

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 24th April, 2025

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

MAC App. No. 21 of 2024

Appellant : The Branch Manager,
The New India Assurance Co. Ltd.

versus

Respondents : Minor Keonsel Namgyal Bhutia and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Dipayan Roy, Advocate for the Appellant.
Mr. K. B. Chettri, Advocate for the Respondent No.1
Mr. Rachhita Rai, Advocate for the Respondent No.2.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Appellant assails the Judgment and Award, both dated 26-06-2024, of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), in MACT Case No.25 of 2023 (*Minor Keonsel Namgyal Bhutia vs. Shri Ranjeet Subba and Another*), whereby the Appellant was directed to pay ₹ 5,00,000/- (Rupees five lakhs) only, with interest @ 10% per annum, in a Claim Petition filed by the Claimant, under Section 164 of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), on grounds of "injury" sustained by the minor victim.

(i) Learned Counsel for the Appellant submits that the Learned MACT erred in granting compensation of ₹ 5,00,000/- (Rupees five lakhs) only, under Section 164(1) of the MV Act instead of ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, as envisaged by the provision, since the victim of the accident only suffered a fracture in his left leg and it was not a case of fatality. The impugned Judgment may be rectified, requiring the Appellant to

The Branch Manager, The New India Insurance Co. Ltd. vs. Minor Keonsel Namgyal Bhutia and Another

compensate the Claimant for a sum of ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, as legally provided.

2. Learned Counsel for the Claimant/Respondent No.1 fairly concedes that the Claim Petition was filed under Section 164 of the MV Act and the compensation sought was ₹ 4,87,377/- (Rupees four lakhs, eighty seven thousand, three hundred and seventy seven) only, however in view of the statutory provision, the Claimant/Respondent No.1 ought to have been compensated with ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, by the Learned MACT.

3. Learned Counsel for the Respondent No.2 had no specific submissions to advance.

4. Heard Learned Counsel for the parties. The facts briefly narrated are that on 08-01-2023, at around 09.00 a.m., the minor Keonsel Namgyal Bhutia, aged about seven years, (represented by his father before the Learned MACT,) was standing alongside the road with several other devotees, waiting for a religious guru. The driver of the offending vehicle (Hyundai i-10) drove the vehicle into the waiting crowd, rashly and negligently as a result of which the minor suffered a fracture in his left leg. Admittedly, the parents of the Claimant incurred a sum of ₹ 57,377.29/- (Rupees fifty seven thousand, three hundred, seventy seven and twenty nine paise) only, in his medical treatment, hence the Claim Petition.

5. The Learned MACT in the impugned Judgment has observed *inter alia* as follows;

"19. It is relevant to note that after the Motor Vehicles (Amendment) Act, 2019 came into force, the old Chapter XI has been replaced with a new one. **The provision of Section 164 (sic., Section 163A) has now been replaced with Section 164, which provides at sub-section (1)** that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law,

the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

20. Though the claim is of ₹ 4,87,377 the petitioner/claimant is entitled to compensation of ₹ five lakhs in view of Section 164(1) of the Act of 1988. Being a benevolent legislation, I have preferred to invoke the provision which is more favourable to the petitioner/claimant.”
(emphasis supplied)

6. Despite the provision of Section 164 of the MV Act having been perused by the Learned MACT as seen *supra*, however without considering the import of the provision, compensation of ₹ 5,00,000/- (Rupees five lakhs) only, was allowed to the minor Claimant, on grounds that the MV Act is a benevolent legislation, thereby reflecting lack of application of judicial mind. Indeed, there is no doubt that the legislation is benevolent, nonetheless such benevolence does not tantamount to empowering the Learned MACT with powers beyond the prescription of the statute. In the instant case Section 164 of the MV Act categorically provides as follows;

“164. Payment of compensation in case of death or grievous hurt, etc.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, **the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.**

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

(emphasis supplied)

7. Admittedly, the victim only suffered a fracture in his left leg. The Learned MACT has therefore misdirected itself in Paragraph 20 of the impugned Judgment by granting compensation beyond the statutory limit by a misinterpretation of the provision.

8. The impugned Judgment, dated 26-06-2024, granting an Award of ₹ 5,00,000/- (Rupees five lakhs) only, with interest @ 10% per annum, from the date of filing of the Claim Petition i.e., 05-07-2023, until full realization, is set aside and quashed.

9. In view of the provisions of Section 164(1) of the MV Act, the Appellant-Insurance Company is directed to pay the compensation of ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, to the Claimant-Respondent No.1, within one month from today, with interest @ 9% per annum, from the date of filing of the Claim Petition i.e., 05-07-2023, 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.

10. Amounts, if any, already paid by the Appellant-Insurance Company to the Claimant- Respondent No.1, under the instant claim petition, shall be duly deducted from the awarded compensation.

11. Appeal disposed of accordingly.

12. No order as to costs.

13. Copy of this Judgment be forwarded to the Learned MACT for information.

14. Copy also be forwarded to all the Learned MACT's in the State for perusal and guidance.

(Meenakshi Madan Rai)
Judge

24-04-2025

Approved for reporting : **Yes**