

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 7th June, 2022

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

MAC App. No. 01 of 2022

Appellants : Chandra Bahadur Chettri (Thapa) and Others

versus

Respondents : Karna Maya Pradhan and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. N. Rai, Senior Advocate with Mr. K. B. Chettri and Mr. Umesh Gurung, Advocate for the Appellants.

Ms. Pritima Sunam, Advocate for Respondents No.1 and 4.

Mr. Thupden G. Bhutia, Advocate for Respondents No.2 and 3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The short question that falls for determination in this Appeal is;

Whether the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (hereinafter, "MACT"), vide the impugned Judgment, in MACT Case No.35 of 2020, dated 30-10-2021, committed an error in rejecting the Income Certificate, Exhibit 8, issued by the Block Development Officer (for short "BDO"), which quantified the monthly income of the deceased as Rs.50,500/- (Rupees fifty thousand and five hundred) only, and instead assessed her monthly income as Rs.25,000/- (Rupees twenty five thousand) only?

2. Learned Senior Counsel for the Appellants while advancing his arguments, referred to Exhibit 8, the Income Certificate, dated 15-07-2020, issued by the BDO, Block Administrative Centre, Dentam, West Sikkim, certifying that late Bishnu Maya Chettri, daughter of Chandra Bahadur Chettri, had an income of Rs.50,500/- (Rupees fifty thousand and five hundred)

only, per month, from agriculture and business. That, despite the Certificate having been issued by the appropriate Authority who was duly empowered, the Learned MACT declined to accept it and proceeded to assess the victim's monthly income at Rs.25,000/- (Rupees twenty five thousand) only, *sans* evidence. That the deceased owned two beauty parlours, was also an agriculturist and obtaining income from all three sources. Hence, the Judgment and Award of the Learned MACT be set aside and the compensation be computed in terms of the actual income of the deceased as revealed in Exhibit 8.

3. Learned Counsel for the Respondents No.2 and 3, (Insurance Company) contended that there is no error in the assessment of the income of the deceased by the Learned MACT as the statutes requires the compensation to be "*just*" and all powers of the Civil Courts are vested on the Learned MACT to take steps in this context. Learned Counsel for the Respondents No.1 and 4 put forth no submissions.

4(i). Having heard Learned Counsel for the parties and examined all evidence and documents on record, the facts summarized are that the Claimants (hereinafter "Appellants") filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the "M.V. Act"), on account of the death of the deceased, Bishnu Maya Chettri, aged about thirty-four years, daughter of Appellants No.1, 2 and allegedly of Appellant No.3 also, and sibling of the Appellant No.4, in a motor vehicle accident on 20-06-2020 at Dhar Gaon, Zoom, Naya Bazaar, West Sikkim. The victim succumbed to her injuries on the spot, the cause of death being the rash and negligent driving of the driver of the vehicle Mahindra Maxx, bearing registration No.SK-02-J-0348. At

the time of her demise she had a monthly income of Rs.50,500/- (Rupees fifty thousand and five hundred) only.

(ii) The Appellants sought compensation of a sum of Rs.71,02,200/- (Rupees seventy one lakhs, two thousand and two hundred) only. The Learned MACT considered the evidence-on-record and computed the compensation at Rs.34,30,000/- (Rupees thirty four lakhs and thirty thousand) only, in the impugned Judgment, assessing the monthly income of the victim at Rs.25,000/- (Rupees twenty five thousand) only, despite the Income Certificate issued by the BDO placing her monthly income at Rs.50,500/- (Rupees fifty thousand and five hundred) only.

5. The arguments of Learned Counsel for the Respondents No.2 and 3 with regard to "*just compensation*" is to say the least, obnoxious. It is but apposite to remark that the compensation which is to be "*just compensation*" is in terms of Section 168 of the MV Act and not in terms of any power vested on the Learned MACT by the Code of Civil Procedure, 1908.

6(i). Now addressing the findings of the Learned MACT with regard to Exhibit 8, the Income Certificate, the Learned MACT is either unaware of the catena of Judgments of this High Court propounding that the BDO is the competent Authority to issue an Income Certificate or has opted to ignore the pronouncements of this Court despite the observations of the Hon'ble Supreme Court regarding Tribunals ignoring the law declared by the High Court, which shall be discussed later.

(ii) In the first instance, it would do well to recapitulate the observations of this High Court on the BDO being the competent Authority to issue an Income Certificate, in Sikkim.

(iii) In *The Branch Manager, Oriental Insurance Co. Ltd. vs. Meena Bania and Others*¹, at Paragraph 17, it was held as follows;

“17. In so far as other two grounds are concerned, it may be answered as under:

17.1 Income certificate issued by the BDO on agricultural income is a valid and accepted document in the State of Sikkim and the position is the same as regards validity while being presented to other authorities also. The BDO or the Block Development Officer in a State is a revenue authority and is competent under the State Government Rules to issue such certificates, a fact which this Court takes judicial notice of.

.....”

(iv) In *Silli Man Subba vs. Man Bahadur Subba*², this Court observed as hereunder;

“20.....

(v) Having said so, I am inclined to set aside the finding on the question in the impugned judgment and hold that the BDO being a public officer duly conferred with the authority to issue income certificate,.....”

(v) In *The Branch Manager, Shriram General Insurance Co. Ltd. vs. Kavita Rai and Others*³, at Paragraph 10, it was held as follows;

“10.....
It is not the case of the Appellant that the Block Development Officer is not empowered to issue the Income Certificate of the deceased. He is indeed the concerned authority at the Block Administrative Level to issue such a Certificate. The ratiocinations of this Court referred to supra lend credence to this stand. In the absence of any document to the contrary, Exhibit 14 is accepted as the correct information pertaining to the income of the deceased.”

(vi) In *Branch Manager, New India Assurance Co. Ltd. vs. Shyam Babu Singh and Others*⁴, this Court again held as follows;

“.....
On perusal of the aforesaid, it is quite clear that the BDO in the State of Sikkim is competent to issue the Income Certificate, as per Notification dated 03.04.2007. In terms of the powers conferred on him, the Income Certificate (Exhibit-9) is the relevant and relied by the Tribunal to determine the loss of dependency and future prospects due to the death of the deceased.

In the said context, it is to observe that if the income certificate issued by a competent authority has been relied by the learned Tribunal accepting

¹ 2013 ACJ 565

² (2014) SCC Online Sikk 198

³ SLR (2019) SIKKIM 227

⁴ SLR (2021) SIKKIM 226

the earning of Rs.20,000/-, the onus to disprove it shifts on the insurance company. However, it was the duty of the insurance company to call the BDO in the witness box and put question to him whether he has verified the books of transaction of business recorded in the Books of Account while issuing income certificate. In absence of taking such steps, the argument so advanced by the counsel for the appellant is of no help to him.....”

Despite these pronouncements, the Learned MACT in direct violation of the law laid down by this High Court has given a go by to the Income Certificate, Exhibit 8, issued by no less an Authority than the BDO, which this Court time and again has reiterated is the concerned Authority empowered to issue the Income Certificate. Necessary reference in this context is also made to Notification No.25/Home/2007, dated 03-04-2007, referred to the matter of **Shyam Babu Singh** (supra) which is extracted herein below;

"SIKKIM
GOVERNMENT GAZETTE
**EXTRAORDINARY
PUBLISHED BY AUTHORITY**
Gangtok Tuesday, 17th April, 2007 No.139
**HOME DEPARTMENT
GOVERNMENT OF SIKKIM**
No:25/Home/2007 Dated:30/04/2007

NOTIFICATION

In exercise of the powers conferred by section 21 of the Code of Criminal Procedure, 1973 (2 of 1974), **the State Government hereby appoints the Block Development Officer, Rural Management & Development Department, Government of Sikkim to be the Special Executive Magistrates for the performance of the following specific functions** with their respective jurisdiction, namely:-

- (1) Swearing in or Affirmation of Affidavits under Section 297 of the Code of Criminal Procedure, 1973.
 - (2) **Issuance of:-**
 - (a) Scheduled Caste and Scheduled Tribe Certificate.
 - (b) Other Backward Class and Most Backward Class Certificate.
 - (c) Income Certificate.**
 - (d) Property Certificate.
 - (e) Employment Card.
 - (f) Married/Unmarried Certificates.
 - (g) Roof Level Certificate
 - (h) No Landed Property Certificate.
 - (i) No Dwelling House Certificate.
 - (j) Landed Property Certificate.
 - (3) Verification of Birth/Death.
2. In respect of the aforesaid functions, the Block Development Officers shall be subject to the control and directions of the District Magistrates/and other authority as may be specified under law.
3. This notification shall come into force at once.

Sd/-
(N.D. Chingapa) IAS
CHIEF SECRETARY
F.NO. GOS/RMDD/07-08/242/11/HQ"
(emphasis supplied)

The Notification thereby lends succour to the observations of this High Court pertaining to the Authority of the BDO to issue Income Certificate.

7. In this context, the Learned MACT may educate itself on the Judgment of the Hon'ble Supreme Court in ***East India Commercial Co. Ltd. Calcutta and Another vs. Collector of Customs, Calcutta***⁵ which held as observed;

"29.....
This raises the question whether an Administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a court of record and shall have all the powers of such a court including the powers to punish for contempt of itself. Under Article 226, it has a plenary of power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all the courts and tribunals throughout the territories in relation to which it exercise jurisdiction. **It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it.** If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working : otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."
(emphasis supplied)

This ratio was reiterated in ***Shri Baradakanta Mishra Ex-Commissioner of Endowments vs. Shri Bhimsen Dixit***⁶ and ***Hanuman Anandrao Pendam vs. State of Maharashtra, Through Secretary Home Department and Another***⁷.

⁵ AIR 1962 SC 1893

⁶ (1973) 1 SCC 446

⁷ (2022) SCC Online BOM 572

8. The Learned MACT despite the above settled position of law, decided to reach a finding contrary to the law laid down by the High Court. The Learned MACT is reminded that it is bound to follow the law laid down by the High Court as also held by Hon'ble Supreme Court in the ratio *M/s. East India Commercial Co. Ltd.* (*supra*).

9. In *A. K. Jain and Another vs. State of Sikkim and Another*⁸, this High Court had observed as follows;

"16.....

In India, the legal position has been made clear by S. 16(1) of the Contempt of Courts Act, 1971, which says that subject to the provisions of any law for the time being in force, a Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own court or any other court in the same manner as any other individual is liable. **That the disobedience on the part of a judicial officer to a specific order of the High Court or deliberate conduct of not following the law laid down in a previous decision of the High Court amounts to contempt of court has the approval of the Supreme Court in *Bardakanta Misra vs. Bhimsen Dixit*: AIR 1972 SC 2466. There the Supreme Court observed:**

15-16. The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law."

(emphasis supplied)

This Court presently does not contemplate any proceeding against the concerned Judicial Officer, citing the ratio *supra* is an effort to bring to the notice of the Officer that there cannot be

⁸ AIR 1992 SIKKIM 20

violation of the law laid down by the High Court unless such law has been set aside by a Higher Court.

10. It is admitted by Learned Counsel for the Insurance Company that the evidence pertaining to the income of the victim being Rs.50,500/- (Rupees fifty thousand and five hundred) only, in terms of Exhibit 8 was not decimated by any cross-examination. In such circumstance, it is inconceivable and incomprehensible as to how the Learned MACT without any basis on its own conclusion made a random assessment of the deceased's income as Rs.25,000/- (Rupees twenty five thousand) only and proceeded to calculate compensation on that ground. There is no application of judicial mind in the said circumstance. Infact, the Learned MACT in Paragraph 24 of the impugned Judgment has *inter alia* held as follows:-

"24.....
Further, though the above income certificate has been filed it is not clear as to on what basis the BDO had issued the same quantifying the monthly income of the deceased as Rs.50,000/-. *Strictly speaking*, the claimants ought to have put forward *cogent* materials in order to sufficiently establish the actual monthly income of the deceased. Having said that, it would not be incongruous here to mention that the OPs No.2 & 3 have not been able to controvert the claims of the claimant that the deceased had two beauty parlours and that she also had income from other sources above. As such considering the facts and circumstances of the case it would be seemly to take the monthly income of the deceased to be Rs.25,000/-. That would make her annual income as Rs.25,000/- x 12 = Rs.3,00,000/-."
(emphasis supplied)

11. Thus, the Learned MACT after having recorded that it is not clear on what basis the BDO had issued Exhibit 8, in contradiction to its own statement deemed it apposite to proceed without any basis to assess the income of the deceased as Rs.25,000/- (Rupees twenty five thousand) only. It does not behove the Learned MACT to clothe itself with the powers of an assessing Authority without any statutory basis.

12. The findings of the Learned MACT assessing the monthly income of the deceased as Rs.25,000/- (Rupees twenty five thousand) only, and granting compensation of Rs.34,30,000/- (Rupees thirty four lakhs and thirty thousand) only, is set aside. The monthly income of the deceased is taken to be Rs.50,500/- (Rupees fifty thousand and five hundred) only, in terms of Exhibit 8.

13. The quantum of compensation hence stands re-calculated as follows;

Annual income of the deceased	(Rs.50,500 x 12)		Rs.6,06,000/-
Add 40% of Rs.6,06,000/- as Future Prospects		(+)	<u>Rs.2,42,400/-</u>
			Rs.8,48,400/-
Less 50% of Rs.8,48,400/-			
[as the victim was a bachelorette, in consideration of the expenses which she would have incurred towards maintaining herself had she been alive]		(-)	<u>Rs.4,24,200/-</u>
Net yearly income			Rs.4,24,200/-
Multiplier to be adopted ' 16 '	(Rs.4,24,200/- x 16)		Rs.67,87,200/-
[The age of the deceased at the time of death was 34 and the relevant multiplier as per Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another</i> : (2009) 6 SCC 121 is ' 16 ']			
Funeral Expenses		(+)	Rs.15,000/-
[in terms of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Other</i> : (2017) 16 SCC 682]			
Loss of Estate		(+)	Rs.15,000/-
[in terms of the Judgment of <i>Pranay Sethi (supra)</i>]			
Loss of Filial Consortium	(Rs.40,000 x 2)	(+)	Rs.80,000/-
[in terms of the Judgment of <i>Magma General Insurance Co. Ltd. vs. Nanu Ram and Other</i> : (2018) 18 SCC 130]			
	Total		<u>Rs.68,97,200/-</u>
			(Rupees sixty eight lakhs, ninety-seven thousand and two-hundred)only.

14. With regard to the Appellants being the legal representatives of the deceased, in the Claim Petition, at Paragraph 22 of the impugned Judgment, the Learned MACT held as follows;

"22.....As seen above, the claimants No.1 and 2 are the parents of the deceased while the claimant No.4 is the sister of the deceased who was reportedly unmarried. Interestingly, even the step mother of the deceased has been arraigned as claimant No.3 in the matter. However, only the claimants No. 1, 2 and 4 can be regarded as the legal representatives of the deceased....."

(emphasis supplied)

In my considered opinion this conclusion of the Learned MACT is found to be plausible and requires no interference.

15. The awarded amount of compensation is to be divided as follows;

- (i) The Appellant No.1, the father of the deceased is entitled to 40%, while the mother of the deceased, Appellant No.2 is granted 45% of the computed compensation.
- (ii) The Appellant No.4, being the unmarried sister of the deceased is granted 15%.

16. The Respondents-Insurance Company shall pay the compensation computed *supra* to the Appellants as ordered. The Appellants 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 MACT, i.e., 10-12-2020, until its full realisation.

17. The Respondents-Insurance Company is directed to pay the awarded amount to the Appellants 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, duly deducting the amounts, if any, already paid by them to the Appellants.

18. Appeal disposed of accordingly.

19. No orders as to cost.

20. Records of the Learned MACT be remitted forthwith to it.

21. Copy of this Judgment be sent to the Learned MACT of all Districts for information.

(Meenakshi Madan Rai)

Judge
07-06-2022