

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 2<sup>nd</sup> August, 2024

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

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MAC App. No.17 of 2024

**Appellant** : The Branch Manager, Shriram General Insurance Company Limited**versus****Respondents** : Chanda Chettri and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Rahul Rathi, Advocate for the Appellant.

Mr. Sushant Subba, Advocate for the Respondents No.1 to 4.

Ms. Tashi Doma Sherpa, Advocate for the Respondents No.5.

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**JUDGMENT(ORAL)**Meenakshi Madan Rai, J.

**1.** The short question for consideration in this Appeal is whether the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, (hereinafter, the "MACT"), vide its Judgment dated 22-12-2023, in MACT Case No.23 of 2022, *Chanda Chettri and Others vs. The Branch Manager, Shriram General Insurance Company Limited and Another*, was correct in awarding compensation of ₹ 20,00,000/- (Rupees twenty lakhs) only, with interest @ 10% per annum, from the date of filing the Petition i.e., 09-11-2022, when the Respondents No.1 to 4 i.e., Claimants No.1 to 4 (Claimants), before the Learned MACT had made a claim specifically only for a total compensation of ₹ 18,85,225/- (Rupees eighteen lakhs, eighty five thousand, two hundred and twenty five) only, along with interest @ 12% per annum.

**2.** Learned Counsel for the Appellant urged that apart from the compensation granted in excess of the claim put forth by the Claimants (Respondents No.1 to 4 herein), the Personal Accident (P.A.) Cover of ₹ 15,00,000/-(Rupees fifteen lakhs) only, could not have been granted to the Respondents No.1 to 4 as the policy cover was specifically for the Owner, who would be driving the vehicle and not for an authorized driver, who in the instant case was driving the vehicle. The owner was not driving the vehicle at the time of the accident. Hence, the Judgment of the Learned MACT being erroneous deserves to be set aside.

**3.** Resisting the submissions of Learned Counsel for the Appellant, Learned Counsel for the Respondents No.1 to 4 submits that no error arises in the finding, conclusion and compensation granted by the Learned MACT. The policy of insurance covered the owner and the driver of the vehicle as has been specifically mentioned in the policy document. A different interpretation from the contents of the document cannot be made by the Appellant. Hence, the Judgment and Award of the Learned MACT be upheld.

**4.** Learned Counsel for the Respondent No.5 had no submissions to make.

**5.** On 25-08-2022 at around 06.10 p.m., the driver of the tipper truck, bearing registration number SK-01-D-2344, was driving from Manglay to Gangtok, carrying a load of sand. The vehicle went off the road and landed on the river bed below. The driver passed away on the spot. The four Claimants are the wife and children respectively, of the deceased driver. They filed a Claim Petition before the Learned MACT under Section 163A of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), seeking

compensation of ₹ 18,85,225/-(Rupees eighteen lakhs, eighty five thousand, two hundred and twenty five) only, with interest @ 12% per annum.

**6.** I have given due consideration to the submissions put forth by Learned Counsel for the parties. It needs no reiteration that the Supreme Court in a plethora of decisions has held that the Learned MACT is in a position to grant compensation over and above the compensation claimed, if it is of the considered view, on examining the matter before it, that, the compensation would tantamount to "just compensation".

**(i)** In *Meena Devi vs. Nunu Chand Mahto alias Nemchand Mahto and Others*<sup>1</sup> the Supreme Court held as follows;

**"17.** At this stage, it is necessary to clarify that as per the decision of a three-Judge Bench of this Court in *Nagappa v. Gurudayal Singh* [(2003) 2 SCC 274 : 2003 SCC (Cri) 523] , it was observed that under the MV Act, **there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed.** The Tribunal/Court ought to award "just" compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the claim petition would not be impediment to award just compensation exceeding the claimed amount." [emphasis supplied]

**(ii)** In *Pappu Deo Yadav vs. Naresh Kumar and Others*<sup>2</sup>, 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. ...." [emphasis supplied]

<sup>1</sup> (2023) 1 SCC 204

<sup>2</sup> (2022) 13 SCC 790

The law with regard to granting of compensation, in excess of the claim made and what "just compensation" tantamounts to, has thus been succinctly propounded.

**(iii)** Now, having perused Exbt-19 the Policy of Insurance, it has been detailed *inter alia* in the document as follows;

".....  
**Limit of Liability:**  
 Under Section II-1(i) in respect of any one accident : as per Motor Vehicles Act, 1988.  
 Under Section II-1(ii) in respect of any one claim or series of claims arising out of one event is Rs. 750000  
 P.A. Cover under Section III for Owner – Driver (CSI) : Rs. 1500000  
 ....."

As extracted hereinabove, it is evident that that P.A. Cover under Section III of the MV Act, has been provided for the "Owner – Driver" (CSI) for a sum of ₹ 15,00,000/-(Rupees fifteen lakhs) only. In my considered opinion, the P.A. Cover is therefore to be construed as covering not only the owner *per se* but also the driver. It is indeed evident that the terms mentioned in the Insurance-Policy covers both the owner and the driver. Needless to add here that, from a perusal of the records and the impugned Judgment that this issue had not even been raised before the Learned MACT. It is settled law that issues which were not raised during the course of trial cannot be raised in Appeal as held by the Supreme Court in **Rajesh Kumar alias Raju vs. Yudhvir Singh and Another**<sup>3</sup> which is extracted hereinbelow;

"11. ....It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's

<sup>3</sup> (2008) 7 SCC 305



Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time.”

**(iv)** In the end result, on due consideration of the facts and circumstances and perusal of the impugned Judgment, I find no reason to disagree with the conclusion arrived at by the Learned MACT. The impugned Judgment and Award are accordingly upheld.

**7.** It is relevant to remark that the Appeal has been filed rather late in the day after the Execution Petition has been determined by the Learned MACT and the compensation amount has already been released to the Respondents No.1 to 4/Claimants of which circumstance the Appellant was well aware of. The Appellant evidently made no attempt to stay the execution proceedings before the Learned MACT.

**8.** Considering that this Appeal has thus resulted in wasting precious judicial hours, the Appellant-Company shall pay a sum of ₹ 3,00,000/-(Rupees three lakhs) only, as costs to the Respondents No.1 to 4 within a period of one month from today.

**9.** Appeal dismissed and disposed of.

**10.** Pending applications, if any, also stand disposed of.

**11.** Copy of this Judgment be forwarded to the Learned MACT for information along with its records.

**( Meenakshi Madan Rai )**

**Judge**

02-08-2024

Approved for reporting : **Yes**