

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

**DATED : 10-07-2012**

CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**MAC App. No.02 of 2012**

The Branch Manager,  
New India Assurance Company Limited,  
M. G. Marg, Gangtok,  
East Sikkim. **... Appellant**

**Versus**

1. Smt. Rakhi Chowdhury (Rajak),  
W/o Shri Abhijit Rajak,  
R/o Nutanchati,  
P.O. Bankura,  
Dist. Bankura,  
West Bengal. **... Respondent**

2. Shri Pintso Lepcha,  
S/o Shri Lak Tshering Lepcha,  
R/o Hingdam, South Sikkim  
(Driver of Taxi No.SK-04/1812  
Tata Spacio)

3. Shri Rinzing Khenkhap Bhutia,  
S/o Shri Y. D. Bhutia,  
R/o Kewzing,  
P.S.Ravangala,  
South Sikkim.  
(Owner of Taxi No.SK-04/1812  
Tata Spacio)

**... Proforma Respondent**

For Appellant

: Mr. A. K. Upadhyaya, Senior  
Advocate with Ms. Binita Chhetri and  
Ms. Dawa Jangmu Sherpa,  
Advocates.



For Respondent No.1 : Mr. Bhupendra Giri, Advocate with Mr. Kumar Subba, Advocate.

For Respondent No.2 : None appears.

For Respondent No.3 : Ms. Geeta Subba, Advocate with Ms. M. D. Tamang , Advocate.

**O R D E R (ORAL)**

**Wangdi, J.**

This Appeal is directed against the impugned judgment dated 19-07-2011 in M.A.C.T. Case No.12 of 2010 passed by the Learned Member, Motor Accident Claims Tribunal, South and West Sikkim at Namchi, whereby an award of ₹ 9,05,441/- was passed as compensation for the injuries suffered by the Respondent No.1.

**2.** The genesis of the claim made before the Learned Claims Tribunal is traced to a motor vehicle accident of a Tata Spacio Taxi bearing registration no.SK-04/1812 on 30-10-2004 in which the Respondent No.1 was travelling. It is an admitted position on both the sides that during the accident the Respondent No.1 had suffered a grievous injury wherein her right shaft femur was fractured. It is relevant to note that it took about 8 months for the

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Respondent No.1 to recover and, she being a teacher, was unable to attend to her duties between 09-12-2004 to 15-06-2005 being on extra-ordinary leave without pay. Against the claim of ₹ 7,65,654/- the Learned Claims Tribunal awarded ₹ 9,05,441/- to the Appellant with her medical expenses and general damages relating to pain and suffering included therein.

**3.** Pressing the Appeal, Mr. A. K. Upadhyaya, Learned Senior Advocate, appearing on behalf of the Appellant-Insurance Company, submits that the question involved in the present Appeal is limited one in as much the award of compensation against the grievous injury being calculated @ 30% as the incapacity of the Respondent No.1 was untenable in law as being not supported by any material on record. It is submitted that the Learned Claims Tribunal had exceeded in its jurisdiction in as much as the claimant ought to have been awarded the compensation only as prescribed under Column 5 in the Second Schedule to the Motor Vehicles Act, 1988, and that, even assuming that the injury sustained by the claimant was a permanent total disablement as held by the Learned Claims Tribunal

then the percentage of loss of earning capacity ought to have been calculated in terms of Schedule I under the Workmen's Compensation Act, 1923. This having not been done, the award deserved to be set aside.

4. Mr. Bhupendra Giri, Learned Counsel, appearing for the Respondent No.1, at the very outset raised the objection of the Appeal being barred by the law of limitation as it had admittedly been filed 147 days from the date of the decree of the Learned Claims Tribunal. He submitted that the case is fully covered by the Order of this Court dated 18-11-2011 passed in **MAC App. No.04 of 2011** in the case of **The Branch Manager, The New India Assurance Co. Ltd. vs. Shri Subhas Chandra Paul and Others** which arose out of the very same motor vehicle accident involved in the present case.

5. Mr. Upadhyaya, in reply to this, submitted that the Appellant has been able to give the reasons for the delay to fall within the meaning of "reasonable cause" as contained in Section 5 of the Limitation Act, 1963. It is submitted that while considering the application for condonation of delay Courts ought not to be pedantic and

hyper-technical in its approach but rather be liberal especially when important questions of law crops up or an arguable case is made out by an Appellant. Reference in this regard was made by him to the case of **Ram Nath Sao alias Ram Nath Sahu and Others vs. Gobardhan Sao and Others : AIR 2002 SC 1201**. He further took support of the case of **State of Jammu and Kashmir and Others vs. Mohmad Maqbool Sofi and Others : (2009) 15 SCC 177** to urge that in a case where the State within the meaning of Article 12 is an Appellant, the well-settled and accepted position that the file has to be routed through different Departments which require some time to take a final decision as to whether an Appeal is to be filed or not, has to be taken into consideration when condonation for delay in preferring an Appeal is being sought for by it.

6. As the Learned Counsel for the parties have chosen to address on the question of limitation first and is being seriously contested it would be appropriate to take up this issue first. I have considered the facts of the present case and I find that they are quite distinguishable from what transpired in the case of **Subhas Chandra Paul**



*(supra)* where there had been a delay of 42 days just for filing an application for certified copy of the impugned order, a fact which was concealed from this Court. In the present case, that is not the position as I find that in paragraph 2 of the application that the Appellant has set out the factual position of their being a delay of 16 days in filing the application for certified copy of the judgment of the Learned Claims Tribunal. No doubt, vagueness is noticed in explaining the various stages in taking a decision to file an Appeal yet, having regard to the fact that there has been an actual delay of 53 days a different view may be taken in this case. The impugned judgment was pronounced on 19-07-2011, the application on behalf of the Appellant for a certified copy was filed on 04-08-2011, i.e., after 16 days, the certified copy was made ready on 24-08-2011 and the Appeal was ultimately filed before this Court on 04-04-2012 for which reasons have been stated at paragraphs 3, 4 and 5 of the application under Section 5 of the Limitation Act, 1963, seeking for condonation of the delay. The explanation given is almost *pari materia* as in MACApp. No.6 of 2009 where this Court has held as under:-



"17. In paragraphs 4 and 5 of the application for condonation of delay, it has not been specified as to when the impugned judgment had been forwarded to the Divisional Manager of the appellant. It has also not been specified as to when the Divisional Manager referred to the Regional Manager for his consideration and the details of the stages followed by the Regional Manager for seeking legal opinion and as to the advice that was said to have been given to the Branch Manager, Gangtok Branch, through the Divisional Manager stationed at Siliguri, West Bengal to prefer an appeal. Apart from the vague statements no material particulars have been furnished in the application with regard to the movement of the file let alone the filing of any records of the appellant showing such deliberations. Keeping in view, the principles of law laid down in the cases (supra) referred to by Mr. Joshi, I have no hesitation in holding that, apart from the averments set out as grounds for condoning the delay that are quite vague, the appellant has been grossly negligent in taking steps in the matter. No *bona fide* can be attached to the appellant in the facts and circumstances obtaining in the case. Suppression of material fact of the application for certified copies being filed in a lackadaisical manner makes the case all the more worse for the appellant. I, therefore, hold that the appellant failed to show that he was prevented by "sufficient cause" in preferring the appeal in time."

7. Although, it is difficult for this Court to reconcile with the vagueness of the pleadings but considering the period of the delay and the honesty in approach by the Learned Counsel for the Appellant, in the interest of justice, this Court has deemed it reasonable to exercise its discretion in favour of the Appellant and allow the application for condonation of delay. Accordingly, the



objection as regards the limitation raised on behalf of the Respondent No.1 is overruled.

**8.** On the merits of the Appeal, I find that on careful consideration of the Second Schedule to the Motor Vehicles Act, 1988, contrary to the submission of Mr. Upadhyaya, Column 4 from its very heading "General Damages in case of Injuries Disabilities" pertains to damages of a general character set out in Entry (i) and (ii) of the said Column. This Column does not provide for compensation for the damages provided under Column 5. Column 5, for convenience, is reproduced below:-

*"5. Disability in non-fatal accidents:*

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:—

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:—

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

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Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."  
[emphasis supplied]

**9.** On careful examination of the above provisions, there is no manner of doubt that apart from the general damages as contained in Column 4 the victims are also entitled to compensation for disability in non-fatal accidents as provided under Column 5 which provides for compensation on two distinct components. They are (a) loss of income for actual period of disablement and, (b) damages for disablement being either (i) permanent total disablement or (ii) permanent partial disablement. It is further provided that the compensation against component (b), i.e., permanent total disablement and permanent partial disablement, shall be calculated as per Schedule I under Workmen's Compensation Act, 1923.

**10.** In pursuance of the above provisions, the relevant entries in the Schedule I of the Workmen's Compensation Act, 1923, has been examined but, the injury involved in the present case, i.e., "fracture of femur", is neither found in Part I containing the list of injuries



deemed to result in "Permanent Total Disablement" nor in Part II enlisting injuries deemed to result in "Permanent Partial Disablement". Can it then be said that the injured is left without a remedy? In my considered opinion, the answer will have to be in the negative. Considering the object of the Act, approach of the Courts in such circumstances has been to come in aid of the victims of accidents and look for a guiding principle to arrive at a just and reasonable compensation and, for this it would be permissible to take resort to the Second Schedule to the Motor Vehicles Act, 1988, as prescribed under Column 5 thereof.

**11.** Proceeding on the anvil of the foregoing principle, in the present case, the annual loss of income of the Respondent No.1 due to her disablement has been deemed as 30% by the Learned Claims Tribunal for which the basis for calculation of the compensation would naturally be as per the procedure prescribed under Clause (a) of Entry 5, i.e., by multiplying the annual loss of income by multiplier applicable to the age of the Respondent No.1 "on the date of determining the compensation". The age of the victim at

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the time of the claim is stated to be 28 years but, the compensation was determined vide the impugned judgment only on 19-07-2011, i.e., over 7 years after the claim. This would make the age of the Respondent No.1 just over 35 years. The Learned Claims Tribunal although has adopted the right approach it, however, appears to have fallen in error in applying the multiplier under the Second Schedule of the Act which ought to have been multiplier 16 and not 18, which, therefore, calls for computation of the compensation afresh.

**12.** There is no dispute as regards the monthly income of the Respondent No.1. Of course, Mr. Upadhyaya, strongly objects to the Learned Claims Tribunal having arrived at 30% as the loss in earning capacity by submitting that there is no basis for the Learned Claims Tribunal to arrive at that figure having not been supported by any evidence either oral or documentary. In my view, this objection also would not sustain. The Learned Claims Tribunal clearly appears to have taken 30% as the basis relying upon the pleadings of the parties. In paragraph 23

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(h) of the Claims Petition the claimant has averred as under:-

"23. ....

(h) The claimant having sustained grievous injury involving fracture of right shaft of the femur leading to her confinement in the various hospitals for more than a month and a follow up treatment for several months. In view of the above facts she was deemed to have sustained 30% permanent disability as a result of the said motor accident."

**13.** This has been dealt with by the Appellant in its written objection as follows:-

"13. That, the contents of paragraph No.23 (a-h) are all false and fabricated facts as such the claimant is put to strict proof thereof."

**14.** From the above, it is quite obvious that the objection raised to paragraph 23 (h) of the Claim Petition is absolutely vague, devoid of any material particulars and bereft of specific denials. It has not been stated as to what is being actually objected to. It becomes all the more difficult to accept this on the undisputed position of the parties of the claimant having suffered grievous injury involving fracture of the right shaft of the femur leading to her confinement in various hospitals for over 8 months.

Objection to the factum of 30% disability claimed by the claimant has not at all been taken up specifically.

**15.** Under such circumstances, I do not find any substance in the objection and find no reason to differ with the finding of the Learned Claims Tribunal at paragraph 26 of the judgment except to the extent alluded to earlier in pursuance of which the compensation is reassessed and calculated as under:-

1.	Loss of Earning 30% of ₹ 10,872/- x 12 x 16	₹ 6,26,227/-
2.	Medical Expenses	₹ 1,85,936/-
3.	Pain and Sufferings	₹ <u>15,000/-</u>
	<b>Total</b>	₹ <u>8,27,163/-</u>

**16.** The award of compensation accordingly stands modified to the above sum with the rest of it remaining unaltered.

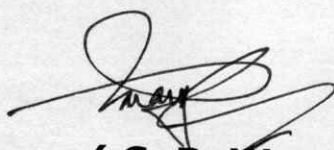
**17.** As the accident is of the year 2004, the Appellant-Insurance Company is directed to ensure that the award is satisfied within a period of 30 days. Failure to do so shall entail payment of additional interest @ 2% to be computed from the date of claim over and above the 10%

awarded by the Learned Claims Tribunal until the award is satisfied in full. Needless to state that any amount paid to the Respondent No.1 in the interim shall stand deducted from the final award.

**18.** In the result, the Appeal is dismissed.

**19.** In the facts and circumstances of the case, no order as to costs.

**20.** Let a copy of this Order be transmitted to the Learned Claims Tribunal, South and West Sikkim at Namchi forthwith for compliance.



**( S. P. Wangdi )  
Judge**

10-07-2012

Approved for reporting : Yes/~~No~~

Internet : Yes/~~No~~