



THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Appellate Jurisdiction)

J U D G M E N T

S.B. MAC App. No. 11/ 2013

AND

Cross Objection No. 02/ 2014

The Branch Manager, National Insurance Co. Ltd.,
31-A, National Highway,
P.O. & P.S. Gangtok,
East Sikkim.

... Appellant/ Insurer.

- versus -

1. Shri Krishna Bdr. Chettri,
S/o Late Lall Bdr. Chettri,
Aged about 48 years.
2. Smt. Man Maya Chettri,
W/o Shri Krishna Bdr. Chettri,
Aged about 20 years.
3. Shri Hamal Chettri,
S/o Shri Krishna Bdr. Chettri,
Aged about 20 years.

All Residents of Namli Village,
Middle Camp,
P.O. Middle Camp & P.S. Ranipool,
East Sikkim.

..Respondents/ Claimants.

4. Shri Ritesh Agarwal,



S/o Shri Bijay Kumar Agarwal,
R/o Rhenock,
P.O. & P.S. Rhenock, East Sikkim.
(owner of vehicle SK-03/1007)

... **Respondent/ Owner.**

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**

Date of Judgment : 27.05.2014

For Appellant : Mr. Thupden Gyatso Bhutia,
Advocate.

For Respondents : M/s. Ajay Rathi, Sushma
No. 1, 2 and 3 Pradhan, Rahul Rathi and
Pema Wangmu Bhutia,
Advocates.

For Respondent No. 4 : Mr. Bhushan Nepal,
Advocate.

Jain, CJ.

Heard learned counsel for the parties.

2. This Appeal on behalf of National Insurance Co. Ltd., is directed against award dated 26.04.2013, passed by Motor Accident Claims Tribunal, East and North Sikkim at



Gangtok (for short ‘the Tribunal’) in MACT Case No. 03 of 2012, whereby learned Tribunal has awarded a total compensation of Rs.4,88,850/- (Rupees four lakh eighty eight thousand eight hundred and fifty) in favour of claimants/respondents in the following heads:

1.	Loss of earning	:Rs.2,59,350/-
2.	Funeral expenses	:Rs. 2,000/-
3.	Loss of estate	:Rs. 2,500/-
4.	Loss of love and affection	:Rs. 25,000/-
5.	Loss of future prospects	: <u>Rs.2,00,000/-</u>
	Total	: <u>Rs.4,88,850/-</u>

3. Learned counsel for the appellant submitted that the learned Tribunal has committed an illegality in awarding Rs.2,00,000/- towards loss of “future prospects” as the age of deceased was about 24 years and as per judgment of the Hon’ble Apex Court in the case of **Rajesh & Others vs. Rajbir Singh & Others** reported in **(2013) 9 SCC 54**, the compensation for future prospects of the deceased, where the deceased is below 40 years of age, could be 50% of the total income. He has submitted that loss of earning in the



present case has been assessed as Rs.2,59,350/-, therefore, 50% of the said amount comes to Rs.1,29,675/-, which should be awarded for “loss of future prospects” by the Tribunal in place of Rs.2.00 lakhs. No other point has been pressed on behalf of the appellant.

4. Learned counsel for respondents has not disputed the principles laid down by Hon’ble Apex Court in awarding compensation for future prospects in the case of **Rajesh & Others** (supra). However, he has submitted that as per judgment of the Hon’ble Apex Court in the case of **Reshma Kumari & Others vs. Madan Mohan and Another** reported in **(2013) 9 SCC 65**, the amount on account of funeral expenses should have been awarded as Rs.25,000/- in place of Rs.2,000/- awarded by the Tribunal.

5. Learned counsel for appellant has not disputed the principle laid down by the Hon’ble Apex Court in the case of **Reshma Kumari & Others** (supra) to award Rs.25,000/- towards funeral expenses.

6. Since learned counsel for appellant as well as respondents have not disputed the position of law in respect



of compensation to be awarded under the “funeral expenses” and “loss of future prospects”, the appeal can be disposed off by reducing the amount of compensation under the head “loss of future prospects” and increasing the amount under the head “funeral expenses”.

7. As agreed by the learned counsel for the parties, the amount of compensation in the present case is awarded as under: -

1.	Loss of earning	:Rs.2,59,350/-
2.	Funeral expenses	:Rs. 25,000/-
3.	Loss of estate	:Rs. 2,500/-
4.	Loss of love and affection:	Rs. 25,000/-
5.	Loss of future prospects	: <u>Rs.1,29,675/-</u>
Total		: <u>Rs.4,41,525/-</u>

8. So far as interest on the amount of compensation is concerned, the learned Tribunal has already awarded the interest @ 10% per annum from the date of filing of the claim petition. Therefore, there is no need to pass any further order in this regard and the same remains unchanged.



9. In view of above discussions, the appeal is partly allowed. The amount of compensation of Rs.4,88,850/- (Rupees four lakh eighty eight thousand eight hundred and fifty) awarded by the Tribunal is reduced to Rs.4,41,525/- (Rupees four lakh forty one thousand five hundred and twenty five) only. The impugned award dated 26.04.2013 is modified to the above extent.

10. In view of above, the Cross Objection No. 02 of 2014 filed by respondents also stands disposed off.

11. Since the accident took place in the year 2009 and Insurance Company has not paid the amount of compensation, therefore, the appellant Insurance Company is directed to pay the entire amount of compensation with interest payable to claimants/respondents, within a period of four weeks from today.

Sd/-
(N.K. Jain)
Chief Justice
27.05.2014

Approved for reporting: ~~Yes~~ / No
Internet : Yes / ~~No~~

pm/ jk