

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

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

MAC App. No.16 of 2025

Appellant : The Branch Manager, The New India Assurance Company Limited

versus

Respondents : Gyandup Tshering Lepcha and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Dipayan Roy, Advocate for the Appellant.

Mr. Rahul Rathi and Ms. Rupal Agarwal, Advocates for the Respondents No.1 to 3.

Mr. Sushant Subba and Mr. Nirmal Thapa, Advocates for the Respondent No.4.

None present for the Respondent No.5.

Date of hearing : 16-04-2026

Date of pronouncement : 16-04-2026

Judgment uploaded : 17-04-2026

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), in MACT Case No.03 of 2022 (*Gyandup Tshering Lepcha and Others vs. The Branch Manager, New India Assurance Company Ltd. and Others*), granted a total compensation of ₹ 29,12,887/- (Rupees twenty nine lakhs, twelve thousand, eight hundred and eighty seven) only, with interest @ 6% per annum, from the date of filing of the application (i.e., 01-02-2022) until full realization.

2. The MACT had granted the compensation by concluding *inter alia* that, the injuries sustained by the Claimant No.1 (Respondent No.1 herein), such as fracture of 5th rib and

dislocation of hip joint could be successfully treated. However, fracture of vertebra may affect performance of his normal routine. That, keeping in view the nature of injuries, it may not be possible to say that the Claimant No.1 is fully disabled but it would be reasonable to conclude that he was permanently disabled. The disability was fixed at around 50% by the MACT.

3. The Appellant Insurance Company, is before this Court, assailing the said Judgment and the quantum of compensation granted, on grounds that no disability certificate was furnished by the Claimants to enable the MACT to arrive at the finding of 50% disability of the Claimant No.1. That, such conclusion has been arrived at on the basis of surmises, *sans* substantiation by evidence. The compensation claimed therefore cannot include loss of income of the Claimant No.1 as in the absence of disability certificate or other proof to establish that on account of the alleged disability, he lost his ability to earn. Compensation also cannot be granted under any of the heads computed by the MACT on the failure of the Claimants to establish disability. The claim of ₹ 2,67,887/- (Rupees two lakhs, sixty seven thousand, eight hundred and eighty seven) only, was made by the Claimants on the basis of medical bills and the expenses thereby incurred by the Claimant No.1 on his medical treatment, however on computation of the bills furnished before the MACT, the actual total amount is revealed to be ₹ 1,14,147/- (Rupees one lakh, fourteen thousand, one hundred and forty seven) only, and that would be the only compensation that the Claimants are entitled to, hence the Judgment of the MACT be modified to that extent.

4. Resisting the arguments advanced by Learned Counsel for the Appellant, Learned Counsel for the Respondents No.1 to 3 submits that it has clearly been stated in the evidence-on-affidavit of the Claimant's witness Mr. Asom Tshering Lepcha (who is not a Claimant in the instant matter), that due to the accident, his brother, Claimant No.1, had sustained grievous injuries [Bi-lateral haemithorax following blunt injury over chest, bi-lateral with multiple fracture injuries (sic.)] and dislocation of left hip joint and various fractures as detailed in the medical certificates, X-ray reports which are filed along with the claim petition, resulting in him being bedridden for several months. That, the said witness also testified that his brother is unable to stand in "*supine manner*" (sic.) and the accident led him to become crippled as his ribs were fractured. His left hip joint was dislocated and he is unable to work, stand and in need of support, even for basic tasks like attending the call of nature. That, he was also referred to various Doctors at Kalimpong and Siliguri which establishes his condition of 50% disability. Hence, there is no error in the findings of the Learned Trial Court and the compensation granted warrants no interference.

5. The parties have been heard *in extenso* and all pleadings, documents and evidence duly perused and considered by me.

(i) This Court is now to determine whether the conclusion arrived at by the MACT of 50% disability of Claimant No.1 is correct and if not what consequences would follow.

(ii) While answering the question framed, the injuries suffered by the victim, Claimant No.1 leading to his alleged

disability are to be examined. Exbt 13 (collectively) is the discharge summary pertaining to the Claimant No.1 which records the following findings;

Form No.: AHNC/GEN/080

ANANDALOKE HOSPITAL & NEUROSCIENCES CENTRE

(A Unit of Anandaloke Medical Centre Pvt. Ltd.)

2ND MILE, SEVOKE ROAD, SILIGURI-734001, PHONE: (0353) 2540980, 2544352
FAX: 0353-2544944, E-mail : info@anandaloke.com, Visit us : www.anandaloke.com

DISCHARGE SUMMARY

IN EMERGENCY CALL ANANDALOKE HOSPITAL ON 0353-2540980/2544352

Name	: GANDUP LEPCHA	IP#	: IP150037412
Gender/Age	: M/24	Blood Group:	MRN : MRN0081562
Telephone	: +91 9609023503	Relative	: S/O Lop Tshering Lepcha
Patient Category:	General	Location	: 4th_Floor-GEN_MALE-4F_GEN_002
Address	: RUMBIK, PO+PS-SOMBARIA, DIST-W/SIKKIM S/SIKKIM SIKKIM INDIA		
Admission Date	: 14/10/2015 02:50	Discharge Date	: 27/10/2015 10:55
Discharged By	: Dr. A. K Sasmal, MS(ORTHO)	Patient Condition	: Stable
Discharge Reason	: Routine Discharge		
Admitting Consultant:	Dr. A. K Sasmal, MS(ORTHO)		

Final Diagnosis:

*B/L HAEMOPNEUMOTHORAX FOLLOWING BLUNT NUURY CHEST (B/L) WITH MULTIPLE INJURIES.
*DISLOCATION Lt. HIP JOINT.

History of Present Illness:

Patient presented with alleged h/o RTA on 13.10.15. at around 7.30 PM followed by chest, back injury and multiple abrasions over whole body. No h/o DM & HTN.

Examination on Admission:

GCS: E4 V5 M6

Pulse: 88/ min ; BP: 90/80 mm Hg

Chest: B/L AE (+) ; Abdomen: Soft

Investigation:

X-Ray Chest (23.10.15) :

- * Fracture of left 5th rib visible.
- * Opacity in left basal region – lung contusion.

CT Scan of Thorax (16.10.15):

- * Fracture of left sided 5th rib and left transverse process of D1 vertebra with left hemithorax and collapse consolidation of left lung.
- * Mild collection at pleural space with chest tube in situ.

Bedside USG screening of Whole Abdomen (14.10.15):

- * Fatty changes in liver.
- * Left sided mild pleural effusion.

X-Ray Chest AP Supine (15.10.15);

- * Intercostal drain in situ on right.
- * Fracture if left 5th rib visible.
- * Hazy left lung field – effusion.

Blood (14.10.15):

* SGOT: 420 U/L, SGPT: 130 U/L.

Urine RE (14.10.15):

* Albumin: Present, trace, Blood: Present (+++), RBC : Plenty, Casts: Hyaline (+), granular (+).

Others – Enclosed

OT Note:

ICD Rt. Side done on 14.10.15. by Dr. Ranjan Paul Chowdhury, MS.

Closed reduction Lt. hip done under GA on 14.10.15, by Dr. A.K. Sasmal,MS (Ortho).

ICD (Lt. side) given on 17.10.15, by Dr. Ranjan Paul Chowdhury, MS.

Course & Management:

During hospital stay patient was managed surgically along with I.V fluid, antibiotics, antiemetic, analgesic, PPI, blood transfusion (4 units 'O' positive) & other supportive measures. **Post-operative recovery was uneventful.** Case was also reviewed by Dr.

The Branch Manager, The New India Assurance Company Limited and Others vs. Gyandup Tshering Lepcha and Others

Ranjan Paul Chowdhury, MS. Now the patient is stable & is being discharged with the following advice.

On discharge: GCS: E4 V5 M6.

Pulse: 74/min ; BP: 120/80 mmHg.

Medication-Advice on Discharge

- | | |
|--|--|
| 1. Normal diet. | |
| 2. Tab Cefadrox 500 mg - | 1 tab twice daily – 7 days |
| 3. Tab Pan 40 mg - | 1 tab twice daily before meal – 7 days |
| 4. Tab Flexon- | 1 tab thrice daily – 7 days |
| 5. Tab Calpol 650 mg- | 1 tab SOS if fever. |
| 6. To continue Spirometry & stitch removal after 10 days from both sides of chest. | |

Follow Up

AT ORTHO OPD AFTER 7 DAYS / SOS.

Discharge Summary Prepared By	Kalpana Pradhan
All relevant papers received by us. (Sign. of Patient Party/Patient)	
Signature of RMO/Dy. Director	Sd/-

[emphasis supplied]

(iii) There is nothing in the discharge summary to indicate that the Claimant was rendered disabled on account of the injuries suffered by him in the accident, besides, it specifies that the 'recovery was uneventful', indicating that the recovery followed the normal course. In other words, nothing untoward occurred during the recovery of Claimant No.1, reinforcing the fact that no disability was identified. As already pointed out by the Learned Counsel for the Appellant, there is no disability certificate furnished by the Appellant. The MACT while arriving at its finding of disability has made a presumptive assessment based on surmises by recording as follows;

"24. The medical papers (collectively marked Exhibit-13) and more particularly, the discharge summary dated 27.10.2015 issued by Anandaloke Hospital, Siliguri would show that petitioner/claimant no.1 had sustained the following injury: **bilateral haemopneumothorax following blunt injury chest with multiple injuries and dislocation of left hip joint.** The discharge summary of 27.10.2015 would show that apart from the above injuries, petitioner claimant no.1 had **"Fracture of left side 5th rib and left transverse process of D1 vertebra with left hemithorax and collapse consolidation of left lung.."**

25. In normal course, the injuries sustained by petitioner/ claimant no.1, such as fracture of 5th rib and dislocation of hip joint could be successfully treated. However, fracture of vertebra may affect

performance of his normal routine. Keeping in view the nature of injuries, it may not be possible to say that petitioner/claimant no.1 is fully disabled. However, it would be reasonable to conclude that his permanent disability is around 50%.”

[emphasis supplied]

(iv) In my considered view, that the fracture of ribs would render a person disabled, is an improbable circumstance, consequently I cannot bring myself to be convinced by the arguments of Learned Counsel for the Respondents No.1 to 3 that a person would suffer 50% disability due to fractured ribs. Regarding the issue of dislocation of hip joint it would mean that the treatment would re-place the bone to the place of its dislocation. It is not the Claimants case that the dislocation was not corrected by treatment. There cannot be a conclusion of disability as made by the MACT, merely on account of fracture of D1 vertebra. The injury to the said vertebra and its consequences have not been detailed by the Claimant No.1 nor his witness of the Claimants or by the medical expert or by medical certificate. I cannot help but notice that the witness has deposed that “.....*That my brother is unable to stand in a supine manner and the accident led him to be crippled*”. “Supine” as per the **Concise Oxford English Dictionary, South Asia Edition, Twelfth Edition 2011**, is, “**1 lying face upwards. ▪ with the palm of the hand upwards.**”. When “supine” means the above, obviously he would not be able to ‘stand’ in a “supine manner” as imagined by the witness. The evidence of the witness is not only ludicrous on this facet but is also self defeating.

(v) In such circumstances, I am of the considered view that the MACT has not only erred in reaching a finding of 50% disability *sans* disability certificate or medical certificate to fortify

that the Claimant No.1 was rendered disabled, on account of the accident but also erred totally in granting compensation of ₹ 29,12,887/- (Rupees twenty nine lakhs, twelve thousand, eight hundred and eighty seven) only, with interest @ 6% per annum. All that the Claimant is entitled to is a sum of ₹ 1,14,147/- (Rupees one lakh, fourteen thousand, one hundred and forty seven) only, as the expenditure incurred by him for his treatment.

6. The Judgment of the MACT being erroneous and the Claimants not being entitled to the compensation calculated by the MACT the Judgment as a consequence is set aside.

7. The amount of ₹ 1,14,147/- (Rupees one lakh, fourteen thousand, one hundred and forty seven) only, shall be paid to the Claimant-Respondent No.1 by the Appellant Company within one month from today with interest @ 9% from the date of filing of the Claim Petition, till full realization, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, till full realisation.

8. Appeal is disposed of accordingly.

9. Copy of this Judgment be sent to the Learned MACT for information, along with its records.

(Meenakshi Madan Rai)
Judge

16-04-2026

Approved for reporting : **Yes**