



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

Single Bench: HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.

**MAC App. No. 08 of 2015**

**APPELLANT:**

1. The Branch Manager,  
National Insurance Co. Ltd.,  
Opp. Tourism Department,  
31-A National Highway,  
P.O and P.S. Gangtok,  
East Sikkim.

***VERSUS***

**RESPONDENTS:**

- 1 Mr. Navin Cintury,  
S/o Nanda Lall Cintury,  
R/o Tarku, Zero Mile,  
P.O. Tarku & P.S. Temi,  
South Sikkim.
2. Mr. Nar Bahadur Pradhan,  
S/o Late Bhir Dhoj Pradhan,  
R/o Temi Bazar,  
P.O & P.S Temi,  
South Sikkim.

**An Application under Section 173(1) of the Motor Vehicles Act, 1988.**

**Appearance:**

Mr. Thupden G. Bhutia, Advocate for the Appellant No. 1.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chettri and Ms. Malati Sharma, Advocates for the Respondent No.1.

Mr. Pema Tamang and Ms. Geeta Subba, Advocates for the Respondent No. 2.

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

( 19.08.2015 )

**Meenakshi Madan Rai, J.**

*1.* Pursuant to a Motor Vehicle accident that occurred on 26.11.2011 near Damthang Secondary School, under the jurisdiction

of Temi Police Station at South Sikkim, the Victim Kripa Cintury succumbed to her injuries at North Bengal Neuro Centre, Siliguri, West Bengal on 1.12.2011. Before the Motor Accidents Claims Tribunal by filing a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 the Claimant (Respondent No.1 herein) sought compensation calculated at Rs.41,87,696/- (Rupees forty one lakhs, eighty seven thousand, six hundred and ninety six) only. The learned Tribunal after appreciation of the evidence and documents on record, awarded a total compensation of Rs.61,10,977/- (Rupees sixty one lakhs, ten thousand, nine hundred and seventy seven) only, to the Respondent No.1 in MACT Case No. 5 of 2013.

2. The aforesaid decision of the learned Tribunal is being assailed by the Appellant herein, *inter alia* on the ground that there was Contributory Negligence on the part of the deceased victim and hence the compensation awarded be reduced by half, apart from which, it is contended that the multiplier adopted by the Tribunal while calculating the compensation ought to have been based on the age of the Claimant and not that of the deceased.

3. Before the learned Tribunal six issues were framed. The issue that is being pressed in Appeal is Issue No.3, which reads as follows:-  
“... *Whether there was any Contributory Negligence on the part of the deceased?*”

4. It is the specific argument of the Learned Counsel for the Appellant Mr. Thupden G. Bhutia, that the Victim had infact had her head protruding from the window of the vehicle, consequently, when the Driver swerved his vehicle to make way for a vehicle approaching from the opposite direction, she struck her head on an iron pole on the

side of the road which led to her death. That, had she been sitting in the vehicle without jutting out her head the accident would not have been fatal. That, infact, the side view mirror of the vehicle and the foot rest on the outer body of the vehicle were also damaged due to the accident but nothing inside the vehicle was damaged, which clearly proves that the deceased contributed to the accident by her conduct which led to her demise.

5. By filing an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 read with Section 151 of the same Code, the learned Counsel for the Appellant sought to and was granted permission to take on board additional documents being certified copies of the Order Sheets of the Learned Judicial Magistrate (South Sikkim), at Namchi in General Register Case No. 60 of 2012, State vs. Bijay Bhandari. While relying on the said Order, it was contended that the Driver of the vehicle in accident, the accused in the General Register Case *supra* was discharged of the offences under Section 279, 304 A read with Section 201 of the Indian Penal Code, 1860 and Section 183, 184, 187 of the Motor Accidents Act, 1988 by the learned Trial Court having reached a finding that there were no *prima facie* materials against the Accused Driver. That, the findings of the learned Trial Court absolves the accused Driver of any wrong doing laying the cause of death on the doorstep of the Victim herself.

6. That, the Investigating Officer who had submitted an Investigation Report under Section 174 of the Cr. P.C. in connection with Pradhan Nagar Police Station U/D Case No. 81 dated 2.12.2011, has in his Report lent credence to the fact that the Victim had protruded her head from the window and was thus hit by a tree and a pole. That, although learned Counsel for the Appellant is conscious of

the fact that the compensation claimed is under a benevolent legislation nevertheless in view of the conduct of the Victim, it is evident that she was responsible for Contributory Negligence.

7. The next leg of the argument of Learned Counsel for the Appellant was that once the Claimant has filed a Petition u/s 166 of the Motor Vehicles Act, 1988 and not u/s 163 'A', he has necessarily to establish the rash and negligent act of the Driver, which in this case was not done. He has placed reliance on *Surendra Kumar Arora and Another vs. Manoj Bisla and Others : (2012) 4 SCC 552* to buttress this submission. That, accordingly in view of the facts and circumstances the compensation payable by the Appellant be reduced by 50%.

8. *Per contra*, Learned Sr. Counsel Mr. N. Rai fervidly defending the case of the Claimant, took the stand that the records of a criminal case cannot be taken into consideration for purposes of computing compensation in a Motor Accidents Claims case for the reason that they require different standards of proof. Towards this submission, he has drawn the attention of this Court to the decisions in the following cases:-


1. *1977 ACJ 37 : Mrs. Pushpa vs State of Jammu and Kashmir,*
2. *1984 ACJ 525 Shabbir Ahmed and another vs. Madhya Pradesh State Road Trans. Corpn. and others,*
3. *AIR 1987 Rajasthan 146 : Smt. Prem Kanwar and others vs. Rajasthan State Roadways Corporation and another,*
4. *1991 ACJ 542 : Andhra Pradesh State Road Trans. Corpn. and another vs. Sravaji Aruna and other and*
5. *1994 ACJ 709 : Dhanwanti and others vs. Kulwant Singh and others.*

**9.** It was put forth that the accident occurred in a place where the road was wide enough and the vehicle went approximately three feet off the pitched road onto the grass edges, hitting a Traffic Sign Post on the side of the road on which the Victim injured her head, leading to her death. That, this establishes the rash and negligent driving on the part of the Driver. He has placed reliance on the evidence of Bikram Rai, a passenger in the vehicle (PW-3 before the learned Tribunal) and urges that the evidence of this witness categorically substantiates the fact of rashness of the Driver. That, infact, the cross-examination of the Driver himself also supports the evidence of PW-3. It is vociferously contended that the Victim obviously did not contribute to the action of the Driver taking his vehicle off the pitched road and hence is not liable for Contributory Negligence. That, although the Driver asserts that there was a vehicle coming from the opposite side, this does not emerge in the evidence of PW-3 or in the investigation of the criminal case relied on by the Appellant himself, hence the compensation awarded by the Tribunal requires no interference.

**10.** The Respondent No.2 made no submission on grounds that the claim was not made against him.

**11.** I have heard the parties at length and perused the entire evidence and documents furnished before the learned Tribunal and before this Court under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

**12.** The evidence of the Claimant in connection with the accident being mere hearsay is not taken into consideration. The fact that the accident took place is supported by the evidence of PW-2, a mechanic



who repaired the vehicle after the accident, while PW-3, a passenger in the ill-fated vehicle deposed that the Driver of the vehicle suddenly accelerated without considering the safety of his vehicle and that of the passengers, and drove at such a speed that he lost control over the vehicle. As there was a curved road at the place of occurrence, therefore the left side of the vehicle hit the iron Traffic Sign Pole which was at a distance of three feet and six inches from the edge of the road. The evidence concerning rash driving has clearly not been demolished under cross-examination and this witness has not supported the case of the Appellant, that, the deceased was protruding her head out from the window on the left side of the vehicle. He has denied that the victim sustained injuries on her head due to her own Contributory Negligence.

**13.** Although, the Driver of the vehicle deposed that the Victim sustained injuries while looking out of the vehicle but under cross-examination admitted that he could not say as to what extent the deceased had taken out her head from the vehicle, at the same time he also admitted that the road where the accident occurred was a wide place and the pole against which the deceased struck her head was located after the patch of grass, around three feet alongside the edge of the road. As pointed out by learned Counsel for the Claimant, although the Driver has alleged that there was a vehicle approaching from the opposite direction, the evidence of PW-3 Bikram Rai, does at all lend support to this contention of the Driver.

**14.** In the backdrop of the above evidence, the question of Contributory Negligence is taken up. Contributory Negligence as the words itself suggests is an expression which implies that the person who suffered damage is also guilty of some negligence and has

contributed towards the damage. In such a case, the loss is to be apportioned between the parties who can be held guilty of negligence by an act or omission on their part. It goes without saying that decisions of criminal cases cannot be foisted upon the Claimant for the purposes of computing compensation in a Motor Accidents Claims case. It would suffice to remark here that the standard of proof in a criminal case requires the matter to be proved "beyond a reasonable doubt", while matters under the Motor Accidents Claims are looked into on the basis of "preponderance of probability".

**15.** No independent witness has vouched for the fact that the Victim had protruded her head from the window of the seat where she was seated. On the other hand, it has emerged in the evidence that the vehicle was driven in a rash and negligent manner, which can be gauged from the fact that the vehicle left the "black topped" portion of the road and was driven on the grassy flanks where the iron traffic post also stood. The Driver has not been able to categorically depose that the Victim contributed to the accident.

**16.** There is a duty cast on every Driver of a vehicle to ensure that the lives of persons travelling in his vehicle are not put in jeopardy. If the driver was disturbed by the glare of the lights of the approaching vehicle, as asserted by him, ordinary prudence would demand that he slow down or stop his vehicle. Evidently, the Driver in this case did neither. He went off the road unto the grassy flanks presumably at the same speed and hit the iron post consequent to which the Victim met with her death.

**17.** Rashness does not consist only in high speed but also requires the Driver to bear in mind the Rules of safety and prudence. The road in question is not said to be a crowded road, neither is it the case of either party that the road was narrow and could not accommodate two vehicles on the pitched portion (Bitumen top), the Driver for this part having admitted that the road was wide at the place where the accident occurred. To be fair, it must be emphasized here that the Driver is not expected to check whether every passenger is seated properly but he is required to exercise caution when driving his vehicle to avert any untoward event.

**18.** In view of the discussions *supra*, I concur with the findings of the learned Tribunal on Issue No.3 and accordingly hold that there was no Contributory Negligence on the part of the deceased.

**19.** In the second leg of his argument, it was contended by learned Counsel for the Appellant that a wrong multiplier was adopted by the learned Tribunal while calculating the compensation, which ought to have been based on the age of the Claimant.

**20.** Having considered the submissions, I find that the question of taking the age of the Claimant into consideration for calculation of compensation does not arise, as the Hon'ble Apex Court in *Amrit Bhanu Shali and Ors vs. National Insurance Co. Ltd. and Ors.* (2012) 6 Scale 1 has laid down as follows " *17. The selection of multiplier is based on age of the deceased and not on the basis of the age of the dependents. There may be a number of dependents of the deceased whose age may be different and therefore the age of the dependents has no nexus with the computation of compensation.*" The learned



Tribunal has correctly adopted the multiplier as laid down by the Hon'ble Supreme Court.

21. However, considering that the Respondent No.1 is the only Claimant and also an earning member being a Government employee serving as Lance Naik, and therefore not totally dependent on the earnings of the Victim, the observation of the Hon'ble Supreme Court in *Smt. Sarla Verma and Ors. Vs. Delhi Transportation Corporation and Ors. AIR 2009 SC 3104* is taken into account in which it was *interalia* held that;

*" Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. "*

22. Consequently, the loss of earnings calculated by the learned Tribunal at Rs.88,77,264/- (Rupees eighty eight lakhs, seventy seven thousand, two hundred and sixty four) only, be reduced by 50% on the presumption that the Victim would have expended the said amount on her own maintenance and upkeep instead of reducing it by only 1/3<sup>rd</sup> as done by the learned Tribunal. Therefore, the loss of earning amounts to Rs.44,38,632/- (Rupees forty four lakhs, thirty eight thousand, six hundred and thirty two) only.

23. Loss of Consortium of Rs.1,00,000/-, Funeral Expenses of Rs.25,000/- and Medical Expenses of Rs.65,300/- as granted by the Learned Tribunal are not disturbed.



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24. In conclusion, the total compensation is calculated at Rs. 46,28,932/- (Rupees forty six lakhs, and twenty eight thousand, nine hundred and thirty two) only, instead of Rs.61,10,977/- (Rupees sixty one lakhs, ten thousand, nine hundred and seventy seven) only, payable by the Appellant to the Respondent No.1/Claimant.

25. In the end result, the Judgment of the learned Tribunal is modified to the above extent.

26. Appeal succeeds in part.

27. No costs in the circumstances.

28. Records of the Learned Tribunal may be returned forthwith.

*Sd/-*  
**(Meenakshi Madan Rai)**  
**Judge**  
**19.8.2015**

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