



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

MAC APPEAL No.06 of 2019

The Branch Manager,
National Insurance Company Limited,
Having its Branch Office at
Opposite Old Tourism Department,
P.O. & P.S. Sardar/Gangtok,
East Sikkim – 737101.
(Insurer of Mahindra & Mahindra (MAXX)
Passenger Carriage
Jeep bearing Registration No.SK-01-J-2576.
Gangtok, East Sikkim.

..... Appellant/Insurer

Versus

1. Mr. Arjun Bhandari,
S/o Late Govinda Bhandari,
2. Mrs. Ran Maya Bhandari,
W/o Mr. Arjun Bhandari,

Both residents of:
House No.551, Syapley, Sarderay Secondary School
West Pendam, GPU, Block Development Office,
Duga, P.O. Sakhu,
P.S. Singtam,
East Sikkim.

....Respondent Nos.1 & 2/Claimant Nos.1 & 2.

3. Mr. Kishore Rai,
S/o Sukbir Rai,
Permanent Resident of:
West Pendam, West Pendam GPU,
Block Development Office, Duga, P.O. Sakhu,
P.S. Singtam, East Sikkim – 737134.
(Owner of: Mahindra & Mahindra (MAXX) Passenger
Carriage Jeep bearing Registration No.SK-01-J-2576,
driven by one Shri. Sandip Kumar Pathak, employed
by the present Respondent No.2.)

.....Respondent No.3/Owner.



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

**Appeal under Section 173 of the Motor Vehicles Act,
1988.**

Appearance:

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

Mr. Ajay Rathi and Mr. Bhushan Nepal, Advocates for
Respondent Nos.1 and 2.

Mr. Sushant Subba, Advocate for Respondent No.3.

Date of hearing : 22.09.2020

Date of judgment : 21.10.2020

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The National Insurance Company Limited is the appellant (the appellant). The respondent nos. 1 and 2 are the claimants (the claimants) and the respondent no.3 is the owner (the owner) of the Mahindra & Mahindra passenger carriage jeep bearing registration no.SK-01-J-2576 (Maxx vehicle) driven by one Sandip Kumar Pathak (the driver).

2. On 05.11.2013 an accident occurred when the motor bike bearing registration no. W.B. 74E/9160 (Bajaj Pulsar) (the motor bike) collided with the Maxx vehicle owned by the respondent no.3. As a result of the accident



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

Binay Bhandari-the driver of the motor bike (the deceased) expired on 11.10.2014.

3. A First Information Report (FIR) dated 06.11.2013 was lodged at Singtam Police Station by the driver of the Maxx vehicle alleging that while escorting the vehicle's owners from Majitar to Singtam, the deceased riding a motor bike came in high speed and hit the Maxx vehicle. As a result of the accident, the deceased was taken to Singtam hospital in a serious condition by them for treatment after which he was referred to the Central Referral Hospital, Tadong.

4. The claimants, as parents of the deceased, preferred a claim under Section 166 of the Motor Vehicles Act, 1988 on 04.02.2016 against the appellant and the respondent no.3 before the Motor Accident Claims Tribunal (the Claims Tribunal). The particulars provided in the claim petition were that the deceased was 23 years of age at the time of the accident, he had the qualification of Bachelor of Technology in Civil Engineering having passed B.Tech in Civil Engineering with 92.70% and was employed in Rural Management and Development Department, Government of Sikkim, as a Technical Assistant earning a salary of



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

Rs.10,000/- per month. It was claimed that the deceased had potential to earn not less than Rs.35,955/-. As per the claim petition the deceased was riding the motor bike and coming towards his home from Central Pendam. While reaching near “*Ghantey Kholso*”, the Maxx vehicle, coming uphill from the wrong direction/wrong lane caused the accident with the motor bike driven by the deceased. It was stated that the deceased had blown horn in the turn but the driver did not heed to it which resulted in the accident. It was asserted that the cause of the accident was due to rash and negligent driving of the driver.

5. The claimants claimed that the deceased had suffered multiple fracture of the spinal cord as a result of which plating was grafted. The deceased was advised continuous physiotherapy; he had to ambulate on wheel chair and had to be on continued catheter clamping. It was also stated that the deceased had suffered quadriplegia due to cervical spine C5 fracture. It was asserted that the deceased was taken to various hospitals and finally to the Central Referral Hospital, Tadong, East Sikkim, after which he was discharged on 01.12.2013. It was asserted that the deceased was bedridden with 100% disability and a certificate of disability had also been issued by the Board of



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

Doctors of the STNM Hospital, Gangtok, East Sikkim. It was stated that on 11.10.2014 the victim died due to result of the injuries sustained in the accident.

6. The claimants claimed that the deceased was under treatment of various doctors at the District Hospital, Singtam, East Sikkim, Central Referral Hospital, North Bengal Neuro Hospital, Siliguri and STNM Hospital, Gangtok. It was claimed that the deceased was bedridden from the date of accident i.e. 05.11.2013 till he breathed his last on 11.10.2014. The claimants asserted that the Maxx vehicle had been duly insured and the insurance policy was valid and effective from 13.06.2013 to 12.06.2014. It was also asserted that the driver of the Maxx vehicle had a valid driving license issued by the Licensing Authority, Motor Vehicle Department, Government of Sikkim, Gangtok, East Sikkim. A claim of Rs.82,09,710/- was sought for as total compensation. The claimants asserted that the accident occurred due to the rash and negligent act of the driver.

7. The appellant filed written objection dated 06.04.2016. The appellant pleaded that the claimants were not entitled to any relief; they had not approached the



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

Claims Tribunal with clean hands and that there was no cause of action against them. The appellant asserted that the claim was bad for non-joinder of necessary parties and mis-joinder of unnecessary parties. The owner and the Insurance Company of the motor bike had not been made a party and that the First Information Report (the FIR) dated 06.11.2013 reveals that the case under Sections 279 and 304 of the Indian Penal Code, 1860 (IPC) had in fact been registered against the deceased. It was asserted that contributory negligence on the part of the deceased cannot be ruled out and as such it was of utmost importance that the Insurance Company of the motor bike was also made a necessary party. If it was found that this was a case of contributory negligence, the responsibility of the accident was to be fixed in the ratio of 50:50. The claim of the monthly income of the deceased was also disputed as on the date of death of the deceased he had been employed on ad hoc basis on a fixed salary of Rs.10,000/- only. It was asserted that there was no reason to seek a higher claim of Rs.35,995/- as salary. It was submitted that the assessment made by the claimants for payment of future professional tax to be deducted on the future earnings was illogical. The appellant disputed the claimants were



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

dependent on the deceased. The quantum of compensation was also disputed.

8. The respondent no.3 filed his written objection dated 01.07.2016. The respondent no.3 claimed that the Maxx vehicle had a valid registration certificate; fitness and token tax paid; it was duly insured and the policy was valid till the midnight of 12.06.2014. The respondent no.3 claimed that the vehicle was driven by a qualified driver who had a valid driving license issued by the Licensing Authority and he was duly authorised to drive the vehicle. The respondent no.3 also claimed that the vehicle had a valid route permit issued by the State Transport Authority, Motor Vehicles Division, Transport Department, Government of Sikkim and that he had issued an authorisation certificate in the name of the driver which was also valid on the date of the accident. The respondent no.3 claimed that he was not liable to pay any compensation under Section 166 of the Motor Vehicles Act, 1988 and as there was contributory negligence on the part of the deceased, the respondent no.3 could not be made liable for the compensation claimed. The respondent no.3 asserted that the insurer of the motor bike was a necessary party. The respondent no.3 also disputed the amount of



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

salary and the quantum of compensation claimed by the claimants.

9. The claimant no.1 filed his evidence on affidavit dated 15.02.2017 before the Claims Tribunal asserting all those facts averred in the claim petition which was confirmed and authenticated on 15.02.2017. The claimant no.1 was cross-examined by the respondent no.3 as well as the appellant. As many as 55 documents were exhibited by the claimant no.1.

10. On behalf of the appellant one Binod Arjel, its investigator filed his evidence on affidavit dated 01.08.2017. In his evidence he claimed that he had investigated the case and obtained all necessary documents. It was asserted that on 05.11.2013 at around 13:15 hours while the deceased was driving towards his home to Central Pendam he met with an accident at “*Ghantey Kholisa*” as a result of which he sustained serious injuries. His investigation also revealed that deceased was driving the motor bike which collided with the Maxx vehicle driven by the driver. Due to the injury sustained by the deceased in the accident he was immediately admitted to the District Hospital, Singtam, from where he was



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

evacuated to Central Referral Hospital, Tadong for further treatment. However, on the same day the deceased was shifted to North Bengal Neuro Hospital, Siliguri, for further treatment. As per his investigation he found that the deceased was thereafter, advised to be taken back to Gangtok where he was admitted to STNM Hospital till 07.11.2013. On 08.11.2013 the deceased was once again admitted to Central Referral Hospital where he underwent treatment till 01.12.2013. The deceased was bedridden for months and finally succumbed to his injuries on 11.10.2014 i.e. after 14 months and 5 days. Binod Arjel asserted that he had met the claimants as well as the respondent no.3 and the driver of Maxx vehicle. He claimed to have visited the spot, made inquiries with the local people and recorded the statements of the claimant no.1, the respondent no.3 as well as the driver and one witness Bishnu Maya Chettri. According to him, the respondent no.3 claimed before him that it was the deceased who was driving the motor bike in a rash and negligent manner and that the driver had himself evacuated the deceased to the hospital. He also claimed that the driver had stated that it was not his fault, but it was because of the rash and negligent driving of the deceased who drove the motor bike



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

in excessive speed that resulted in the accident. He claimed that Bishnu Maya Chettri had stated to him that the deceased was negligent and that he was known to be a negligent driver. He further stated that his investigation revealed that FIR dated 06.11.2013 in connection with this case had been registered against the deceased under Sections 279 and 304 IPC and that no FIR had been registered against the driver. He opined that the accident took place due to the negligence of the deceased as he was known to be notorious for his rash and negligent driving. He also opined that no post mortem was conducted after the death of the deceased and therefore, what was the actual cause of the death could not be ascertained. He authenticated his evidence on affidavit on 20.08.2018. He was cross-examined by the claimant and the respondent no.3. He exhibited his investigation report (exhibit R2-2), the voter identity card of the claimant (exhibit-R2-3), the pension payment book of claimant no.1 (exhibit-R2-4) the date of birth certificate of the deceased (exhibit-R2-5) and agreement dated 04.01.2014 (Document-A) and the attested insurance policy of the Maxx vehicle (exhibit-R2-6).

11. The respondent no.3 filed his evidence on affidavit dated 25.04.2017 in which he stated that the



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

driver had lodged the FIR on 06.11.2013 stating that the deceased who was driving the motor bike had suddenly hit the Maxx vehicle. He also stated that as per the final report the Investigating Officer had opined that the accident had occurred due to spillage of motor engine oil on the road. It was asserted that the claimants had not furnished any document to prove that the deceased was the owner of the motor bike and that he was authorised to ride it. It was claimed that the driving license of the deceased had also not been filed. The respondent no.3 claimed that no case had been registered against the driver of Maxx vehicle. He exhibited the attested copy of certification of registration, fitness and token tax of the vehicle (exhibit-R-1(2)), attested copy of goods carriage permit (exhibit-R-1(3)), attested copy of driving license of the driver (exhibit-R-1(4)), the attested copy of authorization letter issued by him in favour of the driver (exhibiy-R-1(5)) and copy of insurance policy of the MAXX vehicle (exhibit-37 and 38).

12. The respondent no.3 claimed that they had given a sum of Rs.2 lakhs for medical treatment of the deceased for which an agreement was executed in the presence of local panchayat and witnesses (exhibit-R-1(6)). The respondent no.3 authenticated his evidence on



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

25.07.2018. He was cross-examined by the claimants as well as the respondent no.3. During cross-examination by the respondent no.3 he admitted that he was an eye witness and as per his evidence of affidavit the accident occurred due to the negligence of the deceased.

13. The Claims Tribunal framed a solitary issue i.e. whether the claimants are entitled to the compensation claimed? If so, who is liable to compensate them? The Claims Tribunal decided the issue in favour of the claimants vide judgment dated 31.08.2018. The Claims Tribunal took the monthly income of the deceased as Rs.10,000/- and an amount of Rs.22,37,529/- was directed to be paid by the appellant to the claimants with interest @ 10% per annum from the date of filing of the claim petition till full and final payment. Accordingly, an award dated 31.08.2018 for the said amount was passed by the Claims Tribunal. The Claims Tribunal held that the certificate of insurance cum policy (exhibit-36) revealed that the Maxx vehicle owned by respondent no.3 was insured with the appellant w.e.f. 13.06.2013 till the midnight of 12.06.2014 and it was valid during the time of accident.



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

14. The Claims Tribunal held that the date of birth of the deceased was 20.07.1990 and therefore, on the date of the accident the deceased was 23 years 3 months and 16 days. It was further held that the appellant had not adduced any evidence to show that there was any breach of the terms and conditions of the insurance policy by the owner of the vehicle and that the driver was duly employed as the driver of the Maxx vehicle by respondent no.3 who held a valid driving license and a valid authorization letter. It was found that the certificate of the insurance cum policy (exhibit-36) of the Maxx vehicle was also valid. The Claims Tribunal thus concluded that Maxx vehicle was registered in the name of the respondent no.3 and insured with the appellant.

15. Heard Mr. Thupden G. Bhutia, learned counsel for the appellant, Mr. Ajay Rathi, learned counsel for the claimant nos. 1 and 2 and Mr. Sushant Subba, learned counsel for the respondent no.3.

16. Mr. Thupden G. Bhutia, submits that the claimants had failed to prove that it was due to the rash and negligence of the driver of the Maxx vehicle which led to the accident and therefore, one of the vital requirements



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

of Section 166 of the Motor Vehicles Act, 1988 has not been fulfilled. He also took this court through the evidence led by parties before the Claims Tribunal and submitted that this was a clear case of the contributory negligence on the part of the deceased and therefore, it was incumbent that the ratio should have been fixed at 50:50. He further submitted that the deceased had died after 14 months but no post mortem had been conducted on his dead body. As a result, the cause of the death was still unknown. He submits that there was no nexus between the accident and the death.

17. Mr. Ajay Rathi submits that the fundamental fact that it was the driver's rash and negligence that caused the accident has been clearly asserted by Claimant no.1 which has not been disputed and no contrary material has been placed before the Claims Tribunal.

18. Mr. Sushant Subba submits that the Maxx vehicle had been duly insured at the time of the accident and it was valid. He also submitted that the driving license of the driver as well as the authorization letter issued by the respondent no.3 in his favour were both valid at the time of the accident. He submits that the respondent no.3 had not violated any of the terms and conditions of the insurance



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

policy. The respondent no.3 had, in his written objection before the Claims Tribunal, stated that he and the driver had paid an amount of Rs.2 lakhs to the deceased for his medical expenses and should the Claims Tribunal come to the conclusion that it was the appellant who was liable to pay the claim amount then the amount of Rs.2 lakhs paid by respondent no.3 to the deceased should be indemnified by the appellant. He therefore, sought a direction upon the appellant to do so from this court. Mr. Sushant Subba sought to rely upon the two judgments of the Supreme Court for the said purpose. They are:- ***Oriental Insurance Company Limited v. Premlata Shukla & Ors¹***. and ***Ranjana Prakash & Ors. v. Divisional Manager & Anr.²***.

19. This court shall now deal with the concerns raised by Mr. Thupden G. Bhutia. It is his case that the claimants had failed to prove that it was due to the rash and negligent act of the driver of the Maxx vehicle which led to the accident- a vital requirement of Section 166 of the Motor Vehicles Act, 1988.

¹ (2007) 13 SCC 476

² (2011) 14 SCC 639



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

20. The Claimants were the parents of the deceased. Out of the two claimants the claimant no.1 filed his evidence on affidavit before the Claims Tribunal. He, *inter alia*, asserted that-

- "4. That my deceased son was riding a Motor Cycle (Bajaj Pulsar) bearing Registration No.WB 74 E/9160 and was coming home from Central Pendam. While reaching Ghantey Kholsa near the house of Shri Bhagirath Acharya, the vehicle (Maxx), bearing Registration No.SK-01-J-2576 which is owned by the Respondent No.02 and driven by its driver Sandip Kumar Pathak came from the opposite direction at a high speed in a wrong lane and hit the said Motor Bike as a result of which my beloved son sustained grave and fatal injuries.
5. That, I say that my deceased son had even blown the horn in the said turning, but the offending driver paid no heed to it. Furthermore, the road was wide enough to pass two Light Motor Vehicles. I further say that the cause of the accident was solely due to the rash and negligent driving on the part of the driver, Sandip Kumar Pathak who was driving vehicle (Maxx), bearing Registration No.SK-01-J-2576 at the relevant time and there was no any contributory negligence on the part of my deceased son. I can say for sure that my deceased son was wearing protective gear/helmet at the relevant time, but the force of the vehicle was as such, my deceased son sustained injuries on head/skull also.

.....”

21. The claimant no.1 was cross-examined by the appellant. During his cross-examination it was suggested to him by the appellant's counsel that the deceased had died while riding the motor bike and that the accident



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

occurred while the Maxx vehicle collided with the motor bike ridden by the deceased while coming uphill. The appellant did not cross-examine the claimant no.1 on the assertions made by him in paragraphs 4 and 5 quoted above. In paragraphs 4 and 5 quoted above there is a clear assertion that the accident occurred when the Maxx vehicle driven by the driver came from the opposite direction at high speed in a wrong lane and hit the motor bike. It also asserts that the deceased had even blown the horn in the turn, but the driver paid no heed to it and that the cause of the accident was therefore, solely due to the rash and negligent driving of the driver of the Maxx vehicle. It further asserts that there was no contributory negligence on the part of the deceased who was wearing protective gear/helmet at the relevant time.

22. The respondent no.3 also gave his evidence on affidavit. In his evidence on affidavit, however, the respondent no.3 did not state either that he was himself present at the time of the accident nor as to what transpired, save that the driver had lodged an FIR on 06.11.2013 before the Singtam, Police Station, stating that the deceased who was riding the motor bike had suddenly hit the Maxx vehicle. The respondent no.3 was cross-



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

examined by the appellant. According to the FIR lodged by the driver (exhibit 2) the owner's of the Maxx vehicle were also in the car and therefore, witnesses to what transpired. However, during cross-examination of respondent no.3 no suggestion was given, to even suggest that what the claimant no.1 had asserted in his evidence on affidavit was untrue. The FIR led to an investigation which culminated in a final report (exhibit 53). The final report however, opined that the accident occurred when the motor bike came from the opposite direction, slipped on the mobil (motor engine oil) that was on the road and struck the Maxx vehicle. According, to the final report neither the driver of the Maxx vehicle nor the driver of the motor bike had committed any mistake/carelessness. Therefore, both were not guilty. However, the evidence of claimant no.1 given before the Claims Tribunal and tested through cross-examination asserting that the accident occurred due to the rash and negligence act of the driver of the Maxx vehicle remained undisputed. Even the evidence of Binod Arjel, the insurance investigator, suggests that as a result of the accident the deceased suffered serious injuries and finally succumbed to it. According to Binod Arjel the respondent no.3 had claimed before him that it was the



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

deceased who was driving the motor bike in a rash and negligent manner. No such claim was made by the respondent no.3 in his evidence on affidavit before the Claims Tribunal. The respondent no.3 did accept the suggestion from the counsel of the appellant that he was an eye witness. However, there was no reason for him not to assert it in his evidence on affidavit. His evidence on affidavit reads as if he was not there and therefore, it was only the driver who had lodged the FIR. A perusal of the FIR and the sketchy facts placed by the respondent no.3 before the Claims Tribunal it does seem that respondent no.3 was in fact present at the time of the accident but the narration or the failure to narrate the facts precisely creates serious doubts on the version sought to be portrayed. More so when the court sees the hesitation of the respondent no.3, to speak the truth. Although the appellant was privy to the investigation by Binod Arjel, the appellant chose not to lead any evidence of witnesses whose statements had been recorded by Binod Arjel, as claimed by him. Neither the driver nor Bishnu Maya Chettri, an independent witness, claimed to have been examined by Binod Arjel, were examined as witnesses.



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

23. Mr. Thupden G. Bhutia next submitted that this is a case of contributory negligence on the part of the deceased. The assertion of Binod Arjel that it was so was based on his investigation on examination of the driver and Bishnu Maya Chettri both, as stated above, were not examined. During cross-examination he admitted that he was not an approved investigator. He also admitted that he had not recorded the statement of the deceased and had he done so, his report may have been different. The detailed cross-examination of Binod Arjel by the claimants and admissions made by him creates serious doubts on his deposition.

24. Mr. Thupden G. Bhutia insist that the FIR lodged by the driver clearly reflects that it was due to the rash and negligence of the deceased that caused the accident and therefore, it was a clear case of contributory negligence also. The FIR was lodged by the driver who is neither a party nor a witness. The FIR was investigated by the police and a final report filed. The final report disproved the allegation made in the FIR save the factum of accident. The appellant has however, not led any evidence to disprove the assertion made by the claimant no.1. Therefore, there is no evidence, which could lead the court,



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

to believe that there was contributory negligence of the deceased.

25. Mr. Thupden G. Bhutia would finally submit that there was no nexus between the accident and the death. The claimant no.1 gave a detailed statement as to what transpired after the accident till the time of the death of the deceased. He deposed about how the deceased was treated at the District Hospital, Singtam, the Central Referral Hospital, Tadong, North Bengal Neuro Hospital, Siliguri, STNM Hospital, Gangtok and thereafter, back at the Central Referral Hospital, Tadong. The medical records pertaining to the treatment done during this period and the expenses incurred have all been produced before the Claims Tribunal. Claimant no.1 clearly asserted that the deceased died due to the injury sustained in the accident. Although the claimant no.1 was not an eye witness he did spend more than 14 months with the deceased which was enough time to learn as to what transpired. The cross-examination of the claimant no.1 by the appellant reflects that these facts were not even disputed by it. In fact, even the appellant's sole witness, Binod Arjel, asserted that the deceased died as a result of the accident. Thus, it is



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

evident that there was a clear nexus between the accident and the death of the deceased.

26. Mr. Sushant Subba, learned counsel for the respondent no.3 submits that the amount of Rs.2 lakhs paid to the deceased for his medical expenses should be directed to be indemnified by the appellant. This is an appeal under section 173 of the Motor Vehicles Act, 1988 preferred by the appellant. Although such a plea was made by the respondent no.3 before the Claims Tribunal, the Claims Tribunal did not pass any direction in favour of the respondent no.3. In spite of that, the respondent no.3 chose not to prefer an appeal. He now seeks the direction from the Appellate Court, in an appeal by the appellant based on his assertion that he had paid an amount of Rs.2 lakhs to the deceased.

27. In *Oriental Insurance Company Limited (supra)* the Supreme Court held, while examining the provision of Section 147 (2) of the Motor Vehicles Act, 1988, that insurance is mandatory under Section 147(2) and hence the insurer would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants, subject to the limit of its liability as laid down in



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

the Motor Vehicles Act, 1988 or the contract of insurance. The agreement (exhibit-R-1(6)) does not even state that the amount of Rs.2 lakhs relates to the damages payable by the respondent no.3 to the claimants.

28. In *Ranjana Prakash (supra)* the Supreme Court examined the provision of Section 173 of the Motor Vehicles Act, 1988. The claimants therein had not challenged the award of the Claims Tribunal on the ground that the Claims Tribunal had failed to take note of the future prospects and add 30% to the annual income of the deceased. The Supreme Court found from the facts that the claimants therein were not aggrieved by the amount taken as the monthly income and therefore, there was no need for them to challenge the award of the Claims Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Claims Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Claims Tribunal, by pointing out other errors or omissions in the award, which if take note of, would show that there was no need to reduce the amount awarded as compensation. In such circumstances, the Supreme Court held that the fact that the claimants did not independently challenge the award



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

will not therefore, come in the way of their defending the compensation awarded, on other grounds. The Supreme Court however, also held that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

29. Although, the respondent no. 3 had made such assertion before the Claims Tribunal and therefore, aware, he chose not to agitate the issue before this court by filing any independent appeal, cross-appeal or cross-objection. In the circumstances, this court is of the considered view that the respondent no.3 is precluded from agitating this issue without filing any independent appeal, cross-appeal or cross-objection, in an appeal filed by the appellant.

30. Section 166 of the Motor Vehicles Act, 1988 mandates rashness and negligence on the part of the driver of the vehicle as *sine qua non*. Where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. The owner of the vehicle also becomes liable under



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

the Motor Vehicles Act, 1988. As the vehicle was insured the appellant as the insurer would be statutorily liable and enjoined to indemnify the owner. The driver was neither made a party nor a witness so we do not have his version on record. The respondent no.3 who admitted during his cross-examination that he was an eye witness chose not to give his account clearly to the Claims Tribunal. The only version available is that of the claimant no.1 which assertion was neither disputed by the appellant nor the respondent no.3. In the circumstances, it is held that the claimants have been able to sufficiently prove that it was due to the rash and negligence of the driver which caused the accident. Consequently, the respondent no. 2 also become liable and since the appellant was the insurer who had insured the Maxx vehicle it was liable and enjoined to indemnify the respondent no.3 to the extent of the damages payable.

31. The appellant has not agitated the issue as to whether the insurance covered such an accident. The appellant has also not agitated the quantum of compensation awarded by the Claims Tribunal, save the issue of contributory negligence which has already been dealt with above.



MAC Appeal No. 06 of 2019
Branch Manager v. Arjun Bhandari & Ors.

32. All the grounds agitated by Mr. Thupden G. Bhutia on behalf of the appellant having been considered and rejected, the judgment and award both dated 31.08.2018 passed by the Claims Tribunal are upheld. Consequently MAC Appeal No. 06 of 2019 is dismissed.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/