



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 3rd October, 2024

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

MAC App. No.01 of 2024

Appellant : The Manager, The New India Assurance Company Limited

versus

Respondents : Krishna Bahadur Mukhia and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Dipayan Roy, Advocate for the Appellant.

Ms. Vidya Lama and Mr. Nima Tshering Sherpa, Advocates for the Respondents.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Learned Motor Accidents Claims Tribunal (hereinafter, the "MACT"), Gangtok, Sikkim, vide its Judgment dated 24-05-2023, in MACT Case No.23 of 2021 (*Krishna Bahadur Mukhia and Another vs. Suresh Rai and Others*), granted a sum of ₹ 11,50,100/- (Rupees eleven lakhs, fifty thousand and one hundred) only, to the Respondents (Claimants before the MACT), with interest @ 10% per annum, from the date of filing the application (i.e. 20-12-2021) till its full realization, on account of a motor vehicle accident which occurred on 22-08-2021, between 09.00 a.m. to 11.50 a.m. at "Vertical Bhir", Sudunglakha, East Sikkim.

(i) The Respondents case is that their mother, a fifty-eight year old agriculturist, earning a monthly income of ₹ 12,000/- (Rupees twelve thousand) only, was travelling from Rongli to



Rhenock in the said vehicle (Bolero), bearing registration no.SK-01-PC-1884, when the vehicle careened off the road to about 300 feet below, on account of the driver (OP No.3 before the MACT), of the vehicle speeding at the relevant time. That, due to her sudden death, the Respondents faced a loss of family income and accordingly sought compensation of ₹ 11,11,900/- (Rupees eleven lakhs, eleven thousand and nine hundred) only, from the Respondents therein.

(ii) The Appellant-Insurance Company herein (OP No.2 before the MACT), contested the claim petition, denying its liability by averring that no extra premium to cover gratuitous passenger was deposited as apparent from the Insurance Policy Exhibit-8. Thus, the owner of the vehicle (OP No.1 before the MACT) and OP No.3, the driver of the vehicle were liable to pay the compensation. The age and income and the relationship of the deceased to the Respondents were also denied.

(iii) The OP No.3, the driver contested the claim petition on grounds that his driving license was effective at the time of the accident and the vehicle was not driven in a rash and negligent manner thereby divesting him of any liability.

(iv) The OP No.1, the owner of the vehicle, denied his liability claiming to have engaged OP No.3, a qualified driver and the vehicle having been properly maintained and mechanically fit at the time of accident besides being insured with the Appellant-Insurance Company and the Insurance Policy which was a "Package Policy" was subsisting at the time of accident.

(v) On the basis of the pleadings of the parties, the Learned MACT framed the following issues for determination;



- (1) Whether all the documents of the vehicle bearing registration no.SK-01-PC-1884 including the driving licence of the driver were valid and effective at the time of accident on 22.08.2021?
- (2) Whether the petitioner/claimant is entitled to the reliefs claimed?

(vi) In Issue no.1, the Learned MACT after examining all documents on record observed and concluded that, all documents of the vehicle including the driving license of the driver were valid and effective at the time of accident.

(vii) In Issue no.2, it was found that the Petitioners/Claimants were entitled to the reliefs claimed and the liability was upon the OP No.2 (Appellant-Insurance Company). That, in terms of the observations of the Supreme Court in **M. Mansoor vs. United India Insurance Co. Ltd.**, [2013 (12) SCALE 324], the Petitioners/Claimants were also entitled to the amounts under the heads "Love and Affection" and "Cost of Litigation". The compensation was accordingly calculated and granted under the following heads;

Sl. No.	Head	Amount in ₹
1	Loss of earning	9,93,600
2	Funeral expenses	16,500
3	Loss of estate	15,000
4	Love and affection	1,00,000
5	Cost of litigation	25,000
	TOTAL	₹ 11,50,100

2. Dissatisfied with the Judgment of the Learned MACT the Appellant-Insurance Company is before this Court. It is contended by Learned Counsel for the Appellant that the deceased at the relevant time was travelling as a passenger in the vehicle and the Insurance Policy did not cover the liability of any



unauthorized person travelling as passenger. That, although on the date of the accident, the third party coverage was subsisting, the policy being a "Bundled Motor Policy for Private Car" the liability of the Appellant-Insurance Company was limited to ₹ 2,00,000/- (Rupees two lakhs) only, and not beyond. Hence, the Judgment be set aside.

3. Learned Counsel for the Respondents argued that no interference was required in the impugned Judgment as the policy was a "Bundled Motor Policy for Private Car", which was a package policy and nowhere is it mentioned therein that the liability of the Insurance Company was limited to ₹ 2,00,000/- (Rupees two lakhs) only, as is evident from Exhibit-8 relied on by the Respondents. That, an extra premium had been paid to cover all occupants of the vehicle. The Appeal thereby deserves a dismissal.

4. Based on the averments of the parties and the rival submissions advanced by Learned Counsel, the only question for determination by this Court is; Whether the liability of the Appellant towards the Respondents is limited to the payment of ₹ 2,00,000/- (Rupees two lakhs) only.

(i) Exhibit-8 relied on by the Respondents is a policy schedule cum certificate of insurance, "Bundled Motor Policy for Private Car". The policy is valid for the period 21-09-2019 to 20-09-2022 and covers own damages and third party. The accident occurred on 22-08-2021. It is averred in Paragraph 12 of the Memo of Appeal by the Appellant that the policy is a "package policy". The document reveals that, for "own damages" a premium has been deposited and an "additional premium" has been paid for third party. Ext-D2-3/DW-1 is also the same insurance policy but



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is stated to be “enhanced covers” and the insured declared value was ₹ 8,44,902/- (Rupees eight lakhs, forty four thousand, nine hundred and two) only. The document also details as follows;

“
ATTACHED TO AND FORMING PART OF POLICY
NO.51230231190900003907 Additional Premium: Rs.
3379.608
In consideration of payment of an additional premium by
the Insured, it is hereby agreed and declared that
notwithstanding anything to the contrary contained in the
Policy, the Company hereby undertakes to indemnify:
1. Depreciation on replacement of parts including tyres,
tubes, rubber/plastic for Partial Loss Claims.
2. Midterm inclusion of cover is not permitted.
3. Total Loss and Constructive Total Loss will be settled on
the basis of IDV.
Subject otherwise to the terms, exceptions, conditions and
limitation of this Policy.
Date of Issue: 20/07/2022
.....”

The vehicle vide this second document was also insured for the period 21-09-2019 to 20-09-2022 as before.

5. In *National Insurance Company Limited vs. Balakrishnan and Another*¹, the Supreme Court had an occasion to examine the difference between “Act Policy” and “Comprehensive/Package Policy” and observed as follows;

“**24.** It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the “comprehensive/package policy”. Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the “comprehensive policy” and the said position continues to be in vogue till date. It had also admitted that the “comprehensive policy” is presently called a “package policy”. It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in

¹ (2013) 1 SCC 731



respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies.

.....
26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered."

The above position clarifies that a Comprehensive/Package Policy would cover the liability of the insurer for payment of compensation for the occupant in a car, in other words, it covers a third party risk of an occupant in a car.

6. Relevantly at this juncture, it is essential to notice that an "additional premium" was paid by the owner of the vehicle (OP No.1 before the MACT) and the policy was a "Bundled Motor Policy for Private Car" (Exhibit-8). In the said circumstances, in view of the document relied on by the Appellant themselves, I am of the considered view that the Respondents are entitled to the total losses as calculated hereinbelow and the argument of Appellant that the liability is limited to ₹ 2,00,000/- (Rupees two lakhs) only, fails to impress unsubstantiated as it is by documentary evidence.



7. “Cost of litigation” has not been granted in any of the Judgments of the Supreme Court viz; **National Insurance Company Limited** vs. **Pranay Sethi and Others**², **Sarla Verma (Smt) and Others** vs. **Delhi Transport Corporation and Another**³ and **Magma General Insurance Company Limited** vs. **Nanu Ram alias Chuhru Ram and Others**⁴. The compensation of ₹ 25,000/- (Rupees twenty five thousand) only, granted by the Learned MACT under this head is thereby disallowed and set aside. However, the amount computed under “Love and Affection” is allowed in terms of the decision in **Magma General Insurance Company Limited** (*supra*). Although, **Magma General Insurance Company Limited** (*supra*) also provides that “Parental consortium” is to be granted on the death of a parent or parents but it specifies that parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training”. Considering that the Respondents are both aged above thirty years, they would surely not fall within the ambit of the observation and therefore are not entitled to parental consortium.

8. In conclusion, the compensation which is found to be “just compensation” which the Appellant is liable to pay the Respondents is re-computed as follows;

Annual income of the deceased (₹ 12,000/- x 12)	₹	1,44,000.00
Add 10% of ₹ 1,44,000/- as Future Prospects	(+)	₹ 14,400.00
[in terms of Paragraph 58 of the Judgment of <i>National Insurance Company Limited</i> vs. <i>Pranay Sethi and Others</i> : (2017) 16 SCC 680]		₹ 1,58,400.00
Less 1/3 rd of ₹ 1,58,400/-	(-)	₹ 52,800.00
[in terms of Paragraph 30 of the Judgment of <i>Sarla Verma (Smt) and Others</i> vs. <i>Delhi Transport Corporation and Another</i> : (2009) 6 SCC 121 — deducted from the above amount as expenses that the deceased would have incurred towards herself had she been alive]		
Net yearly income	₹	1,05,600.00
Multiplier to be adopted ‘9’	(₹ 1,05,600/- x 9)	₹ 9,50,400.00

² (2017) 16 SCC 680
³ (2009) 6 SCC 121
⁴ (2018) 18 SCC 130



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[The age of the deceased at the time of death was '58' and the relevant multiplier in terms of Paragraph 42 as per Judgment of *Sarla Verma (supra)* is '9']

Add Funeral Expenses [in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years. Therefore, the figure calculated is — ₹ 15,000 @ 10% = ₹ 1,500 + ₹ 15,000 = ₹ 16,500]	(+)	₹	16,500.00
Add Loss of Estate [in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years. Therefore, the figure calculated is — ₹ 15,000 @ 10% = ₹ 1,500 + ₹ 15,000 = ₹ 16,500]	(+)	₹	16,500.00
Add Love and Affection [@ ₹ 50,000/- each, in terms of Paragraph 19 of the Judgment of <i>Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others : (2018) 18 SCC 130</i>]	(+)	₹	<u>1,00,000.00</u>
Total =			₹ <u>10,83,400.00</u>

(Rupees ten lakhs, eighty three thousand and four hundred) only.

9. The Respondents-Claimants are therefore entitled to compensation ₹ 10,83,400/- (Rupees ten lakhs, eighty three thousand and four hundred) only, with simple interest @ 9% per annum, on the above amount with effect from the date of filing of the Claim Petition before the Learned MACT, i.e., 20-12-2021, till its full realisation.

10. The Appellant-Insurance Company is directed to pay the awarded compensation to the Respondents-Claimants No.1 and 2, within one month from today, with interest @ 9% per annum, failing which, it shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition, till full realisation. Amounts, if any, already paid by the Appellant-Insurance Company to the Respondents-Claimants No.1 and 2, for the instant Claim Petition, shall be duly deducted from the awarded compensation.

11. The awarded amount of compensation along with interest as specified above, shall be divided equally amongst the Claimants-Respondents No.1 and 2, being the sons of the deceased.

12. The impugned Judgment is set aside.

13. Appeal disposed of accordingly.



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14.

No order as to costs.
15.

Copy of this Judgment be sent to the Learned MACT for information, along with its records.

(Meenakshi Madan Rai)

Judge

03-10-2024

Approved for reporting : **Yes**