



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 30th SEPTEMBER, 2019

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

MAC App. No.03 of 2019

Appellant : The Branch Manager,
Chola MS General Insurance Company Limited

versus

Respondent : Mrs. Radha Pradhan and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Yadev Sharma and Mr. Dilip Kumar Tamang, Advocates for the Appellant.

Mr. Tarun Choudhary, Advocate for the Respondents No.1 to 8.

Mr. Dilli Bahadur Pradhan, Advocate for the Respondent No.9.

J U D G M E N T

Meenakshi Madan Rai, ACJ

1. The only question that arises for determination in this Appeal is whether the deceased was a gratuitous passenger in the vehicle in accident, i.e., truck (Tata), bearing registration No.WB 73 D 8533, the resultant relief or denial thereof would be contingent upon such determination.

2. It was contended by Learned Counsel for the Appellant-Insurance Company that the deceased was a



gratuitous passenger and travelling in a goods carrier vehicle which met with the accident and hence was not entitled to claim any compensation whatsoever. The other arguments raised were that the Respondent did not produce any eye-witnesses to the alleged accident nor was the authority who issued the relevant documents including the Driving Licence of the driver examined before the Learned Claims Tribunal. That, the Income Certificate of the deceased was procured only for the purpose of obtaining enhanced compensation and in the absence of proof of income or voucher thereto an income of Rs.3,10,000/- per annum as projected by the Claimants-Respondents cannot be considered as the correct income of the deceased. The seizure list of the vehicle does not reflect that the goods carried therein were bricks as alleged by the Claimants-Respondents, but was infact timber. The owner of the goods alleged to be one Arun Rai was not produced as a witness to prove the plea of the Claimants/Respondents. The aforestated grounds do not entitle the Claimants-Respondents to any compensation, thus the impugned Judgment and Award dated 24-10-2018 of the Learned Claims Tribunal be set aside.

3. Refuting the arguments advanced by Learned Counsel for the Claimants-Respondents it was contended that the deceased was travelling in the goods carrier with the loaded goods as the representative of the owner and therefore the compensation cannot be declined. The income of the deceased being Rs.3,10,000/- (Rupees three lakhs and ten thousand)



only, per annum, as has been established by the documentary evidence. All other documents furnished by the Respondents also substantiate their claims and in such circumstances, the impugned Judgment requires no interference.

4. Having heard and considered the submissions and the relevant records, we may briefly advert to the facts of the matter at hand for determination of the issue flagged hereinabove. The Respondents herein were the Claimants before the Learned Motor Accidents Claims Tribunal, South Sikkim, at Namchi, being the widow and five minor children of the deceased and his aged parents. The deceased Santosh Pradhan was travelling in the truck bearing No.WB 73 D 8533 with loaded goods for one Arun Rai of Jorethang. When the truck met with an accident on 20-08-2017 at about 1530 hours near a place called "Tanam Khola", South Sikkim, where he succumbed to his injuries. The Claimants' case is that the deceased was 32 years at the time of the accident, a self-employed business man with an annual income of Rs.3,10,000/- (Rupees three lakhs and ten thousand) only. Income Tax had also been deducted from his income for the financial year 2017-18 through his Pan Card. On account of the accident, he succumbed to his injuries on the spot. The vehicle was insured with the Appellant Company. The claimants sought a total compensation of Rs.59,10,200/- (Rupees fifty nine lakhs, ten thousand and two hundred) only.



5. The Appellant-Company who was the Opposite Party No.1 before the Learned Claims Tribunal contested the Claim raising the ground that a gratuitous passenger travelling in a goods carrier vehicle was disentitled to any compensation. That, there was a statutory violation of the conditions of the Insurance Policy as contemplated under Section 149(2) of the Motor Vehicles Act, 1988 (hereinafter, M.V. Act). That, the Respondents had failed to substantiate by documentary evidence that the goods loaded in the vehicle in accident belonged to the deceased or that he was therefore the representative of the owner of the consignment. That apart, the deceased was said to be travelling from Siliguri to Jorethang, but documents, such as, road challan, invoice, bill, vouchers, etc., were not produced nor were reasons given for non-filing of the said documents casting a cloud on the Claims put forth which was in any event excessive. Hence, the Petition ought to be rejected.

6. The Respondent No.9, who was Opposite Party No.2, before the Learned Claims Tribunal, wife of the driver of the truck averred that all documents pertaining to the vehicle were valid and effective and the O.P. No.1 would be liable to pay the award, if any.

7. The Learned Claims Tribunal framed a single issue, viz., (i) Whether the Claimants are entitled for compensation as claimed, if so, who is liable to pay the same?



8. The Claimant No.1 filed her evidence-on-affidavit as C.W.1 along with that of one Dawa Tamang, C.W.2. The Opposite Party filed the evidence-on-affidavit of its Legal Manager. The Opposite party No.2 had no witness to examine nor any evidence to file. After considering the evidence and documents on record, the Learned Claims Tribunal pronounced the impugned Judgment and awarded compensation of Rs.56,25,200/- (Rupees fifty six lakhs, twenty five thousand and two hundred) only, as total compensation to the Claimants. Thus, aggrieved this Appeal has arisen.

9. While addressing the issue flagged before this Court, i.e., whether the deceased Santosh Pradhan was a gratuitous passenger in the goods vehicle, it may be relevantly noted that the term 'gratuitous' does not find any definition or explanation in the M.V. Act. The term however is understood to indicate a passenger travelling in a commercial vehicle without payment. That, having been said, the relevant portions of Section 147 of the M. V. Act are extracted below;

"147. Requirement of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the



- motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;
- (ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Provided that a policy shall not be required-

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
 - (a) engaged in driving the vehicle, or
 - (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
 - (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.
- (2)
- (3)
- (4)
- (5) ”

10. The object of the provision is to lay down the requirements of the policies and the limits of liability in respect of passengers and persons other than passengers in relation to passenger vehicles and goods carriages. Thus, the said Section provides that the policy of insurance is to be issued by an



authorized insurer, which must insure the specified person or class of persons, against any liability incurred in respect of death or of bodily injury, to any person or damage to any property of a third party, as well as against the death of or bodily injury caused to any passenger of a public service vehicle, caused by or arising out of the use of the vehicle in a public place. The liability extends to damage to any property to a third person but not of the insured. It includes the owner of the goods carried in the vehicle or his authorized representative.

11. The specific argument of the Appellant is that the deceased was neither the owner of the goods nor the authorized representative of the owner and he was merely travelling in the vehicle. The evidence on record, I find however would establish to the contrary. The Claimants' witness Dawa Tamang, C.W.2 was also travelling in the ill-fated vehicle. He has clearly stated that although he boarded the vehicle from Melli as it belongs to his brother who was also the driver of the vehicle, the deceased was already an occupant in the said vehicle. On his enquiry, the deceased told him that he was travelling in the truck with goods, i.e., bricks, loaded in the truck which belonged to one Arun Rai of Jorethang. The Claimant No.1 has also supported this evidence and the cross-examination of both the witnesses were not decimated in this context. Exhibit 23 is the Supervision Charge-Receipt Book of the Transport Department, Sikkim Nationalised Transport (SNT) dated 19-08-2017 which infact lends credence to the statements of both C.W.1 and



C.W.2 inasmuch as the document reveals that bricks were loaded in the truck which met with an accident. The argument of the Appellant that the seizure memo revealed the goods to be timber and not bricks is also obliterated by Exhibit 23 and is therefore an incorrect argument advanced by the Appellant. Exhibit 22 further substantiates that a sum of Rs.1,892/- (Rupees one thousand, eight hundred and ninety two) only, was received from one Arun Rai of Jorethang for the said goods. It also emerges from the evidence of the witness of the Appellant, Deborshi Bhowmick that they had appointed an Investigator to look into the matter but admittedly the report of the Investigator had not been filed before the Tribunal. This concealment raises doubts about the *bona fides* of the Appellant Company and an adverse inference is drawn under Section 114(g) of the Indian Evidence Act, 1872. In the light of the evidence on record, in no way can it be stated that the deceased was a gratuitous passenger in the ill-fated vehicle. In this view of the matter, it consequently cascades that the Claimants are entitled to compensation. Besides, it needs no reiteration that matters filed before the Motor Accidents Claims Tribunals is to be proved by the Claimant by a preponderance of probability and not beyond a reasonable doubt.

12. The rash and negligent driving of the deceased has been categorically established by Dawa Tamang, the brother of the deceased driver who was also travelling in the truck from Melli, South Sikkim. The fact of accident is established by the



FIR, Exhibit 1. The death of the deceased is established by Exhibit 2 the Inquest Report and Exhibit 3 the document of which the death body was forwarded for post-mortem. Exhibit 4 is the Insurance Policy pertaining to the vehicle in accident with validity at the time of the accident.

13. The income of the deceased was contested as being exorbitant. The Claimants for their part have relied on the "Indian Income Tax Return Verification", Form Exhibit 12, where the Gross Total Income of the deceased is shown as Rs.3,10,000/- (Rupees three lakhs and ten thousand) only. The total taxes paid is indicated as Rs.1,030/- (Rupees one thousand and thirty) only. Thus, the net annual income of the deceased would be Rs.3,08,970/- (Rupees three lakhs, eight thousand, nine hundred and seventy) only. No document was produced by the Appellant to controvert the income of the deceased. In such a circumstance, no error arises on the reliance of the Learned Claims Tribunal on Exhibit 12. Exhibit 14 is the document pertaining to the computation of the total income of the deceased with income tax deduction. Hence, the annual income of the deceased would be Rs.3,08,970/- (Rupees three lakhs, eight thousand, nine hundred and seventy) instead of Rs.3,10,000/- as held by the Learned Claims Tribunal, which failed to consider the tax deducted. This settles the contest with regard to the deceased's income hence the correct multiplier for loss of income has been adopted by the Learned Claims Tribunal.



The Branch Manager, Chola MS General Insurance Co. Ltd. vs. Radha Pradhan and Others

14. His date of birth is established by Exhibit 16, his Birth Certificate, as 06-03-1985. As the date of accident was 20-08-2017, he was approximately 32 years 5 months and 14 days at the time of accident.

15. In view of the aforestated discussions, there is no error in the findings of the Learned Claims Tribunal, however, the compensation stands re-calculated and modified in view of the observations *supra* pertaining to the income of the deceased.

Annual income of the deceased		Rs.	3,08,970.00
Add 40% of Rs.3,08,970/- as Future Prospects	(+)	Rs.	<u>1,23,588.00</u>
		Rs.	4,32,558.00
Less 1/5 th of Rs.4,32,558/- [in consideration of the expenses which The victim would have incurred towards maintaining himself had he been alive]	(-)	Rs.	<u>86,511.60</u>
Net yearly income		Rs.	3,46,046.40
	(rounded off)	Rs.	3,46,046.00
Multiplier to be adopted ' 16 ' [The age of the deceased at the time of death between 31 and 35 and the relevant multiplier as per Judgment of <i>Sarla Verma</i> is '16']	(Rs.3,46,046/- x 16)	Rs.	55,36,736.00
Funeral Expenses [in terms of the Judgment of <i>Pranay Sethi</i> : (2017) 16 SCC 680]	(+)	Rs.	15,000.00
Loss of Estate [in terms of the Judgment of <i>Pranay Sethi</i>]	(+)	Rs.	15,000.00
Loss of Spousal consortium [in terms of the Judgment of <i>Magma General Insurance</i> : (2018) 18 SCC 130]	(+)	Rs.	40,000.00
Loss of Parental consortium (Rs.40,000/- x 5) [in terms of the Judgment of <i>Magma General Insurance</i>]	(+)	Rs.	2,00,000.00
Loss of Filial consortium (Rs.40,000/- x 1) [in terms of the Judgment of <i>Magma General Insurance</i>]	(+)	Rs.	<u>40,000.00</u>
Total	=	Rs.	<u>58,46,736.00</u>

(Rupees fifty eight lakhs, forty six thousand, seven hundred and thirty six) only.

16. The Claimants-Respondents shall be entitled to simple interest @ 10% per annum on the above amount with effect from the date of filing of the Claim Petition before the



Learned Claims Tribunal, i.e., 09-11-2017, until its full realisation.

17. The Appellant is directed to pay the awarded amount to the Claimants-Respondents within one month from today, failing which the Appellant-Insurance Company shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition, till realisation, duly deducting the amounts, if any, already paid by the Appellant-Insurance Company to the Claimants-Respondents.

18. To consider division of the compensation amongst the Claimants-Respondents, it is appropriate to refer to the ratio in ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another***¹ which while considering the dependants of the deceased held as follows;

"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." [emphasise supplied]

19. As no evidence was furnished to establish the dependency of the father only the mother would be considered

¹ (2006) 6 SCC 121



The Branch Manager, Chola MS General Insurance Co. Ltd. vs. Radha Pradhan and Others

as a dependant of the deceased besides his spouse and children. The awarded amount of compensation shall be divided amongst the Claimant-Respondent No.1 being the spouse of the deceased, Claimant-Respondent Nos.2 to 6 being his minor daughters and Claimant-Respondent No.8 being his mother.

- (i) From of the amount awarded, Claimant-Respondent No.1, spouse of the deceased is entitled to 15%, while Claimant-Respondent No.8 shall also be granted 15% considering the fact that she is aged and would obviously has been dependant on the deceased, along with interest as specified above.
- (ii) 70% of the total amount awarded shall be divided amongst the Claimant-Respondent Nos.2 to 6, of which 50% of the share of each child shall be kept in individual Fixed Deposit in a Nationalised Bank, until the child attains the age of majority. The remaining 50% of each of the minor's share shall be expended on their education.

20. The impugned Judgment of the Learned Claims Tribunal is upheld with modifications to the impugned Award.

21. Appeal allowed to the extent above.

22. No order as to costs.

23. Copy of this Judgment be sent to the Learned Claims Tribunal for information.

**(Meenakshi Madan Rai)
Acting Chief Justice**

30-09-2019

Approved for reporting : **Yes**

ds

Internet : **Yes**