

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 2nd December, 2022

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

MAC App. No.07 of 2020

Appellant : The Branch Manager, Oriental Insurance Company Limited

versus

Respondents : Padam Bahadur Rai and Others

MAC App. No.08 of 2020

Appellant : The Branch Manager, Oriental Insurance Company Limited

versus

Respondents : Karma Tshering Tamang and Others

MAC App. No.09 of 2020

Appellant : The Branch Manager, Oriental Insurance Company Limited

versus

Respondents : Karma Tshering Tamang and Others

Appeals under Section 173 of the Motor Vehicles Act, 1988

Appearance

Ms. Rachhitta Rai, Advocate for the Appellant.

Mr. Charles L. Lucksom, Advocate for the Respondent No.1.

Mr. Tashi Raptan Barfungpa, Advocate (Legal Aid) for Respondent No.2.

None present for Respondent No.3.

Mr. R. C. Sharma, Advocate for Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. These three Appeals, being MAC App. No.07 of 2020, MAC App. No.08 of 2020 and MAC App. No.09 of 2020, are being disposed of by this common Judgment.

2(i). The Learned Motor Accidents Claims Tribunal (hereinafter, "the Learned Tribunal") in MACT Case No.01 of 2017 (*MAC App. No.07 of 2020*), awarded compensation of ₹ 55,93,328/- (Rupees fifty five lakhs, ninety three thousand, three hundred and twenty eight) only, to the Claimant, Respondent No.1 herein, with interest @ 10% per annum, from the date of filing of the Claim Petition till full and final payment.

(ii) In MACT Case No.03 of 2017 (*MAC App. No.08 of 2020*), an Award of ₹ 4,16,000/- (Rupees four lakhs and sixteen thousand) only, was granted to the Claimant, Respondent No.1 herein, with the same rate of interest *supra*, from the date of filing of the Claim Petition till full and final payment.

(iii) In MACT Case No.04 of 2017 (*MAC App. No.09 of 2020*), the compensation amount of ₹ 6,28,968/- (Rupees six lakhs, twenty eight thousand, nine hundred and sixty eight) only, was granted to the Claimant, Respondent No.1 herein.

(iv) In all three matters *supra*, the Insurance Company, Opposite No.3 (Appellant herein), was directed to pay the compensation.

3. The only point pressed in these Appeals is that, the Motor Insurance Certificate-cum-Policy Schedule, Exhibit 10 in MAC App. Nos.07 and 08 of 2020 and Exhibit 11 in MAC App. No.09 of 2020 (*hereinafter, referred to "Exhibit 10", both documents being one and the same*), relied on by the Claimant/Respondent No.1 is a fake document, on the basis of which, liability was nevertheless fastened upon the Appellant Company by the Learned Tribunal. Hence, the assailed Judgments and Awards of the Learned Tribunal

in MACT Case No.01 of 2017, MACT Case No.03 of 2017 and MACT Case No.04 of 2017, be set aside.

4. Learned Counsel for the Appellant contended that the Insurance Policy relied on by the Claimant-Respondent No.1 is a fake document and was not issued by the Appellant Company. That, the Branch Code Number of the Appellant Company is "313203", which is always cited prior to the Policy Number, issued to the concerned person, e.g., "313203" followed by the Policy Number allotted to the insured. That, the Branch Code Number '313203' pertains to Sikkim, whereas Exhibit 10 does not reflect this number nor does it precede the Insurance Policy Number allotted to the insured. Instead, an alien number is reflected before the Policy Number, viz., "313719". It was admitted however that the document did reflect the Sikkim Code "313203" at the "Issue Office Code". That, Exhibits 'C1' and 'C2' relied on by the Appellant Company are Computer generated copies of original Insurance Certificates, issued to the Insurers, which indicate the correct Format of an original Insurance Policy. That, admittedly Rajen Tamang, the person whose name is reflected in the alleged fake Policy is indeed the Agent Broker of the Appellant Company duly authorised to collect insurance premium from the insurers, but the Policy purported to have been issued by him is a fake document. That, in light of this fact, the Learned Tribunal ought to have rejected the document and dismissed the Claim Petitions. Consequently, these Appeals be allowed.

5. *Per contra*, it was contended by Learned Counsel appearing for the Claimant-Respondent No.1 that the allegation pertaining to a fake document is not borne out by the records, in

addition to which, the Appellant Company failed to produce their authorised Agent Rajen Tamang as a witness, to establish the allegation that the document was a fake document, despite several opportunities afforded to the Appellant, by the Learned Tribunal. That, Bikash Roy Pradhan, the witness of the Appellant, under cross-examination, admitted that Rajen Tamang was their authorised Agent and his name appears on Exhibit 10 as also the correct Office Code. The Agent was authorised to collect premium amounts from the insured and deposit it in their Branch and collect the Insurance Policy pertaining to the premium received. That, the witness also admitted that he had not filed any document to substantiate the fact that third party premium is fixed Region wise despite such assertion. That, admittedly the Insurance premium may vary from year to year depending upon the age of the vehicles, its seating capacity and other taxes. As no error emanates in Exhibit 10 nor was it established to be a fake document, its issuance and acquisition, alleged to be *mala fide* are unproved, hence the Appeals be dismissed.

6. Learned Counsel for the other Respondents endorsed the submissions put forth by Learned Counsel for the Claimant-Respondent No.1 and had no independent submissions to make.

7(i). The Claim Petitions were filed before the Learned Tribunal on account of a Motor vehicle accident on 06-01-2016, involving a "Mahindra Bolero", bearing No.SK 04 J 0064, at "Deorali Dara", Namthang, South Sikkim, at around 0900 hours, in the vehicle owned by Opposite Party No.1 (the Respondent No.2 herein).

(ii) In MACT Case No.01 of 2017 (*MAC App. No.07 of 2020*), the accident claimed the life of one Supriya Rai, aged about 34 years, a Graduate Teacher by occupation in the Government of Sikkim, receiving a monthly income of ₹ 38,287/- (Rupees thirty eight thousand, two hundred and eighty seven) only.

(iii) In MACT Case No.03 of 2017 (*MAC App. No.08 of 2020*), the deceased was one Dhan Maya Tamang, aged about 71 years, by occupation of housewife, with a monthly income of ₹ 6,000/- (Rupees six thousand) only.

(iv) In MACT Case No.04 of 2017 (*MAC App. No.09 of 2020*), the deceased was Repose Tamang, aged 70 about years, a retired Government servant, with a monthly income of ₹ 9,803/- (Rupees nine thousand, eight hundred and three) only.

(v) After framing three Issues for determination, upon consideration of the entire evidence on record, the assailed Judgments and Awards were pronounced by the Learned Tribunal.

8. It is pertinent to mention that the records of the Learned Tribunal reveal that the Appellant Company had been granted several dates to enable them to produce their Agent, Rajen Tamang as their witness. Initially, he was not listed as a witness of the Appellant, however at a later stage they opted to drop the listed witness, one Bindu Arjen and in her stead sought to examine Rajen Tamang. The Learned Tribunal vide its Order dated 14-03-2019 permitted their plea. However, pursuant to the Order, despite several opportunities by way of adjournments, being granted to the Appellant to produce the said witness, they were unable to do so. On 04-04-2019, the Appellant again expressed its inability to produce the witness, on grounds of his ill-health and

furnished photocopies of medical documents to support its prayer. The Learned Tribunal unimpressed with the documents concluded that the documents did not mention that the illness of the witness kept him from appearing in Court. It was also observed that despite several opportunities afforded to the Appellant they had failed to produce the witness, hence the evidence of the witness was dispensed with. Thus, it transpires that the Appellant failed to produce the one indispensable witness who in all probability could have clarified the Appellant's position vis-à-vis Exhibit 10.

9. Although several grounds were urged in the averments by the Appellant in the Memorandum of Appeal before this Court, however, Learned Counsel for the Appellant during her verbal arguments contended that the only relief pursued before this Court pertained to the Insurance Policy being fake and as a result the Judgment and Award having no basis. No alternative arguments were advanced before this Court assailing the amount of compensation granted by the Learned Tribunal, hence the determination by this Court will be confined to the authenticity or otherwise of Exhibit 10 and the resultant conclusion.

10(i). The Appellant Company in order to establish that Exhibit 10 was a false document produced Exhibits 'C1' and 'C2' claiming that these two documents are samples of original Certificates issued by the Appellant. In this context, we may usefully refer to the evidence-on-affidavit of the witness, Bikash Roy Pradhan, the Branch Manager of the Appellant Company for twenty-five years. According to him, the Appellant Company has different Branches and in the State of Sikkim they have a single Branch, at Gangtok. They classified this Branch through their

Branch Code "313203". The first six digits in the Policy denote their Branch Code followed by the Policy Number, viz., '313203', in '31' being the Motor Vehicle Department Code and the next four digits denoting the Policy Number and the remaining numbers the Policy Serial Number. That, in every genuine Policy the "collection date" and the "Policy issuing date" will be the same. Pausing here for a moment, on careful scrutiny of both Exhibit 10 and Exhibit 'C1' and Exhibit 'C2', "the collection date" is found mentioned in the document, but there is in fact no column styled as "Policy issuing date" found on the documents, although Exhibit 10, Exhibit 'C1' and Exhibit 'C2' bear identical dates of 30-07-2015 at the end of the policy document. No documentary evidence was put forth to substantiate the assertion that "313203" was the Branch Code for Sikkim, nor was it clarified as to which Region "313719" allegedly an alien number was issued to, if at all.

(ii) It was his further evidence that a Policy issued by their Office depicts the Bar Code with the Insurance Regulatory Development Authority (IRDA) Registration Number. While mulling over this evidence, it emerges that no document was furnished before the Learned Tribunal to establish that the IRDA registration number is contained in the Bar Codes. It was deposed that at the relevant time, the scheduled premium for Third Party Policy for 10 + 1 (*probably indicative of the seating capacity of the vehicle, with driver*) was ₹ 13,265/- (Rupees thirteen thousand, two hundred and sixty five) only, which is not reflected in Exhibit 10. Momentarily pausing here, it is pertinent to notice that no schedule of premium was furnished for the Learned Tribunal to hold that the premium to be paid for that particular policy (Exhibit 10) would be

₹ 13,265/- (Rupees thirteen thousand, two hundred and sixty five) only. According to the witness, every Saturday and Sunday, their Office remains closed, as per the guidelines of the IRDA, Government of India, however the date of collection "12-04-2015" reflected in Exhibit 10, fell on a Sunday, hence no collection could have been made on that day.

(iii) The witness went on to identify Exhibit 'C4' as the Computer generated receipt dated 12-04-2015 to support his evidence that no collection could have been made on the said date. On this count, relevantly it has been extracted from the witness during his cross-examination that, Rajen Tamang was the Company's Agent and duly authorised to collect the premium. Thus, if the Office was closed on 12-04-2015 being Sunday, it can safely be assumed that the amount could well have been deposited by the Agent on any other day, authorized as he was, to collect insurance premium. No evidence was furnished to prove that on the date of deposit of premium a copy of the Insurance Policy is to be unfailingly made over to the Insurer. The witness went on to depose that the seal and signature appearing in Exhibit 10 does not belong to the Appellant Company, hence Exhibit 10 is neither a genuine policy nor issued by their Office. On this aspect, it is pertinent to remark that the original seal of the Company or the original signature of the Agent were not furnished for comparison by the Learned Tribunal, with the seal and signature affixed on Exhibit 10. Without such comparison, there can be no authoritative conclusion that Exhibit 10 is a fake document. As per the witness, on 30-07-2015 only two Insurance Policies were issued by the Office of the Opposite Party No.3 and the Office was not in receipt

of the premium amount pertaining to the accident vehicle. Although Exhibit 'C1' and Exhibit 'C2' were produced as the Computer generated Insurance Policies issued to one Kapil Kumar Pradhan and one Uttam Pradhan respectively, it does not establish the contention that on that day only two Policies were issued. It may well be assumed that records of other Policies issued on that day were not printed out. The Appellant is required to furnish the entire records maintained to lend authenticity to their claims.

11. It is also unfathomable as to how premium collected by the agent from the insured, outside the Office, can be Computer generated. The Appellant would have the Learned Tribunal believe that Exhibits 'C1' and 'C2' are genuine documents, merely for the reason that it has been furnished and relied on by the Appellant Company, without considering that neither the issuance of the documents nor its contents and signatures therein have been proved. Despite the insistence that Exhibit 10 was a fake document, no proof of any Complaint lodged against the Agent or any other person before any Police Station to discover the truth of the matter was before the Learned Tribunal. Indeed it is inconceivable as to why an insured would pay a premium amount to obtain a fake document at his own peril. However, third party claimant is not concerned with the question of fraud or forgery between the insurer and the insured. In the event, a fraud or error is discovered to have been committed by any person, the Appellant would necessarily have to resort to the remedy of initiating appropriate action for rectification and penalty thereof.

12. The Learned Tribunal after considering the evidence on record has reasoned in its impugned Judgments as follows;

“27. Shri Bikash Roy Pradhan, the Branch Manager of the Opposite Party No. 3 clearly admitted that Shri Rajen Tamang is the authorized agent of Opposite Party No.3. Exhibit-10 is the certified copy of the Insurance Policy of the vehicle. In Exhibit-10, in place of the details of the agent/Broker, the name of Shri Rajen Tamang with his agent code number as ‘BA000015623’ has been clearly mentioned. Exhibit-10 was served upon the Opposite Party No.3. The Opposite Party No. 3 failed to produce and examine Shri Rajen Tamang, Authorized Agent of Oriental Insurance Company Limited (*Opposite Party No. 3*) despite several opportunities having been given to it. By perusal of Exhibit -10, it is difficult to identify the fake and the genuine policy. There is no evidence produced by the Opposite Party No.3 that the Opposite Party No.1 owner of the vehicle had involved himself or influenced the said Shri Rajen Tamang to illegally issued the fake insurance policy to him. The Opposite Party No. 3 has not exhibited any complaint/document against the Opposite Parties No. 1, 4 or Shri Rajen Tamang, authorized agent of Opposite Party No. 3 stating that the Opposite Parties No.1 and 4 had obtained a fake insurance policy of the Oriental Insurance Company Limited or Shri Rajen Tamang handed over the fake insurance policy to the Opposite Parties Nos.1 and 4 and the same was in their personal knowledge. **There is no evidence to the effect that the Opposite Parties No.1 and 4 had obtained fake insurance policy in collusion with the staff or agent of Opposite Party No.3. From evidence on record, no apparent role appears to have been played by the owner in obtaining the fake insurance policy. It is very difficult to pin point who is responsible for issuance of the fake insurance policy. It is unbelievable that an insured would obtain a fake certificate by paying the same premium at his own risk and peril. The Opposite Party No.4 Shri Biren Gurung further establishes that in order to obtain Exhibit-10, Opposite Party No.1 had given him ₹ 14,500/. He personally knows Rajen Tamang as he is the agent of the Opposite Party No.3. Opposite Party No.4 paid a sum of ₹ 14,500/- to Rajen Tamang, agent of the Opposite Party No. 3 through one Palden Bhutia and Rajen Tamang handed over Exhibit-10 to Opposite Party No.4. Opposite Party No. 4 further establishes that as per the direction of Rajen Tamang, he handed over premium amount to Shri Palden Bhutia.** On the facts and circumstances of the case at hand, it cannot be held that Opposite Party No.1 (*Owner of the vehicle*) has any role to play in issuance of the fake policy, on the other hand evidence on the record cast suspicion towards the authorized agent of the insurance company. Since, Opposite Party No. 3 has admitted that Shri Rajen Tamang is its authorized agent, there is master and servant relation between the Opposite Party No. 3 and the said Shri Rajen Tamang. From this angle

also Opposite Party No. 3 is liable for the act of the said Rajen Tamang. However, the Opposite Party No. 3 is as liberty to conduct an inquiry against its agent Rajen Tamang in respect of issuance of Exhibit 10 to find out the actual fact as narrated supra and if found guilty, it can recover the amount paid to the Claimant by way of the Award in the instant claim petition from the said Rajen Tamang.” [emphasis supplied]

13. The observations of the Learned Tribunal in arriving at its conclusions is perfectly reasoned and brooks no interference.

14(i). In MAC App. No.07 of 2020, the Claimant/Respondent No.1 (Padam Bahadur Rai) is the father of the deceased.

(ii) In *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others*¹, the Supreme Court while discussing consortium observed as follows;

“21. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased which is a loss to his family.

.....

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

.....

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under “loss of consortium” as laid down in *Pranay Sethi*” [emphasis supplied]

(iii) In *Magma (supra)* the Filial Compensation granted to the Respondent Nos.1 and 2 the parents of the deceased was ₹ 80,000/- (Rupees eighty thousand) only, and divided equally between them.

¹ (2018) 18 SCC 130

(iv) In light of the said Judgment and for the purpose of meting out complete justice in the matter, Filial Consortium of ₹ 40,000/- (Rupees forty thousand) only, is granted to the Claimant/Respondent No.1 in MAC App. No.07 of 2020.

(v) Consequently, a sum of ₹ 40,000/- (Rupees forty thousand) only, is added to the compensation of ₹ 55,93,328/- (Rupees fifty five lakhs, ninety three thousand, three hundred and twenty eight) only, computed by the Learned Tribunal. All other calculations remain the same.

15(i). In MAC App. No.08 of 2020 and MAC App. No.09 of 2020, the deceased persons were the parents of the Claimant/Respondent No.1 (Karma Tshering Tamang).

(ii) In *Magma (supra)*, the Supreme Court while discussing Parental Consortium observed as follows;

"21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

.....

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *Pranay Sethi*"

[emphasis supplied]

(iii) Consequently, for the purpose of meting out complete justice, Parental Consortium of a total of ₹ 80,000/- (Rupees eighty thousand) only, i.e., ₹ 40,000/- (Rupees forty thousand) only, each, in MAC App. No.08 of 2020 and MAC App. No.09 of 2020, is granted to the Claimant/Respondent No.1.

(iv) Thus, a sum of ₹ 40,000/- (Rupees forty thousand) only, is added to the compensation of ₹ 4,16,000/- (Rupees four lakhs and sixteen thousand) only, in MAC App. No.08 of 2020 and, ₹ 40,000/- (Rupees forty thousand) only, to the compensation of ₹

6,28,968 (Rupees six lakhs, twenty eight thousand, nine hundred and sixty eight) only, in MAC App. No.09 of 2020. Other computations made by the Learned Tribunal in both the matters *supra*, warrant no alteration.

16. The amounts computed in all the Appeals shall be paid within a period of two months from today with interest @ 10% per annum, failing which the Appellant 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 the Appellant Company to the Claimants-Respondents.

17. Consequently, Appeals are dismissed and disposed of accordingly.

18. Copy of this Judgment be forwarded to the Learned Tribunal for information, along with its records, if any.

19. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)
Judge

02-12-2022

Approved for reporting : **Yes**