

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

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

MAC Appeal No. 23 of 2024

The Divisional Manager,
National Insurance Company Limited,
Having its Office at National Highway-10,
Opposite Tourism Department,
P.O. & P.S. Gangtok, Sikkim-737101.

..... Appellant/Insurer

Versus

1. Mr. Jigme Lepcha,
Aged about 22 years,
Son of late Netuk Lepcha,
P.O. Dzongu & P.S. Mangan,
Sikkim-737116.
2. Mr. Sonam Rinzing Lepcha,
Aged about 54 years,
Son of late Kabo Lepcha,
P.O. Dzongu & P.S. Mangan,
Sikkim-737116.

..... Respondents/Claimant Nos. 1 & 2.

*Both residents of Sangdong, Hee Gyathang GPU, Lower
Dzongu, P.O. Dzongu, P.S. Mangan Sikkim.*

3. Mr. Lukbo Thing Lepcha,
Son of Mr. Phurba Tshering Lepcha,
Resident of Ray Mindu, Ranka,
Sikkim-737102.

.....Respondent No.3/owner of the motorcycle.

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

*(Impugned judgment and award dated 11.09.2024 passed by the
learned Member, Motor Accident Claims Tribunal, Sikkim at
Mangan in MACT Case No.01 of 2024 directing the
appellant/insurer to pay Rs.15,00,000/- with interest @ 10% per*

annum on the said sum, to the claimants from the date of filing of the claim petition i.e. 02.12.2023 until full and final payment.)

Appearance:

Mr. Madan Kumar Sundas, Advocate for the Appellant/Insurer.

Ms. Vidya Lama and Mr. Nima Tshering Sherpa, Advocates for the Respondent nos.1 & 2/Claimant Nos. 1 and 2.

Mr. Sishir Mothay, Advocate for Respondent no.3/owner of the motorcycle.

Date of Hearing : 14.10.2025

Date of Judgment : 29.10.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The appellant is aggrieved by the award of compensation to the tune of Rs.15,00,000/- granted to the respondent nos. 1 and 2 (claimant nos. 1 and 2) under personal accident cover with interest at 10% per annum from the date of filing of the claim petition till full and final payment.

2. On 23.11.2023 the deceased met with an accident while riding a motorcycle borrowed from his friend-the respondent no.3 Lukbo Thing Lepcha (the owner of the motorcycle) and subsequently succumbed to his injuries on 30.11.2023. The deceased-late Karma Topden Lepcha was 24 years when he died. The deceased was the elder brother of claimant no.1 and nephew of claimant no.2.

3. The motorcycle was duly insured by the respondent no.3 vide insurance policy (exhibit-C/9). The learned Tribunal has concluded that the motorcycle had a valid registration certificate as well as insurance policy and the appellant has admitted that the insurance policy was issued by the appellant and it covered the date of the accident. The appellant also admitted that premium of Rs.295/- was paid for personal accident to owner-driver and under the limits of liability clause, personal accident cover for owner-driver is Rs.15,00,000/-.

4. The learned Tribunal has also held that the respondent no.3 had admitted that he had given the motorcycle to the deceased who was his friend and authorised him vide authorisation letter (exhibit-C/12) which was valid till 14.03.2024 and covered the accident date.

5. The learned Tribunal held that the deceased was thus a borrower who stepped into the shoes of the vehicle owner i.e. respondent no.3 relying upon the judgment of the Supreme Court in ***Ningamma & Anr. vs. United India Insurance Company Limited***¹.

¹ (2009) 13 SCC 710

6. The learned Tribunal was of the view that the claimants were not entitled to the claim as made by them under section 164 of the Motor Vehicles Act, 1988 as the Supreme Court in ***Oriental Insurance Company Limited vs. Rajni Devi & Ors***² had laid down that vehicle owner cannot be the claimant as well as recipient of the claim and the liability under section 163A is on the owner of the vehicle.

7. However, the learned Tribunal opined that the claimants were still entitled to relief as the insurance policy provided for a personal accident cover for owner-driver to the extent of Rs.15,00,000/- drawing strength from the judgment of the Supreme Court in ***Ramkhiladi & Anr. vs. United India Insurance Company & Anr.***³.

8. The learned Tribunal also noticed that the insurance policy (exhibit-C/9) covered the deceased and he was permitted to drive the motorcycle.

9. The learned counsel for the appellant submitted that as the personal accident cover was for owner-driver it was not transferrable and the claimants could not have sought compensation for the death of the deceased who was not the owner-driver. He also argued that as the learned Tribunal held that the claim petition filed under section

² (2008) 5 SCC 736

³ (2020) 2 SCC 550

164 of the Motor Vehicles Act, 1988 was not maintainable, compensation could not have been granted.

10. The Supreme Court in *Ningamma* (supra) relying upon its earlier view in *Oriental Insurance Company Ltd.* (supra) opined that as the borrower was authorised to drive the accident vehicle by its owner he would step into the shoes of the owner of the motorcycle. Thus, the deceased who had borrowed the motorcycle from the owner through a valid authorisation letter had stepped into the shoes of the owner when he met with an accident.

11. In *Ramkhiladi* (supra), in almost similar fact situation, the Supreme Court opined that the claim made by the claimants therein under section 163A of the Motor Vehicles Act, 1988 was not maintainable. The Supreme Court however also opined that under the contract of insurance the claimants were entitled to Rs.1,00,000/- as per the terms of the contract of insurance as the driver had stepped into the shoes of the owner of the vehicle. Similarly, the learned Tribunal has correctly opined that the claim petition under section 164 of the Motor Vehicles Act, 1988 filed by the claimants was not maintainable but under the insurance policy the claimants were entitled to Rs.15,00,000/- under the personal accident cover for the

owner-driver as the deceased had stepped into the shoes of the owner i.e. respondent no.3.

12. In the circumstances, this Court does not find any merit in the present appeal which is accordingly dismissed along with the interim application.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/