

IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Civil Appellate Jurisdiction)

MAC Appeal No.03 of 2014

DATED : 20.02.2014

CORAM

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

The Branch Manager,
Bajaj Allianz General Insurance Co.Ltd.
City Plaza (4th Floor),
2nd Mile, Sevoke Road,
Siliguri, West Bengal.

Appellant/Insurer

Versus

1. Smt. Shital Tamang,
W/o Late Raj Kumar Tamang,
Aged about 32 years.
2. Miss Srijana Tamang,
D/o Late Raj Kumar Tamang,
Aged about 3 years.
3. Miss Pranita Tamang,
Aged about 1 ½ years.
4. Miss Radhika Tamang,
D/o Late Raj Kumar Tamang,
Aged about 3 years.

All permanent residents of Daragaon,
Jorethang, South Sikkim and presently
residing at I.B.M. Rangpo, Rangpo,
East Sikkim.

Respondents/Claimants

FOR THE APPELLANT : MR. THUPDEN G. BHUTIA, ADVOCATE.

O R D E R (O R A L)

Wangdi,J

This appeal is directed against the judgment dated 20.06.2013 passed by the Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, in MACT Case No.34 of 2010.

2. The original claim petition had been instituted by the respondents no.1 to 4 who are the wife and minor children respectively of the deceased, Raj Kumar Tamang, who was a driver by profession and aged as 33 years. While on his way home on foot, the deceased was hit by a vehicle bearing registration no.WB-77/7623 (Indica Car) in the night at I.B.M. Rangpo on 14.04.2010 and later succumbed to his injuries. Compensation of Rs.9,62,000/- was claimed in the claim petition against his death. In reply to the claim petition, the appellant Insurance Company had raised inter alia, an objection on the ground that there were violations of the terms and conditions in the policy, in as much as, the driver of the vehicle causing the accident did not possess an effective and valid driving licence. The other objections are not taken note of as this is the sole ground upon which the

present appeal rests and which is pressed before this Court.

3. Considering the pleadings of the parties, 7 issues were framed out of which issue nos. 3 and 5 are relevant and are reproduced below for convenience: -

- "
-
3. Whether there was any violation of terms and conditions of the Insurance Policy ?
-
5. Whether the driver of the vehicle in accident was possessing a valid driving licence at the time of the accident ?
-
-"

4. The Claims Tribunal upon consideration of the oral and documentary evidence, decided the issues against the appellant Insurance Company holding that the appellant/OP No.2 had failed to prove that the driver of the vehicle did not possess any valid licence as asserted by them. It was thus held that there was no violation of the terms and conditions of the Insurance Policy.

5. Mr. Thupden G. Bhutia, learned Advocate appearing on behalf of the Appellant, most strenuously argued and made efforts to impress upon this Court

that the Claims Tribunal had fallen in error in rejecting the contention that there was a violation of the condition of the policy to the effect as discussed above. It was his submission that the O.P.No.2 had led evidence to prove this fact by examining one Mr. Amlan Gupta, Senior Legal Executive of the O.P.No.2, as a witness and by proving the document Exbt.D-5 which is a letter issued by the Deputy Collector-in-charge, Copying Department, General Section, Office of the Sub-Divisional Officer, Siliguri, dated 25.04.2011, addressed to Shri Gautam Adhikary, Advocate, Siliguri, said to be the Counsel for the O.P.No.2.

6. Mr. Bhutia submits that the learned Claims Tribunal while deciding issues No.3 and 5 failed to take into consideration this glaring evidence which clearly stated that the driving licence of the driver Bijay Thapa did not tally with the driving licence as per the record of the Sub-Divisional Officer, Siliguri and that the oral evidence of the said Amlan Gupta, the Senior Legal Executive of the Company who appeared as DW1 for the appellant, was not at all taken into consideration while arriving at the impugned finding.

7. Upon consideration of the submissions made by Mr. Thupden G. Bhutia, learned Counsel for the appellant, the records placed before this Court with the memo of appeal and the impugned judgment, I am inclined to hold that there is no merit at all in the appeal. When on a bare reading of the judgment and a perusal of the document Ext.D-5 placed in support of the appeal, no prima facie case is made out, it will be a travesty of justice to allow this matter to linger on and is, therefore, felt appropriate to dispose off the appeal at this stage.

8. The evidence of Mr. Amlan Gupta, DW-1 for the appellant so far as it is relevant only proves the document Exbt.D-5 as would appear from his deposition which reads as :-

"....."

.....Exbt.D-5 is the verification of driving license No.18419, Book No.95 wherein it has been clearly stated that "as per our official records the driving license No.18419, Book No.95 does not tally in respect of Bijay Thapa in any relevant register as far as issue of driving licence is concerned.

....."

9. It is an admitted position that the original of the document Exbt. D-5 was not filed and exhibited. There is no explanation whatsoever as to what had prevented

the appellant Insurance Company from doing so. None from the authority who issued the document Exbt.D-5 was examined. Even the receiver of letter Exbt.D-5 did not enter into the witness box to prove that he had indeed received the letter from the authority. Rather an undisputed finding of the learned trial court reflects that the counsel for the appellant/OP No.2 prayed that the RTO be dropped as a witness on his behalf. Under these circumstances, grave doubt arises as to the authenticity of Exbt.D-5 and adverse presumption would certainly be drawn against the appellant for having failed to produce the best evidence, namely, the original document Exbt.D-5, the authority from the Sub-Divisional Office, Siliguri who issued it and the addressee of the letter, namely, Gautam Adhikary, Advocate. Therefore, the finding on issue nos. 3 and 5 by the Claims Tribunal cannot be held to be illegal or unsustainable.

10. For the above reasons, I am inclined to hold that there is no merit in the appeal.

11. The other aspect of the case which heavily weighs against the appellant is the inordinate delay in filing the appeal. Admittedly there is a delay of 88 days. The

explanation furnished for that delay is quite vague and devoid of substance. Most of the time appears to have been spent by the appellant only in exchanging communications with counsel. This is an era of online communication and, therefore, it is difficult to accept such explanation as reasonable. It needs to be borne in mind that this is a case under a benevolent piece of legislation and any form of recalcitrance cannot be countenanced.

12. In the result, the Appeal is dismissed in limine.

13. The Insurance Company shall satisfy the award passed by the learned Claims Tribunal within a period of 15 days from hence and not later than that.

14. A compliance report to this effect shall be filed before the learned Claims Tribunal at the end of the 15 days, i.e., on 07.03.2014.

15. No order as to costs.

Sd/-

(S. P. Wangdi)
Judge
20.02.2014