



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

**MACApp Nos.04 & 05 of 2009**

1. The Branch Manager,  
Oriental Insurance Company Ltd.,  
573, Chirag Delhi,  
New Delhi.

2. The Branch Manager,  
Oriental Insurance Company Ltd.,  
Branch Office : M. G. Marg,  
Gangtok, East Sikkim.

..... Appellants

**VERSUS**

1. Shri Pawan Moktan,  
S/o Late Buddha Moktan

2. Ms. Parbil Moktan,  
D/o Late Buddha Moktan,  
All R/o Indira Bye Pass,  
Lingding Busty,  
P.O. & P.S. Gangtok,  
East Sikkim.

3. Mrs. Kanta,  
W/o Shri Daya Chand,  
1857/A, Kotla, Mubarak Pur,  
New Delhi.

..... Respondents

For Appellants : Mrs. Laxmi Chakraborty, Advocate  
with Ms. Manju Rai, Advocate.

For Respondent Nos.1 to 2 : Mr. Ajay Rathi, Advocate with Ms.  
Sushma Pradhan, Advocate.

For Respondent No. 3 : None appears.

**BEFORE : HON'BLE MR. JUSTICE S. P. WANGDI, ACTING CHIEF JUSTICE**

Last date of hearing : 13-05-2010

**DATE OF JUDGMENT : 17-05-2010**



## J U D G M E N T

Wangdi, ACJ.

The facts and circumstances of the aforesaid appeals being the same as in the case of MACApp no.3 of 2009 in the matter of Branch Manager & Anr. vs. M. K. Subba & Ors. as the deaths had occurred in the very accident involved in that case, they are not being dealt with to avoid repetition. In MACApp no.4 of 2009 arising out of the judgment dated 19-12-2006 in M.A.C.T. Case no.18 of 2006 of the Member, Motor Accident Claims Tribunal, East & North Sikkim at Gangtok, the claim has been made in respect of deceased Hem Kumari Lama (Moktan), the mother of respondents no.1 and 2, and in MACApp no.5 of 2009 arising out of the judgment dated 19-12-2006 in M.A.C.T. Case no.20 of 2006 of the Member, Motor Accident Claims Tribunal, East & North Sikkim at Gangtok, the compensation has been sought for in respect of the death of the deceased Buddha Tamang (Moktan) who was the husband of the deceased Hem Kumari Lama (Moktan) and the father of respondents no.1 and 2.

2. In all the 3 (three) cases, the primary witness is the same Mrs. Shrijana Pradhan, wife of Mr. Pawan Moktan, the respondent no.1, who had appeared as PW2. The FIR in these 2 (two) cases is the very same one involved in MACApp no.3 of 2009. The grounds set up by the appellants seeking to impugn the award in all the three appeals are common, i.e., the vehicle that met with the accident being a private car, had been hired out to the deceased, and this being a violation of the terms of the



insurance policy, the appellants-insurers could not be held liable for payment of the compensation. Therefore, the finding in respect of MACApp no.3 of 2009 would apply in equal force in these 2 (two) appeals and consequently result in them facing the same fate as MACApp no.3 of 2009.

3. In the result, these appeals stand dismissed.

4. The appellants are directed to pay the compensation awarded by the Claims Tribunal in equal portions to the respondents no.1 and 2 within a period of 30 days with interest computed from the date of the claim till it is finally paid to the claimants. Failing to comply with an additional interest of 2% shall be paid by the appellants-insurance company. The appellants are directed to submit compliance report within a period as stipulated herein.

5. No order as to costs.

6. A copy of the judgment be sent to the court below for information and compliance.

7. The records of the court below be returned forthwith.

( S. P. Wangdi )  
Judge

17-05-2010