# THE HIGH COURT OF SIKKIM: GANGTOK

## (Civil Appellate Jurisdiction)

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

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**MAC Appeal No. 03 of 2018**

The Branch Manager,
National Insurance Co. Ltd.,
Having its Branch Office at:-
N.H.-10, Opposite Tourism Department,
Gangtok, East Sikkim.

.... Appellant/Insurer

**versus**

**1.** Mrs. Dil Kumari Subba,
W/o Late Pem Tshering Lepcha,

**2.** Ms. Jola Shemik Lepcha,
D/o Late Pem Tshering Lepcha,
both are resident of Marchak Busty,
P.O. & P.S. Ranipool, East Sikkim.

.... Respondents/Claimants

**3.** Shri Raj Kumar Thirani,
S/o B.D. Thirani,
R/o Thirani Building, M.G. Marg,
P.O. & P.S. Sardar,
Gangtok, East Sikkim.
(Owner of vehicle No. Sk-01-P-0466, Estilo LXI Zen).

.... Respondent/Owner

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**Appeal under Section 173 of the Motor Vehicle Act, 1988.**

**Appearance:**

Mr. Thupden Gyatso Bhutia, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Ms. Sudha Sewa and Mr. Nima Tshering Sherpa, Advocates for Respondent nos. 1 and 2.

Mr. Ajay Rahti, Mr. Rahul Rathi, Ms. Phurba Diki Sherpa and Ms. Renuka Chhetri, Advocates for Respondent no. 3.

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**J U D G M E N T**
**(10.06.2019)**

***Bhaskar Raj Pradhan, J***

**1.** The Appellant is the Insurance Company. It was Opposite Party no.2 before the Motor Accident Claims Tribunal (Tribunal). The Respondent no.1 and Respondent no.2 are the Claimant no.1 i.e. the wife of the deceased-Pem Tshering Lepcha who succumbed due to the accident and the Claimant no.2 i.e. the minor daughter of the deceased and the Claimant no.1. The Respondent no.3 is the owner of the vehicle which met with the accident. The present appeal had been preferred by the Appellant dissatisfied with the impugned judgment and the award both dated 27.11.2017 passed by the learned Tribunal.

**2.** The quantum of the award passed by the learned Tribunal is not in dispute. The judgment of the learned Tribunal directing the Appellant to pay the compensation is challenged. The income certificate of the deceased (exhibit-11) dated 02.09.2016 having not been proved by the Block Development Officer who issued it, is contested. The Appellant also submits that the Respondent no.3 has categorically stated that the driver had not taken due permission/authorisation from him before taking the said vehicle. Thus, it is argued the Appellant could not be saddled with the compensation.

**3.** Heard Mr. Thupden Gyatso Bhutia, learned Counsel for the Appellant, Mr. N. Rai, learned Senior Counsel for Respondent nos. 1 and 2 and Mr. Ajay Rahti, learned Counsel for Respondent no.3.

**4.** On the intervening night of the incident i.e. 13.04.2016 and 14.04.2016 the deceased was travelling along with other occupants in vehicle bearing registration no. SK-01-P-0466 (Estilo LXI Zen) from Marchak to Mangan, North Sikkim driven by its driver-late Gopal Chettri. When the vehicle reached Rangchang Bhir, Dikchu Singtam Road, East Sikkim it fell off the cliff resulting in the death of the deceased. The driver had a valid license issued by the Motor Vehicle Department. The vehicle was duly insured with the Appellant having a valid insurance policy no. 150608/31/16/6700000049 valid from 04.04.2016 to the midnight of 03.04.2017 covering the date of the accident.

**5.** The learned Tribunal relied upon the certificate of registration (exhibit-8) to hold that the vehicle was registered in the Motor Vehicle Division; tax was paid up to 22.06.2016 covering the date of the accident and that the Respondent no.3 was the owner of the said vehicle.

**6.** The learned Tribunal came to the conclusion that the accident had occurred on the said date on examining the

certified copy of the First Information Report (FIR) dated 14.04.2016 (exhibit-2). The FIR was registered against the driver of the vehicle for rash driving on a public way (Section 279 Indian Penal Code, 1860) (IPC) and causing death by negligence (Section 304A IPC). The learned Tribunal examined the property seizure memo (exhibit-7) vide which the police seized the vehicle, its key and documents.

**7.** The inquest form (exhibit-4), dead body challan (exhibit-5), autopsy/post mortem report (exhibit-15), dead body handing and taking memo (exhibit-6), death certificate of the deceased (exhibit-13) satisfied the learned Tribunal regarding the death of the deceased due to the accident.

**8.** The learned Tribunal came to the conclusion that the collective appreciation of the testimony of Respondent no.1 and the exhibited documents clearly established that the accident occurred on the intervening night on 13.04.2016 and 14.04.2016 when the vehicle owned by the Respondent no.3 and driven by the driver in which the deceased was travelling fell off the cliff resulting in the death of the deceased, one Dipak Chettri and the driver.

**9.** The learned Tribunal was aware that Respondent no.1 was not travelling in the vehicle at the relevant time although she deposed that the driver had driven the vehicle rash and

negligently. However, the learned Tribunal concluded that the driver had driven the vehicle rash and negligently after examining the FIR and the charge-sheet (exhibit-18) implicating him under Section 279 and 304A of the IPC. The finding in the charge-sheet (exhibit-18) was that the motor vehicle inspection report stated that the vehicle could have lost control due to over speeding resulting in the accident.

**10.** The driving license of the driver (exhibit-9) assured the learned Tribunal that it was valid at the time of the accident.

**11.** The learned Tribunal examined the insurance policy (exhibit-10) to come to the conclusion that the vehicle was insured w.e.f. 04.04.2016 till the midnight of 03.04.2017 covering the period of accident. The learned Tribunal also held that there was no doubt created about the genuineness of the documents. Hence, the learned Tribunal came to the conclusion that the deceased while travelling in the vehicle died in the motor accident which was duly insured.

**12.** The birth certificate (exhibit-12) of the deceased made the learned Tribunal conclude that the age of the deceased was 20 years at the time of the accident.

**13.** The Respondent nos. 1 and 2 placed reliance on the income certificate of the deceased issued by the Block Development Officer reflecting his monthly income. The income certificate

certified that the deceased was working as a local mason which was a skilled profession and was earning Rs.16000/- per month. The income certificate also certified that the deceased was earning some income by selling organic vegetables. The Appellant contested the income certificate being not proved by the Block Development Officer. Although the Block Development Officer was not examined the Respondent no.1 who is the wife of the deceased deposed that the deceased was working as a local mason and earning Rs.16000/- per month. She also deposed that he was also earning some income by selling organic vegetables. The Respondent no.1 deposed that the income certificate was issued by the Block Development Officer. The learned Tribunal considered that the Appellant did not deny the monthly income of the deceased.

**14.** Mr. Thupden Gyatso Bhutia drew the attention of this Court to the written objection filed by the Appellant in which the contents of the income certificate were contested. The Respondent no.1 had exhibited the income certificate issued by the Block Development Officer. She was cross-examined by the Appellant. During cross-examination the Respondent no.1 accepted the suggestion that she had not filed any document to substantiate that the deceased used to work as a mason. She also deposed that the income certificate was obtained approximately five months from the date of the accident.

Obviously the income certificate was applied for and obtained after the death of the deceased to make the claim. No fault can be attributed to the Respondent no.1 for doing so. She also admitted that the income certificate does not reflect on which documents and facts and it was issued. No suggestion was made to the Respondent no.1 that the income certificate was a false certificate. Mr. N. Rai relied upon Notification No.25/Home/2007 dated 03.04.2007 published in the Sikkim Government Gazette dated 17.04.2007 by which in exercise of the powers conferred by Section 21 of the Code of Criminal Procedure, 1973 (Cr.P.C.) Block Development Officers have been appointed to be Special Executive Magistrates for the performance of various functions including issuance of income certificate. It is thus clear that the Block Development Officer while issuing the income certificate was exercising a statutory function as a public officer. Thus the income certificate would fall under the category of public documents. Mr. N. Rai would also draw the attention of this Court to two judgments of this Court on this issue. In re: ***Smt. Anita Sunam & Ors. v. Shri Hom Nath Timshina & Anr.***[1] the learned Single Judge of this Court held, relying upon an earlier judgment of this Court in re: ***Branch Manager, Oriental Insurance Company***

[1] **2013 SCC OnLine Sikk 67**
[2] **2012 (1) T.A.C. 444 (Sikkim)**

***Ltd. v. Smt. Meena Bania and Ors.***[2]**,** that the Block Development Officer is a competent authority under the State Government to issue certificate of income and also a public servant and therefore certificate issued under his seal and signature can be judicially taken notice of under illustration (e) of Section 114 of the Indian Evidence Act, 1872. In re: ***Shri Silli Man Subba & Ors. v. Shri Man Bahadur Subba & Anr.***[3] the learned Single Judge of this Court once again held that there was no necessity to examine the Block Development Officer to prove the certificate as it would fall within the meaning of a public document under Section 74 of the Indian Evidence Act, 1872 and thus judicial notice can be taken of it under clause (6) and (7) of Section 57 thereof. The learned Single Judge also held that the Block Development Officer being a public officer duly conferred with the authority to issue income certificates, it would not be mandatory to call him in the witness box to prove that he had indeed issued the income certificate. It was held even otherwise, it is trite that in cases filed under the provisions of the Motor Vehicles Act, 1988, strict rules of evidence are not applicable. This Court sees no reason to differ from the earlier views of this Court.

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[3] **2014 SCC OnLine Sikk 198**

**15.** In the judgment of the Supreme Court in re: ***Sunita & Ors. v. Rajasthan State Road Transport Corporation & Anr.***[4] relied upon by Mr. N. Rai it has been lucidly held:

> ***"31****..... The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider. Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.***"**

**16.** The first challenge by the Appellant about the non-examination of the Block Development Officer to prove the income certificate therefore, must fail.

**17.** Relying upon the judgment of this Court in re: ***The Branch Manager, National Insurance Company Limited v. Smt. Tika Devi Limboo & Ors.***[5] Mr. Thupden Gyatso Bhutia sought a remand of this case to examine the Block Development Officer who issued the income certificate. In the said case this Court had remanded

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[4] **2019 SCC OnLine SC 195**
[5] **2017 SCC OnLine Sikk 201**

the matter in view of the anomaly in the income detailed in the income certificate. No such anomaly could be pointed out in the income certificate by the learned Counsel and evidently none exist. As such the prayer for remand is liable to be rejected.

**18.** The second ground of challenge by Mr. Thupden Gyatso Bhutia is regarding the unauthorised use of the vehicle by the driver which, as submitted, was admitted by the Respondent no.3. It is argued that the learned Tribunal failed to consider Section 149 (2) of the Motor Vehicle Act, 1988 under which violation of terms and conditions of the Insurance Policy would be a valid ground of defence.

**19.** The Respondent no.3 in his evidence-on-affidavit deposed that the vehicle was driven by a qualified driver in possession of valid driving license issued by the licensing authority. He also deposed that the driver was authorised to drive light motor vehicle. The Respondent no.3 further deposed that he had taken a road drive test of the driver before giving him employment to make sure that his driving was good. He deposed that after the road drive test he was satisfied with his driving skills. Thereafter, he perused the driving licence which seemed genuine, valid and effective. He deposed that the documents of the vehicle including insurance policy was valid and effective at the time of the accident and that he had not violated any of its terms and conditions. The Respondent no.3 vouched for the

trustworthiness of the driver and stated that he used to take the vehicle to his house after duty hours in case he got late. Having stated the above the Respondent no.3 also stated:

> ***"11****.... It is pertinent to mention here that when the said deceased driver Late Gopal Chettri used to take the vehicle to his home from that time he was not in duty hours of the present Respondent No.01. I came to know that the victim driver was proceeding towards Rangchang, Makha-Dikchu Road driving the above mentioned vehicle i.e. bearing Registration Number SK-01-P-0466 and met with an accident resulting to his death at the place of occurrence. I further came to know that two unauthorized occupants were inside the said vehicle as the driver had never taken any permission to take ant (sic-any) friends/relatives/unauthorized persons/passengers in the said vehicle.....****"***

**20.** Referring to the above quoted deposition of the Respondent no.3 it was argued that he having admittedly not authorised the driver to take his vehicle when it met with the accident amounted to violation of the terms and conditions of the insurance policy.

**21.** The Respondent no.3 has categorically deposed that the driver used to take the vehicle to his house after duty hours in case he got late. Thus the driver taking the vehicle with him away from the Respondent no.3's house was authorised. Section 146 of the Motor Vehicles Act, 1988 provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that

other person, as the case may be, a policy of insurance complying with the requirements of this chapter. The Respondent no.3 had exhibited the insurance policy. The Appellant cross-examined the Respondent no.3. No question was put to the Respondent no.3 about him violating the terms and conditions of the insurance policy in spite of the statement quoted above. In the written objection filed by the Appellant it was contended by him that the use of the vehicle was illegal and therefore there was contributory negligence on the part of the deceased in using the private vehicle for commercial purpose. It is submitted that this tantamount to violation of terms and conditions of the insurance policy. No evidence was led to establish the allegation that the vehicle was used for commercial purpose. A perusal of the insurance policy does not reflect any such terms and condition which have been violated. The Appellant did not rely upon or refer to any specific term or condition of the policy in question. It is not in dispute that the Appellant had notice through the learned Tribunal of the bringing of the proceedings. The Appellant was made a party to the proceedings and permitted to defend the action on any of the grounds available. It was completely within the Appellant's right to defend the action specifying the breach of the condition of the insurance policy. In spite of the opportunity no evidence was led by the Appellant to satisfy the learned Tribunal about any

breach of the conditions of the insurance policy. It is evident that there was no such breach. As such the second ground of challenge by the Appellant also must fail.

**22.** No further grounds were urged by the Appellant during the course of the hearing. The learned Tribunal has examined the evidence and correctly come to the conclusion that the Respondent no.1 and 2 were entitled to compensation as calculated. The amount of compensation granted by the learned Tribunal not being challenged nothing further remains to be decided.

**23.** The appeal fails. The judgment and award both dated 27.11.2017 passed by the learned Tribunal are upheld.

**( Bhaskar Raj Pradhan )**
**Judge**
**10.06.2019**

Approved for reporting: yes.
to/ Internet: yes.