

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 20th October, 2023

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

MAC App. No.05 of 2023

Appellant : The Branch Manager,
United India Insurance Co. Ltd.

versus

Respondents : Indra Chettri and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Pema Ongchu Bhutia, Advocate for the Appellant.

Mr. K. B. Chettri, Advocate for the Respondents No.1 to 4.

Mr. Bhusan Nepal, Advocate for the Respondents No.5 and 6.

Ms. Rachana Rai, Advocate for the Respondent No.7.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The only challenge in this Appeal, filed by the Appellant/Insurance Company is to the amount of ₹ 1,00,000/- (Rupees one lakh) only, granted as costs of litigation to the Respondents No.1 and 2 by the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, and an allegedly higher rate of interest @ 10%, on the sum awarded as compensation, in MACT Case No.19 of 2021 (*Shri Indra Chettri and Others vs. M/s Kailash Roller Flour Mills (P) Ltd and Others*), dated 20-06-2023.

2. The Respondents No.1 and 2 are the parents of the deceased Subhas Chandra Chettri, aged about 32 years, at the time of the road accident, which took place on 20-07-2021, at around 08.30 a.m, at 10th Mile, Tarkhola, along the National Highway-10. The deceased was travelling from Piplay to Gangtok,

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on his motorcycle, when the truck bearing registration no.SK-01-D-2175 driven by the Respondent No.6, driver of the Respondent No.5, came at high speed and crushed the motorcyclist to his death.

3. Learned Counsel for the Appellant submits that the Appellant-Insurance Company is aggrieved by the grant of litigation expenses to the Respondents No.1 and 2 which are on the higher side. Relying on the Judgments of this Court being ***Branch Manager, United India Insurance Co. Ltd. vs. Bishnu Maya Mukhia and Others¹*** and ***Branch Manager, United India Insurance Company Limited vs. Dhan Bdr. Chhetri and Others²***, it is urged that the litigation costs be reduced to ₹ 25,000/- (Rupees twenty five thousand) only, as granted in the two matters cited hereinabove. That, the rate of interest imposed on the total Award also be reduced to 9% instead of 10%. That, this Court had in the matters cited *supra* granted interest @ 9% instead of the 10% imposed by the Learned Tribunal.

4. Learned Counsel for the Respondents No.1 to 4 submits that the Respondents have no serious objections to the prayers put forth by the Appellant.

5. Learned Counsel for the Respondents No.5 and 6 and Learned Counsel for the Respondent No.7 endorse the submissions advanced by Learned Counsel for the Respondents No.1 to 4.

6. Having heard the submissions *in extenso*, I am of the considered opinion that in view of the consistent stand of this Court with regard to the costs of litigation being assessed at ₹ 25,000/- (Rupees twenty five thousand) only, the litigation costs computed

¹ SLR (2020) SIKKIM 138 : MANU/SI/0009/2020

² SLR (2020) SIKKIM 180 : 2020 SCC OnLine Sikk 21

in the instant matter at ₹ 1,00,000/- (Rupees one lakh) only, be reduced to ₹ 25,000/- (Rupees twenty five thousand) only.

(i) So far as the rate of interest at 10% on the total Award is concerned, relevant reference is made to the decision in ***Abati Bezbaruah vs. Dy. Director General, Geological Survey of India and Another***³ wherein the Hon'ble Supreme Court held as extracted hereinbelow;

"18. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case."

Bearing in mind the above observation, I see no reason to reduce the rate of interest from 10% per annum to 9% per annum on the total amount of the Award considering the facts and circumstances of this matter.

³ (2003) 3 SCC 148

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7. Consequently, in light of the above discussions, I find that the following compensation will serve as "just compensation" which stands calculated as follows;

Annual income of the deceased	(Rs.37,423/- x 12)	₹ 4,49,076.00
Add 50% of Rs.4,49,076/- as Future Prospects [in terms of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Others : (2017) 16 SCC 680</i>]	(+)	₹ <u>2,24,538.00</u> ₹ 6,73,614.00
Less 50% of Rs.6,73,614/- [Deducted from the said amount as expenses that the deceased would have incurred towards himself had he been alive]	(-)	₹ <u>3,36,807.00</u>
Net yearly income		₹ 3,36,807.00
Multiplier to be adopted ' 16 ' [The age of the deceased at the time of death was '32' and the relevant multiplier as per Judgment of <i>Sarla Verma (SMT) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121</i> is ' 16 ']	(Rs.3,36,807/- x 16)	₹ 53,88,912.00
Add Funeral Expenses [in terms of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	₹ 15,000.00
Add Loss of Estate [in terms of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	₹ 15,000.00
Add Costs of Litigation	(+)	₹ 25,000.00
Add Loss of Filial Consortium [payable to the parents of the deceased, i.e., Respondents No.1 and 2, in terms of the Judgment of <i>Magma General Insurance Company Limited vs. Nanu Ram and Others : (2018) 18 SCC 130</i>]	(+)	₹ <u>80,000.00</u>
	Total	= ₹ <u>55,23,912.00</u>

(Rupees fifty five lakhs, twenty three thousand, nine hundred and twelve) only.

8. The Claimants-Respondents No.1 and 2 shall be entitled to simple interest @ 10% per annum on the above amount with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal, i.e., 22-10-2021, until its full realisation.

9. The Appellant/Insurance Company, is directed to pay the awarded amount to the Claimants-Respondents No.1 and 2 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 and 2, shall be duly deducted from the awarded amount.

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- 10.** Appeal disposed of accordingly.
- 11.** No order as to costs.
- 12.** Copy of this Judgment be sent to the Learned Claims Tribunal for information.

(Meenakshi Madan Rai)

Judge

20-10-2023

Approved for reporting : **Yes**

ds/sdl