



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

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI , JUDGE

MAC App. No.03 of 2013

Appellants : 1. Shri Silli Man Subba,
Son of Late Purna Lall Limboo
aged 39 years,

2. Ms. Phungwama Subba,
Daughter of Shri Silli Man Subba
aged 11 years,

3. Ms. Phunglingsama Subba,
Daughter of Shri Silli Man Subba
aged 7 years,

All residents of Mansabung,
Yuksam,
P.O. Yuksam,
P.S. Gyalshing,
West Sikkim.

versus

Respondents : 1. Shri Man Bahadur Subba,
Son of Shri P. B. Subba,
R/o Yuksam,
P.O. Yuksam,
P.S. Gyalshing,
West Sikkim.

2. The Branch Manager,
Reliance General Insurance Company Limited,
First Floor, Geetanjali Complex,
Sevoke Road, Siliguri,
West Bengal.

Appeal under Section 173 of the Motor
Vehicles Act, 1988



Shri Silli Man Subba and Others vs. Shri Man Bahadur Subba and Another

Appearance

Mr. Tshewang Namgyal, Mr. Shrawan Kumar Prasad,
Mr. Khem Raj Sapkota and Mr. Suman Subba,
Advocates for the Appellants.

Mr. N. Rai, Senior Advocate with Ms. Tamanna
Chhetri and Ms. Bindu Gurung, Advocates for
Respondent No.1.

Mr. Manish Kumar Jain, Advocate for Respondent
No.2.

CO No.01 of 2013

Appellant : Shri Man Bahadur Subba,
Son of Shri P. B. Subba,
R/o Yuksam,
P.O. Yuksam,
P.S. Gyalshing,
West Sikkim.

VERSUS

Respondents : 1. Shri Silli Man Subba,
Son of Late Purna Lall Limboo

2. Ms. Phungwama Subba,
Daughter of Shri Silli Man Subba

3. Ms. Phunglingsama Subba,
Daughter of Shri Silli Man Subba
All residents of Mansabung,
Yuksam,
P.O. Yuksam,
P.S. Gyalshing,
West Sikkim.

4. The Branch Manager,
Reliance General Insurance Company Limited,
First Floor, Geetanjali Complex,
Sevoke Road, Siliguri,
West Bengal.



Shri Silli Man Subba and Others vs. Shri Man Bahadur Subba and Another

Cross Objection by way of Cross Appeal
under Order XLI Rule 22 of the Code
of Civil Procedure, 1908

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Bindu Gurung, Advocates for the Appellant.

Mr. Tshewang Namgyal, Mr. Shrawan Kumar Prasad, Mr. Khem Raj Sapkota and Mr. Suman Subba, Advocates for the Respondents No.1 to 3.

Mr. Manish Kumar Jain, Advocate for Respondent No.4.

J U D G M E N T

(24th November, 2014)

Wangdi, J.

1. The MAC App. and the Cross Objection are taken up together as they arise out of the same judgment impugned in the Appeal.

2. Taking up the MAC App. first, it has been filed seeking enhancement of the death compensation awarded to the Claimants (Appellants in MAC App. No.3 of 2013 and Respondents No.1 to 3 in CO No.1 of 2013) by the Learned Member, Motor Accident Claims Tribunal, South



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and West Sikkim at Namchi in MACT Case No.8 of 2012 (in short the "Learned Claims Tribunal") by the impugned judgment dated 19-02-2013.

3(i). As per the Appellants' case, his wife, the deceased, was a farmer and a private employee aged about 27 years earning a monthly income of ` 9,042/- (Rupees nine thousand and forty two). On 01-04-2012, while proceeding from Solophok, Namchi, South Sikkim to Mangsabung, Yuksam, West Sikkim, the vehicle having registration no.SK 02 J 0529 (Tempo Trax) in which she was travelling, met with an accident at Nandugaon, Jorethang-Namchi Road, South Sikkim, at around 1130 hours in which she died on the spot.

(ii) This led to the Appellants claiming compensation ` 19,26,548/- (Rupees nineteen lakhs twenty six thousand five hundred and forty eight) against the owner of the accident vehicle (Respondent No.1 in MAC App. No.3 of 2013 and Appellant in CO No.1 of 2013) and the Insurance Company (Respondent No.2 in MAC App. No.3 of 2013 and Respondent No.4 in CO No.1 of 2013) with which the accident vehicle was insured.



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(iii) The claim was contested only by the Respondent No.1 who filed a written objection denying and disputing the claims made by the Appellants. The Respondent No.2- Insurance Company, having failed to appear despite having received notice issued by the Learned Claims Tribunal, was proceeded *ex parte* by order dated 07-09-2012.

4. Based on the pleading of the parties and after hearing their Counsel, the Learned Claims Tribunal framed five issues which were as under: -

Issue No.1

Whether the vehicle bearing registration No.SK-02-J-0529 was met with an accident at Nandugaon near Jorethang, South Sikkim on 01.04.2012?

Issue No.2

Whether the deceased died due to the accident of Tempo Trax vehicle bearing registration No.SK-02-J-0529 on 01.04.2012?

Issue No.3

Whether the vehicle bearing registration No.SK-02-J-0529 was insured with Opposite Party No.2 at the time of accident and the documents of the vehicle in question was valid and effective at the time of accident?

Issue No.4

Whether the age of the deceased was 27 years at the time of accident?



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Issue No.5

Whether the Claimants are entitled to compensation as claimed in the claim petition?

5. After hearing the parties and in consideration of the evidence and the documents on record, the Learned Claims Tribunal decided all the issues in favour of the Appellants but, while deciding issue no.5, it was held that the Appellants could not prove that the monthly income of the deceased was ` 9,042/- as claimed by them, as they had failed to examine the Block Development Officer, Yuksam, West Sikkim (in short the "BDO"), who had issued the Income Certificate, Exhibit 21 (Annexure 7 in MAC App. No.3 of 2013) by which the annual income of the deceased had been certified as being ` 1,08,500/- which is ` 9,042/- per month. On these premises, the Learned Claims Tribunal notionally placed the income of the deceased as being ` 3,000/- (Rupees three thousand) per month and awarded compensation amounting to ` 5,76,500/-.

6. The owner-Respondent No.1 preferred the Cross Objection in the Appeal against the direction of the Learned Claims Tribunal contained in the impugned



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judgment directing deduction of ` 50,000/- (Rupees fifty thousand) from the final award which he had in fact been paid by him as interim compensation in compliance to order dated 02-11-2012 under Section 140 of the Motor Vehicles Act, 1988 (in short the "Act"). It is contended that the direction was erroneous as the Respondent No.2 who was held liable to pay the compensation, ought to have been directed to refund the amount of ` 50,000/- to him. It has been prayed that the impugned judgment be set aside to the limited extent and a direction be issued upon the Respondent No.2 to refund the sum of ` 50,000/- paid by him to the Appellants in compliance to order dated 02-11-2012 of the Learned Claims Tribunal.

7(i). It is relevant to note that although the Respondent No.2-Insurance Company chose not to prefer any Cross Objection, on 14-08-2013 it was submitted by Mr. Manish Kr. Jain, Advocate for the Respondent No.2, that as per instructions received by e-mail from one Rishavdev, Assistant Manager – Legal Claims, Reliance General Insurance Co. Ltd., Kolkata Service Centre, the insurance policy cover based upon which the claim had



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been made, was a fake one as the insurance policy cover bears the very same number as the one issued to one Mr. Narad Moni Sharma of Bermoik, P.S. Kala, West Sikkim – 737 125, the validity of which also had since expired on 16-12-2010. Considering the seriousness of the matter, direction was issued for investigation into the allegation by a competent officer of the Crime Branch, Sikkim Police, after registering a criminal case. The Appeal was thus adjourned *sine die* until completion of the investigation directing the parties to inform this Court as soon as it was over.

(ii) On being mentioned by the Appellants, the case was listed on 02-09-2014 when it was informed that charge-sheet under Sections 468/471/420/34 of the Indian Penal Code was filed against the erring official of Respondent No.2-Insurance Company, *inter alia*, for issuing forged insurance policy as genuine to the Respondent No.1-Owner of vehicle No.SK 04/7591. The case was then taken up for hearing on 30-09-2014. CM Appl No.255 of 2014 was also filed on behalf of the Appellants to place on record the charge-sheet submitted by the investigating agency in CID Case No.5 of 2013



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dated 17-08-2014 registered in pursuance to the order of this Court dated 14-08-2013.

(iii) During the course of the proceedings on 30-09-2014, Mr. Manish Kr. Jain, Advocate for the Respondent No.2, sought for liberty to file an affidavit to place on record certain facts, particularly with regard to the employment of the erring official of the Insurance Company. Although, the question as to whether the official was in employment under the Respondent No.2 when he had issued the fake policy was no more a matter of controversy after it was found that he was so during the investigation, yet liberty was granted as prayed for by him to file an affidavit by 03-11-2014 which was the date fixed for hearing. No such affidavit was, however, filed and the matter finally came up for hearing on 20-11-2014.

8. In the Appeal, primarily two grounds have been raised to assail the impugned judgment in respect of issue no.5 and they were – (a) the income certificate issued by the BDO, Exhibit 21, ought not to have been rejected by the Learned Claims Tribunal as it was issued by him in his official capacity and in exercise of the powers conferred



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upon him to issue such certificates. The decision was in conflict with the finding of this Court in ***Oriental Insurance Co. Ltd. vs. Meena Bania and Others : 2013 ACJ 565*** and, (b) The Learned Claims Tribunal had fallen in error in passing the award as a claim under Section 163A of the Act when it had been filed under Section 166 of the Act.

9. Mr. Tsewang Namgyal, Advocate, appearing on behalf of the Appellants, in his oral arguments, reiterated the above submissions and prayed that the award of compensation against pecuniary heads passed by the Learned Claims Tribunal being unreasonable and against the law of just compensation, the same be revised from ` 4,41,500/- to ` 13,26,500/- by enhancing the award against various components. It was also submitted that the denial of the award under Section 166 of the Act had deprived the Appellants from the claim on loss against future prospects and compensation against non-pecuniary damages of love and affection, mental shock and agony and loss of service of the deceased/wife/mother against which a distinct claim cumulatively amounting to ` 6 lakhs had been made raising the total compensation to ` 19,26,500/-



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10(i). On behalf of the Respondent No.2, Mr. Manish Jain, Advocate, pointed out that the certificate, Exhibit 21, issued by the BDO could not be relied upon which would be apparent from its bare reading. It was pointed out that the deceased had died on 01-04-2012 at the time of the accident but, the income certificate was said to have been issued on 10-05-2012, *inter alia*, on the basis of solemn affirmation on oath before the BDO on that very day. It was submitted that the deceased could not have made the solemn affirmation on 10-05-2012 when he had died on 01-04-2012 suggesting that the certificate contained false information. It was thus stated that there was no error in the impugned judgment on this account.

(ii) It was next argued that even if the claim is considered to be one under Section 166 of the Act, the Appellants would not be entitled to future prospects by application of the principle laid down in ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121*** where it was held that the Courts will usually take only actual income of persons at the time of death where the deceased persons were self-employed or on a fixed salary and that a departure



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therefrom should be made only in rare and exceptional cases involving special circumstances.

(iii) Mr. Jain then went on to argue, but rather feebly, that the Respondent No.2 ought not be held responsible for the action of its employee in issuing the fake insurance policy. In support of this submission reference was made to a judgment of the High Court of Delhi in the matter of ***United India Insurance Company Limited vs. Amaratta and Others : 2014 ACJ 1706***, where it had been held that since the false documents in respect of the offending vehicle and false insurance certificate were created by the driver and owner, both would be held jointly and severally liable to make the payment of compensation to the claimants. He contended that the Respondent No.2 was unaware of the omission and commission of its employee and also had not condoned his action.

11(i). Mr. N. Rai, Learned Senior Counsel, appearing on behalf of Respondent No.1-owner, in support of his Cross Objection, drew the attention of this Court to the documents filed in CM Appl No.255 of 2014, more



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particularly the charge-sheet, to impress upon this Court that the Respondent No.1 had produced the insurance policy in Court during the proceedings of the claim petition believing it to be genuine. It was also pointed out that the erring officer, Prosenjit Bhattacharjee, who had issued the fake insurance policy Exhibit 19 on 06-04-2012, was terminated by the Respondent No.1 only on 10-06-2013 for the fraud that he had committed. He then referred to an insurance policy cover filed in CM Appl No.331 of 2014 to point out that the insurance cover which had been obtained by the Appellant No.1 in the name of his sister filed as Annexure 'A' was, in the identical form as the fake one issued to the Appellant No.1, i.e., Respondent No.1 in the Cross Objection. This was done to impress upon this Court that the Appellant No.1 could not have been able to make out as to whether the policy issued to him in respect of the accident vehicle was a fake one. Mr. Rai submitted that the Respondent No.2 cannot escape from the liability for the action of its employee as it would be vicariously liable.

(ii) A decision of a Division Bench of the Hon'ble High Court of Calcutta in ***V. Ravi*** vs. ***M/s. New India***



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Calcutta 242 was referred to in submitting that if a question of fraud or mis-representation arises by and between the insurer and the insured, the third party claimant is not concerned with it in view of the statutory provisions contained in Section 149 of the Act by which a statutory liability is fixed on the insurance company to honour the award passed by the Claims Tribunal.

12. Supplementing the submission of Mr. N. Rai, Mr. Tsewang Namgyal, Advocate for the Appellants, submitted that the plea taken by the Respondent No.2 was a lame one as it had not questioned the genuineness of the seal of the company affixed on the questioned insurance policy except its content.

13(i). Upon hearing the Learned Counsel for the parties, pleadings and the records, I am of the view that the objections raised on behalf of the Insurance Company are not sustainable and rather find substance in the contentions raised on behalf of the Appellants.

(ii) On the first objection as regards the validity of the income certificate, Exhibit 21, issued by the BDO,



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Yuksam, the contention placed by Mr. Manish Jain does not appear to be correct. From the last entry in the income certificate, it is stated that the income had been prepared on the basis of the report of the R.S. (Gerethang) and on the basis of the solemn affirmation under oath before the BDO. The income certificate was obviously obtained by the Appellant No.1 in support of his claim and that could have been done only after the death of the deceased. Therefore, the oath by natural colorally would have been affirmed by the Appellant No.1, only after the death of his deceased wife. The fact that the claim petition was filed before the Learned Claims Tribunal on 10-07-2012 would also substantiate this. Considering the fact that Respondent No.2 chose not to appear despite notice before the Learned Claims Tribunal and that even after having been proceeded *ex parte*, no steps were taken to get the order set aside, objections of the present kind would not be permissible to be raised by them, which in any case appear to be quite trivial and devoid of any substance. That apart, the finding of the Learned Claims Tribunal that it was important to examine the BDO so that he could justify the income of the deceased and also know



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on what basis he had issued the certificate, is clearly perverse when in the very certificate, Exhibit 21, it has been most categorically noted that it was based upon the report of the R.S. (Gerethang) and on the basis of solemn affirmation under oath before the BDO.

(iii) There is another disturbing aspect in the finding of the Learned Claims Tribunal that the income certificate, Exhibit 21, issued by the BDO ought to have been proved by producing the BDO himself. As rightly pointed out by Mr. Tsewang Namgyal, in an earlier case decided by this Court on this very question, it had been held that there was no necessity to examine the BDO to prove as the certificate would fall within the meaning of a public document as provided under Section 74 of the Indian Evidence Act, 1872 and that judicial notice can be taken of it under Clauses (6) and (7) of Section 57 thereof.

(iv) Quite obviously, the finding of the Learned Claims Tribunal is in clear violation of this decision. In **A. K. Jain and Another vs. State of Sikkim and Another : AIR 1992 Sikkim 20** while dealing with a similar situation reference was made to **Harish Chandra Mishra and Others**



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Patna 65 (FB) wherein reference has been made at page 72 to Halsbury's Law of England, 4th Edition, Vol. 9, at page 30, which read as under: -

"9.

Judges of inferior courts are punishable by committal for acting unjustly, oppressively or irregularly in the execution of their duty; or for disobeying writs issued by the High Court requiring them to proceed or not to proceed in matters before them.

....."

Further, it was held that –

"16.

In India, the legal position has been made clear by S. 16(1) of the Contempt of Courts Act, 1971, which says that subject to the provisions of any law for the time being in force, a Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable. That the disobedience on the part of a judicial officer to a specific order of the High Court or deliberate conduct of not following the law laid down in a previous decision of the High Court amounts to contempt of court has the approval of the Supreme Court in Bardakanta Misra v. Bhimsen Dixit : AIR 1972 SC 2466. There the Supreme Court observed:

"15-16. The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of



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a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law.

.....

20. This is a case where the comments made in the earlier case did not evoke a positive response from him to make him adopt the correct judicial approach and work according to law binding on him. This is a serious matter. However, initiation of contempt proceedings is not the only way to deal with such a matter. I would like to postpone my decision on this matter."

[underlining mine]

This observation is being made not to take any punitive measure against the Learned Member, MACT but, simply to make all those concerned aware of the legal position with the hope and expectation that the omission shall not be repeated in future.

(v) Having said so, I am inclined to set aside the finding on the question in the impugned judgment and hold that the BDO being a public officer duly conferred with the authority to issue income certificates, it would not



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be mandatory to call him in the witness box to prove that he had indeed issued the income certificate. Even otherwise, it is trite that in cases filed under the provisions of the Motor Vehicles Act, 1988, the strict rules of evidence are not applicable. As noted earlier, the Respondent No.2- Company chose not to appear and contest the case before the Learned Claims Tribunal and produce evidence to the contrary. The finding on this by the Learned Claims Tribunal, therefore, stands set aside.

(vi) The second contention raised by Mr. Tsewang Namgyal that the award had been erroneously passed by the Learned Claims Tribunal under Section 163A of the Act, in my view, does not appear to be correct. On a perusal of the impugned judgment, it is quite evident that the Learned Claims Tribunal, while computing the compensation the relevant multiplier as prescribed under the Second Schedule to Section 163A of the Act was adopted and nothing further. The components of award on pecuniary and non-pecuniary damages claimed by the Appellants were awarded as being reasonable and just as per the Learned Claims Tribunal in the process of which the claim was drastically reduced from ` 19,26,548/- to



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₹ 5,76,500/-. While arriving at this figure, against claim of loss of earning of ₹ 13,02,048/- the Learned Claims Tribunal has awarded ₹ 4,32,000/-, against ₹ 2,00,000/- for loss of love and affection it has awarded ₹ 1,00,000/-, against claim of ₹ 1,00,000/- for mental shock and agony ₹ 25,000/- has been awarded, against transportation of dead body ₹ 10,000/- as claimed, against funeral expenses ₹ 2,000/- as claimed, against loss of consortium ₹ 5,000/- as claimed and against loss of estate ₹ 2,500/- as claimed. Claims against loss of services of deceased as wife/mother, future prospects and expenses on death rites appears to have been rejected. On a careful consideration, I do not find any error in the award except the one against loss of earning which was calculated by fixing notional income of ₹ 3,000/- per month by rejecting the income certificate as not proved.

(vii) As regards the claim against future prospects although no reason has been stated in the impugned judgment for not awarding it, it would not be permissible in view of the decision in **Sarla Verma (supra)** in which it has been held as follows: -



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"24.Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rarer and exceptional cases involving special circumstances."
[underlining mine]

In the case at hand when admittedly the deceased was self-employed, it would be permissible to take only the actual income.

(viii) As it has been held that the income certificate, Exhibit 21, is reliable and valid, the actual income is taken as ` 9,042/- per month and accordingly, the award against loss of earning arrived at by the Learned Claims Tribunal stands revised by calculating it in the manner following:-

Monthly income of the deceased as per income certificate	`	9,042.00
Annual income of the deceased (` 9042 x 12 months)	`	1,08,504.00
Less $\frac{1}{3}$ of ` 1,08,504/- [in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive]	(-)	<u>36,168.00</u>
Net annual pecuniary loss	`	72,336.00
Applicable Multiplier - 18 [The age of the deceased at the time of death about <u>27 years</u> and the relevant multiplier as per the Second Schedule is ' 18 ']	(` 72,336 x 18)	<u>13,02,048.00</u>

(Rupees thirteen lakhs two thousand and forty eight)



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(ix) Next, dealing with Cross Objection of the owner-Respondent No.1., in so far as the question as regards the fake insurance policy is concerned, it is not the case on behalf of the Respondent No.2, the Insurance Company, that Respondent No.1, the owner of the insured vehicle, had deliberately produced the fake certificate. Their only contention, as orally stated by Mr. Manish Jain, Advocate, was that the employer could not be made responsible for their employee in issuing such insurance policy and that they were not aware of such omission and commission. I am, however, not impressed by such contention and rather inclined to agree with the submission of Mr. Rai that the Respondent No.1 had produced the insurance policy, Exhibit 19, believing it to be a genuine one. On a perusal of the insurance policy obtained in the name of Ms. Sushma Subba, the sister of the Appellant No.1, Annexure 'A' and the questioned policy, Exhibit 19, it is difficult to identify the fake and the genuine one. It is also not the case of the Respondent No.2-Insurance Company that the Respondent No.1-owner had colluded with its employee to obtain the fake insurance policy. Even otherwise also, it is difficult to believe that an insured would obtain a fake



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certificate by paying the same premium at his own risk and cost.

(x) The case of ***Amaratta (supra)*** relied upon by Mr. Jain is clearly distinguishable from the facts of the present case, as the decision was rendered where the false document and the false insurance certificate were created by the driver and the owner and, therefore, were held jointly and severally liable to make the payment of compensation of the claims. In the present case, it was the employee, Prosenjit Bhattacharjee, who had played fraud upon the Respondent No.1 by issuing the fake insurance policy for his own illegal gain. Under the circumstances, the Respondent No.2- company cannot be absolved from the liability of the action of its employee by application of the principles of vicarious liability.

(xi) There is another aspect to this which would make the resistance of the Respondent No.2 untenable. Under Sub-Section (1) of Section 149 of the Act, there is an obligation placed upon the insurer to honour the award passed by the Learned Claims Tribunal as if he is the judgment-debtor in respect of the liability. The only



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defence available to an insurer is prescribed under Sub-Section (2) of Section 149 of the Act as provided under Clauses (a), (b) and Sub-Clauses thereunder. The objection sought to be raised on behalf of the Respondent No.2 and that too only, at the stage of Appeal, clearly do not fall under those defences. For this reason also, I hold that there is no merit in the objection raised on behalf of the Respondent No.2.

14. For the reasons aforesaid, the award passed by the Learned Claims Tribunal in the impugned judgment stands modified as under duly maintaining the rest of the award which shall remain unaltered: -

Loss of earning		˘	13,02,048.00
Funeral expenses	(+)	˘	2,000.00
Loss of estate	(+)	˘	2,500.00
Loss of love and affection	(+)	˘	1,00,000.00
Loss of consortium	(+)	˘	5,000.00
Transportation of dead body	(+)	˘	10,000.00
Mental shock and agony	(+)	˘	25,000.00
Less : interim compensation [Rs.50,000/- as interim payment received by the Appellants vide order dated 02-11-2012]	(-)	˘	<u>50,000.00</u>
Total	-	˘	<u>13,96,548.00</u>

(Rupees thirteen lakhs ninety six thousand five hundred and forty eight)



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15. The compensation shall be divided in three equal parts in favour of Appellants. The shares of the minor Appellants shall be kept in Fixed Deposits in a Nationalised Bank in separate accounts in their respective names until such time they attain the age of majority. The third share in the name of the Appellant No.1, the husband of the deceased, shall be released and disbursed to him to enable him to meet the household expenses and the expenditure towards the upkeep and education of the minor children.

16. It is made clear that the Fixed Deposits kept in the names of the two minor children, shall not be pledged against any form of advances and be kept encumbered. This shall be conveyed to the Nationalised Bank where the Fixed Deposit Accounts are being opened.

17. In the event of dire necessity in the interest of the family, it shall be open for the Appellants to approach this Court for relaxation of these conditions.

18. In the result, the MAC App. is partly allowed.



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19. Since the issues raised in the Cross Objection being No.1 of 2013 has also been dealt in this judgment together with MAC App. No.3 of 2013 and, that it has been held Respondent No.2 is liable under the policy of insurance to pay the compensation even as per the Learned Claims Tribunal, the amount of ` 50,000/- paid to the Appellants (Respondents No.1 to 3 in the Cross Objection) by the Respondent No.1 (Appellant in the Cross Objection) as interim compensation under Section 140 of the Act as per the order dated 02-11-2012 of the Learned Claims Tribunal, it shall be refunded to the Respondent No.1 (Appellant in the Cross Objection) by the Respondent No.2, the Insurance Company (Respondent No.4 in the Cross Objection) thereby allowing the Cross Objection.

20. Considering the fact that the accident took place as far back as on 01-04-2012, the Respondent No.2- Company is directed to pay the compensation to the Appellants within thirty days from hence and not later than that. The refund of ` 50,000/- to the Respondent No.1 by the Respondent No.2, as directed above, shall also be made within a period of thirty days.



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21. A report of compliance of the directions shall be filed by the Respondent No.2-Company on or before the expiration of the period as stipulated by this Court.

22. With the above observations, the MAC App. and Cross Objection are disposed of.

23. A copy of this judgment and the original case records be transmitted to the Court of the Learned Member, Motor Accident Claims Tribunal, South Sikkim at Namchi, for necessary compliance.

Sd/-
(**S. P. Wangdi**)
Judge
24-11-2014

Approved for reporting : Yes

Internet : Yes