy.



10. In the result, the Civil Revision Petition is dismissed as not being maintainable apart from the fact that it cannot be sustained on its merit also. In view of the fact that the claimants/respondents 1, 2 and 3 have already been paid the compensation in terms of the award passed by the Claims Tribunal, there shall be no order as to costs.

11. Records of the Motor Accident Claims Tribunal, South and West District, Sikkim at Namchi be sent back forthwith.

  
( S. P. Wangdi )  
**J U D G E**  
11.12.2009