

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 22<sup>nd</sup> March, 2023

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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## **I.A. No.02 of 2023 in MAC App./78/2022 (Filing No.)**

**Applicant** : Subham Silal

**versus**

**Respondents** : Saroja Chettri and Others

Application under second proviso of Section 173 of the  
Motor Vehicles Act, 1988.

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**Appearance**

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Mr. Yojan Rai,  
Advocate (Legal Aid Counsel) for the Applicant.

Mr. Johnson Subba, Mr. Saurav Singh and Mr. Tenzing Thinlay Lepcha,  
Advocates for Respondent No.1.

Ms. Navtara Sarda, Advocate for the Respondents No.2.

None present for the Respondent No.3.

Mr. Rahul Rathi, Advocate for the Respondent No.4.

Ms. Tashi Doma Sherpa, Advocate for the Respondent No.5.  
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## **O R D E R (O R A L)**

**Meenakshi Madan Rai, J.**

**1.** I.A. No.02 of 2023 is an application filed by the Appellant/Applicant under the second proviso to Section 173 of the Motor Vehicles Act, 1988, (hereinafter, the "MV Act") seeking condonation of 387 days' delay in filing the Appeal.

**2.** Learned Senior Counsel for the Applicant submits that the Appeal could not be filed within the period of limitation as the cause of action for filing the present Appeal arose only recently, particularly after 06-08-2022, when the Appellant discovered the fraud perpetrated by the Respondent No.1, Saroja Chettri. That, the said person filed the Claim Petition before the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (hereinafter,

the "Tribunal"), as the mother of the deceased Umesh Chettri, but on 06-08-2022 confessed to the father of the Appellant that she is not the real mother of the deceased but has accepted part of the compensation awarded by the Learned Tribunal which the Appellant was ordered to pay. That, the Appellant having learnt that the Respondent No.1 is infact not the mother of the deceased he seeks to prove this fact before the Learned Tribunal, hence the delay be condoned and the Petition allowed. It is admitted by Learned Senior Counsel for the Applicant that there is no other specific challenge to the Judgment of the Learned Tribunal, dated 30-06-2021, except for the fact that it is now in the knowledge of the Appellant that the Respondent No.1 was not the mother of the deceased and therefore had no *locus standi* to file the Claim Petition.

**3.** *Per contra*, Learned Counsel for the Respondent No.1 submits that the Birth Certificate of the deceased victim was furnished before the Learned Tribunal wherein the name of the mother of the deceased has been recorded as "Saroja Chettri" the Respondent No.1, and no cross-examination on this count was carried out to demolish the contents of the document. That, although it is contended by Learned Senior Counsel for the Applicant that the real mother of the deceased is alive no such person has approached the Court to contest the *locus standi* of the Respondent No.1, hence the Petition being devoid of merit and not relating to the provisions of Section 173 of the MV Act pertaining to condonation of delay, be dismissed.

**4.** Learned Counsel for the Respondent No.4 contended that the Applicant has no *locus standi* to assail the Judgment and

award of the Learned Tribunal for the reason that although the real mother of the deceased is alleged to be alive she has not staked a claim to the award, neither is she aggrieved in any manner by the acts of the Respondent No.1 nor has she approached this Court for reprieve.

**5.** Learned Counsel for the Respondent No.2 and Respondent No.5 endorse and support the submissions put forth by Learned Counsel for the Respondent No.4.

**6.** I have considered the submissions put forth by Learned Counsel for the parties and perused the Petition. It is evident from the submissions put forth by Learned Senior Counsel for the Appellant that he is not aggrieved by the Judgment and award of the Learned Tribunal in MACT Case No.54 of 2018 (*Smt. Saroja Chettri vs. Shubham Silal and Others*), dated 30-06-2021. It is not his case that the amount in the award was erroneously granted or compensation under any head was disproportionate. The only grievance of the Appellant is on an apparent tangential issue which has emerged when the Appellant/Petitioner made over some amount of compensation to Respondent No.1, who allegedly confessed to his father that she was not the mother of the victim of the accident. This conundrum cannot be addressed by this Court by way of a Petition under Section 173 of the MV Act. It is neither for this Court nor for the Learned Tribunal to delve into questions of misrepresentation or fraudulent representation once the matter has been closed with parties having been afforded due opportunity to put forth their cases or demolish it during the stage of recording of evidence. That apart the alleged real mother whose existence

has not been established has not sought the intervention of this Court.

**7.** In the above circumstances, the Petition is without merit and deserves a dismissal.

**8.** Accordingly, I.A. No.02 of 2023 stands disposed as dismissed as also MAC App. 78/2022 (Filing No.) with accompanying applications, if any.

**9.** Records of the Learned Tribunal be remitted forthwith.

**( Meenakshi Madan Rai )**  
**Judge**  
22-03-2023

Approved for reporting :**Yes**