

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

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

MAC App. No.10 of 2025

Appellant : The Branch Manager,
Cholamandalam MS General Insurance Company Limited

versus

Respondents : Dal Bahadur Thapa and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Rahul Rathi, Advocate for the Appellant.

Mr. Bhim Shankar Pradhan, Advocate and Mr. Nawang Tenzing Bhutia, Advocate for the Respondents No.1, 3, 4 and 5.

Mr. Tarun Choudhary, Advocate for Respondents No.6 and 7 (*through VC*).

Date of hearing : 06-04-2026

Date of pronouncement : 06-04-2026

Judgment uploaded : 06-04-2026

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Appellant impugns the Judgment, dated 30-09-2023, of the Learned Motor Accidents Claims Tribunal, Namchi, Sikkim (hereinafter, "MACT"), in MACT Case No.11 of 2020 (*Dal Bahadur Thapa and Others vs. The Branch Manager, Cholamandalam MS General Insurance Co. Ltd. and Others*), whereby the Appellant was directed to pay a sum of ₹ 48,10,000/- (Rupees forty-eight lakhs and ten thousand) only, with interest @ 9% to the Claimants, from the date of filing of the Claim Petition, i.e., 28-12-2020.

2. In brief, the case of the Claimants (Respondents No.1, 2, 3, 4 and 5 herein) is that the deceased Sagar Thapa, son of the Respondents No.1 and 2 and the sibling of the Respondents No.3, 4 and 5, was driving a motorcycle at "Gangtok road", from Ravangla,

South Sikkim. As the deceased rider slowed down his motorcycle on account of the light traffic on the said road, the motorcycle was struck from behind by a loaded Tipper truck, bearing registration no.SK 04 D 0631, driven by the Respondent No.7, Krishna Pradhan. It is alleged that the driver of the said truck was not only driving in a rash and negligent manner, but was in a drunken state, while driving the truck towards Namchi Bazaar. The truck dragged both the driver of the motorcycle and the pillion rider to about 50 feet from the place where the accident occurred, resulting in the death of the rider and grievous injuries to the pillion rider. The rider of the motorcycle, as per the Respondents, was 29 years old at the time of the accident, working as an *ad hoc* Post Graduate teacher at Victoria Cross Ganju Lama Ravangla, Senior Secondary School, South Sikkim, earning a monthly salary of ₹ 25,000/- (Rupees twenty five thousand) only. All the Claimants were solely dependent on the income of the deceased.

3. After the Appeal was filed before this Court, the name of the Respondent No.2 was struck off from the array of the Respondents, in terms of the Order dated 16-04-2025, as she had passed away.

4. Learned Counsel for the Appellant contends that firstly the driver of the motorcycle did not have the requisite driving licence, and was therefore not eligible to be drive. Secondly, the driver of the offending truck was found to be in a drunken state as has been proved by Exbt CW-12 relied on by the Respondents before the MACT. Hence, the Respondents are not at all entitled to the compensation computed, in view of the foregoing shortcomings. Even if the Respondents are found entitled to the compensation, the Respondent No.6, the owner of the truck, would be liable to pay it as

the truck was being driven in breach of the conditions of the policy as alcohol was found in the blood of the driver as proved by the forensic report, Exbt CW-12.

5. Learned Counsel for the Respondents No.1, 3, 4 and 5 submitted that there is sufficient evidence, i.e., Exbt CW-15, to show that the victim was earning a monthly income of ₹ 25,000/- (Rupees twenty five thousand) only. Exbt CW-12, which was not decimated during the cross-examination by the Appellant, indicates that alcohol was detected in the blood of the truck driver. This establishes that he was in a drunken state and was also driving his vehicle rashly and negligently. That, admittedly the driving licence of the deceased was not furnished however this cannot be confused with the rash driving of the driver to deprive the Respondents of compensation. To fortify his submissions, reliance was placed on the decisions of the Supreme Court in ***Sudhir Kumar Rana vs. Surinder Singh and Others***¹, where, in similar circumstances the Supreme Court was of the view that if the driver in accident was not driving rashly and negligently, the Court failed to see as to how only because he was not having a licence, he could be held to be guilty of contributory negligence. Hence, the compensation awarded to the said driver in accident was allowed by the Supreme Court. This case was relied on again by the Supreme Court in ***Dinesh Kumar J. alias Dinesh J. vs. National Insurance Company Limited and Others***². That, the parents of the deceased were dependant on the income of the deceased as also his sibling, who were students at the time of the accident. Hence, the impugned Judgment warrants no interference.

¹ (2008) 12 SCC 436

² (2018) 1 SCC 750

6. Learned Counsel for the Respondents No.6 and 7 contended that as the owner of the vehicle had taken a driving test of the driver and the driver was found to be competent to drive the vehicle, as held by the Supreme Court in a plethora of Judgments, the owner is not required to make a roving enquiry with regard to the licence of the driver if he shows it to the owner and the owner finds it valid. As the vehicle was insured with the Appellant Insurance Company, it is the Appellant who was liable to pay the compensation, if any.

7. I have heard Learned Counsel for the parties. I have also perused the impugned Judgment, the pleadings, evidence and all documents on record.

8. Learned MACT after due consideration of the Claimants' case vide the impugned Judgment granted compensation as reflected hereinabove.

9. In a similar set of facts and circumstances, the Supreme Court in ***Sudhir Kumar Rana*** (*supra*) held as follows;

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

This was followed by the Supreme Court in the latter decision of ***Dinesh Kumar*** (*supra*).

10. Consequently, bearing in mind the aforementioned views of the Supreme Court, it stands to reason that although the rider of the motorcycle had no licence, he was admittedly not the person driving rashly or negligently nor was he under the influence of any mind altering substance. He had slowed down his motorcycle on account of the traffic. It was the truck which was driven by Respondent No.7 in a rash and negligent manner as evidently he was under the influence of alcohol. The truck struck the motorcycle from behind and dragged the deceased and the pillion rider for a distance of 50 feet leading to the death of the deceased and injuries to the pillion rider. In fine, it concludes that the driver of the motorcycle was not responsible for the accident which snuffed out his life.

11. Consequently, I find no error in the granting of compensation by the Learned MACT. It was argued by Learned Counsel for the Appellant that the deduction ought to be 50% in consideration of the expenses which the deceased would have incurred towards maintaining himself had he been alive. In **Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another**³ the Supreme Court has held that the deduction would be 1/4th where the dependents of the deceased are four to six. Considering the number of dependents on the deceased, the deduction would be 1/4th instead of 1/3rd. Further, the argument of Learned Counsel for the Appellant that the owner is vicariously liable to pay the compensation has no legs to stand in view of the fact that the vehicle was duly insured with the Appellant Insurance Company.

12. In conclusion, the total compensation for the Respondents No.1, 3, 4 and 5 is computed accordingly as follows;

³ (2009) 6 SCC 121

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Annual income of the deceased	₹	3,00,000.00
Add 40% of ₹ 3,00,000/- as Future Prospects [in terms of Paragraph 59.4 of <i>National Insurance Company Limited vs. Pranay Sethi and Others</i> : (2017) 16 SCC 680]	(+)	₹ <u>1,20,000.00</u>
	₹	4,20,000.00
Less 1/4 th of ₹ 4,20,000/- [in terms of Paragraph 30 of <i>Sarla Verma (supra)</i>]	(-)	₹ <u>1,05,000.00</u>
Net yearly income	₹	3,15,000.00
Multiplier to be adopted ' 17 ' (₹ 3,15,000/- x 17) [The age of the deceased at the time of death was '29' and the relevant multiplier in terms of Paragraph 42 of <i>Sarla Verma (supra)</i> is ' 17 ']	₹	53,55,000.00
Add Funeral Expenses [in terms of Paragraphs 52 & 59.8 of <i>Pranay Sethi (supra)</i> , 10% enhanced every three years, hence 10% of ₹ 15,000/- = ₹ 1,500/- + ₹ 15,000/- = ₹ 16,500/- and 10% of ₹ 16,500/- = ₹ 1,650/- + ₹ 16,500/- = ₹ 18,150/-, as the accident occurred on 25-01-2019]	(+)	₹ 18,150.00
Add Loss of Estate [in terms of Paragraph 52 & 59.8 of <i>Pranay Sethi (supra)</i> , 10% enhanced every three years, hence 10% of ₹ 15,000/- = ₹ 1,500/- + ₹ 15,000/- = ₹ 16,500/- and 10% of ₹ 16,500/- = ₹ 1,650/- + ₹ 16,500/- = ₹ 18,150/-, as the accident occurred on 25-01-2019]	(+)	₹ 18,150.00
Add Loss of Filial Consortium [₹ 40,000/- each payable to Respondents No.1, 3, 4 and 5 (Claimants), in terms of Paragraph 21.3 and 24 of <i>Magma General Insurance Co. Ltd. vs. Nanu Ram</i> : (2018) 18 SCC 130 and in terms of Paragraphs 52 & 59.8 of <i>Pranay Sethi (supra)</i> , 10% enhanced every three years, hence 10% of ₹ 1,60,000/- = ₹ 16,000/- + ₹ 1,60,000/- = ₹ 1,76,000/- and 10% of ₹ 1,76,000/- = ₹ 17,600/- + ₹ 1,76,000/- = ₹ 1,93,600/-, as the accident occurred on 25-01-2019]	(+)	₹ <u>1,93,600.00</u>
Total = ₹		<u>55,84,900.00</u>

(Rupees fifty five lakhs, eighty four thousand and nine hundred) only.

13. The impugned Judgment of the Learned MACT is upheld, however the award is modified as stated hereinabove.

14. The Appellant-Insurance Company is directed to pay the above compensation amount of ₹ 55,84,900/- (Rupees fifty five lakhs, eighty four thousand and nine hundred) only, with interest @ 9% per annum, to the Respondent-Claimants within one month from today, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, i.e., 28-12-2020, till full realisation.

15. Amounts, if any, already paid by the Appellant-Insurance Company to the Respondents-Claimants, shall be duly deducted from the compensation granted today.

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- 16.** Appeal disposed of accordingly.
- 17.** No order as to costs.
- 18.** Copy of this Judgment along with original records, if any, be remitted forthwith to the Learned MACT.

(Meenakshi Madan Rai)
Judge

06-04-2026

Approved for reporting : **Yes**

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