

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 22<sup>nd</sup> May, 2025

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

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MAC App. No.03 of 2024

**Appellant** : The Branch Manager,  
New India Assurance Co. Ltd.

**versus**

**Respondents** : Kailash Rai and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Dipayan Roy, Advocate for the Appellant.

Mr. Tashi Wongdi Bhutia and Ms. Anjali Pradhan, Advocates for the Respondent No.1.

Mr. Mahesh Subba, Advocate for the Respondent No.2.

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## JUDGMENT

Meenakshi Madan Rai, J.

**1.** The Appellant-Insurance Company assails the Judgment dated 13-02-2024, of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, "MACT"), in MACT Case No.32 of 2022. The Respondent No.1-Claimant, father of the deceased, in an application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter, "MV Act") sought compensation of a sum of ₹ 30,38,000/- (Rupees thirty lakhs and thirty eight thousand) only, on account of the death of his twenty-seven year old son, due to a motor vehicle accident on 21-06-2022. ₹ 15,00,000/- (Rupees fifteen lakhs) only, was granted against the said claim by the MACT. The Appellant is aggrieved by the fact that despite the insured-Respondent No.2 herein, having opted out of the "compulsory personal accident" (CPA) and not paid the premium thereof, the

amount of ₹ 15,00,000/- (Rupees fifteen lakhs) only, was erroneously granted by the MACT, contrary to the terms of the insurance policy, the MACT having reasoned that the driver, since deceased, had stepped into the shoes of the owner and thus entitled to the compulsory PA cover.

**2.** The Appellant, before this Court, urged that, as Respondent No.2 the owner of the vehicle, had opted out of the CPA coverage of the insurance policy, the liability of the Appellant to compensate did not arise. Drawing strength from the decision in ***Ramkhilladi and Another vs. United India Insurance Company and Another***<sup>1</sup> and ***Dhanraj vs. New India Assurance Co. Ltd. and Another***<sup>2</sup>, it was contended that as the deceased son, stepped into the shoes of the owner of the vehicle Respondent No.2, his mother, the Respondent No.1 was disentitled to the compensation claimed.

**3.** The Respondent No.1, on the other hand, submitted that the issue of Respondent No.2 opting out from the personal accident cover was never agitated before the MACT and is being raised for the first time in Appeal. That, the policy is a "Private Car Package Policy" and covers all persons travelling in the vehicle, including the driver of the vehicle. That, there is no error in the finding of the MACT granting ₹ 15,00,000/- (Rupees fifteen lakhs) only, to the Respondent No.1.

**4.** Respondent No.2 had no submissions to advance, but endorsed the submissions put forth by Learned Counsel for the Respondent No.1.

**5.** Before considering the merits of the matter, a brief summary of the facts is narrated herein. The deceased Suraj Rai,

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<sup>1</sup> (2020) 2 SCC 550 : AIR 2020 SC 527

<sup>2</sup> (2004) 8 SCC 553 : AIR 2004 SC 4767

aged about twenty-seven years and drawing a monthly salary ₹ 20,000/- (Rupees twenty thousand) only, was the son of the Respondent No.1-Claimant and the Respondent No.2 the vehicle owner. He was driving vehicle bearing registration No.SK 05 P 0815 (Mahindra Bolero) on the Gangtok road, District Namchi, on 21-06-2022. He met with the unfortunate accident at about 0915 hours the same day, resulting in his fatality. The Respondent No.1 filed the Claim Petition under Section 166 of the MV Act before the Learned MACT, seeking compensation as detailed hereinabove.

**6.** Having considered the arguments of the Learned Counsel for the parties and examined the documents on record, it is relevant to notice in the first instance that the MACT in the impugned Judgment while granting compensation amounting to ₹ 15,00,000/- (Rupees fifteen lakhs) only, rationalised in Paragraphs 12 and 14 of the impugned Judgment *inter alia* that (i) there was no rash or negligent driving of any other person in the present case. (ii) A claim for compensation cannot be maintained where no other vehicle is involved and the deceased driver is the owner's son. (iii) As the personal accident (PA) cover for the owner driver is upto ₹ 15,00,000/- (Rupees fifteen lakhs) only, and since the deceased is deemed to have stepped into the shoes of the owner, his family is entitled to the compulsory PA cover of ₹ 15,00,000/- (Rupees fifteen lakhs) only. (iv) However, he is not entitled to the compensation claimed under Section 166 of the MV Act.

**(i)** While addressing the findings of the MACT that there was no rash and negligent driving of any other person in the present case and hence a claim for compensation was not maintainable, in my considered view, on this facet, the MACT has failed to consider

the doctrine of *res ipsa loquitur*. Undoubtedly in an action for negligence, the legal burden of proof rests on the Claimant, but barring exceptional cases, it may not be possible for the Claimant to specify the exact cause of the accident. The maxim (*supra*) suggests that, in the circumstances of a given case, the *res* or the action speaks and is eloquent. When the facts stand unexplained, the natural and reasonable inference from the facts which are not conjectural inference, shows that the act is attributable to some person's negligent conduct. In ***Mohammed Aynuddin alias Miyam vs. State of A.P.***<sup>3</sup> the Supreme Court held as follows;

**"8. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer."**

[emphasis supplied]

Accordingly, the attendant circumstances of the instant accident are indicative of the fact that there was rashness and negligence on the part of the deceased driver, which led to the accident, based on the inference that there are certain incidents which do not occur normally, unless there is the existence of negligence. Where two vehicles are not involved but all circumstances indicate negligence, the claim for compensation cannot be denied.

**(ii)** The MACT also opined that the personal accident cover for owner driver is upto ₹ 15,00,000/- (Rupees fifteen lakhs) only. In this context, while examining Exhibit 9, the insurance policy, the schedule of the premium is perused and extracted hereinbelow for clarity;

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<sup>3</sup> (2000) 7 SCC 72

## SCHEDULE OF PREMIUM

Own Damage		Liability	
Basic OD Premium	1745	Basic TP Premium	3221
Calculated OD Premium	1745	Calculated TP Premium	3221
Total OD Premium	1745	Total TP Premium	3221
Net Premium in Rs			4976

In the continuing page of Exhibit 9, it is *inter alia* recorded as **"PA cover for Owner Driver – As per the declaration given, the Insured has opted out of CPA cover under this policy"**. The insured owner had not paid premium to be covered by the policy which was specified to be for the owner driver. Exhibit 9 nowhere mentions personal accident cover for owner driver as ₹ 15,00,000/- (Rupees fifteen lakhs) only, as erroneously discussed by the MACT. All that the insurance policy *inter alia* details with regard to amount payable is *"Limits of Liability: Limit of the amount the Company's Liability Under Section II 1(a) in respect of any one accident: as per the Motor Vehicles Act, 1988. Limit of the amount of the Company's Liability, Under Section II 1(ii) in respect of any one claim or series of claims arising out of one event: Up to Rs.7,50,000"*. Sans reasons, the award of ₹ 15,00,000/- (Rupees fifteen lakhs) only, granted by the MACT is erroneous, as it lacks any basis, nor has any discussion emanated on this point in the impugned Judgment. I am of the considered view that there has been no application of judicial mind while dealing with the aspect of insurance cover to the owner. The Judgment also does not reveal under what provision the compensation was granted if Section 166 of the MV Act was found inapplicable as no discussion has emanated on this point as well.

**7.** It is pertinent to notice that the reasoning of the MACT at Paragraph 14 in the impugned Judgment that the deceased being

the son of Respondent No.2 stepped into her shoes is cryptic and made without reference to any documentary evidence or the evidence of any party and therefore appears to have been decided on a whim. It is therefore imperative for this Court to consider whether the deceased had stepped into the shoes of the owner Respondent No.2 his mother.

**(i)** In *Ramkhaladi (supra)*, the deceased was travelling on a motorcycle, which he had borrowed from the opponent-owner Bhagwan Sahay. The Supreme Court concluded *inter alia* that, it is true that in a claim under Section 163A of the MV Act, there is no need for the Claimants to plead or establish negligence and/or that the death in respect of which the Claim Petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the MV Act, if he is the borrower as he will step into the shoes of the owner. That, the parties are governed by the contract of insurance and the liability of the insurance would be qua third party only. In the case of *Ramkhaladi (ibid)* it is clear that the insurance company was not liable, for the reason that, the motorcycle driver had 'borrowed' the motorcycle. By virtue of the fact that he had 'borrowed' the motorcycle, he stepped into the shoes of the owner of the motorcycle and was thereby deemed to be the insured. A contract of indemnity is between the insurer and the insured, vide which the insurer agrees to indemnify a third party in the event of loss of life or damage to property. The insurer and the insured are the first and second party, hence where the deceased

has stepped into the shoes of the owner, no liability accrues to the insurance company to indemnify the loss.

**(ii)** In *Dhanraj (supra)*, the Supreme Court opined that, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including “an owner of the goods” or his “authorised representative”) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. It was further held that, Section 147 of the MV Act does not require an insurance company to assume risk for death or bodily injury of the owner of the vehicle. In the said matter, the owner was travelling in his own Jeep when it met with the accident, in which he was injured along with other occupants. The MACT directed the Appellant as the owner and the driver and insurance company to be liable to pay the compensation. The insurance company appealed against the Judgment. At the appellate stage it was held that, as the Petitioner was the owner of the vehicle, the insurance company was not liable to pay him any compensation. The Supreme Court making a reference to the decision of *Oriental Insurance Co. Ltd. vs. Sunita Rathi and Others*<sup>4</sup> noticed that the liability of an insurance company is only for the purpose of indemnifying the insured, against the liabilities incurred towards the third person, or in respect of damages to property. Where the owner of the vehicle has no liability to a third party, the insurance company has no liability as well. On the anvil of that decision, it was observed that in the case of *Dhanraj (ibid)*, it has not been shown that the policy covered any risk for injury to the owner himself. It was further observed that the premium of ₹ 4,189/-

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<sup>4</sup> (1998) 1 SCC 365

(Rupees four thousand, one hundred and eighty nine) only, paid under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appeared, making it clear that this premium was paid towards damage to the vehicle and not for injury to the person of the owner. The owner of a vehicle can only make a claim provided a "personal accident insurance" has been taken out.

**8.** It is evident from the foregoing discussions that the facts and circumstances of the above cases *Ramkhilladi (supra)* and *Dhanraj (supra)* are distinguishable from the matter at hand. If there is no specific premium paid for the owner driver, the insurance company would obviously not be liable, however in the instant case the deceased could not have stepped into the shoes of Respondent No.2 merely by reason of his relationship with her as mother and son as wrongly concluded by the MACT. Exhibit 11, the document duly exhibited before the MACT, which was clearly ignored by the MACT sans reasons, reveals that Suraj Rai (the deceased) was in fact authorised by Respondent No.2 to drive the vehicle in accident. The evidence of the Respondent No.1-Claimant at Paragraph 10 reads as;

"....."

10. I say that my son (Late Suraj Rai) who was driving the said vehicle bearing registration no.SK 05 P 0815 was authorised by the respondent no.3 to drive the said ill-fated vehicle and to that effect an authorisation letter was also issued by the respondent no.3. **Exhibit-11** is the authorisation letter issued by the respondent no.3 in the name of the deceased Late Suraj Rai and **Exhibit-11(a)** is the signature of the respondent no.3 and **Exhibit-11(b)** is the signature of Late Suraj Rai which I can identify.

"....."

**(i)** The insurance company had the benefit of cross-examining the Respondent No.1-Claimant but the fact of

authorisation granted to the deceased by Respondent No.2 was not decimated. The deceased driver was clearly authorised by Respondent No.2 to drive the vehicle vide Exhibit 11. He had not 'borrowed' the vehicle from the Respondent No.2, had he done so, he would have stepped into her shoes and the insurer would not have been liable to indemnify the insured as Respondent No.2 had opted out of the CPA, but the deceased having driven under her authority, he would be covered by the definition of "third party". Thus, even though Respondent No.2 had opted out of the "compulsory personal accident" cover, it did not affect the deceased, who was a third party not being either the insurer or the insured. It need no reiteration that the owner becomes vicariously liable for the acts of the driver, duly authorised by the owner to drive. Consequently, the insurance company becomes liable to pay the compensation on behalf of the owner of the vehicle, as they had insured the vehicle in accident and entered into a contract with the insured for payment of compensation. The MACT was thus in error in concluding that the deceased stepped into the shoes of the owner by completely bypassing Exhibit 11, while at the same time contrarily opining that a claim for compensation cannot be maintained where the deceased driver is the owner's son, revealing the confusion of the MACT in its vacillating findings about the status of the deceased qua the compensation.

**9.** *In fine*, I am of the considered view that the Respondent No.1 is entitled to compensation under Section 166 of the MV Act. For the foregoing reasons, the assailed Judgment is liable to be and is accordingly set aside in its entirety.

**10.** The compensation which is found to be "just compensation" under Section 168 of the MV Act is calculated hereinbelow;

Annual income of the deceased ( <b>₹ 20,000/- x 12</b> )	₹	2,40,000.00
<b>Add</b> 40% of ₹ 2,40,000/- as Future Prospects <b>(+)</b>	₹	<u>96,000.00</u>
[in terms of Paragraph 59.4 of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Others : (2017) 16 SCC 680</i> ]	₹	3,36,000.00
<b>Less</b> 50% of ₹ 3,36,000/- <b>(-)</b>	₹	<u>1,68,000.00</u>
[as the deceased was a bachelor in terms of Paragraph 32 of the Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121</i> ]		
<b>Net yearly income</b>	₹	1,68,000.00
<b>Multiplier</b> to be adopted ' <b>17</b> ' ( <b>₹ 1,68,000/- x 17</b> )	₹	28,56,000.00
[The age of the deceased at the time of death was '27' and the relevant multiplier in terms of Paragraph 42 of the Judgment of <i>Sarla Verma (supra)</i> is ' <b>17</b> ']		
<b>Add</b> Funeral Expenses @ ₹ 18,150/- <b>(+)</b>	₹	18,150.00
[in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> enhancement @ 10% in every three years		
Therefore, the figure calculated is as follows; First three years — ₹ 15,000/- @ 10% = 16,500/- Second three years — ₹ 16,500/- @ 10% = 18,150/-]		
<b>Add</b> Loss of Estate @ ₹ 18,150/- <b>(+)</b>	₹	18,150.00
[in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> enhancement @ 10% in every three years		
Therefore, the figure calculated is as follows; First three years — ₹ 15,000/- @ 10% = 16,500/- Second three years — ₹ 16,500/- @ 10% = 18,150/-]		
<b>Add</b> Loss of Filial Consortium <b>(+)</b>	₹	<u>48,400.00</u>
[₹ 40,000/-, payable to Respondent No.1-Claimant, in terms of Paragraphs 21 and 24 of the Judgment of <i>Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others : (2018) 18 SCC 130</i> ]		
[also in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> enhancement @ 10% in every three years		
Therefore, the figure calculated is as follows; First three years — ₹ 40,000/- @ 10% = 44,000/- Second three years — ₹ 44,000/- @ 10% = 48,400/-]		
<b>Total</b> =	₹	<b><u>29,40,700.00</u></b>

**(Rupees twenty nine lakhs, forty thousand and seven hundred) only.**

**11.** The Appellant-Insurance Company is directed to pay the awarded compensation to the Respondent No.1-Claimant, within one month from today, with simple interest @ 9% per annum, failing which, it shall pay simple interest @ 12% per annum, from the date

The Branch Manager, New India Assurance Co. Ltd. vs. Kailash Rai and Another

of filing of the Claim Petition, i.e., 21-12-2022, till final realization. Amounts, if any, already paid by the Appellant-Insurance Company to the Respondent No.1-Claimant, under the Claim Petition, shall be duly deducted from the awarded compensation.

**12.** Appeal dismissed and disposed of accordingly.

**13.** No order as to costs.

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

**( Meenakshi Madan Rai )**  
**Judge**

22-05-2025

Approved for reporting : **Yes**

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