



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 14th March, 2018

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

M.A.C. App. No. 8 of 2017

Appellants

- : 1. Smt. Anita Tamang,
W/o Late Nima Tamang alias Passang Tamang,
2. Master Topzor Tamang,
S/o Late Nima Tamang alias Passang Tamang,
3. Master Palzor Tamang,
S/o Late Nima Tamang alias Passang Tamang,

Appellants are residents of:-
West Rongyek PW, Bhusuk Road,
Near Rongyek School , Dechiling,
Tathangchen, Shyari G.P.U., Rongyek,
Post Office : Raj Bhawan,
Police Station: Gangtok,
East Sikkim,
Pin No.- 737102.

versus

Respondent

- : The Branch Manager,
New India Assurance Company Limited,
Gangtok Branch, Tibet Road,
Below Old Sadar Police Station,
Post Office and Police Station : Gangtok
East Sikkim,
Pin No. – 737101.

Application under Section 173 of the
Motor Vehicles Act, 1988.

Appearance

Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates for the
Appellants.

Mr. Sudesh Joshi, Advocate for the Respondent.



J U D G M E N T

Meenakshi Madan Rai, J.

1. Dissatisfied with the Judgment dated 30.05.2017, passed by the learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok (hereinafter 'Claims Tribunal'), in MACT Case No. 42 of 2015, dismissing the Claim Petition seeking compensation of Rs.2,22,300/- (Rupees two lakhs, twenty-two thousand and three hundred) only, on account of the death of the husband of Appellant No. 1 and father of the Appellants No. 2 and 3, the instant Appeal has been preferred.

2. For the purposes of the instant matter, the ground raised is that the deceased was known by the names of Nima Tamang alias Passang Tamang, while his father was known both as Karma Tamang and Dil Bahadur Tamang. As per the Appellants, this is evident from the fact that the name of the deceased was recorded as Passang Tamang, son of Late K. Tamang in his Driving Licence (Exhibit-13), in the Authorisation letter bearing his photograph (Exhibit-19) and in the Report of the Motor Vehicles Inspector (Exhibit-20). While in the Death Certificate of the deceased, his name has been reflected as Nima Tamang, son of Late Dil Bahadur Tamang, Resident of Changu, Gangtok, Sikkim (Exhibit-21), as also in the Final Report submitted by the Investigating Officer (Exhibit-23). The Voter's Identity Card of the Appellant No.1, bears the name of the deceased her husband, as Nima Tamang (Exhibit-25), so does her Certificate of Identification (Exhibit-26). The Certificate of



Identification of the Appellant No.2 reveals his father's name to be Nima Tamang, son of Karma Tamang (Exhibit-27) and his School Transfer Certificate also bears his father's name as Nima Tamang (Exhibit-28). The Birth Certificate of the Appellant No.2 reveals his father's name to be Nima Tamang (Exhibit-29) as also the Certificate of Identification of the Appellant No.3 (Exhibit-30), his Birth Certificate (Exhibit-31), Admit Card (Exhibit-32). Besides, the Aadhar Card of the deceased bears the details of his name as Nima Tamang and his father's name as Dil Bahadur Tamang (Exhibit-33). A comparison of the photograph affixed on the Driving Licence of the deceased and his Aadhar Card, clearly reveal them to be of one and the same person. The Voter's Identity Card of the deceased bears his name Nima Tamang, son of Late Dil Bahadur Tamang (Exhibit-34), as also his PAN Card and the Certificate of Identification. Therefore, in view of all of the above documents, it is clear that the deceased had and was known by two names which were used interchangeably, as countenanced by the documents furnished before the learned Claims Tribunal. Hence, the learned Claims Tribunal erred in rejecting the Petition of the Claimants despite relevant facts of the name of the deceased being placed before it.

3. Learned Counsel for the Respondent, repelling the arguments of the Appellant canvassed that no proof by way of witnesses was put forth before the learned Claims Tribunal to establish the fact that Nima Tamang and Passang Tamang were one and the same person. Mere furnishing of documents does not suffice



to establish the interchangeability of names of the person as contended. That, no error manifests in the conclusion of the learned Claims Tribunal dismissing the Claim Petition filed by the Appellants.

4. The Appellants also filed a Petition under Order XLI Rule 27 of the Code of Civil Procedure, 1908, read with Section 151 and Section 107(1)(b)(d) of the Code of Civil Procedure, 1908, being I.A. No. 1 of 2017. It was submitted by learned Counsel for the Appellants that the Claim Petition before the learned Claims Tribunal was filed under Section 163A of the Motor Vehicles Act, 1988, which is benevolent legislation. The only shortfall on the part of the Appellant was failure to establish by any witness that Nima Tamang and Passang Tamang were one and the same person and his father was also known as Dil Bahadur Tamang and Karma Tamang. That, the Appellants seek to produce the area Panchayat to prove the above facts, hence the Petition. This was objected to by the Respondent on grounds that it was filed belatedly, apart from which the Petition requires no consideration having failed to satisfy the conditions required under the provision invoked.

5. The opposing arguments of the parties were heard *in extenso* and careful consideration given. I have perused the evidence, the documents on record and also the impugned Judgment.

6. The facts before the learned Claims Tribunal were that the deceased was a driver by profession, aged about 57 years, at the time of accident, with a monthly income of Rs.3325/- (Rupees



three thousand, three hundred and twenty-five) only. He was driving a Tata Sumo passenger vehicle bearing No. SK 01-T-1533 registered in the name of the Claimant No.1/Appellant No.1 herein, on 17.1.2015. At around 14:30 hours, at Changu Commercial Complex, under the jurisdiction of the Sherathang Police Station, the vehicle with passengers while proceeding towards Gangtok, met with an accident and careened off twenty feet below the road. The deceased succumbed to his injuries on the spot while the passengers escaped with minor injuries. The Sherathang Police Station accordingly registered Sherathang Police Station Case No. 02/2015 dated 17.1.2015, under Section 279/337/338/304 'A' of the Indian Penal Code, 1860 and the autopsy of the deceased was conducted at STNM hospital. The Insurance Policy of the vehicle extending from 17.8.2014 to the midnight of 16.8.2015 was valid on the date of the accident and the claimant had also paid a sum of Rs.50/- (Rupees fifty) only, on account of legal liability to the Driver. The total compensation claimed was Rs.2,22,300/- (Rupees two lakhs, twenty-two thousand and three hundred) only.

7. Learned Counsel for the Respondent denied and disputed the claims of the Appellants, primarily on the ground that the driver of the vehicle who died in the accident was Passang Tamang, son of K. Tamang, as evident from his Driving Licence, FIR, Inquest Report and Challan forwarding the dead body for post-mortem and not Nima Tamang, son of Dil Bahadur Tamang. That, no records exist to indicate that he also went by the name Nima Tamang or that his father was also known as Karma Tamang. That,



the deceased had no connection with the Claimants who have in fact put forth a fallacious story of two names for one person as detailed above, to defraud the Opposite Party/Respondent (herein). The other grounds raised were that the compensation claimed was excessive and it was denied that the deceased had an income.

8. On the basis of the pleadings of the parties, the learned Claims Tribunal framed one Issue.

“Whether the Claimants are entitled to the compensation claimed? If so, who is liable to compensate them?”

9. After consideration of the evidence and documents on record, the learned Claims Tribunal concluded that the Claimants have failed to establish that Passang Tamang, son of Late K. Tamang and Nima Tamang, son of Dil Bahadur Tamang are the names of one and the same person who was the deceased. That, the Claimants have further failed to establish that the deceased who died in the motor accident was indeed the husband of the Claimant No.1 and the father of the Claimants No.2 and 3.

10. The Petition of the Appellant filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 was taken up along with the hearing of the main Appeal, in view of the observation of the Hon’ble Supreme Court in ***Union of India vs. Ibrahim Uddin and Another¹***, wherein it was held in Paragraph 52 as follows;

“**52.** Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency

¹ (2012) 8 SCC 148



of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored."

11. This stand was reiterated in *A. Andisamy Chettiar vs. A. Subburaj Chettiar*², wherein it was observed as follows;

"**16.** In *Union of India v. Ibrahim Uddin and another* [(2012) 8 SCC 148], this Court has held as under:—

"49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.
....."

12. This Court is aware and conscious that Section 163A of the Motor Vehicles Act, 1988, has been incorporated by the legislature in the Statute under the welfare scheme to provide benefits to the family of the injured persons falling within the income group extending up to Rs.40,000/- (Rupees forty thousand) only, per annum. Compensation under this provision is to be in

² AIR 2016 SC 79



accordance with the Second Schedule which is a structured formula and is a benevolent legislation.

13. It is indeed trite law that the conditions laid down under Order XLI Rule 27 of the Code of Civil Procedure, 1908 are to be fulfilled if the said law is to be applied. From the provision of Order XLI Rule 27 of the Code of Civil Procedure, 1908, which is not being reproduced herein to avoid prolixity, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary, in the Appellate Court but for the three different situations which are enumerated in the provisions. In other words, the Appellate Court cannot issue an order to fill the lacuna in the evidence of the parties who has failed to succeed before the learned Trial Court. However, considering the spirit of Section 163A of the Motor Vehicles Act, 1988, and it being a settled position of Law that it is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence [See Raj Rani and Ors. V. Oriental Insurance Co. Ltd. and Ors. : (2009) 13 SCC 654] and for a just decision in the matter, without delving into the merits of the case, I deem it appropriate to remand the matter to the Motor Accidents Claims Tribunal, East Sikkim at Gangtok, for the limited purpose of allowing the Appellants to furnish evidence as sought hereinabove with regard to the names of the deceased and his father. Thereafter, the learned Claims Tribunal shall proceed in accordance with law.

14. The impugned Judgment of the learned Claims Tribunal is accordingly set aside.



15. It is hereby ordered that MACT case be readmitted to its original Number in the Register of Motor Accidents Claims Tribunal, East Sikkim at Gangtok and all necessary steps be completed within six months.

16. Appeal is disposed of accordingly.

17. Copy of this Judgment be transmitted to the learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok, for information and compliance.

18. In the circumstances, no order as to costs.

19. Records be remitted forthwith.

Sd/-
(Meenakshi Madan Rai)
Judge
14.3.2018

Approved for reporting : **Yes**
Internet : **Yes**