



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 18<sup>th</sup> FEBRUARY, 2020

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

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MAC App. No.08 of 2019

**Appellant** : The Branch Manager,  
National Insurance Company Limited

**versus**

**Respondent** : Chezing Bhutia and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Ms. Kesang Choden Tamang, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. Nima Tshering Sherpa,  
Advocate for the Respondents No.1 to 3.

Mr. Mr. K. B. Chettri, Advocate for the Respondent No.4.

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**and**

CO No.02 of 2019

**Appellants** : Chezing Bhutia and Others

**versus**

**Respondents** : The Branch Manager,  
National Insurance Company Limited and Another

Cross-Objection under Order XLI Rule 22(1) and (2) read  
with Section 151 of the Code of Civil Procedure, 1908

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**Appearance**

Mr. N. Rai, Senior Advocate with Mr. Nima Tshering Sherpa,  
Advocate for the Appellants.

Ms. Kesang Choden Tamang, Advocate for the Respondent  
No.1.

Mr. Mr. K. B. Chettri, Advocate for the Respondent No.2.

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## J U D G M E N T (ORAL)

Meenakshi Madan Rai, J.

**1.** The Appeal assails the Judgment of the Motor Accident Claims Tribunal, East Sikkim, at Gangtok (for short, "Learned Claims Tribunal"), dated 29-03-2019, in MACT Case No.70 of 2017. The first ground raised is that the Learned Claims Tribunal adopted the multiplier of '18' for calculating loss of income of the deceased which allegedly resulted in a miscalculation of the amount awarded which was placed at Rs.27,99,376/- (Rupees twenty seven lakhs, ninety nine thousand, three hundred and seventy six) only. That, infact the multiplier adopted ought to have been '11' and not '18' bearing in mind the age of the Claimants-Respondents No.1 to 3. The age of the deceased instead was erroneously considered by the Learned Claims Tribunal. The second ground for assailing the Judgment was that despite the Claimants not having established rash and negligent driving the Learned Claims Tribunal took into consideration the prayer of the Claimants and granted compensation.

**2.** In the Cross-Objection filed by the Appellant in the Cross-Objection No.02 of 2019 (Respondents No.1 to 3 in MAC App. No.08 of 2019) the grievance is that the Learned Claims Tribunal failed to calculate and include "future prospects" of the deceased in the compensation granted in terms of the Judgment of the Hon'ble Supreme Court in the ratio of **National Insurance**



***Company Limited vs. Pranay Sethi and Others<sup>1</sup>***. No objection on this count was raised by Learned Counsel for the Respondent No.1 (Appellant in MAC App No.08 of 2019).

**3.** The undisputed facts are that the deceased along with four other Indian Reserve Battalion (hereinafter, IRB) personnel were travelling in vehicle bearing registration No.SK 01 P 8693 from IRB Camp at Pipaley, West Sikkim to Rorathang, East Sikkim, on 11-08-2017. The vehicle met with an accident near the Sikkim Distilleries, Rangpo, East Sikkim, resulting in the death of the deceased, son of Respondents No.1 and 2 and brother of Respondent No.3 (MAC App No.8 of 2019). The age of the deceased being 22 years at the time of the accident is not disputed.

**4.** Learned Counsel for the parties have been heard at length. Their submissions duly considered and pleadings perused.

**5.** In the light of the decision in ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another<sup>2</sup>***, it is evident that the multiplier to be adopted is indeed '18' and not '11', as the age of the deceased and not that of the Claimants is the criteria for consideration for adoption of multiplier. In ***Pranay Sethi (supra)*** it has clearly been spelt out by the Hon'ble Supreme Court that the age of the deceased should be the basis for applying the multiplier. Hence, the objection raised by the Appellant, on this count has no legs to stand.

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<sup>1</sup> (2017) 16 SCC 680

<sup>2</sup> (2009) 6 SCC 121



6. So far as rash and negligent driving is concerned, it is admitted that there were five occupants in the vehicle including the driver of whom three passed away in the unfortunate accident. Apart from the driver, it was contended that one remaining person was not examined. It would be apposite to remark here that barring exceptional cases, it is always not possible for the Claimant to know what precisely led to the accident, hence the application of the maxim *res ipsa loquitur*, which is but a rule of evidence. The reason being that there are certain incidents which do not occur unless there is negligence. In consideration of the facts placed before this Court the negligence on the part of the driver obviously cannot be ruled out. Hence, I find no merit in the second ground raised in the Appeal.

7. Addressing the question in the Cross-Objection, viz., the Learned Claims Tribunal had failed to consider the future prospects of the victim. In this context, in **Pranay Sethi** (*supra*) the Supreme Court while discussing future prospects held as hereunder extracted;

"59. In view of the aforesaid analysis, we proceed to record our conclusions:

.....

**59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made.** The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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**59.7.** The age of the deceased should be the basis for applying the multiplier.

**59.8.** Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. **[emphasis supplied]"**

Since the deceased had a permanent job being an employee in the Indian Reserve Battalion posted in Pipaley Camp, West Sikkim, future prospects are thus due to him. Nevertheless, as he was a bachelor there can be no computation for "loss of consortium" as calculated by the Learned Claims Tribunal which is however replaced by "Loss of Filial Compensation".

**8.** In view of the aforestated discussions, the quantum of compensation calculated by the Learned Claims Tribunal stands re-calculated and modified as follows;

Annual income of the deceased	(Rs.25,272- x 12)	Rs.	3,03,264.00
<b>Add</b> 50% of Rs.3,03,264/- as Future Prospects	<b>(+)</b>	<u>Rs.</u>	<u>1,51,632.00</u>
		Rs.	4,54,896.00
<b>Less</b> 50% of Rs.4,54,896/- [as the victim was a bachelor, in consideration of the expenses which he would have incurred towards maintaining himself had he been alive]	<b>(-)</b>	<u>Rs.</u>	<u>2,27,448.00</u>
Net yearly income		Rs.	2,27,448.00
<b>Multiplier</b> to be adopted ' <b>18</b> ' [The age of the deceased at the time of death was 22 and the relevant multiplier as per Judgment of <i>Sarla Verma (supra)</i> is '18']	(Rs.2,27,448/- x 18)	Rs.	40,94,064.00
Funeral Expenses [in terms of the Judgment of <i>Pranay Sethi (supra)</i> ]	<b>(+)</b>	Rs.	15,000.00
Loss of Estate [in terms of the Judgment of <i>Pranay Sethi (supra)</i> ]	<b>(+)</b>	Rs.	15,000.00
Loss of Filial Consortium [in terms of the Judgment of <i>Magma General Insurance Co. Ltd. vs. Nanu Ram and Others : (2018) 18 SCC 130</i> ]	(Rs.40,000/- x 3) <b>(+)</b>	<u>Rs.</u>	<u>1,20,000.00</u>
<b>Total</b>		<b>=</b>	<b><u>Rs. 42,44,064.00</u></b>

**(Rupees forty-two lakhs, forty-four thousand and sixty-four) only.**



**9.** The Appellant-Insurance Company shall pay the compensation computed *supra*. 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., 14-09-2017, until its full realisation.

**10.** The Appellant-Insurance Company 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.

**11.** Appeal dismissed. Cross Objection allowed. Both stand disposed of accordingly.

**12.** No order as to costs.

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

**( Meenakshi Madan Rai )**  
**Judge**  
18-02-2020

Approved for reporting : **Yes**