THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 26th MARCH, 2024

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

MAC App. No.03 of 2023

Appellant : The Branch Manager,
National Insurance Company Limited

versus

Respondents : Ms. Avipsa Pathak and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant.

Mr. Sishir Mothay, Advocate for the Respondents No.1 to 3.

Mr. Sushant Subba, Advocate for the Respondent No.4.

Mr. Romit Gurung, Advocate for the Respondent No.5.

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with

CO No.01 of 2023 in MAC App. No.03 of 2023

Cross Objector : Uday Kumar Pradhan

versus

Respondents : Ms. Avipsa Pathak and Others

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

Appearance

Mr. Sushant Subba, Advocate for the Cross Objector.

Mr. Sishir Mothay, Advocate for the Respondents No.1 to 3.

Mr. Romit Gurung, Advocate for the Respondent No.4.

Mr. Thupden G. Bhutia, Advocate for the Respondent No.5.

JUDGMENT

Meenakshi Madan Rai, J.

1. MAC App. No.03 of 2023 and CO No.01 of 2023 are being taken up together and disposed of by this common Judgment

as both variously assail the findings of the Learned Motor Accidents Claims Tribunal, District - Gyalshing (for short, "Learned Claims Tribunal"), in the impugned Judgment and Award dated 16-11-2022, in MACT Case No.03 of 2020 (*Ms. Avipsa Pathak and Others* vs. *The Branch Manager, National Insurance Company Limited and Others*).

2. The Respondents No.1, 2 and 3 herein were the Claimants before the Learned Claims Tribunal and were granted compensation amounting to ₹ 1,53,66,600/- (Rupees one crore, fifty three lakhs, sixty six thousand and six hundred) only, along with interest @ 10% per annum on the said sum, from the date of filing of the Claim Petition, i.e., 13-10-2020, till full and final payment. It was further ordered that as there was violation of a condition of the Insurance Policy by the owner of the vehicle, Respondent No.4 herein (Opposite Party No.2 before the Learned Claims Tribunal), on account of lack of "route permit", despite the vehicle in question being insured with the Appellant herein, (Opposite Party No.1), the Claimants were entitled to receive the amount from the Appellant, who was at liberty to recover the same from the Respondent No.4, after satisfying the claim put forth.

3. Hereinafter the parties shall be referred to in their order of appearance before this Court.

4. Although the Appellant Company assailed the impugned Judgment and Award stating that the Learned Claims Tribunal was not justified in granting the relief of *"pay and recovery"* when it was proved that there was a breach of a policy condition and therefore, ought to have exonerated the Appellant

Company from satisfying the claim of the Respondents No.1, 2 and 3 at all, however, during his verbal submissions before this Court, Learned Counsel conceded that in view of the pronouncement of this Court in ***Suresh Khati*** vs. ***Santosh Chetry @ Santosh Chettri and Others***[1] which has discussed at length the issue pertaining to "*pay and recovery*" and the circumstances when the principle would be applicable, with due reference to Supreme Court Judgments, he does not press this point. That, the multiplier of '15' adopted by the Learned Claims Tribunal while computing the compensation was assailed on the ground that it ought to have been '14' in terms of the Judgment ***Sarla Verma (Smt) and Others*** vs. ***Delhi Transport Corporation and Another***[2]. The third ground urged by Learned Counsel was that the Learned Claims Tribunal erred in granting an exorbitant amount of ₹ 4,25,000/- (Rupees four lakhs and twenty five thousand) only, under conventional heads, overlooking the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited*** vs. ***Pranay Sethi and Others***[3]. The rate of interest @ 10% was also assailed on grounds that it was against the ratio laid down by the Hon'ble Supreme Court in ***Benson George*** vs. ***Reliance General Insurance Company Limited and Another***[4] wherein the interest granted was 6%. Hence, besides the quantum of compensation granted by the Learned Claims Tribunal being excessive and exorbitant, in view of the grounds urged, the impugned Judgment deserves to be set aside.

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[1] MAC App. No.06 of 2021 decided on 12-06-2023 : 2023 SCC OnLine Sikk 58
[2] (2009) 6 SCC 121
[3] (2017) 16 SCC 680
[4] (2022) 13 SCC 142

5. A Cross Objection being CO No.01 of 2023 was filed by Respondent No.4 herein, the owner of the vehicle, Mahindra Xylo bearing registration No.SK/1/TR/2018/3223, which had travelled from Namchi District to Kaluk, Gyalshing District and had met with the fateful accident at Tinzerbong near Reshi, Gyalshing District, on 22-10-2018 around 1930 hours, under the jurisdiction of the Nayabazar Police Station, Gyalshing District, resulting in the death of the father of Respondents No.1 and 2, and the husband of Respondent No.3.

6. The Cross Objector while assailing the Judgment dated 16-11-2022 passed by the Learned Claims Tribunal in MACT Case No.03 of 2020 (*Ms. Avipsa Pathak and Others* vs. *The Branch Manager, National Insurance Company Limited and Others*) contended that all documents of the vehicle in accident including the Insurance Policy were valid and up-to-date at the time of the accident, consequently there was no violation of any of the terms and conditions of the Insurance Policy. That, the Learned Claims Tribunal while ordering recovery of the award/compensation paid to the Claimants by the Appellant Company from the Respondent No.4, after satisfying the claims of the Claimants, failed to appreciate that the Respondent No.4 had applied for the "route permit" of the vehicle in accident from the Motor Vehicles Division, Transport Department, Government of Sikkim, on 08-10-2018, well before the accident but it was issued by the Department belatedly on 26-10-2018, i.e., after the accident occurred on 22-10-2018. The Respondent No.4 was not at fault on this aspect and there was no violation of the terms of the Insurance Policy from his end.

Therefore, the Judgment to that extent which ordered recovery of compensation amount from the Respondent No.4 be set aside.

7. Learned Counsel for Respondents No.1 to 3 and 5 had no specific submissions to put forth.

8. The rival contentions advanced by Learned Counsel for the parties were heard at length. All documents on record including the evidence and the impugned Judgment have been duly perused.

9. The question for consideration is "Whether the computation of compensation arrived at by the Learned Claims Tribunal was correct"?

10. While first considering the question of "*pay and recovery*" as ordered by the Learned Claims Tribunal, this Court in ***Suresh Khati*** (*supra*) had in Paragraphs 11 and 12 of the Judgment discussed the provisions of Sections 147 and 149 of the Motor Vehicles Act, 1988 and the law as settled by a plethora of Judgments of the Hon'ble Supreme Court. The discussions ensued as follows;

> ***"11.*** Section 147 of the Motor Vehicles Act, 1988 (hereinafter, the "MV" Act) lays down the requirements of Policies and limits of liability. In order to comply with the requirements of Chapter XI of the MV Act, a policy of insurance must be a policy which is issued by a person, who is an authorized insurer and insures the person or classes of persons specified in the policy, to the extent mentioned in Sub-section 2 of Section 147 of the MV Act. The object of obtaining an insurance policy is to ensure that it covers the liability incurred by the insured, in respect of death or bodily injury to any person, carried in the vehicle of the insured or damage to any property of a third party, caused by or arising out of the use of the vehicle. The provision mandates a compulsory coverage of insurance for passengers travelling in public transport vehicle, passenger vehicle, goods vehicle along with goods and the workmen under the Workmen's Compensation Act,

1923, employed in connection with the motor vehicle, etc.

(i) Section 149 of the MV Act lays down the duty of the insurer to satisfy Judgments and Awards against persons insured, in respect of third party risk.

(ii) It is not in dispute that the vehicle was duly insured vide Insurance policy, Exhibit B, Respondent No.2 being the insurer and the Appellant the owner of the insured vehicle.

(iii) That, the contract of insurance is a contract of indemnity is no more *res integra*. The insurer is an indemnifier, while the insured is an indemnity holder. Thus, the essence of the contract of insurance is to indemnify the insured against the claim of a third party. The expression 'third party' means a person who is not a party to the contract, but beneficiary of the contract and has the right to enforce the terms of contract against the insurer and the insured.

(iv) In ***National Insurance Company Limited*** vs. ***Yellamma and Another*** [(2008) 7 SCC 526], the Supreme Court, at Paragraph 11, observed as follows;

> "**11.** A contract of insurance like any other contract, is a contract between the insured and the insurer. The amount of premium is required to be paid as a consideration for arriving at a concluded contract. ……..."

(v) In ***Sohan Lal Passi*** vs. ***P. Sesh Reddy and Others*** [(1996) 5 SCC 21]***,*** it was observed that when the insured had taken all precaution by appointing a duly licensed driver, to drive the vehicle in question and it was not established that it was the insured who had allowed the vehicle to be driven by a person not duly licensed, due to which the accident occurred, then the Insurance-Company cannot repudiate its statutory liability, on the grounds of contravention of condition of policy, including its liability in case of vehicle being driven by person not duly licensed.

(vi) In ***New India Assurance Co., Shimla*** vs. ***Kamla and Others*** [(2001) 4 SCC 342], the Supreme Court, at Paragraph 25, observed as follows;

> "**25**. The position can be summed up thus:
>
> The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. **But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.** …….. In the present case, if the Insurance Company succeeds in

> establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."
> **(emphasis supplied)**

(vii) In ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and Others*** [(2004) 3 SCC 297]***,*** a three Judge Bench of the Supreme Court observed *inter alia* as follows;

> "**48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured.** By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury."
> **(emphasis supplied)**

(viii) It was also further held that the breach of policy condition e.g. disqualification of the driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149 of the MV Act, has to be proved to have been committed by the insured, for the insurer to avoid any liability. The insurer is also to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy, regarding use of vehicles by a duly licensed driver, or one who was not disqualified to drive at the relevant time. Mere absence of, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties.

(ix) At Paragraph 110 (ix) and (x), of the citation (*ibid*), it was observed as follows;

> "**110**. …….
>
> (ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of

> bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.
>
> (x) **Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.** Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."
> **(emphasis supplied)**

(x) That, where the Insurance-Company was able to establish that the owner handed over the vehicle to an unauthorized person, the Appellant shall initially satisfy the award and thereafter, if so advised, recover the same from the insured.

(xi) It is evident from all of the afore extracted citations that only when the insurer is able to prove that there has been a breach of condition of the insurance policy that the Tribunal can conclude that the insurer is liable to be reimbursed by the insured, for the compensation and other amounts which it had paid to the third party under the award of the Tribunal. In other words 'pay and recover' can only be ordered by the Tribunal when a breach of the policy conditions are established by the insurer.

12. That, having been said while considering the rival contentions canvassed, it is imperative to

refer to the Judgment of this Court in ***Binod Kumar Agarwal*** (*supra*), wherein at Paragraphs 15 to 19, it was observed as follows;

> ***"15.*** In ***Skandia Insurance Company ltd.*** [(1987) 2 SCC 654] relied on by the Appellant, the Supreme Court took up the question as to whether the insurer is entitled to claim immunity from a decree obtained by the dependents of the victim of a fatal accident, on the ground that the insurance policy provided *"a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification and that such exclusion was permissible in the context of Section 96(2)(b)(ii)"*. The facts therein were that a truck had come from Barejadi and had been unloaded at Baroda. The driver had gone to bring snacks from the opposite shop, leaving the engine running with the key in the ignition and not in the cabin of the truck as alleged by him. The driver was grossly negligent in leaving the truck with its running engine in the control of the cleaner, which became the immediate cause of the accident. The Claims Tribunal found the owner of the car *viz*; insured, to be vicariously liable along with the driver and the cleaner. The High Court, *inter alia*, held that the owner never gave permission to the cleaner to drive and therefore, the owner even though he had become liable by reason of his vicarious liability, could not be held guilty of the breach of the contractual condition embodied in the policy of insurance. Thus, the insurer could not plead any exemption on the ground that the owner had committed breach of the specified condition. Before the Supreme Court, it was contended on behalf of the Insurance Company that since admittedly there was an exclusion clause, the insurance company would not be liable if at the point of time when the accident occurred, the person who had been driving the vehicle was not a person duly licensed to drive the vehicle. It was immaterial that the insured had engaged a licensed driver and had entrusted the vehicle for being driven by him. Once it was established that the accident occurred when an unlicensed person was at the wheels, the Insurance Company would be exonerated from the liability. The validity of this argument advanced in order to assail the view taken by the High Court was to be tested in the light of the provisions contained in Sections 96(1) and 96(2)(b)(ii) of the Act of 1939. The Supreme Court before doing so discussed several decisions of various High Courts on the same issue *viz*; in ***Sardar Nand Singh v. Abhyabala Debi*** [AIR 1955 Ass 157], the view taken therein was that the master is undoubtedly liable for the wrongful act,

conduct or negligence of his servant, where the act or conduct or negligence occurs in the course of the masters employment or in furtherance of his interest, notwithstanding the fact that the servant may have been prohibited from doing such an act. However, the High Court proceeded to absolve the Insurance Company from the liability in the light of Section 96(2) of the Act of 1939 without examining or analyzing the provisions of the said section and had taken for granted that once it is established that the vehicle was driven by an unlicensed person, the Insurance Company stood exonerated.

16. In ***Shankar Rao vs. M/s Babulal Fouzdar and Anr.*** [AIR 1980 MP 154], the High Court exonerated the Insurance Company for the reason that, according to one of the terms of the policy of insurance, the insurer's liability is subject to the condition, that, the person driving the vehicle holds a license to drive a vehicle or has held and is not disqualified from holding or obtaining such a license and provided he is in the employment of the insured and is driving on his order or with his permission. Unless the person driving the vehicle falls in that category, the insurer is not liable under the policy and is therefore exempted from indemnifying the insured. In ***Orissa State Commercial Transport Corporation, Cuttack v. Dhumali Bewa*** [AIR 1982 Ori 70], the High Court concluded that the Insurer was not liable as the vehicle was driven by a person who had no driving license and the accident did not take place in a public place. The decision in ***Dwarka Prasad Jhunjhunwala and Anr. v. Sushila Devi*** [AIR 1983 Pat 246], was also taken up for consideration, where the liability of the owner was shifted to the Insurer as the vehicle was insured.

17. After considering the aforesaid decisions as reflected hereinabove, the Supreme Court found that the Judgments were buttressed by '*ipse dixit*' rather than rationality and, *inter alia*, observed that the question therefore deserves to be examined afresh on its own merits on principle. It opined that the proposition is incontrovertible that, so far as the owner of the vehicle is concerned, his vicarious liability for damages arising out of the accident cannot be disputed, having regard to the general principles of law, as also having regard to the violation of the obligation imposed by Section 84 of the Act of 1939, which provides that no person driving or in charge of motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to

ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

18. However, in the case of ***Skandia Insurance Company ltd.*** [(1987) 2 SCC 654], the appellant had contended that the exclusion clause is strictly in accordance with the statutorily permissible exclusion embodied in Section 96(2)(b)(ii) of the Act of 1939 and that under the circumstances the appellant Insurance Company is not under a legal obligation to satisfy the judgment procured by the respondents. Being in disagreement with the argument canvassed, the Supreme Court held in Paragraph 12 as follows;

> "12. The defence built on the exclusion clause cannot succeed for three reasons, viz;-
>
> 1. On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour, and fulfil the promise and he himself is not guilty of a deliberate breach.
>
> 2. Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.
>
> 3. The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise."

19. The Supreme Court while reflecting on the reasons for insuring against third party risk was of the opinion that the provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads, from the risk attendant upon the user of motor vehicles on the road. If an accident occurs and compensation is awarded to the victims, then there ought to be a guarantee that, the compensation, would be recoverable from the persons held liable for the consequences of the accident. **Thus, the legislature has made it obligatory that no motor vehicle shall be used, unless a third party insurance is in force. Further, in order to make the protection real, the legislature has also provided that the judgment obtained shall**

> **not be defeated by incorporation of the exclusion clause other than those authorized by Section 96 of the Act of 1939 and by providing that except and save to the extent permitted by Section 96 of the Act of 1939, it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against third party risks. It was thus concluded that Section 96(2)(b)(ii) of the Act of 1939, extends immunity to the Insurance Company if a breach is committed of;** *"a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification….."* **That, if the insured was not at fault and had not done anything he should not have, or was not amiss in any respect, how could it be conscientiously posited that he had committed a breach. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving license that it can be said that he is guilty of the breach of the promise that the vehicle will be driven by a licensed driver. Unless, the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated, having regard to the fact that the promisor (the insured) committed a breach of his promise. Therefore, it was concluded that the exclusion clause does not exonerate the insurer."** **(emphasis supplied)**

(i) In the case of ***Binod Kumar Agarwal*** (*supra*), it was clear that the insured had given the vehicle in the hands of his authorized and licensed driver. The insured though not travelling in the same vehicle was of the firm belief that his employee would be driving the vehicle. That, as held in ***Skandia Insurance Company Ltd.*** (*supra*), when the insured had done everything within his power inasmuch as he had engaged a licensed driver and placed the vehicle in-charge of the said driver with the express or implied mandate that it would be driven by him, it cannot be said that the insured is guilty of any breach of the terms of the Insurance policy. That, it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause and avoid payment of compensation to the third party or as in this case seek to recover it from the Appellant, the Respondents No.3 and 4. That, in Paragraph 14 of ***Skandia Insurance Company Ltd.*** (*supra*), it was succinctly pointed out that in view of this provision, apart from the implied mandate to the licensed driver not to place an unlicensed person in-charge of the vehicle, there is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in-charge of an unlicensed driver. That, what is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the

conditions. It cannot therefore in any case be considered as a breach on the part of the insured.

(ii) The observation in ***Skandia Insurance Company Ltd.*** (*supra*), was affirmed by a three Judge Bench in ***Sohan Lal Passi*** (*supra*), which in turn came up for discussion before a three Judge Bench of the Supreme Court in ***Swaran Singh and Others*** (*supra*), where it was observed that an Insurance-Company cannot shake off its liability to pay compensation only by saying that at the relevant point of time, the vehicle was driven by a person who did not have a license.

(iii) In ***Sohan Lal Passi*** (*supra*), the Supreme Court elucidated and observed that;

> **"12.** ……
> 96. ……..
>
> ……. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known.**"**

> ***(iv)*** Despite the clear and concise Judgment of this Court, explaining the provisions of law with due reference to the law laid down by the Hon'ble Supreme Court, vide its afore cited Judgments and reference to it by Learned Counsel for the Appellant before the Claims Tribunal, the Claims Tribunal disregarded the Judgment and remained in ignorance of the observations on the issue not only of this Court but also of the Hon'ble Supreme Court. As a result, the Claims Tribunal has not been able to comprehend the provisions of Sections 147 and 149 of the MV Act. It is clear, the Appellant as the owner of the vehicle in accident had placed his driver, Respondent No.3, in-charge of the vehicle, the said driver had a valid and effective license at the time of the accident. That, it was Respondent No.3, who has acted irresponsibly and in an inebriated condition handed over the vehicle to Respondent No.4. The vehicle had been placed in the charge of Respondent No.3 with the express and implied mandate that it would be driven by him and none else. Consequently, there is no breach of the terms of the contract by the Appellant.**"**

11. Similarly, in the matter at hand, the Learned Claims Tribunal despite being seized of the fact that the owner of the vehicle Respondent No.4 had applied for "route permit" for the vehicle in accident from the Motor Vehicles Division, Transport Department, Government of Sikkim, on 08-10-2018, it was issued only on 26-10-2018, i.e., four days after the accident, i.e., on 22-10-2018, went on to hold that -

> **"***39. Consequently, in view of the finding arrived at issue No.(iv) the principle of pay and recover has been developed by Hon'ble Supreme court of India in the various cases including in the reported case of S. Iyyapan vs United India Ins. Co. Ltd. (2013 ACJ 1944) in which the apex court has observed as follows-*
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> *"18. **********************************In any case , it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount* ***in the event there has been violation of any condition of the Insurance policy"."*** **[emphasis supplied]**

12. I am consequently in disagreement with the finding of the Learned Claims Tribunal and opine that the Learned Claims Tribunal has mis-directed itself while interpreting the principle of "*pay and recovery*" which has already been discussed in detail in

the case of ***Suresh Khati*** (*supra*) as extracted hereinabove, for comprehension of the said principle.

13. In the case at hand, it is evident that all other documents of the vehicle were in order. The Respondent No.4 on 08-10-2018 had applied for the "route permit" much before the accident which occurred on 22-10-2018. The owner of the vehicle cannot be held to ransom for the tardiness in ministerial and administrative works of the concerned Department and he cannot be foisted with paying the Appellant on their satisfying the claims of the Respondents No.1, 2 and 3 in the absence of wilful violation of the terms of insurance on his part. Once the vehicle is validly insured with the Insurance Company and no terms therein are flouted by the insured, it is the sole responsibility of the Insurance Company to pay the compensation.

14. That having been said, the next question is with regard to the multiplier adopted by the Learned Claims Tribunal for calculating loss of income. The multiplier '15' adopted by the Learned Claims Tribunal is certainly erroneous as in ***Sarla Verma*** (*supra*) it has specifically been laid down as follows;

> **"42.** We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying *Susamma Thomas* [(1994) 2 SCC 176], *Trilok Chandra* [(1996) 4 SCC 362] and *Charlie* [(2005) 10 SCC 720]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, **M-14 for 41 to 45 years**, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.**"**
>
> **[emphasis supplied]**

Since the victim was 42 years old, the correct multiplier to be adopted is '14'.

15. So far as the compensation under conventional heads is concerned, here too the Learned Claims Tribunal while exercising its discretion has gone overboard under some heads and granted less under some heads and thus failed to comply with the decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (*supra*) as also in ***Magma General Insurance Company Limited*** vs. ***Nanu Ram alias Chuhru Ram and Others***[5]. However, loss of love and affection of ₹ 1,00,000/- (Rupees one lakh) only, granted by the Learned Claims Tribunal cannot be faulted as this is fortified by the ratio in ***Magma General Insurance Company Limited*** (*supra*). The Learned Claims Tribunal has granted the following compensation under the conventional heads;

"7.	*Funeral Expenses*	*:*	*Rs. 25,000/-*
8.	*Loss of Estate*	*:*	*Rs.1,00,000/-*
9.	*Loss of Consortium*	*:*	*Rs.1,00,000/-*
10.	*Loss of Love and affection to minors*	*:*	*Rs.1,00,000/-*
11.	*Loss of guidance to minor children*	*:*	*Rs.1,00,000/-*
12.	*Litigation costs*	*:*	*Rs. 25,000/-"*

[emphasis supplied]

(i) Funeral expenses of ₹ 25,000/- (Rupees twenty-five thousand) only, is in excess of the amount of ₹ 15,000/- (Rupees fifteen thousand) only as settled by the ratio in ***Pranay Sethi*** (*supra*).

(ii) ₹ 1,00,000/- (Rupees one lakh) only, granted under the head of loss of estate, is placed at ₹ 15,000/- (Rupees fifteen thousand) only, as settled by the ratio in ***Pranay Sethi*** (*supra*).

(iii) Loss of consortium has been detailed in the decision of ***Magma General Insurance Company Limited*** (*supra*) as follows;

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[5] (2018) 18 SCC 130

> **"21.** A Constitution Bench of this Court in *Pranay Sethi* [(2017) 16 SCC 680] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased which is a loss to his family. .....
>
> **21.1 Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979]
>
> **21.2 Parental consortium** is the granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".
> ....."

(iv) Hence, the total loss of consortium of ₹ 1,00,000/- (Rupees one lakh) only, granted by the Learned Claims Tribunal is short changing the Respondents No.1, 2 and 3. As per ***Magma General Insurance Company Limited*** (*supra*) an amount of ₹ 40,000/- (Rupees forty thousand) only, is granted to the Respondent No.3 as spousal consortium for loss of the company, society, cooperation, affection, and aid of her spouse in every conjugal relation. Parental consortium of ₹ 40,000/- (Rupees forty thousand) only, each, is allowed to the Respondents No.1 and 2 upon the premature death of their father, for loss of parental aid, protection, affection, society, discipline, guidance and training.

(v) Loss of guidance to minors computed at ₹ 1,00,000/- (Rupees one lakh) only, is set aside as it finds no place in the scheme of the Judgments of the Supreme Court *supra*.

(vi) Litigation costs also do not find place in the ratiocination of ***Pranay Sethi*** (*supra*) or ***Magma General Insurance Company Limited*** (*supra*) and is accordingly set aside.

16. The next point raised by Learned Counsel for the Appellant was the rate of interest payable @ 10% imposed on the awarded compensation. It was the case of the Appellant that the interest rate ought to be placed at 6%. I have carefully perused the Judgment of the Supreme Court in ***Benson George*** (*supra*) where the High Court had reduced the interest rate of 9% to 6% per annum and the Hon'ble Supreme Court was loathe to interfere in the interest rate fixed. It may be noted here that this Court has in all matters of motor accident cases uniformly awarded interest rate @ 9%. Hence, in the interest of justice, in my considered opinion, as no specifics are mentioned in the case of ***Benson George*** (*supra*) for reduction of the rate of interest, 9% as previously granted by this Court in other similar matters is maintained as interest rate in the instant matter as well. Rate of 10% interest imposed by the Learned Claims Tribunal is set aside.

17. In light of the discussions and findings which thereby answers the question framed for determination by this Court, the compensation requires re-computation. It may pertinently be noted that the sentence at Paragraph 59.8 of ***Pranay Sethi*** (*supra*) propounds that the aforesaid amounts, i.e., loss of estate, loss of consortium and funeral expenses should be enhanced @ 10% in every three years, which is thereby duly considered. Since ***Pranay Sethi*** (*supra*) was pronounced on 31-10-2017 and as the accident occurred on 22-10-2018, six years have elapsed since then, hence 20% each is added on loss of estate, loss of consortium and funeral expenses. Consequently, the compensation is re-computed and modified as follows;

Annual income of the deceased **(₹ 95,619/- x 12)**			₹ 11,47,428.00
Add 30% of ₹ 11,47,428/- as Future Prospects [in terms of the Judgment of *Pranay Sethi (supra)*]		**(+)**	₹ 3,44,228.00
			₹ 14,91,656.00
Less 1/3rd of ₹ 14,91,656/- [Deducted from the said amount as expenses that the deceased would have incurred towards himself had he been alive]		**(-)**	₹ 4,97,219.00
Net yearly income			₹ 9,94,437.00
Multiplier to be adopted **'14'** **(₹ 9,94,437/- x 14)** [The age of the deceased at the time of death was '42' and the relevant multiplier as per Judgment of of *Sarla Verma (supra)* is **'14'**]		**(+)**	₹ 1,39,22,118.00
Add Funeral Expenses [in terms of the Judgment of *Pranay Sethi (supra)* and enhancement @ 10% in every three years. Therefore, the figure calculated is as follows; ₹ 15,000/- @ 10% = 16,500/- and ₹ 16,500/- @ 10% = 18,150/-]		**(+)**	₹ 18,150.00
Add Loss of Estate [in terms of the Judgment of *Pranay Sethi (supra)* and enhancement @ 10% in every three years. Therefore, the figure calculated is as follows; ₹ 15,000/- @ 10% = 16,500/- and ₹ 16,500/- @ 10% = 18,150/-]		**(+)**	₹ 18,150.00
Add Loss of love and affection [in terms of the Judgment of *Magma General Insurance Co. Ltd. (supra)*]		**(+)**	₹ 1,00,000.00
Add Loss of Spousal Consortium [@ wife of the deceased, in terms of the Judgment of *Magma General Insurance Co. Ltd. (supra)* and enhancement @ 10% in every three years. Therefore, the figure calculated is as follows; ₹ 40,000/- @ 10% = 44,000/- and ₹ 44,000/- @ 10% = 48,400/-]		**(+)**	₹ 48,400.00
Add Loss of Parental Consortium **(₹ 40,000/- x 2)** [@ two daughters of the deceased, in terms of the Judgment of *Magma General Insurance Co. Ltd. (supra)* and enhancement @ 10% in every three years. Therefore, the figure calculated is as follows; ₹ 80,000/- @ 10% = 88,000/- and ₹ 88,000/- @ 10% = 96,800/-]		**(+)**	₹ 96,800.00
	Total =		**₹ 1,42,03,618.00**

(Rupees one crore, forty-two lakhs, three thousand, six hundred and eighteen) only.

18. The Claimants-Respondents No.1 to 3 shall be entitled to simple interest @ 9% per annum on the above amount with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal, i.e., 13-10-2020, until its full realisation.

19. The Appellant-Insurance Company is directed to pay the awarded compensation to the Claimants-Respondents No.1 to 3 within one month from today, 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 Claimants-Respondents No.1 to 3, shall be duly deducted from the awarded compensation.

20. The modified awarded amount of compensation along with interest as specified above shall be divided amongst the Claimant-Respondent No.3 being the spouse of the deceased and Claimants-Respondents No.1 and 2 being the minor children, in the following manner, duly setting aside the order of the Learned Claims Tribunal on this aspect.

(i) *From the awarded compensation, Claimant-Respondent No.3, spouse of the deceased, is entitled to 34%; and*

(ii) *66% of the total amount of compensation awarded shall be divided equally amongst the Claimants-Respondents No.1 and 2 (minor children of the deceased), i.e., 33% each. 50% of the share of each child shall be kept in individual Fixed Deposits 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 towards their education and upkeep.*

21. Appeal and Cross Objection stand disposed of accordingly.

22. No order as to costs.

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

(Meenakshi Madan Rai)
Judge
26-03-2024

Approved for reporting : **Yes**

ds/sdl