



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 20th MAY, 2022

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

MAC App. No.13 of 2019

Appellant : The Branch Manager,
Reliance General Insurance Company Limited

versus

Respondents : Dil Kumari Pradhan and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Manish Kr. Jain, Advocate for the Appellant.

Mr. Sudesh Joshi, Advocate with Mr. Yadev Sharma and Mr. Sujan Sunwar, Advocates for the Respondents No.1 to 3.

J U D G M E N T (ORAL)

Meenakshi Madan Rai, J.

1. The Appellant herein assails the Judgment and Award of the Learned Motor Accidents Claims Tribunal, South Sikkim, at Namchi (for short, "Learned Claims Tribunal"), dated 11-03-2019, in MACT Case No.04 of 2018.


2. Learned Counsel for the Appellant contends that his challenge is two-pronged, the first being that rash and negligent act of the driver of the two wheeler has not been proved, and secondly, the pillion rider being a gratuitous passenger was therefore not covered by the Policy of Insurance. That, in view of the said arguments, the impugned Judgment and Award of the Learned Claims Tribunal ought to be set aside.

3. *Per contra*, Learned Counsel for the Respondents submits that in the first instance the ground of gratuitous passenger was never agitated by the Appellant before the Learned Claims Tribunal and a fresh ground cannot now be raised at the appellate stage. That, the fact of the accident itself establishes the rash and negligent act of the driver of the two wheeler. That, before the Learned Claims Tribunal the Appellant did not deny its liability. Hence, the impugned Judgment and Award of the Learned Claims Tribunal requires no interference.

4. Having heard Learned Counsel for the parties *in extenso*, I have also perused the documents on record as well as the evidence.

5. The facts briefly narrated are that a Claim Petition was filed by the Respondents No.1 to 3 claiming compensation on account of the death of the deceased in a motor cycle accident on 15-05-2017 near Jorethang-Legship Road, South Sikkim. The deceased was riding pillion on the motor cycle. The total compensation claimed was Rs.32,86,000/- (Rupees thirty two lakhs and eighty six thousand) only. On consideration of the evidence on record, the Learned Claims Tribunal granted a compensation of Rs.26,64,200/- (Rupees twenty six lakhs, sixty four thousand and two hundred) only, and directed the Appellant herein to pay the said compensation with interest @ 10% per annum from the date of filing of the Claim Petition till full and final payment.

6. In the first instance, it must be pointed out that as submitted by the Respondents there is no averment pertaining



to the question of gratuitous passenger in the written statement of the Respondent No.1, the Appellant herein, before the Learned Claims Tribunal and hence, I am not inclined to consider this ground as a new ground cannot be raised in Appeal, this being a settled position of law. Secondly, so far as the question of rash and negligent driving not having been established, it is apposite to state here that there is no denial that the accident occurred which resulted in the unfortunate death of the pillion rider subsequently. The principle of *res ipsa loquitur* thus falls into place, which applies to a situation when the mere happening of the accident is more consistent with the negligence of the defendant than with other cause. Besides the principle of *res ipsa loquitur*, Exhibit 9 indicates that a Final Report under Section 174 of the Code of Criminal Procedure, 1973, was submitted reporting therein the unnatural death of the deceased Diwas Rai. Investigation revealed that on 15-05-2017, at around 1915 hours, a telephonic information was received from ASI Jitman Subba stating that at around 1900 hours a motor bike bearing number SK 04 P 5250 (Royal Enfield) with two riders while going to Sikkip, West Sikkim from Jorethang were buried under the debris at Sikkip leading to the death of the driver and the rider was evacuated to the Hospital, but succumbed to his injuries on road. No cross-examination of any witness demolished this document and the facts stated therein have thus attained finality.

7. As per the evidence of D.W.1, Manager, Legal Claims of the Appellant, the policy of insurance is a comprehensive

package policy. In *Yashpal Luthra and Another vs. United India Insurance Co. Ltd. and Another*¹ it was held as follows;

"27. In view of the aforesaid, it is clear that the comprehensive/package Policy of a Two-Wheeler covers a pillion rider and comprehensive/package Policy of a Private car covers the occupants and where the vehicle is covered under a Comprehensive/Package Policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a Private Car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

8. Considering that the policy is a comprehensive policy, it needs no reiteration that it covers the pillion rider. This is being stated just to clear the air with regard to the position of a pillion rider in two wheelers, as held by the Hon'ble Supreme Court.

9. In light of the facts and circumstances discussed above, I am of the considered view that the Judgment and Award of the Learned Claims Tribunal requires no interference and is accordingly upheld.

10. Appeal dismissed and disposed of accordingly.

11. No order as to costs.

12. Copy of this Judgment be forwarded to the Learned Claims Tribunal for information, along with its records.

(Meenakshi Madan Rai)
Judge
20-05-2022

Approved for reporting : **Yes**

ds

¹ 2011 ACJ 1415 : 2009 SCC OnLine Del 4291