



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 3RD MARCH, 2016

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC APP. No.11 of 2015

Appellant : The Branch Manager,
National Insurance Co. Ltd.,
Gangtok Branch,
East Sikkim.

versus

Respondents-Claimants : 1. Mr. Karma Bhutia
2. Mr. Loday Bhutia
3. Mr. Naksing Bhutia
4. Mr. Daba Bhutia
5. Mr. Karma Tseten Bhutia

All are sons of
Late Sonam Palzor Bhutia,
R/o Middle Tumin Busty,
Singtam,
East Sikkim.

Respondent-Owner : 6. Mr. Dawa Lachungpa,
S/o K. D. Lachungpa,
R/o Lachung,
North Sikkim.

Appeal under Section 173 of the
Motor Vehicles Act, 1988



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Appearance

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

Mr. R. C. Sharma, Advocate for the Respondents No.1, 2, 4 & 5.

None for Respondent No.3.

Mr. Tshering Wangyal Bhutia, Advocate for Respondent No.6.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal is preferred against the Award granted in a Claim under Section 163A of the Motor Vehicles Act, 1988, in MACT Case No.17 of 2014 of the Motor Accidents Claims Tribunal, North Sikkim at Mangan (for short "Claims Tribunal"). The Claims Tribunal vide the assailed Judgment dated 28-02-2015 ordered the Appellant to pay compensation calculated at Rs.4,14,500/- (Rupees four lakhs fourteen thousand and five hundred) only, with interest @ 10% per annum, to the Claimants till full and final payment.

2. The Respondents No.1, 2, 4 and 5 herein were the Claimants before the Claims Tribunal and are the brothers of the deceased, who died due to a motor accident at Dikchu-Mangan road. Respondent No.3 another brother of the deceased has passed away in the interim.

3. The Claims Tribunal framed two issues and on consideration of the entire matter reached the finding that the



Respondents were entitled to compensation *supra* against the Claim of Rs.7,26,500/- (Rupees seven lakhs twenty six thousand and five hundred) only, made by the Claimants.

4. The main thrust of the arguments put forth by the Learned Counsel for the Appellant is that the Driving Licence of the deceased who was driving the passenger taxi vehicle, was not valid as it was not issued by the appropriate Licensing Authority and was procured through illegal means. Peripheral to this argument was the exposition that the owner Respondent No.6 having failed to check the authenticity of the Driving Licence has acted in contravention to Section 5 of the Motor Vehicles Act, 1988. Non-compliance of Rule 3 of the Central Motor Vehicles Rules, 1989, is another point agitated as a corollary. Under this argument, it was expostulated that as Rule 3 *supra* was not complied with, the relevant Clause in the Insurance Policy was also violated.

5. The second leg of the argument raised was that as the deceased was a bachelor, 50% ought to have been deducted from the amount calculated as Loss of Earnings, to the contrary a deduction of only 1/3rd was only made. The third leg of the argument consisted of the proposition that the award of compensation of an amount of Rs.50,000/- (Rupees fifty thousand) only, towards non-pecuniary damages is beyond the scope of Section 163A of the Motor Vehicles Act, 1988.



6. *Per contra*, the Respondents argued that although the Appellant insists that the Driving Licence of the driver was not genuine but to counter this allegation they have only furnished a Verification Report obtained from the Sub-Divisional Office at Siliguri, West Bengal, which firstly is not the appropriate Authority not being the Licensing Authority. Secondly, during the course of trial, the document was not exhibited and, therefore, cannot be relied on by the Appellant at this stage. It was contended that the evidence of Respondent No.6 clearly indicates that he had conducted a driving test, perused the Driving Licence concluded that it was genuine and employed the deceased. Therefore, the question of him being negligent in allowing the deceased to drive does not arise. To support his contentions on this point, Learned Counsel for the Respondents placed reliance on ***New India Assurance Company Ltd. and Others*** vs. ***Makhan Singh and Others***¹.

7. The question for determination before this Court is whether the Claims Tribunal has correctly awarded the compensation.

8. Dealing with the first argument of the Appellant, that the Driving Licence was not valid, I have to agree with the arguments placed by the Learned Counsel for the Respondents. Exhibit 11 which is the Driving Licence of the driver appears to have

1. II (2006) ACC 164 (P&H)



been issued by the Licensing Authority at Siliguri. If the Appellant contends that the Licence was fake, it ought to have furnished proof thereof in support of its contention by filing a document from the concerned Authority, which is, the Licensing Authority at Siliguri and not from the Sub-Divisional Office, which evidently is not the appropriate Authority. In addition to the above, the said document has not even been exhibited before the Claims Tribunal and, therefore, cannot be taken into consideration on the urging of the Respondents at this stage without compliance of the relevant provisions of law. The Respondent No.6 has clearly stated that he had taken the deceased for a test drive, was satisfied with his driving and had found the Driving Licence to be genuine on its perusal. The owner cannot be expected to launch an investigation into the genuineness of the Licence when employing a driver.

9. In this regard, one may usefully refer to the decision in ***United India Insurance Company Ltd. vs. Lehru and Others***² wherein the Hon'ble Apex Court has held as follows:-

"17. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a Competent Authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTOs, which are spread all over

2. I (2003) ACC 611 (SC)



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the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.”

10. While dealing with the same point, the Hon’ble Apex Court in **National Insurance Co. Ltd. vs. Swaran Singh and Others**³ has held as follows:-

“109.

- (iii) The breach of policy condition e.g., disqualification of the driver on invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

.....”

3. I (2004) ACC 1 (SC)



11. In consideration of the above ratiocination, the arguments of the Learned Counsel for the Appellant are untenable on this point.

12. Moving on to the argument with regard to the deduction from Loss of Earnings, the argument of the Appellant have to be conceded to *inasmuch* as the deceased was a bachelor. It was held in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another**⁴ that where the deceased was a bachelor, 1/2 is to be deducted from his Loss of Earnings on the assumption that the amount would have been incurred by the victim towards maintaining himself had he been alive.

13. On this count, it would be worthwhile to walk through the decision of the Hon'ble Apex Court in **Munna Lal Jain and Another vs. Vipin Kumar Sharma and Others**⁵ which has reiterated the decision in **Sarla Verma's case (supra)** the relevant portion of which is reproduced herein below:-

"7. On the issue of deduction towards personal and living expenses in *Sarla Verma v. DTC* [(2009) 6 SCC 121], at para 31, it was held that: (SCC p.136)

"31. 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

4. (2009) 6 SCC 121

5. (2015) 6 SCC 347



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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

8. The deduction ordinarily in the case of a bachelor at 50% was approved recently by a three-Judge Bench decision in *Reshma Kumari v. Madan Mohan* [(2013) 9 SCC 65], holding that the standard fixed in *Sarla Verma* on the aspect of deduction for personal and living expenses "must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out".
....."

14. Consequently, it emerges that the deduction in the matter at hand would have to be 50% and not 1/3rd as made out by the Claims Tribunal as there are no compelling reasons to deviate from the norm set out *supra*.

15. That having been settled, we may now discuss the point of Rs.50,000/- (Rupees fifty thousand) only, being granted on non-pecuniary damages. In this context in ***Jayakodi and Others*** vs. ***Branch Manager, National Insurance Co. Ltd. And Another***⁶ the Hon'ble Apex Court ruled, *inter alia*, as follows:-

"4. When a person dies in a motor accident and his dependent legal representatives claim compensation, the general damages is made up of the loss of dependency

6. 2010 ACJ 697



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plus a token sum for loss to estate. In the event of a claimant being a spouse another token amount is awarded as loss of consortium. Actual expenditure incurred for transporting the dead body and the funeral, are also awarded by way of special damages. Nothing is awardable under the head of shock and mental agony of parents or other legal representatives.”

16. Bearing in mind the above ratio and also the Second Schedule of the Motor Vehicles Act, 1988, it is clear that the Statute makes no provision for compensation on account of Loss of Love and Affection, Mental Tension and Agony, Loss of Prospective Happiness, Loss of Companion of Brother, as claimed by the Respondents No.1, 2, 4 and 5. That apart no reasons have been elucidated by the Claims Tribunal for awarding compensation under this head, consequently the sum of Rs.50,000/- is deducted.

17. It would be beneficial at this point to also refer to the Judgment of this Court dated 07-04-2015 in MAC App. No.21 of 2014 in the matter of ***The Branch Manager, National Insurance Co. Ltd.*** vs. ***Smt. Sujita Newar and Others***, where it has been held as follows:-

“**15.** In the instant case, as stated above, the Tribunal, on the one hand, already awarded compensation towards the Loss of Estate and Loss of Consortium and, on the other hand, it also awarded Rs.1,00,000/- towards Non-pecuniary damages, which appears to be a repetition. That apart, the Tribunal has not assigned any reason for awarding this amount and has simply said that considering the age of the deceased and the claimants, the same is allowed. This deserves to be set aside in view of ***R.D. Hattangadi*** (supra) [(1995) 1 SCC 551].”



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18. While considering the calculation made by the Claims Tribunal in paragraph 18 of the impugned Judgment, it is, *inter alia*, recorded as -

“18.
In consideration of the fact that the victim is a (sic) unmarried person. Accordingly, the loss of earning is calculated as follows:
Rs. 3000/- per month – 1/3 deduction, i.e., 2000 x 18
= 3,60,000/- per annum.”

19. The above calculation is apparently erroneous as Rs.2,000/- x 18 would be Rs.36,000/- (Rupees thirty six thousand) only and not Rs.3,60,000/- (Rupees three lakhs and sixty thousand) only, per annum as calculated by the Claims Tribunal. The Loss of Income per annum, after adopting the multiplier of ‘18’ as per the Second Schedule of the Motor Vehicles Act, 1988, on account of the age of the victim, i.e., 27 years, would be as follows:-

Rs.3,000/- (income per month)	x	12 (per annum)	x	18 (correct multiplier)	-	1/2 (on account of the expenses which the victim would have incurred towards maintaining himself had he been alive)	=	Rs.3,24,000/-
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20. It is also noticed that in paragraph 17, the Claims Tribunal has recorded as follows:-

“.....
I am of the considered opinion that the notional income of the victim can be taken to be Rs. 3,000/- per month.”

21. The question of “notional income” which means “hypothetical income” comes into play only if the deceased was a



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non-earning person. It does not arise in the instant matter since Exhibit 16, the Salary Certificate of the deceased, clearly indicates that he was receiving a monthly salary of Rs.3,000/- (Rupees three thousand) only, hence the sum of Rs.3,000/- per month was the “actual income” of the deceased and not his “notional income”.

22. Hence, the amount of compensation stands re-calculated and modified as follows:-

Monthly income of the deceased		Rs. 3,000.00
Annual income of the deceased (Rs.3000 x 12 months)		Rs. 36,000.00
Less 1/2 of Rs.36,000/- [in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive]	(-)	Rs. 18,000.00
Net yearly income		Rs. 18,000.00
Multiplier to be adopted '18' [as per the Second Schedule of the Motor Vehicles Act, 1988]	(Rs.18,000 x 18)	Rs.3,24,000.00
Funeral expenses [as per the Second Schedule of the Motor Vehicles Act, 1988]	(+)	Rs. 2,000.00
Loss of estate [as per the Second Schedule of the Motor Vehicles Act, 1988]	(+)	Rs. 2,500.00
Total -		<u>Rs.3,28,500.00</u>

(Rupees three lakhs twenty eight thousand and five hundred) only

23. The Respondents No.1, 2, 4 and 5 shall be entitled to simple interest @ 10% on the above with effect from the date of the Claim made before the Claims Tribunal until full and final settlement of the award.

24. Before concluding the matter, it may be mentioned in passing that the Appellant appears to have raised the issue of a



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wrong multiplier having been adopted by the Respondents for calculating the compensation, i.e., based on the age of the deceased and not on the average age of the Claimants. This matter was not discussed by the Claims Tribunal in its Judgment. Nevertheless since no arguments were raised before this Court on this count, I do not deem it necessary to delve into this question.

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

26. No order as to costs.

27. Considering the fact that the accident took place as far back as on 13-12-2011, the Appellant is directed to pay the award amount to the Respondents No.1, 2, 4 and 5 within 6 (six) weeks from today and not later than that.

28. Copy of this Judgment be sent to the Claims Tribunal for information and compliance.

29. Records of the Claims Tribunal be returned forthwith.

Sd/-
(**Meenakshi Madan Rai**)
Judge
03-03-2016

Approved for reporting : **Yes**

Internet : **Yes**