THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

MAC. App. No. 22 of 2024

1. Shri Prem Bahadur Rai,
S/o Late Sikpa Rai,
Aged about 72 years.

2. Smt. Khus Kumari Rai,
W/o Shri Prem Bahadur Rai,
Aged about 67 years.

Both residents of Kaizaley, Amba Village,
District Pakyong, Sikkim,
Pin Code-737133.

.... Appellants/Claimants

versus

1. The Branch Manager,
United India Insurance Co. Ltd.
Having its branch office at Deorali Bazaar,
Deorali, Gangtok, Sikkim,
Pin Code-737102.

2. Shri Saharman Chettri,
S/o Chandra Bahadur Chettri,
R/o Bering, Pakyong,
Sikkim,
Pin Code-737135.
(Owner of the Accident Vehicle No.SK-7-D-0102)

.... Respondents

Appeal under Section 173 of the Motor Vehicles Act, 1988.

Appearance:

Mr. Umesh Ranpal and Ms. Rubusha Gurung, Advocates for the Appellants/Claimants.

Mr. Pramit Chettri, Advocate for the Respondent No.1.

Mr. Bhusan Nepal, Advocate for the Respondent no.2.

Date of Hearing : 02.07.2025
Date of Judgment : 10.07.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The appellants/claimants-father and mother of the deceased in an application filed under Section 166 of the Motor Vehicles Act, 1988 (the MV Act) had sought compensation to the tune of Rs. 22,41,000/- (Rupees twenty two lakhs forty one thousand) only, on account of the accidental death of their son in a motor vehicle accident that occurred on 20.04.2023.

2. The question which arose for consideration before the learned Motor Accident Claims Tribunal (the learned Tribunal) was whether the deceased was a workman covered by the insurance policy or a gratuitous passenger not entitled to compensation? Both were questions of fact.

3. The learned Tribunal has rejected the claim of the appellants (claimants) who were the parents of the deceased on the ground that the deceased was a gratuitous passenger in the accident vehicle and not a workman or a helper in the accident vehicle.

4. The claimants had asserted that the deceased was working as a daily wage labor of the accident vehicle and on the relevant day of the accident he was travelling from Rorathang to Bering

to unload sand of Ms. Durga Mishra when the accident occurred due to which both the deceased and his brother died.

5. The Insurance Company (respondent no.1) disputed the claim made by the claimants by filing its written objection and denying the assertion of the claimants that the deceased was a workman working as a daily laborer in the accident vehicle. The Insurance Company asserted that the deceased and the driver of the accident vehicle were from the same village and therefore, the deceased had taken a lift in the accident vehicle. The Insurance Company supported this claim by filing the Motor TP Claims Investigation Report (exhibit-R1) made by Binud Arjel- the Insurance Investigator who opined that the deceased was a gratuitous passenger in his report.

6. The owner of the accident vehicle (respondent no.2) in his written objection admitted that he had required five bags of sand to repair the drain of his house which were loaded in the accident vehicle along with the sand of Mr. Durga Mishra on the relevant day; the deceased boarded the accident vehicle to unload the said five bags of sand belonging to the owner but unfortunately before unloading the sand, the accident vehicle met with an accident.

7. In the insurance policy it is seen that the owner has paid an additional premium for insuring his liability to workmen greater than six. The insurance policy which is dated

04.02.2023 does not define the word "workmen". During the course of the hearing it was suggested that the word "workmen" as mentioned in the insurance policy would have the same meaning as was defined in Workmen Compensation Act, 1923. By section 4 of the Workmen Compensation (Amendment) Act, 2009 nomenclature of the Act has been amended by substituting the word "Employee's" for the word "Workmen's" w.e.f. 18.01.2010 and now the Act stands as the Employee's Compensation Act, 1923. The Employee's Compensation Act, 1923 defines the word "Employee" in section 2(dd) to include a person recruited as driver, helper, mechanic, cleaner or any other capacity in connection with a motor vehicle. Thus, the deceased would be covered by the definition of an "Employee" as aforesaid and a "workman" covered by the Insurance Policy.

8. The appellant no.1 (claimant no.1)-(the father of the deceased) deposed that his deceased son used to work as a daily wage laborer and on the relevant day of the accident he was travelling in the accident vehicle from Rorathang to Lower Bering to unload the sand of Mr. Durga Mishra; before reaching the house of Mr. Durga Mishra, enroute, the deceased had to unload four bags of sand belonging to the respondent no.2-owner at his house. The claimant no.1 also stated that since the accident vehicle was a hydraulic vehicle the four bags of sand had to be manually unloaded by the deceased and further when

the accident vehicle reached lower Bering the driver lost control and met with an accident when both his sons as well as the driver succumbed to their injuries. The evidence of the claimant no.1 stood firm even after his cross examination by the respondents including the Insurance Company.

9. The Insurance Company examined only Binud Arjel as their witness. Binud Arjel was an Insurance Investigator as per the Insurance Company. In his evidence on affidavit he stated that he was a General Insurance Investigator and he had investigated the present case as per instruction received from the Insurance Company. Binud Arjel stated that he learned from the injured persons Suraj Rai and Santi Dangal the deceased took a lift in the accident vehicle. During cross examination he admitted that he had not recorded the statements of the claimant and other witnesses. He also admitted that the accident vehicle had gone to deliver sand from the quarry. Neither Suraj Rai nor Santi Dangal was examined as witnesses by the Insurance Company. The deposition of Binud Arjel–the Insurance Investigator as well as his report has no evidentiary value being hearsay in nature. When the Insurance Company cross-examined the claimant No.1 the suggestions to the claimant No. 1 was contrary to what was pleaded in its written objection. The suggestion of the Insurance Company to the claimant No.1 was that the deceased used to

travel in the accident vehicle as he also worked for the accident vehicle owner in carrying load. It was also suggested that the deceased used to travel in the accident vehicle and did petty work in the accident vehicle. Both the suggestions of the Insurance Company were answered in the affirmative by claimant No.1. The suggestions made by the Insurance Company to the claimant No.1 as above which were answered in the affirmative would be binding on the Insurance Company and significant to be considered. Both the suggestions were to the effect that the deceased was in fact a workman.

10. The learned Tribunal in the impugned judgment dated 25.06.2024 framed a singular issue as to whether the claimants were entitled to the relief sought and if so who is liable to pay the same. The learned Tribunal held that there is no dispute that the deceased had died in the accident vehicle; the inquest report (exhibit-5) and the autopsy report (exhibit-14) shows that the death of the deceased was due to intracranial hemorrhage with fracture of skull and other poly-trauma caused with a blunt force trauma; the FIR (Exhibit-2 and 3) reveal that the accident had occurred at lower Bering and a case under Sections 279/338/304A of the Indian Penal Code, 1860 (IPC) was registered against the deceased driver. The learned Tribunal also held that the accident was caused due to the negligence of the driver and all the relevant documents relating

to the accident vehicle were valid and effective. It was also held that the insurance policy was valid and effective and additional premium of Rs.100/- was paid for liability to workmen.

11. The learned Tribunal however, felt that it was not clear whether the deceased was a worker employed in the operation of the accident vehicle. The evidence of Binud Arjel-the Insurance Investigator to the effect that the deceased was not working as a laborer in the accident vehicle found favor with the learned Tribunal more reliable than the evidence led by the claimants. The evidence of Binud Arjel-the Insurance Investigator was held to be reliable and not demolished in cross examination. The solitary evidence of Binud Arjel-the Insurance Investigator led to the rejection of the claim made by the claimants holding that the deceased was a gratuitous passenger and not a workman in the accident vehicle.

12. The learned counsel for the claimants questions this finding of the claims Tribunal and submits that in matters of this nature the evidence on record would clearly lead to a conclusion that in fact the deceased was a workman under the owner in the accident vehicle which met with an accident on the fateful day. The learned counsel for the respondent no.1 supports the impugned judgment. The learned counsel for the respondent no.2-the owner draws attention to his pleading in the written objection admitting that the deceased was in fact a

workman under him and employed on that particular day for his purpose.

13. The claimant no.1 was the father of the deceased. The deceased was at the relevant time of the accident residing with the claimants. The claimant no.1 would thus be aware of his son's engagements. The claimants pleaded that the deceased was working as a helper with the owner in the accident vehicle. The claimant no.1 also deposed the same in his evidence on affidavit. The best person to depose as to whether the deceased was a workman would be the owner. In his written objection the owner had clearly pleaded that he had required five bags of sand to repair the drain of his house which was loaded in the accident vehicle and the deceased had boarded the accident vehicle to unload the said five bags of sand belonging to him. This pleading would amount to an admission to the claim of the claimants that the deceased was a workman under the owner.

14. Except for the Motor TP Claims Investigation Report (exhibit-R1) of the insurance investigator-Binud Arjel the knowledge of the Insurance Company is that of a stranger. According to Binud Arjel he was instructed by the Insurance Company to investigate. He did not record the evidence of the people acquainted with the facts of the case and produce it in court. The report is therefore based on hearsay evidence at the instance of the Insurance Company. The learned counsel for the

Insurance Company has failed to show how the evidence of Binud Arjel and his report should get higher precedence than that of the claimant no.1 as well as the admission made by the owner in his pleading. Not only had the claimant no.1 deposed that the deceased was working as a helper with the owner in the accident vehicle even the Insurance Company made specific suggestions to the claimant no.1 during his cross examination to the effect that the deceased was in fact a workman under the owner. In response the claimant no.1 deposed that the deceased would continuously travel in the accident vehicle as he also worked at a quarry; the deceased used to travel in the accident vehicle as he also worked for the owner in carrying load and at the relevant time five bags of sand of the vehicle owner was also loaded in the accident vehicle. The claimant no.1 emphatically denied the suggestion of the Insurance Company that the deceased was travelling in the accident vehicle as a gratuitous passenger. He also admitted to the suggestion of the Insurance Company that the deceased used to travel in the accident vehicle and did petty work in the accident vehicle; that he was travelling in the accident vehicle when the accident occurred.

15. On the other hand the claim of Binud Arjel–the Insurance Investigator that the deceased was a gratuitous passenger was based on hearsay knowledge from persons who did not enter the witness box. There was no other evidence for the learned

Tribunal to conclude that the deceased was a gratuitous passenger. On a preponderance of probabilities the evidence on record clearly suggest that the deceased was a workman working with the owner and engaged for the unloading of sand for the owner in the accident vehicle when the accident occurred and not a gratuitous passenger.

16. In the circumstances this Court is unable to accept the finding in the impugned judgment that the deceased was only a gratuitous passenger and not a workman.

17. The insurance policy reflects that additional premium was paid by the owner for liability to workmen. There is no dispute on that aspect. The learned Tribunal also has concluded so. The accident occurred when the insurance policy was effective. There is no dispute on this aspect as well. Admittedly the deceased was in the accident vehicle when it met with an accident. That was the case of the Insurance Company as well. The accident was a consequence to the rash and negligent driving of the driver. The learned Tribunal has affirmed this fact in its findings in the impugned judgment. Therefore this Court is of the considered view that owner was vicariously liable for the rash and negligent driving of the accident vehicle by the driver who had been duly authorized by him. As the Insurance Company had indemnified the owner of such a liability through the insurance policy the Insurance Company would be required

to make good the compensation payable to the claimants as they were the parents of the deceased.

18. The deposition of the claimant No.1 reveals that at the time of the accident the deceased was thirty five years old and the claimants were dependent on him. As per the claim made by the claimants the deceased was earning Rs 15,000/- a month which was duly certified by the income certificate issued by the Block Development Officer (Exhibit-15) which was duly exhibited. The Insurance Company could not bring out anything in the cross examination of the claimant No.1 which would reflect that the deceased was not earning Rs.15,000/- per month.

19. The claimants have claimed Rs.22,41,000/- as compensation. This includes Rs.20,16,000/- as loss of earning, Rs.15,000/- as loss of estate, Rs.15,000/- as transportation costs to the hospital. Rs.15,000/- as funeral expenses, Rs.80,000/- as loss of filial consortium and Rs.1,00,000/- as cost of litigation. Considering the fact that the claim was filed in the year 2023 and the claimants had to approach this Court for award of compensation which is granted today it is deemed proper to grant an amount of Rs.25,000/- as cost of litigation and not Rs.1,00,000/- as claimed. The compensation for loss of estate, funeral expenses and filial consortium is increased in terms of the judgments of the Supreme Court as pointed out in

the calculation below. Thus the claimants would be entitled to "just compensation" of a total amount of Rs.21,89,100/- calculated as follows:

Annual income of the deceased (Rs.15,000/-x12)		Rs. 1,80,000.00
add 40% of Rs.1,80,000/- as **Future Prospects** *[in terms of paragraph 59.4 of the judgment of National Insurance Company Limited vs. Pranay Sethi & Ors.: (2017) 16 SCC 680]*	**(+)**	Rs. 72,000.00
		Rs. 2,52,000.00
Less 50% of Rs.2,52,000/- *[as the deceased was a **bachelor** in terms of paragraph 32 of the judgment of Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr.: (2009) 6 SCC 121]*	**(-)**	Rs. 1,26,000.00
Net Yearly Income		Rs. 1,26,000.00
multiplier to be adopted **16 (Rs.1,26,000/- x 16)** *[The age of the deceased at the time of death was 35 and the relevant multiplier in terms of paragraph 42 of the judgment of Sarla Verma (supra) is* **16]**		Rs. 20,16,000.00
Transportation to Hospital	**(+)**	Rs. 15,000.00
add **Funeral Expenses** @ Rs.18,150/- *[in terms of paragraph 59.8 of the judgment of Pranay Sethi (supra) Enhancement @ 10% in every three years* Therefore, the figure calculated is as follows: First three years – Rs.15,000/- @ 10% = Rs.16,500/- Second three years – Rs. 16,500/- @ 10% = Rs.18,150/-]	**(+)**	Rs. 18,150.00
add **Loss of Estate** @ Rs.18,150/- *[in terms of paragraph 59.8 of the judgment of Pranay Sethi (supra) enhancement @ 10% in every three years* Therefore, the figure calculated is as follows; First three years – Rs. 15,000/- @ 10% = 16,500/- Second three years – Rs. 16,500/- @ 10% = Rs.18,150/-]	**(+)**	Rs. 18,150.00
add **Loss of Filial Consortium** *[Rs.40,000/- payable to claimants, in terms of Paragraph 21 and 24 of the judgment of Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & Ors.: (2018) 18 SCC 130]* *[also in terms of paragraph 59.8 of the judgment of Pranay Sethi (supra) enhancement @ 10% in every three years* Therefore, the figure calculated is as follows: First three years – Rs.40,000/- @ 10% = 44,000/- Second three years – Rs.44,000/- @ 10% = 48,400/-]	**(+)**	Rs. 96,800/- (Rs.48,400.00/- payable to each of the claimant no.1 and claimant no.2.)

add **Cost of Litigation** *[in terms of Paragraph 77-80 of the judgment of Sidram vs. Divisional Manager Union of India Insurance Company Ltd. (2023) 3 SCC 439].*	**(+)**	Rs. 25,000.00
	Total	Rs. 21,89,100.00

(Rupees twenty one lakhs eighty nine thousand one hundred) only.

20. The Insurance Company is therefore, directed to pay the amount of Rs.21,89,100/- (Rupees twenty one lakhs eighty nine thousand one hundred) only with simple interest @ 9% from the date of the filing of the claim petition i.e. from 07.08.2023 till realization to the claimants failing which it shall pay simple interest @12% per annum as aforesaid till final realization. Amounts, if any, already paid by the Insurance Company to the claimants shall be accordingly deducted from the compensation awarded.

21. The appeal filed by the claimants is allowed. The impugned judgment is set aside and compensation awarded to the claimants as above.

22. The Registry is directed to send a copy of this judgment forthwith to the learned Tribunal for information along with its records.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: yes.
Internet: yes.