

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 2nd May, 2025

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

MAC App. No.27 of 2024

Appellant : The Branch Manager,
National Insurance Company Limited

versus

Respondents : Hasmukh Pannalal Punamiya and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Madan Kumar Sundas, Advocate for the Appellant.

Mr. Rahul Rathi, Advocate for the Respondents No.1 to 3.

Mr. Sushant Subba, Advocate, for the Respondent No.4.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Claimants/Respondents No.1 to 3 herein were granted compensation of ₹ 5,00,000/- (Rupees five lakhs) only, vide the impugned Judgment, dated 12-08-2024, by the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), in MACT Case No.29 of 2022 (*Hasmukh Pannalal Punamiya and Others vs. The Branch Manager, National Insurance Co. Ltd. And Another*), under Section 164(1) of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), along with interest @ 6% per annum, from the date of filing of the Claim Petition, i.e., 16-12-2022, till full realisation.

2. The Appellant is before this Court assailing the award on grounds that, the driving licence of the driver of the vehicle in accident, who was also a fatality thereof, had a fake driving licence which is proved by the report of one Suparna Dey, Additional

Regional Transport Officer (ARTO), Siliguri, West Bengal. As per the report, the data concerning the driving licence of late Somi Biswakarma was not found in their office. That, as the ARTO, Siliguri, who is the licensing authority, has no records of issuance of licence to the deceased driver, the licence is found to be fake and driving with such a licence was in violation of the policy of insurance. That, in the said circumstance, the Respondents No.1 to 3, who were the Claimants before the Learned MACT, are not entitled to the compensation.

3. *Per contra*, Learned Counsel for the Respondents No.1 to 3 contended that Respondent No.4 the owner of the vehicle had employed the driver after duly checking his driving licence and his driving competence and being thus satisfied, he engaged him. That, the Learned MACT has correctly relied on the decision of the Supreme Court, wherein it was held that, if the owner was satisfied that the driver had a licence and was driving competently, there would be no breach of insurance policy. That, the Insurance Company in such a situation, would not be absolved of their liability.

4. Learned Counsel for the Respondent No.4 made no specific submissions.

5. I have given due consideration to the rival contentions of Learned Counsel for the parties.

6. A summation of the facts is that, the Claimants, Respondents No.1 and 2 are the paternal uncles and Respondent No.3 is the paternal married aunt of the deceased Hiral Suresh Punamiya, who along with the other occupants of the vehicle in accident were proceeding to Lachung, North Sikkim, on 28-05-

2022. At around 09.30 p.m., on reaching a place, "Khedum", in Mangan District, the vehicle veered off the road to approximately 700 feet below the road. The victim met her demise along with her father, mother, sister and cousin including the driver on the spot. The deceased child was a fifteen year old student. It is not in dispute that the vehicle was insured with the Appellant-Company and the insurance policy was valid at the time of the accident. It is now no more *res integra* that when an owner is hiring a driver he has to check the driving licence produced by the driver. If on the face of it the licence looks genuine, the owner is not expected to carry out a roving enquiry into its authenticity or otherwise. All that the owner is concerned with is the competence of the driver to drive the vehicle on which ground he can engage him. The Supreme Court in **United India Insurance Co. Ltd. vs. Lehu and Others**¹ observed *inter alia* that;

"20..... We find it rather strange that insurance companies expect owners to make enquires with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured."

(i) In **IFFCO Tokio General Insurance Co. Ltd. vs. Geeta Devi and Others**², the Supreme Court has reiterated this position of law and at Paragraph 16 observed as follows;

"16. As already pointed out supra, once a seemingly valid driving licence is produced by a

¹ (2003) 3 SCC 338

² 2023 SCC OnLine SC 1398

person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law."

7. It is not the case of the Appellant-Insurance Company that the owner/insured was aware of or had noticed that the licence was fake, and despite such knowledge he permitted the deceased driver to drive the vehicle. In view of the law laid down by the Supreme Court in the above matters and in a plethora of other cases, i.e., **Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and Others**³, **Sohan Lal Passi vs. P. Sesh Reddy and Others**⁴ and **New India Assurance Co. vs. Kamla and Others**⁵, I am of the considered view that there is no reason to interfere with the award granted by the Learned MACT.

8. This Court has in all matters of motor accident cases uniformly awarded interest rate @ 9% per annum, on the compensation awarded. Consequently, interest of 6% imposed by the Learned MACT is set aside and in its stead 9% interest is imposed on the award, which shall be effective from the date of

³ (1987) 2 SCC 654

⁴ (1996) 5 SCC 21

⁵ (2001) 4 SCC 342

filing of the Claim Petition before the Learned MACT, i.e., 16-12-2022, till full realisation of the compensation amount.

9. The Appellant-Insurance Company is directed to pay the above compensation amount of ₹ 5,00,000/- (Rupees five lakhs) only, with interest @ 9% per annum as ordered, to the Respondents No.1 to 3, within one month from today, 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 Respondents No.1 to 3, shall be duly deducted from the awarded compensation.

11. Appeal dismissed and disposed of.

12. No order as to costs.

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

(Meenakshi Madan Rai)
Judge
02-05-2025

Approved for reporting : **Yes**