



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

**HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE**

**MAC App. No.17 of 2015**

1. The Branch Manager,  
National Insurance Co. Ltd.,  
31-A, National Highway,  
(Opp. Tourism Department),  
P.O. & P.S. Gangtok, East Sikkim.
2. The Branch Manager,  
National Insurance Co. Ltd.,  
Having its Office at Pratap Nagar,  
2<sup>nd</sup> Mile, Sevoke Road,  
Siliguri, Dist. Darjeeling,  
West Bengal-734 405.

... **APPELLANTS/ INSURERS**

**Versus**

1. Mr. Kharka Singh Tamang,  
Son of Parti Man Tamang,  
Aged about 52 years.
2. Master Tseten Tamang,  
Son of Mr. Karka Singh Tamang,  
Aged about 17 years.

Permanent Residents of Khanamtek PW  
Near Tek Primary School,  
Maney Dara GPU, Khanamtek,  
P.O. & P.S. Namchi, South Sikkim.

... **RESPONDENTS/ CLAIMANTS**

3. Mr. Sunil Gurung,  
Son of K.S. Gurung,  
Resident of Bhanu Bhakta Sarani,  
Gurung Busty, Siliguri,  
Dist. Darjeeling,  
West Bengal-734 003.

... **RESPONDENT/ OWNER**



**Appeal under Section 173 of the Motor Vehicles Act. 1988**  
**arising out of Award dated 18.03.2015 passed in M.A.C.T. Case**  
**No. 21/ 2014 by MACT, Gangtok.**

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**Appearance :**

Mr. Thupden G. Bhutia, Advocate for the Appellant.

Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates  
for Respondents 1 and 2.

Mr. Bhushan Nepal, Advocate for Respondent No. 3.  
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**JUDGMENT**

(02.05.2016)

**SUNIL KUMAR SINHA, CJ.**

1. Deceased, Sunita Tamang was a house-wife. She was aged about 40 years. She died in a motor accident on 01.09.2014. On a claim petition filed u/ S. 166 of the Motor Vehicles Act, 1988, by her husband and minor son (Respondents 1 and 2 herein), the Tribunal assessed her income at Rs.13,275/- per month, applied multiplier of 15 and after deducting 1/ 3<sup>rd</sup> towards her personal expenses assessed the loss of earning at Rs.15,93,000/-. The Tribunal also awarded Rs.7,96,500/- towards future prospects; Rs.25,000/- towards funeral expenses; Rs.2,500/- towards loss of estate; Rs.25,000/- towards non-pecuniary damages and Rs.1,00,000/- towards loss of consortium. The Tribunal, thus, awarded a total sum of Rs.25,42,000/- as compensation to Respondents 1 and 2 on account of death of deceased, Sunita Tamang in the motor accident. The Tribunal also awarded interest @ 10% per annum from the date of filing of claim petition



till realization. The Insurance Company was held liable to pay the aforesaid amount.

2. Mr. Thupden G. Bhutia, learned counsel appearing on behalf of the Appellant, raised two fold arguments. He firstly contended that in the facts and circumstances of the case when the deceased was a non-earning member (house-wife), no amount of future prospects would have been awarded. Secondly, he contended that when the funeral expenses, loss of estate and loss of consortium were awarded under separate heads, then there was no reason to award Rs.25,000/- towards non-pecuniary damages because all the said heads were already covering the non-pecuniary damages and the said amount is in repetition.

3. On the other hand, Mr. Ajay Rathi, learned counsel appearing on behalf of Respondents 1 and 2, has opposed these arguments and submitted that the Tribunal was right in awarding compensation on account of future prospects and non-pecuniary damages. He argued that if the income of the husband was likely to increase in future and something could have been awarded for his future prospects, the same logic would be applicable in case of house-wife also.

4. Mr. Bhushan Nepal, learned counsel appearing on behalf of Respondent No. 3, has, however, supported the arguments of Mr. Bhutia.

5. I have heard counsel for the parties.



6. Admittedly, the deceased was a house-wife. The Tribunal on the basis of earning of her husband, i.e. Rs.39,824/- per month, applying clause 6 (b) of the second schedule u/ S. 163A of the Motor Vehicles Act, 1988 held that the income of the deceased should be 1/3<sup>rd</sup> of the income/ earning of the surviving spouse i.e. her husband and it was determined at Rs.13,275/- per month. This was done on the basis of the judgment of **Arun Kumar Agrawal and Another vs. National Insurance Co. Ltd. and Others**<sup>1</sup>. To this extend, the award of the Tribunal cannot be faulted with. However, vide paragraph 24 of the award, the Tribunal simply stated that in view of the observation of the Hon'ble Supreme Court in **Arun Kumar Agrawal** (supra), an addition of 50% of the actual income should be allowed and it allowed a sum of Rs.7,96,500/- towards future prospects.

7. I have gone through the judgment of **Arun Kumar Agrawal**. Though, it talks about the income of the non-earning house-wife/ mother to be calculated in the way the Tribunal has calculated, but it never talks about any loss of future prospects of a non-earning house-wife/ mother to be calculated in terms of 50% of the actual income assessed. When the deceased was a non-earning member as she was a house-wife, there was no question of future prospects to be calculated in the above terms. The element of the future prospects shall appear for calculation when the

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1 (2010) 9 SCC 218



deceased was an earning member but in case where deceased was not an earning member and was simply a house-wife/ mother, such mode of calculation shall not be applied. The argument of Mr. Rathi that if the future prospects of the husband would earn something, in the same logic the future prospects of the non-earning wife may also be calculated, does not appear to be logical and acceptable.

8. I am of the view that the Claims Tribunal fell into error by awarding a sum of Rs.7,96,500/- towards future prospects to a non-earning house-wife, whose income was assessed on the basis of structured formula u/ S. 163A of the Motor Vehicles Act.

9. So far as award of Rs.25,000/- towards non-pecuniary damages is concerned, Mr. Bhutia has contended that in light of the other non-pecuniary damages like funeral expenses, loss of estate and loss of consortium, the same should not have been awarded.

10. Mr. Rathi, relying on the judgment of **Jiju Kuruvila and others vs. Kunjamma Mohan and others**<sup>2</sup>, has argued that loss of consortium, in fact, was awarded to Respondent No. 1, husband, on account of death of his wife, whereas, Rs.25,000/-, though classified as non-pecuniary damages, was, in fact, awarded

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2 (2013) 9 SCC 166



to Respondent No. 2, minor son, towards loss of love and affection, who, in fact, lost his mother at the age of 17. **Jiju Kuruvila** was relied in **Asha Verman and others vs. Maharaj Singh and Others<sup>3</sup>** wherein separate amount towards loss of love and affection was awarded to the Appellant children on account of death of their father (deceased). Admittedly, the above amount of Rs.25,000/- was over and above the amount of loss of consortium, funeral expenses and loss of estate and it cannot be said that after awarding the compensation under the above heads, Rs.25,000/- was just a repetition. I am of the view that it was easily awardable under loss of love and affection to Respondent No. 2. Thus, the argument of Mr. Bhutia that Rs.25,000/- awarded as non-pecuniary damages was incorrect, cannot be accepted.

11. For the above reasons, the Appeal is partly allowed. Respondents 1 and 2/ Claimants would be entitled to receive compensation in the following manner: -

1.	Loss of earnings	Rs.15,93,000.00
2.	Funeral expenses	Rs. 25,000.00
3.	Loss of estate	Rs. 2,500.00
4.	Loss of love and affection to the minor son	Rs. 25,000.00
5.	Loss of consortium	<u>Rs. 1,00,000.00</u>
	Total	<u>Rs.17,45,500.00</u>

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3 (2015) 11 SCC 389



12. Respondents 1 and 2/ Claimants, thus, are entitled to receive a sum of Rs.17,45,500/- as compensation on account of death of deceased, Sunita Tamang, in the motor accident. They shall also be entitled to receive interest @ 10 % per annum on the said amount of Rs.17,45,500/- from the date of filing the claim petition till realization.

13. The Appeal is allowed to the extent indicated above, there shall be no order as to costs.

**Chief Justice**  
02.05.2016

Approved for Reporting : Yes/ ~~No~~.  
Internet : Yes/ ~~No~~.

pm/ jk