

HIGH COURT OF SIKKIM

Record of Proceedings**I.A. No.03 of 2022**

arising out of

MAC App. No.02 of 2020BRANCH MANAGER, HDFC ERGO
GENERAL INSURANCE COMPANY LIMITED

PETITIONER

VERSUS

NARAPATI SHARMA (DHAKAL) & ORS.

RESPONDENTS

Date: 16.03.2022

CORAM:

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

For Petitioner

Mr. Sudesh Joshi, Advocate.

O R D E R

- 1.** Heard Learned Counsel for the Petitioner.
- 2.** Learned Counsel while making his submissions before this Court seeking restitution of the Appeal which was permitted to be withdrawn, vide Order of this Court dated 25.06.2021, contended that the earlier Learned Counsel of the Appellant who withdrew the matter made an erroneous submission by seeking withdrawal of the matter. That, the error be condoned by this Court and the Appeal heard on merits for the ends of justice. That, in ***Jet Ply Wood (P) Ltd. and Another vs. Madhukar Nowlakha and Others: (2006) 3 SCC 699*** the Hon'ble Supreme Court has observed that the Court has discretionary powers under Section 151 of the CPC, 1908 to remedy such errors. That, this may be considered and the Petition allowed.
- 3.** I have given due consideration to the submissions put forth and perused the averments in the I.A. as also the Order of the Hon'ble Supreme Court dated 06.12.2021 in ***SLP(C) No(s).19732/2021: HDFC Ergo General Insurance Company Limited vs. Narapati Sharma (Dhakal) & Ors.***
- 4.** Pertinently it may be recapitulated here that the Appellant/Petitioner herein had filed an Appeal, being MAC Appeal No.02

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of 2020 against the Judgment and Award of the Motor Accidents Claims Tribunal, East Sikkim at Gangtok in MACT Case No.67 of 2017, dated 31.08.2019. By the assailed Judgment and Award, the Appellant/Insurer had been directed to pay compensation amounting to Rs.30,18,909/- (Rupees thirty lakhs, eighteen thousand, nine hundred and nine) only, along with interest @ 9% per annum from the date of filing of the Claim Petition i.e. 01.09.2017 till full and final realization. Aggrieved thereof, the Appellant was before this Court. On 25.06.2021, Learned Counsel for the Appellant submitted before this Court that the points raised in the Appeal had already been considered and determined by this Court in ***The Branch Manager, National Insurance Company Limited, Gangtok vs. Master Suraj Subba and Another: AIR 2014 Sik 7*** and in ***The Branch Manager, United Insurance Co. Ltd. vs. Lily Ongmu Lepcha: 2017 ACJ 2224***. It was further submitted that the said Judgments remained unassailed and thereby attained finality, in view of the said circumstance, he may be permitted to withdraw the said Appeal, which was thus allowed by this Court.

5. Despite voluntarily seeking to withdraw the Appeal *supra*, the Appellants were before the Hon'ble Supreme Court in a Special Leave Petition assailing the Order dated 25.06.2021. The Hon'ble Supreme Court upon hearing Counsel for the Petitioner observed as follows;

"We feel that this Special Leave Petition is a gross abuse of the process of Court, the impugned order having noticed that the counsel for the petitioner sought to withdraw the appeal. The petitioner is an insurance company and is fully legally advised.

At this stage, learned senior counsel states that he has instructions to withdraw the Special Leave Petition with liberty to file a review.

It is for the petitioner to file an appropriate application before the High Court on the basis of the alleged averments in the petition and for that Court to consider and certainly not to come back to this Court on that ground.

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The Special Leave Petition is dismissed as withdrawn in terms aforesaid but we consider appropriate to burden the petitioner with costs of Rs.10,000/- (Ten thousand rupees only) for this misadventure, to be deposited with the Supreme Court Employees Welfare Association within four weeks.

Pending applications stand disposed of.”

6. While bearing in mind the submissions of Learned Counsel for the Petitioner before this Court that this matter be heard on merits, it is apposite to notice that when the matter was withdrawn by Counsel for the Petitioner pursuant to which Order dated 25.06.2021 was issued by this Court permitting such withdrawal, it was not the case of Learned Counsel for the Petitioner that the Court had deprived them an opportunity of being heard. It is also relevant to note the submissions of the then Learned Counsel for the Petitioner made earlier, that both **Lily Ongmu Lepcha** and **Master Suraj Subba** (*supra*) were unassailed. In fact, both Judgments were tested before the Hon'ble Supreme Court, which, upon hearing Counsel for the parties, had dismissed both Appeals.

7. Considering the facts and circumstances of the instant matter, I find no reason whatsoever to allow restitution of the Appeal and decline to exercise the discretion vested on me under Section 151 of the CPC, 1908.

8. I.A. No.03 of 2022 stands dismissed and disposed of accordingly.

Judge
16.03.2022