

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 26th September, 2024

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

MAC App. No.18 of 2024

Appellant : The Divisional Manager,
National Insurance Company Limited**versus****Respondents** : Bahadur Rai and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. M. N. Dhungel, Advocate for the Appellant.

Mr. R. C. Sharma, Advocate for the Respondent No.1.

Mr. Nirankush Dahal, Advocate for the Respondent No.2.

JUDGMENT (ORAL)Meenakshi Madan Rai, J.

1. The only ground on which the Judgment of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), dated 30-04-2024, in MACT Case No.24 of 2021 (*Bahadur Rai vs. The Divisional Manager, National Insurance Company Ltd. and Another*), is assailed is that the compensation of ₹ 5,00,000/- (Rupees five lakhs) only, was awarded to the Respondent No.1 by the Learned MACT, having reasoned as follows;

"17. The contents of the insurance policy (Exhibit-7) shows limits of liability of the insurance company in terms of Section II(I)(i) of the said policy is upto ₹ 7.5 lakhs. This fact is clearly mentioned in the compromise deed (Exhibit-19). It would also show the admission of insurance company (at paragraph 7) that the deceased (one of the other passenger involved in the same accident and the same vehicle) was covered under the supra clause and that the insurance company was liable to pay the compensation. I have no reason to disagree with learned Counsel for the petitioner/claimant as to why the same logic cannot be applied in the present case when the deceased was one of the passenger in the same accident vehicle.

The Divisional Manager, National Insurance Company Limited vs. Bahadur Rai and Another

18. Therefore, according to the principle of parity, I find that the deceased is also covered under Section II(I)(i) of the said policy and deserves to be paid compensation of ₹ 5 lakhs by the insurance company. The question whether the petitioner/ claimant is entitled to the compensation claimed is answered in affirmative. Respondent no.1 is liable to pay the same as above.”

2. Learned Counsel for the Appellant submitted that, the Learned MACT had based its Judgment on the principle of parity when in fact no liability accrues to the Appellant Company to pay the compensation. That, the vehicle in accident was a private vehicle and although the vehicle was duly insured it did not cover liabilities for passengers in the vehicle, hence the Judgment of the Learned MACT be set aside.

3. Learned Counsel for the Respondents No.1 on the other hand contended that, the Appellant Company had agreed to pay compensation of ₹ 5,00,000/- (Rupees five lakhs) only, in ***Dorjee Tshering Bhutia vs. Dhan Maya Rai and Another***, MAC App. No.12 of 2019, filed before this Court. The Claimant therein was the kin of a person who was travelling in the same vehicle and was a fatality. The Appellant was aware of the fact that they were liable to pay the compensation as the vehicle was duly insured. It was not a gratuitous settlement by the Appellant but was a well thought out compromise, arrived at to the benefit the Appellant Company, which concluded in the settlement of ₹ 5,00,000/- (Rupees five lakhs) only, vide Annexure A-2, relied on by the Appellant. Hence, there is no error in the Judgment of the Learned MACT which correctly held that the principle of parity is applicable and the same amount be paid by the Appellant Insurance Company herein.

4. Learned Counsel for the Respondent No.2 had no separate submissions to advance and endorsed the contentions put forth by Learned Counsel for the Respondent No.1.

The Divisional Manager, National Insurance Company Limited vs. Bahadur Rai and Another

5. From the documents on record before this Court and from the rival submissions of Learned Counsel for the parties, it is apparent that the kin of another passenger involved in the same accident and in the same vehicle was paid compensation of ₹ 5,00,000/- (Rupees five lakhs) only, by the Insurance Company, thereby implicitly conceding that the Insurance Company was indeed liable to pay the compensation to the Claimant who sought compensation on account of the passing of their kin/family in the unfortunate accident. It was not a settlement arrived at by the Appellant based on any altruism or misplaced magnanimity. It is also seen in Paragraph 17 of the impugned Judgment extracted *supra* that, in terms of Section II(I)(i) of the Policy of Insurance, the limits of liability was in fact up to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only, but a compromise was arrived at between the parties in ***Dorjee Tshering Bhutia*** (*supra*) and the matter settled by payment of compensation of ₹ 5,00,000/- (Rupees five lakhs) only, by the Insurance Company to the Claimants therein. Although an Appeal had been filed before this Court, the Insurance Company (Appellant herein) did not seek to contest the Appeal and instead arrived at the compromise with the Claimant as posited above.

6. It is relevant to notice that in Annexure A-2 the "*Joint Compromise Deed/Settlement Agreement*" the following has been stated in Paragraphs 5 and 7;

"5. That as the contents of the policy obtained by the Appellant / Second Party and issued by Respondent No.01 / First Party had clause under the heading - "Limits of Liability Clause" which is reproduced as under as averred at paragraph 14 of the present appeal pending for disposal before Hon'ble High Court of Sikkim, in M.A.C. App. No.12 of 2019 - *Dorjee Tshering Bhutia vs Dhan Maya Rai and Another*, as -

The Divisional Manager, National Insurance Company Limited vs. Bahadur Rai and Another

Limits of Liability Clause: Under Section II(I)(i) of the Policy – Death or bodily injury. Such amount as is necessary to meet the requirements of the Motor Vehicle Act, 1988. Under Section II(I)(i) of the policy – Damage to third party property is Rs.7,50,000/-, P.A. Cover under Section 3 for owner-driver is Rs.2.00 Lakhs.

7. **That the Respondent No.02 / FIRST PARTY i.e. National Insurance Company Limited, Gangtok Branch, Gangtok, East Sikkim, hereby ratifies and agreed that that the deceased was covered by virtue of the above clause, thus the present Appellant / SECOND PARTY (Insured) is not liable to pay or satisfy the award and admit the liability to pay the Compensation as directed by the Ld. Member, Motor Accident Claims Tribunal, at Gangtok, East Sikkim in M.A.C.T. Case No: 07 of 2017, vide Judgment Dated: 22.06.2019, which is under challenged by the Appellant / SECOND PARTY (Insured) as the Appellant / SECOND PARTY (Insured) is made liable to satisfy the award / compensation to the Third Party i.e. Claimant / Petitioner / Respondent No.1.”** [emphasis supplied]

7. In view of such settlement and the admission and explicit acceptance thereof that the deceased in that case was covered by the policy of insurance which the Insurance Company was liable to pay, no error arises in the finding of the Learned MACT directing the Appellant to pay compensation of ₹ 5,00,000/- (Rupees five lakhs) only, with interest @ 9% per annum, from the date of filing of the application, i.e., 23-12-2021, till full and final realization, as similarly situated persons cannot be treated differently. That would be a travesty of justice.

8. In the end result, the Appeal stands dismissed and disposed of accordingly.

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

(Meenakshi Madan Rai)
Judge

26-09-2024

Approved for reporting : **Yes**

