

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 14th MAY, 2024

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

MAC App. No.07 of 2023

Appellants : Passi Lamu Sherpa and Another

versus

Respondent : The Branch Manager, New India Assurance Co. Ltd.

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Umesh Ranpal, Advocate with Ms. Laxmi Khawas, Advocate for the Appellants.

Mr. Dipayan Roy, Advocate for the Respondent.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Appellants/Claimants were denied compensation by the Learned Motor Accidents Claims Tribunal, Namchi, Sikkim (for short, "MACT"), placing reliance on the Judgment of this Court in **Branch Manager, New India Assurance Co. Ltd. vs. Geeta Khatiwada and Others**¹. Aggrieved they are before this Court impugning the Judgment dated 31-05-2023, in MACT Case No.07 of 2020 (*Smt. Passi Lamu Sherpa and Another vs. The Branch Manager, New India Assurance Company Limited*).

2. Learned Counsel for the Appellants submitted that the Learned MACT sans reasons for its reliance on the Judgment *supra*, erroneously dismissed the claim of the Appellants. That, in **Geeta Khatiwada** (*supra*) the deceased persons were gratuitous passengers in a private Bolero vehicle, whereas in the instant case the deceased was travelling in the private vehicle of her husband

¹ 2021 SCC OnLine Sikk 196

and was not a gratuitous passenger but a third party. That, all documents of the vehicle in accident were found to be in order, including Exhibit 7, the insurance policy which reflects that third party premium had been duly deposited by the insured. That, as a distinction arises in **Geeta Khatiwada** (*supra*) and the instant Appeal, the Appellants are entitled to the compensation claimed.

3. *Per contra*, Learned Counsel for the Respondent-Insurance Company submitted that the husband was the owner of the vehicle in accident, the deceased being his wife was merely an 'occupant' in the vehicle and did not qualify as a third party, thereby disentitling the Appellants from the compensation claimed. That, as the deceased wife was the legal heir of her deceased husband the insurer, on this ground also the Appellants were not entitled to claim the compensation. That, on the death of the insured who was the son of Appellant No.1 and father of minor Appellant No.2, the compensation amounting to ₹ 15,00,000/- (Rupees fifteen lakhs) only, had already been granted to the Appellants in terms of the Personal Accident Cover of the owner/driver and the Respondent had no further liabilities. As, no error arises in the findings of the Learned MACT, the appeal deserves a dismissal.

4. Before delving into the merits of the matter, we may consider the facts briefly for clarity. On 05-12-2019, the deceased Laki Sherpa was traveling in the private vehicle, "Renault Duster" bearing registration No. SK 04 P 3222, owned and driven by her husband Norden Sherpa, from Ravangla South Sikkim to Kalimpong, West Bengal, which was duly insured with the Respondent, vide Exhibit 7. At around 0945 hours, the vehicle

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veered off the road approximately 350 ft. into the Rangeet River, near the Kali Mandir along the Melli-Jorethang Highway in South Sikkim. The accident resulted in the fatality of the couple. The Appellants sought compensation amounting to ₹ 37,10,000/- (Rupees thirty seven lakhs and ten thousand) only, by filing a claim petition before the Learned MACT.

5. The claim petition was resisted by the Respondent, which *inter alia* averred in its written statement that the vehicle was driven in contravention to the insurance policy and it was exempted from any liability and payment of the compensation claimed. Pausing here, it is evident from a perusal of the Written Statement that the insurance company did not in its averments raise the issue of the wife not being a third party, however, its witness the Deputy Manager, during his evidence deposed that the insured vehicle was a private vehicle and the insurance policy, Exhibit 7 of the vehicle did not cover the compensation claimed by the Claimants in the instant case, as it covered only the personal accident of the owner/driver amounting to ₹ 15,00,000/- (Rupees fifteen lakhs) only, since released to the legal heirs.

6. To support the Appellants' claim, the Appellant No.1 was examined as witness before the Learned MACT. The Deputy Manager of the Respondent Company testified as the Respondent's witness.

7. The short question for consideration in this Appeal is; Whether the Claimants-Appellants are entitled to compensation on account of the death of the daughter-in-law of the Appellant/Claimant No.1 and the mother of the minor Appellant/Claimant No.2, who was travelling in the private vehicle

of her husband, which met with an accident leading to the death of both the husband and wife?

8. The policy of insurance emanates from a contract of indemnity between the insurer and the insured, against the liability incurred by the insured. The insurer is the first party and the insured is the second party. Section 147 of the Motor Vehicles Act, 1988, elucidates the requirement of policies and limits of liability. Consequently, other than the contracting parties to the insurance policy, a third party would be a person who was not a party to the insurance policy and could be a person on the road, an occupant of an another vehicle or an occupant of the vehicle which is the subject-matter of the insurance policy. It is not in dispute that the vehicle was a private one owned by the deceased owner/driver and his wife was travelling with him.

(i) In the first instance, it is necessary to notice that the instant matter is to be distinguished from the case of **Geeta Khatiwada** (*supra*). The deceased persons therein were travelling in a private Bolero vehicle sans payment. Gratuitous passenger has not been explained in the Act, but it is understood to be a passenger travelling without payment of consideration.

(ii) The contents of Exhibit 7 reveal that premium for compulsory personal accident cover for the owner/driver of the vehicle with sum assured at ₹ 15,00,000/- (Rupees fifteen lakhs) only, to cover such a person was duly paid by the issued. In other words, compensation was payable to the owner/driver of the vehicle of a sum of ₹ 15,00,000/- (Rupees fifteen lakhs) only, in the event of an accident, which undisputedly has already been paid to the Appellants.

(iii) As the wife who was travelling in the vehicle of her husband who was the owner/driver, she was neither the insurer nor the insured neither can she be termed a gratuitous passenger as she is the wife of the owner/driver, resultant she is covered by the ambit of third party. Exhibit 7 reflects that a third party premium has been paid for covering any liability that would accrue to the owner/driver on account of the involvement of a third party in an accident involving his vehicle. The argument that the limits of liability is only up to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only, in terms of the limits of liability entered in Exhibit 7 is, in my considered opinion, an erroneous interpretation. The concerned provision as seen in Exhibit 7 is extracted hereinbelow;

Limits of Liability

Limit of the amount the Company's Liability Under Section II 1(i) 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 ₹ 7,50,000

As per the India Motor Tariff, the first pertains to liability covered in respect of death and as stated in Exhibit 7, the liability is as per the Motor Vehicles Act, 1988, which thereby makes the insurer liable to pay compensation as computed in terms of the said Act. The second pertains to damage to property of a third party and the claim therein would be limited to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only. In view of the above, the question of the liability for the death of the wife of the insured being limited to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only, is an erroneous interpretation advanced by Learned Counsel for the Respondent before this Court.

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(iv) The argument that she is the legal heir and would step into shoes of the owner/driver and therefore her Claimants would be disentitled to the compensation is a preposterous argument, more so when both husband and wife are no longer living.

(v) The reliance of the Learned MACT in **Geeta Khatiwada** (*supra*) to dismiss the claim petition, is misplaced. On pain of repetition, it is pointed out that in the said case the deceased persons were travelling gratuitously in a private Bolero vehicle whereas here the deceased is the wife of the driver/owner, qualifying as a third party and cannot be considered to be a gratuitous passenger.

9. The concept of just compensation has been succinctly explained by the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and Others**² as follows;

"55. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* [(2009) 6 SCC 121] and it has been approved in *Reshma Kumari* [(2013) 9 SCC 65]. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. **It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach.** There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an

² (2017) 16 SCC 680

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endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age." [emphasis supplied]

(i) In **Pappu Deo Yadav vs. Naresh Kumar and Others**³, the Supreme Court observed that;

"8. "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

10. Consequently, the computation of the compensation which is 'just compensation' is as follows;

The income of the deceased wife, aged 34 years at the time of accident, is shown to be ₹ 15,000/- (Rupees fifteen thousand) only, per month. She was employed on a fixed salary, in a hotel, this fact was not decimated by cross-examination.

Accordingly, the annual income of the deceased (₹ 15,000/- x 12)	₹	1,80,000.00
Add 40% of ₹ 1,80,000/- as Future Prospects [in terms of Paragraph 59.4 of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Others</i> : (2017) 16 SCC 680]	(+)	₹ 72,000.00 ₹ 2,52,000.00
Less 1/3 rd of ₹ 2,52,000/- [in terms of Paragraph 30 of the Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another</i> : (2009) 6 SCC 121 — deducted from the above amount as expenses that the deceased would have incurred towards herself had she been alive]	(-)	₹ 84,000.00
Net yearly income	₹	1,68,000.00
Multiplier to be adopted '16' [The age of the deceased at the time of death was '34' and the relevant multiplier in terms of Paragraph 42 as per Judgment of <i>Sarla Verma (supra)</i> is '16']	(₹ 1,68,000/- x 16)	₹ 26,88,000.00
Add Funeral Expenses [in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years. Therefore, the figure calculated is — ₹ 15,000 @ 10% = ₹ 1,500 + ₹ 15,000 = ₹ 16,500]	(+)	₹ 16,500.00

³ (2022) 13 SCC 790

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Add Loss of Estate [in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years. Therefore, the figure calculated is – ₹ 15,000 @ 10% = ₹ 1,500 + ₹ 15,000 = ₹ 16,500]	(+)	₹	16,500.00
Add Loss of Parental Consortium [@ one son of the deceased, in terms of Paragraph 21 of the Judgment of <i>Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others : (2018) 18 SCC 130</i> and Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years. Therefore, the figure calculated is – ₹ 40,000 @ 10% = ₹ 4,000 + ₹ 40,000 = ₹ 44,000]	(+)	₹	<u>44,000.00</u>
Total		=	₹ <u>27,65,000.00</u>

(Rupees twenty seven lakhs and sixty five thousand) only.

11. The total compensation is therefore calculated as ₹ 27,65,000.00 (Rupees twenty seven lakhs and sixty five thousand) only, to which the Appellants are entitled, with 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., 20-06-2020, till its full realisation.

12. The Appellant-Insurance Company is directed to pay the awarded compensation to the Claimants-Appellants No.1 and 2 within one month from today with interest @ 9% per annum, 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 Respondent-Insurance Company to the Claimants-Appellants No.1 and 2, for the instant claim petition, shall be duly deducted from the awarded compensation.

13. The awarded amount of compensation along with interest as specified above, shall be divided amongst the Claimant-Appellant No.1 being the mother-in-law of the deceased and Claimant-Appellant No. 2 being the minor son, in the following manner;

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- (i) From the awarded compensation, the Claimant-Appellant No.1, mother-in-law of the deceased, is entitled to 25%; and
- (ii) The balance of 75% of the awarded compensation shall be granted to the Claimant-Appellant No. 2 (minor son of the deceased).

50% out of the share of the child, shall be kept in a Fixed Deposit in a Nationalised Bank, until the child attains the age of majority. The remaining 50% of the minor's share shall be expended towards his education and upkeep.

- 14.** The impugned Judgment is set aside.
- 15.** Appeal disposed of accordingly.
- 16.** No order as to costs.
- 17.** Copy of this Judgment be sent to the Learned MACT for information, along with its records.

(Meenakshi Madan Rai)
Judge

14-05-2024

Approved for reporting : **Yes**