

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 13-08-2012

CORAM

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

MAC App. No.03 of 2012

1. Smt. Manita Tamang,
W/o Late Kanu Sherpa,
R/o Soreng Singling Busty,
P.O. & P.S.Soreng,
West Sikkim.
2. Master Rickjen Sherpa,
S/o Late Kanu Sherpa,
Represented by his mother
Smt. Manita Tamang,
R/o Soreng Singling Busty,
P.O. & P.S.Soreng,
West Sikkim.

..... Appellants

Versus

Branch Manager,
ICICI Lombard General
Insurance Company Limited,
Gangtok,
East Sikkim

..... Respondent

1. Shri Mohan Rai,
S/o Gorey Rai,
Driver of SK-TC/2034
(Maruti Alto)
R/o North Tukver Singla,
P.O.Singmari,
P.S.Darjeeling,
West Bengal.
2. Shri Sajan Subba,
(Owner of Vehicle
No.SK-TC/2034 (Maruti Alto)
S/o Karna Bahadur Subba,
R/o Jorethang Bazar,
P.O. & P.S. Jorethang,
South Sikkim.

Proforma Respondents.

FOR THE APPELLANTS : MR. KUMAR SHARMA WITH
MR. PRASUN ADHIKARI,
ADVOCATES.

FOR THE RESPONDENT : MR. BHUPENDRA GIRI,
ADVOCATE.

PROFORMA RESPONDENT
NO.1, DRIVER OF SK-TC/2034
MR. MOHAN RAI IN PERSON.

PROFORMA RESPONDENT
NO.2, MR SAJAN SUBBA,
OWNER OF VEHICLE NO.SK-
TC/2034 IN PERSON.

J U D G M E N T (O R A L)

Wangdi, J.

This Appeal involves a limited question as regards the quantum of death compensation awarded in favour of the claimants by the Learned Claims Tribunal, South and West Sikkim at Namchi, in M.A.C.T. Case No.14 of 2009 vide the impugned Order dated 29-02-2012.

2. It is urged on behalf of Mr. Kumar Sharma, learned Counsel for the Appellants, that out of the four sources of income which the deceased used to have at the time of his death, the Learned Claims Tribunal had rejected all of them except one, i.e., the income received in the form of commission in the business of lotteries. By referring to the claim petition, it was submitted that he had specifically pleaded that the deceased had the following sources of income:-


"Monthly income of
the person dead -

1. Rs.20,000/- (Rupees twenty thousand only) from scrap & bottle collection.
2. Rs.14,000/- (Rupees Fourteen Thousand) From one line lotteries
3. Rs.11,500/- (Rupees Eleven thousand five Hundred) from vehicle Agency
4. Rs.10,000/- (Rupees Ten Thousand) from Taxi vehicle.

Total Monthly income stands as Rs.55,500/- (Rupees Fifty Five Thousand and Five Hundred) only, and thus annual income in total stands as Rs.6,66,000/- (Rupees Six lakhs, sixty six thousand) only.

3. Mr. Kumar Sharma submits that all the above sources of income had been fully established by production of both documentary and oral evidence.

4. Apart from the above, Mr. Sharma submits that the statements of account contained in the pass-book in respect of the savings account of the deceased between periods April 2008 to March 2009 shows the total annual income to be Rs.10,06,830.00 which would work out to be Rs.55,934.00 which is nearly the same as claimed in the claim petition which is Rs.55,500.00 per month.



5. Mr. Bhupendra Giri, learned Counsel for the Respondent, the Insurance Company, on the other hand submits that the Appellants had failed to prove the income except the one allowed by the learned Claims Tribunal as required under the law as the Appellants neither produced any documents nor any books of account to sustain those claims. In view of this, as per him, no error in the learned Claims Tribunal passing the impugned judgment rejecting the three claims sought to be pressed on behalf of the Appellants.

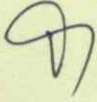
6. On careful consideration of the submissions made by the learned Counsels and upon consideration of the evidence in the records, I find it difficult to accept the contention raised on behalf of the Appellants and see no reason to interfere with the impugned award passed by the leaned Claims Tribunal.


7. While seeking to support the claims before this Court, Mr. Kumar Sharma placed the following as evidence against each of the claims: -

1. **Business of scrap and bottle collection**

- (i) Trade licence Exbt-6 (Annexure P-4 before this Court).
- (ii) The evidence of Jiendra Prasad Gupta PW2 (Annexure-P-5 before this Court).


2. **Vehicle Agency**


- (i) Agent licence Exbt-7 (Annexure P-6 before this Court).
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- (ii) Evidence of Sangey Sherpa, PW3 (Annexure P-7 before this Court).
- 3.**
- (i) Certificate of registration Exbt-9 (Annexure P-8 (colly) before this Court).
 - (iii) Evidence of Tara Mangar (Annexure P-9 (colly) before this Court).

8. Alternatively, Mr. Sharma submits that the statements of account of the savings account held by the deceased in the State Bank of Sikkim, Soreng Branch, marked Exbt. 21 [Annexure P-12 (colly) before this Court] would show that the monthly income of the deceased was not less than Rs.55,500.00 per month.

9. On examination of the evidence referred to by Mr. Sharma, I find that they are not sufficient for this Court to accept that the claimants were successful in proving the incomes claimed by them from the aforesaid sources. The documents Exbt.-6, Exbt.-7 and Exbt.-9 are only Trade Licence, Agent Licence and Certificate of Registration of Tax respectively. They are by itself not proof of the incomes of the deceased. No doubt, PW2, Jitendra Prasad Gupta, did depose that the deceased used to earn more than Rs.20,000/- per month on an average after deduction of all expenditures against the business of scraps and bottles, but no documentary evidence was furnished in support of this. Similarly, PW3, Sangay Sherpa stated that the deceased used to earn Rs.11,500/- per month from the business of vehicle agent. No






documentary evidence was placed as evidence in support of this also. Similarly, PW4, Tara Mangar stated that the deceased had handed over his taxi to him which was a Maruti WagonR on the condition of payment of Rs.10,000/- per month to the deceased, but the claimants failed to produce any documentary evidence to support such claim.

10. It is no doubt provided in Chapter IV of the Indian Evidence Act, 1872 that all facts, except the contents of documents or electronic records may be proved by oral evidence and that oral evidence must be direct, but having regard to the facts and circumstances of the present case something more is essential. The fact that the deceased was operating several businesses would naturally require maintenance of proper books of accounts. No such document was furnished making this Court quite circumspect as regards the claims. Upon enquiry, it was submitted by Mr. Sharma that after the accident in which the deceased died, no documents were found traceable, except the statement of accounts of the Bank, Exbt.21, was also discovered later and placed before the Tribunal as evidence. We do not find anything on record to support such submission. In view of this, it is to be presumed under the law that the deceased did not have such income.

11. The statement of accounts of the Bank being pressed as an evidence to prove the income of the deceased as reflected

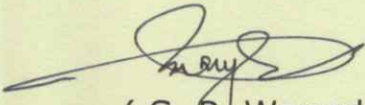


therein, in my view, would not be permissible since neither has such fact found to have been pleaded in the claim petition nor any amendment sought for to incorporate it in the claim petition. This position will remain unaltered even though the Learned Claims Tribunal has considered it for whatever its worth but was ultimately rejected as unacceptable for reasons recorded by it and to which I am inclined to agree. Despite this, I have gone through the statement of accounts, Exbt.-21, to ascertain as to whether there were any deposits made by the deceased equal to the sums stated by the witnesses against each of the sources and, I find none. I, therefore, have no hesitation to hold that the claim of incomes from 3 sources made by the claimants has not been established at all.

12. In view of such circumstances, I do not find any error committed by the Learned Claims Tribunal in passing the impugned judgment.

13. In the result, the Appeal stands dismissed.

13. Let the records along with a copy of this Order be transmitted to the Court of the learned Member, Motor Accident Claims Tribunal (South & West) at Namchi forthwith.


(S. P. Wangdi)
Judge
13.08.2012