

IN THE HIGH COURT OF SIKKIM

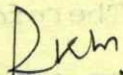

ORDER SHEET

M.A.C. APPEAL No. 1 of 2004.

National Insurance Co. Ltd. Petitioner / Appellant

Versus

Kamala Rai and Others. Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	23-2-2004	<p>Admit.</p> <p>Issue notice. The awarded amount be deposited with the Motor Accident Claims Tribunal, East & North, Gangtok within four weeks as undertaken by the learned counsel for the appellant.</p> <p>List it on 23-3-2004 for orders.</p> <p style="text-align: right;">  (R.K. Patra) Chief Justice 23-2-2004. </p>	<p>Requests not filed. notice not issued. <i>hurdles.</i> 20/3/04</p>
2.	23.3.2004	<p>None appears for the appellant.</p> <p>Respondents 1, 2 and 3 have entered appearance through Shri Suraj Chettri and Shri Ajay Rathi, Advocates and Shri Basant Sharma, Advocate has entered appearance on behalf of respondent No.4.</p> <p>Put up on 12.4.2004 for fixing date of hearing.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice </p>	

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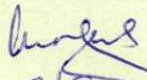



No. of Order	Date of Order	Order with Signature	Office Note or action (if any) taken on Order
3.	12.4.2004	<p>As prayed for, / Put up for hearing on 26.4.2004.</p> <p><i>R.K.P.</i> (R. K. Patra) Chief Justice</p>	
at/			
4.	26.4.2004	<p>Put up this case before the State Lok Adalat on 22.5.2004 at 10.30 a.m.</p> <p><i>R.K.P.</i> (R. K. Patra) Chief Justice</p>	<p>As directed list it on 16.7.2004 for fixing date of hearing. Interven party/parties accordingly.</p> <p><i>Sh</i> 20/8/04.</p>
5.	16-7-2004	<p>This matter was referred to the Lok Adalat but it could not be settled. Therefore put up for hearing on 9-8-2004 as agreed to by the counsel for the parties.</p> <p><i>R.K.P.</i> (R.K. Patra) Chief Justice 16-7-2004.</p>	
rs/			
6.	9.8.2004	<p>This appeal filed on behalf of the insurer is directed against the order dated 30.10.2003 passed by the Motor Accident Claims Tribunal, (East and North) Gangtok in MACT Case No.9 of 2003 granting a sum of Rs.7,45,372.00 (minus Rs.50,000/- already received as interim compensation) as compensation in favour of the respondents 1 to 3.</p> <p>2. I have heard Shri S. Majumdar, learned Counsel for the appellant and Shri Suraj Chettri and Shri Ajay Rathi for the respondents 1 to 3.</p> <p>3. The respondent no.1 is the widow of the deceased Fauda Raj Rai who died in a motor accident</p>	



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		<p>on 10.1.2003. Respondent nos. 2 and 3 are their minor daughter and son. The claim petition for compensation was filed on their behalf before the Motor Accident Claims Tribunal alleging that on 10.1.2003, Fauda Raj Rai (hereinafter referred to as the deceased) was returning home on foot when he was run over by a vehicle bearing registration number SK03/0132. In the accident, the deceased sustained grievous head injury resulting in his instantaneous death at the spot.</p> <p>On the basis of the evidence, the learned Tribunal held respondents 1 to 3 are entitled to the aforesaid amount as compensation and passed orders accordingly.</p> <p>4. Learned counsel for the appellant submitted that in absence of a finding that the accident took place on account of rash and negligent driving, the order is vulnerable. I have perused the impugned order and found that no finding has been recorded that on account of rash and negligent driving by the driver of the offending vehicle, the deceased met with the accident. Learned counsel for the appellant also submitted that no evidence was led in this regard.</p> <p>4. In the facts and circumstances of the case, I am inclined to remit the matter to the Claims Tribunal for fresh disposal according to law by giving opportunity to respondents 1 to 3 to lead necessary evidence. I may mention here that the doctrine of res ipsa loquitur which means that the accident tells its own story or speaks for itself can be invoked in certain circumstances. The Claims Tribunal shall bestow its attention to this aspect also.</p> <p>6. I make it clear that this remand is confined to only for the above purpose. The quantum of</p>	



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		<p>compensation granted by the Claims Tribunal in favour of respondents 1 to 3 is just compensation which is hereby confirmed.</p> <p>7. For the reasons aforesaid, I set aside the impugned order and remit the matter to the Motor Accident Claims Tribunal for fresh disposal according according to law keeping in view the above direction and the entire exercise shall be done preferably within four weeks' hence.</p> <p>8. Respondents are at liberty to adduce evidence with regard to the accident. Counsel for the parties have agreed before me that they would appear before the Motor Accident Claims Tribunal on the 16th of this month to receive further direction from it.</p> <p>9. The appeal is accordingly allowed. No costs.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice </p>	<p>A Copy of order forwarded to member MACT on 9-8-04.  9/8/04</p> <p>As directed the order of 9/8/04 is sent to the Motor Accident Claims Tribunal, (P.O.) at Gurgaon.  09/08/04 (Attishah Shere)</p>