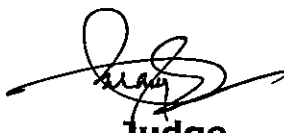




Serial No.	Date	Order (s) with Signature (s)
1	2	3
03.	11.04.2013	<p style="text-align: center;"><u>BEFORE</u></p> <p style="text-align: center;">HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present : Mr. A. K. Upadhyaya, Senior Advocate with Ms. Binita Chhetri and Ms. Dawa Jangmu Sherpa, Advocates for the Appellants.</p> <p>Mr. Sudesh Joshi, Advocate for Respondent No.1.</p> <p>Mr. B. Sharma, Senior Advocate with Mr. Pratap Sharma and Mr. T. T. Gurung, Advocates for the Respondent No.2.</p> <p style="text-align: center;">-----</p> <p>Upon hearing the Learned Counsels at length, the prayer made by Mr. B. Sharma, Learned Senior Advocate, appearing on behalf of Respondent No.2, the registered owner of the accident vehicle, that the case be remanded to the Learned Motor Accident Claims Tribunal, South and West Sikkim at Namchi, appears to have some force. The reason for arriving at this conclusion being the submission of Mr. Sharma that in the event of Respondent No.1, the Insurance Company, being held not liable to pay the claims it will be the Respondent No.2 upon whom the liability will fall, a burden which obviously is quite onerous; and that for want of proper assistance certain important documents could not be filed by the Respondent No.2 nor could he lead evidence effectively to bring forth his case.</p> <p>Mr. A. K. Upadhyaya, Learned Senior Advocate, appearing for the Appellants, submits that in the event of the case being remanded he may be permitted to cross-examine the witnesses that may be produced on behalf of the Respondent No.2.</p> <p>Mr. Sudesh Joshi, Learned Advocate, appearing for the Respondent No.1, does not object but only seeks for liberty to take up additional facts which appear not to have been taken earlier.</p>



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		<p>Considering the facts and circumstances stated by Mr. B. Sharma and the likely predicament that the Respondent No.2 may fall in, it would be in the interest of justice if the case is remanded to the Learned Motor Accident Claims Tribunal for affording the Respondent No.2 an opportunity to defend himself effectively. It is, therefore, directed that:</p> <p>(a) The case be remanded to the Learned Claims Tribunal for consideration on the aspect raised by Mr. B. Sharma;</p> <p>(b) The other parties are also at liberty to raise additional facts that may be relevant and germane for an effective adjudication of the matter; and</p> <p>(c) Consequently, the impugned Order stands set aside. The Learned Claims Tribunal upon consideration of the additional facts and evidence that may come on record, may consider the case afresh and decide it accordingly;</p> <p>However, it is made clear that the case shall be disposed of positively within a period of 2 (two) months. The Learned Counsels are requested to cooperate with the Learned Claims Tribunal to dispose of the case within this time frame.</p> <p>The case stands disposed of in terms of the above direction.</p> <p>No order as to costs.</p> <p style="text-align: right;"> Judge 11-04-2013</p> <p>Index : Yes/No Internet : Yes/No</p>