



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

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

MAC App. No.13 of 2014

Appellant- Insurer : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
East Sikkim.

versus

Respondents-Claimants : 1. Shri Nimai Chandra Pal,
S/o Late Radha Krishna Pal,
aged about 64 years

2. Smt. Kavita Pal,
W/o Shri Nimai Chandra Pal,
aged about 61 years

3. Shri Nishant Pal,
S/o Shri Nimai Chandra Pal,
aged about 32 years

All residents of A/3 Kunj Duplex,
Near Vrajdhara Society,
Ramji Mandir Lane,
Beside Padam Park Society,
Opposite Novino, Tarshali,
Vadodara,
Gujarat.

Respondent-Vehicle Owner : 4. Shri Sonam Topgyal Bhutia,
S/o Shri Tsangyal Lachenpa,
C/o Shri Nedup Lachenpa,
Presently residing at
Swastik, Near GREF Gate,
P.O. Raj Bhawan,
P.S. Gangtok,
East Sikkim.



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Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant-Insurance Company.

Mr. Ajay Rathi, Advocate with Mr. Rahul Rathi and Ms. Pema Wangmu Bhutia, Advocates for the Respondents No.1 to 3.

Mr. Bhushan Nepal, Advocate for the Respondent No.4.

J U D G M E N T

(1st May, 2015)

Wangdi, J.

1. This Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act of 1988") to assail the judgment of the Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for short the "Claims Tribunal") dated 29-05-2014 in MACT Case No.820 of 2013 by which compensation of ` 91,62,410.24 (Rupees ninety one lakhs sixty two thousand four hundred ten and paise twenty four) with interest @ 10% per annum was awarded apportioning it amongst the three



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Claimants @ ` 34,35,903.84 (Rupees thirty four lakhs thirty five thousand nine hundred three and paisa eighty four) for the Respondents No.1 and 2, the father and mother respectively of the deceased, and ` 22,90,602.56 (Rupees twenty two lakhs ninety thousand six hundred two and paisa fifty six) for the Respondent No. 3, the brother.

2. The Claim Petition under Section 166 of the Act of 1988 arose out of the death of one Priya Pal in a motor accident on 14-04-2013 at 9th Mile, J. N. Road, East Sikkim, while travelling with her friends as tourists in a vehicle owned by Respondent No.4.

3. Although in the memo of appeal several grounds have been raised to assail the impugned judgment, Mr. Thupden G. Bhutia, Learned Advocate, appearing on behalf of the Appellant-Insurance Company, in the course of his argument, confined himself only on the questions of (a) the application of the multiplier with cognate issue of "just and reasonable" compensation and, (b) apportionment of the award of compensation in favour of the Respondent No.3, the brother of the deceased.



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We may, therefore, confine ourselves on these two questions only.

4(i). On the first question, it was submitted that the Claims Tribunal had committed an error in basing the multiplier on the age of the deceased when it ought to have been of the Claimants in view of the following decisions: -

- (a) ***New India Assurance Co. Ltd. vs. Charlie and Another : (2005) 10 SCC 720;***
- (b) ***New India Assurance Company Ltd. vs. Shanti Pathak (Smt) and Others : (2007) 10 SCC 1;***
- (c) ***Shakti Devi vs. New India Insurance Company Limited and Another : (2010) 14 SCC 575;***
- (d) ***National Insurance Company Limited vs. Shyam Singh and Others : (2011) 7 SCC 65;***
and
- (e) ***Kishan Gopal and Another vs. Lala and Others : (2014) 1 SCC 244.***

(ii) It was contended that the Trial Court had mis-directed itself in relying upon ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121*** on the assumption that it laid down the principle that the multiplier ought to be based upon the age of the



deceased when the issue with regard to the application of multiplier had not at all been the subject-matter of adjudication in that case. As per the Learned Advocate, the Hon'ble Supreme Court had only rationalised the multiplier after considering a number of its earlier decisions. It was contended that by resorting to such erroneous assumption the claimants were awarded exorbitantly high amounts which was opposed to the principle of "just and reasonable" compensation as laid down in ***Divisional Controller, KSRTC vs. Mahadeva Shetty and Another : (2003) 7 SCC 197.***

5. Mr. Ajay Rathi, Learned Advocate, appearing on behalf of the Respondents No.1 to 3, supporting the impugned judgment strongly argued that the Claims Tribunal had correctly applied the principle laid down in ***Sarla Verma's case (supra)*** in identifying the multiplier. It was contended that the guidelines prescribed in that case for assessing compensation have been consistently followed in the later decisions of the Hon'ble Supreme Court as well as this Court. Reference was made in this regard to the following decisions:



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- (a) *National Insurance Company Limited* vs. *Gurumallamma and Another* : (2009) 16 SCC 43;
- (b) *P. S. Somanathan and Others* vs. *District Insurance Officer and Another* : (2011) 3 SCC 566;
- (c) *Amrit Bhanu Shali and Others* vs. *National Insurance Company Limited and Others* : (2012) 11 SCC 738;
- (d) *Vimal Kanwar and Others* vs. *Kishore Dan and Others* : (2013) 7 SCC 476;
- (e) *Reshma Kumari and Others* vs. *Madan Mohan and Another* : (2013) 9 SCC 65; and
- (f) *Branch Manager, Bajaj Allianz General Insurance Co. Ltd.* vs. *Smt. Sanu Rai and Others* : 2014 (3) TAC 403 (Sikkim).

6(i). Upon hearing the Learned Counsel for the parties, I find that the bone of contention between the parties is obviously the question as to whether in a claim arising out of accidental death, it was the age of the deceased or the age of the claimants that was the relevant factor for identifying the appropriate multiplier for the purpose of arriving at a "just and fair" compensation. This question, in my view, is now no more *res integra* in view of the decision in *Reshma Kumari (supra)* rendered by a three-Judges' Bench of the Hon'ble Supreme Court which



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has clarified this position on a reference made on the question by a two-Judges' Bench of that Court. The questions that were referred for consideration by the larger Bench were as follows: -

"1.1. Whether multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short "the 1988 Act") should be scrupulously applied in all cases? and

1.2. Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospect?"

(ii) The Hon'ble Supreme Court while deliberating upon the two questions, had the occasion to go through a plethora of its earlier judgments including ***General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.) and Others : (1994) 2 SCC 176; U.P. State Road Transport Corporation and Others vs. Trilok Chandra and Others : (1996) 4 SCC 362; Charlie (supra)*** and observed that in ***Sarla Verma (supra)*** exercise was undertaken by the Hon'ble Supreme Court of comparing the multiplier indicated in ***Susamma Thomas (supra), Trilok Chandra (supra)*** and ***Charlie (supra)*** for claims under Section 166 of the Act of 1988, with the multiplier mentioned in the Second Schedule for claims



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under Section 163A of the Act of 1988 (with appropriate deceleration after 50 years) and noted the Table worked out in that case which is reproduced below for convenience: -

<i>Age of the deceased</i>	<i>Multiplier scale as envisaged in Susamma Thomas</i>	<i>Multiplier scale as adopted by Trilok Chandra</i>	<i>Multiplier scale in Trilok Chandra as clarified in Charlie</i>	<i>Multiplier specified in Second Column in the Table in Second Schedule to the MV Act</i>	<i>Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18
26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15
41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

(iii) Thereafter, it was followed by the following observation: -

“29. In para 42 of the Report, this Court in *Sarla Verma* laid down that the multiplier shall be used in a given case in the following manner : (SCC 140)

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared



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by applying *Susamma Thomas, Trilok Chandra and Charlie*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years); reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

30. The above exercise was undertaken in *Sarla Verma* to ensure uniformity and consistency in the selection of multiplier while awarding compensation in motor accident claims made under Section 166.

31. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the Claims Tribunal which appears to it to be just. The expression, "just" means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously "just compensation" does not mean "perfect" or "absolute" compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case."

[underlining mine]

(iv) By referring to *Taff Vale Rail Co. vs. Jenkins* : [1911-13] All E. R. Rep. 160 (HL) and *C. K. Subramania Iyer and Others vs. T. Kunhikuttan Nair and Others* : (1969) 3 SCC 64, it was held that the determination of compensation was not an exact science and the exercise would involve an assumption based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into



consideration and further that award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor. It was then held that determination of compensation based on multiplier method was the best available means and the most satisfactory method and “must be followed invariably by the tribunals and courts”. Approving the Table prescribing the multiplier reproduced above in the case of ***Sarla Verma (supra)***, it was held that in all cases of death where application has been made under Section 166 of the Act of 1988 the multiplier as indicated in Column (4) in the Table of ***Sarla Verma (supra)*** should be followed. Ultimately in paragraph 43, it has been summed up as under: -

“43. In what we have discussed above, we sum up our conclusions as follows:

43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in *Sarla Verma* read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier



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of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of *Sarla Verma* for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the judgment in *Sarla Verma*.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in *Sarla Verma* subject to the observations made by us in para 41 above."

[underlining mine]

(v) As can be seen from paragraph 43.1, where the age of the deceased is 15 years and above, the Claims Tribunal shall select the multiplier as indicated in Column (4) of the Table prepared in *Sarla Verma (supra)* read with paragraph 42 of the judgment. In paragraph 43.4, it has been directed that the Claims Tribunal shall follow the steps and and guidelines stated in paragraph 19 of *Sarla Verma (supra)* for determination of compensation in cases



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of death. In the backdrop of the above, we may reproduce paragraph 19 of ***Sarla Verma (supra)*** which reads as under: -

"19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.



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The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added." [underlining mine]

(vi) On a bare reading of 'Step 2' which is relevant for the purpose of determining the question in the present case, it clearly lays down that the appropriate multiplier should be selected having regard to the age of the deceased and period of active career and, that the multiplier should be chosen from the Table with reference to the age of the deceased. Nothing would be more precise and clearer than this. This would also be apparent from the heading of Column (1) in the Table worked out in ***Sarla Verma (supra)*** extracted earlier which reads as "*Age of the deceased*". This, in my view, answers the entire questions on the matter raised on behalf of the Appellant-Insurance Company rendering anything else to the contrary unsustainable.

(vii) As noted earlier, a two-Judges' Bench of the Hon'ble Supreme Court had referred the issue pertaining to the assessment of dependency and application of multiplier to a larger Bench, in view of the divergence of



opinion and the aspect having not been considered in the earlier decisions and also the absence of clarification from the Parliament despite recommendations made by the Hon'ble Supreme Court in *Trilok Chandra (supra)*. This would be apparent from paragraph 4 of *Anjani Singh and Others* vs. *Salauddin and Others* : 2014 (6) Scale 55 and paragraph 3 of *Shashikala and Others* vs. *Gangalakshmamma and Another* : 2015 (3) Scale 668. Pursuant thereto, the matter having been placed before a larger Bench, decision in *Reshma Kumari (supra)* was rendered wherein the points were answered in paragraph 43 and sub-paragraphs thereunder which we have reproduced earlier. Following those answers, the two-Judges' Bench in *Anjani Singh (supra)* fixed the multiplier on the age of the deceased and the compensation accordingly worked out.

(viii) The principle laid down in *Sarla Verma (supra)* and *Reshma Kumari (supra)* was also followed in *Puttamma and Others* vs. *K. L. Narayana Reddy and Another* : AIR 2014 SC 706 where the fact that the view taken in *Sarla Verma (supra)* was affirmed by a three-Judges' Bench of the Hon'ble Supreme Court in *Reshma Kumari (supra)* was



noticed and, accordingly the relevant multiplier in the Table prepared in ***Sarla Verma (supra)*** based on the age of the deceased at the time of his death, was chosen and the compensation worked out.

(ix) In ***Shashikala (supra)*** also the principle laid down in ***Sarla Verma (supra)*** and ***Reshma Kumari (supra)*** has been noted with approval and followed.

(x) It was also precisely for the reasons aforesaid that this Court in ***Sanu Rai (supra)*** had based it on the age of the deceased in determining the multiplier following ***Sarla Verma (supra)***.

7(i). The next is on the question of the Respondent No.3 being not a 'dependant' of the deceased. I find considerable force in this contention placed on behalf of the Appellant-Insurance Company in view of the established and undeniable position that the Respondent No.3 is the brother of the deceased who has his own establishment with source of income of his own. Even the father of the deceased, Respondent No.1, would not be considered as a 'dependant' of the deceased admittedly being a pensioner upon which he sustains himself, leaving



the mother, Respondent No.2, alone who can be considered as a 'dependant'. In *Reshma Kumari (supra)*, the following observation in *Sarla Verma (supra)* was noted with approval: -

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father." [underlining mine]

(ii) In view of the above, I am inclined to agree with the submission made on behalf of the Appellant-Insurance Company that neither the father of the deceased nor her brother, the Respondents No.1 and 3 respectively, can be considered as 'dependants' of the deceased except for the mother, Respondent No.2.

8(i). For the aforesaid reasons, it would not be necessary to advert to the other decisions cited at the bar as those have been rendered on the peculiar facts and



circumstances of each case. As observed in ***Reshma Kumari (supra)*** award of damages in each case would depend on the particular facts and circumstances of the case guided by the element of fairness in determining the amount of compensation.

(ii) Following ***Reshma Kumari (supra)*** in ***Sanjay Verma vs. Haryana Roadways : (2014) 3 SCC 210*** it has been held as follows: -

“15. Answering the above reference a three-Judge Bench of this Court in *Reshma Kumari v. Madan Mohan* (SCC p.88, para 36) reiterated the view taken in *Sarla Verma* to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression “exceptional and extraordinary circumstances” is not capable of any precise definition, in *Shakti Devi v. New India Insurance Co. Ltd.* there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.”

[underlining mine]

(iii) On the anvil of the above proposition, considering that the deceased who was about 29 years of age with a brilliant academic record, holding a Bachelor’s



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degree in Information Technology and degree in Master of Business Administration (Software Development and Management) and employed in Tata Consultancy Services Limited, Kolkata as 'Systems Analyst' with an annual salary of ₹ 7,66,023/- (Rupees seven lakhs sixty six thousand and twenty three), her life being snuffed out prematurely in the unfortunate accident at a time when her father had retired from service with only his pension to survive on leaving her dependant mother quite helpless, can be considered as exceptional and extraordinary circumstance to compute the loss of income by taking into account the possible future earnings. The fact that the mother is now about 61 years old would not necessarily mean that her dependency or the multiplicand would be diminished. If there is a possibility of her early demise, the possibility of her surviving for long also cannot be ruled out. In any case, this is not an issue which has been raised.

(iv) Mr. Thupden G. Bhutia, Learned Advocate for the Appellant-Insurance Company, would argue that the compensation worked out is exorbitantly high. This,



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however, does not appear to be of substance considering the annual salary earned by the deceased at the time of her death and the likely increase in the later part of her career had she been alive. That would naturally have led to a higher standard of living not only of herself but also of her dependants. We also cannot lose sight of the rising cost of living, medical expenses, etc. In this regard, we may usefully refer to the following portion of the decision in *Puttamma (supra)*: -

“17. Here in India, we have a different culture. Here, every parent thinks that it is his moral and legal duty to give fullest education to his children. Parents think that marriage of their children is their responsibility and even providing a house to their children and grand-children is their responsibility. Here, in India, the concept of culture and family life is totally distinct from the culture and family life in England and in other foreign countries. Here, parents not only educate the children but spend huge amounts or at least sufficient amounts on the marriages of their children, on their education, for their housing needs and in majority of cases in return they are looked after in old ages.

.....

19. Though the method of multiplier is one of the best methods in providing compensation while choosing the multiplier the Court/Tribunal has to take into consideration the rising inflation, increasing salaries and increasing cost of living. Therefore, we have to determine just compensation keeping in view the Indian background, the Indian culture, the Indian legal background, and the socio-cultural circumstances existing in India.”

[underlining mine]



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(v) In *P. S. Somanathan (supra)* in which *Sarla Verma (supra)* was followed, it has been observed as under: -

"7. On the question of fixing the quantum of compensation in motor accident claim cases, this Court has laid down several guidelines. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [(1979) 4 SCC 365], Krishna Iyer, J. speaking for a Bench of this Court, observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

[underlining mine]

(vi) Considering the above factors, it cannot be said that the compensation awarded is such that it can be considered as exorbitantly high as submitted by the Learned Advocate for the Appellant-Insurance Company.

(vii) This Court is conscious of the law laid down in *Mahadeva Shetty (supra)* where the concept of "just and reasonable" compensation was propounded. It may be relevant to note that this aspect was also considered in *Reshma Kumari (supra)* which is apparent from paragraph 31 of the judgment reproduced above.

(viii) For these reasons, I hold that the compensation arrived at by the Claims Tribunal falls within the parameters of "just and reasonable" compensation.



Furthermore, the Claims Tribunal has strictly adhered to the guidelines laid down by the Apex Court.

(ix) It may again be noted that the decision in *Reshma Kumari (supra)*, having been rendered by a three-Judges' Bench on a reference, would be binding as would appear from the directions contained in paragraph 43.7 of the judgment which reads as follows: -

“43.7. The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.”

(x) Although the present case was not a pending matter when the aforesaid direction was issued, it would certainly apply in full force.

9(i). For the aforesaid reasons, the impugned judgment of the Claims Tribunal is upheld subject to the modification that the entire amount shall be paid to the Respondent No.2, the mother of the deceased, in the manner that would follow.

(ii) The amount of ` 10,00,000/- (Rupees ten lakhs) only deposited by order of this Court dated 18-11-2014 in CM Appl No.319 of 2014 shall be disbursed to the



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Respondent No.2 along with balance amount of the compensation awarded in the impugned judgment at paragraph 74 thereof after deducting ₹ 10,00,000/- (Rupees ten lakhs) only already paid also in terms of the order dated 18-11-2014.

10. The Appellant-Insurance Company shall ensure that 50% of the awarded sum after deduction of the sum already paid, is deposited in a Fixed Deposit Account in a Nationalised Bank of the choice of the Claimant/ Respondent No.2 and the remaining amount be paid to her through 'Demand Draft' within six weeks from today with the interest @ 10% per annum as awarded by the Claims Tribunal from the date of the claim, i.e., 17-06-2013, until full and final settlement of the claim.

11. A report of compliance of the directions shall be filed by the Appellant-Insurance Company on or before the expiration of the period as stipulated by this Court.

12. In the result, the Appeal stands allowed in part.

13. No order as to costs.

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14. Let a copy of this judgment be transmitted to the Motor Accidents Claims Tribunal, East Sikkim at Gangtok, forthwith for its due compliance.

Sd/-
(S. P. Wangdi)
Judge
01-05-2015

Approved for reporting : **Yes**

Internet : **Yes**