

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 3rd JULY, 2021

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

MAC App. No.03 of 2020

Appellant : The Branch Manager,
National Insurance Company Limited

versus

Respondents : Rohit Kumar Gurung and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Sushant Subba, Advocate for the Appellant.

Ms. Vidya Lama, Advocate for Respondents No.1 to 3.

Mr. K. B. Chettri, Advocate for Respondent No.4.

Mr. Umesh Gurung, Advocate for Respondent No.5.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Aggrieved by the Judgment of the Motor Accidents Claims Tribunal, East Sikkim, at Gangtok, (for short, "Learned Claims Tribunal") dated 31-10-2019, in MACT Case No.71 of 2017, whereby the Appellant-Insurance Company was ordered to pay compensation amounting to Rs.54,88,752/- (Rupees fifty four lakhs, eighty eight thousand, seven hundred and fifty two) only, to the Respondent Nos.1 to 3, the Appellant is before this Court assailing it.

2. Learned Counsel for the Appellant contended that only two grounds are being raised in Appeal by him and he does not

seek to press any other ground. That, firstly Respondent No.5, Purna Kumar Pradhan, who was driving the vehicle which met with an accident was not authorized to drive it. That, driving of a vehicle by an unauthorized person is by itself a violation of the terms and conditions of the policy thereby disentitling the Claimants/Respondents No.1, 2 and 3, to any compensation. That, secondly the Learned Claims Tribunal was in error in deducting 1/3rd from the amount computed as compensation towards the personal and living expenses of the deceased who was 22 years at the time of the accident and a bachelor. That, the correct deduction under this head ought to have been 50%. Hence, the Appeal be allowed and the impugned Judgment and Award of the Learned Claims Tribunal be set aside.

3. *Per contra*, Learned Counsel for the Respondent Nos.1 to 3 while conceding that the deduction in the compensation computed ought to have been 50% for the personal expenses of the deceased in consideration of his age and that he was a bachelor, disagreed with the argument of the Appellant that Respondent No.5 was not authorized to drive the vehicle. That, the Respondent No.5 had categorically stated in his evidence that he was the driver of the vehicle and this fact was not decimated in cross-examination. That, in ***The Branch Manager, National Insurance Company Limited*** vs. ***Chezing Bhutia and Others***¹ which arose out of the same accident, the Respondents being different persons therein, the Appellant had not raised the issue of the driver not being authorized to drive the vehicle. This is a fresh ground being

¹ SLR (2020) Sikkim 50 : 2021 ACJ 1655

urged only in this Appeal in order to circumvent payment of compensation to the Respondents-Claimants. In the Appeal *supra* this Court having duly considered the points raised in the Appeal had granted compensation of Rs.42,44,064/- (Rupees forty-two lakhs, forty-four thousand and sixty-four) only, after modifying the quantum of compensation calculated by the Learned Claims Tribunal. Besides, the Appellant made no effort to examine the owner of the vehicle to establish that he had allowed an unauthorized person to drive his vehicle. Hence, in view of the arguments advanced, the impugned Judgment of the Learned Claims Tribunal requires no interference.

4. The submissions of Learned Counsel have been given due consideration. All documents on record, the evidence and the impugned judgment have been carefully perused.

5. The Claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988. The only grounds raised in this Appeal which require determination pertain to the erroneous deduction for personal expenses of the victim and the allegation that the Respondent No.5 was not the authorized driver of the vehicle in accident thereby leading to violation of the policy conditions.

6. Considering that it is conceded by Learned Counsel for the Respondent Nos.1 to 3 that as the deceased was 22 years old and a bachelor at the time of accident and the deduction for personal expenses ought to have been 50%, discussion on this ground stands truncated here with only the quantum of compensation requiring re-computation. The Learned Claims Tribunal appears to have been remiss in deducting 1/3rd as

expenses which the victim would have incurred as his personal expenditure had he lived, considering that the Claim Application itself clearly reflects at Sl. No.25 A that 50% is to be deducted as personal expenses of the deceased.

7. Addressing the issue of Respondent No.5 not being the authorized driver of the vehicle in accident his evidence reveals otherwise. The cross-examination failed to decimate his evidence to the effect that he was the driver of the vehicle. His licence was valid at the time of accident as also documents pertaining to the ill-fated vehicle. There is evidently no breach of the terms and conditions of the policy. In this context, relevant reference is made to the observation of the Hon'ble Supreme Court in ***Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and Others***² which is as follows;

"14. Section 96(2)(b) (ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons *or by any person who is not fully licensed*, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression "breach" is of great significance. The dictionary meaning of "breach" is "infringement or violation of a promise or obligation" [See Collins English Dictionary]. It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the

² (1987) 2 SCC 654

The Branch Manager, National Insurance Company Limited vs. Rohit Kumar Gurung and Others

insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.”

In the instant matter, the Appellant has failed to establish that either the insured committed a breach of his promise or that the driver was unauthorized to drive the vehicle.

8. In view of the aforestated discussions, the quantum of compensation calculated by the Learned Claims Tribunal stands re-calculated and modified as follows;

Annual income of the deceased	(Rs.25,272- x 12)	Rs. 3,03,264.00
Add 50% of Rs.3,03,264/- as Future Prospects	(+)	<u>Rs. 1,51,632.00</u> Rs. 4,54,896.00
Less 50% of Rs.4,54,896/- [as the victim was a bachelor, in consideration of the expenses which he would have incurred towards maintaining himself had he been alive]	(-)	<u>Rs. 2,27,448.00</u>
Net yearly income		Rs. 2,27,448.00
Multiplier to be adopted ' 18 ' [The age of the deceased at the time of death was 22 and the relevant multiplier as per Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another</i> : (2009) 6 SCC 121 is ' 18 ']	(Rs.2,27,448/- x 18)	Rs.40,94,064.00
Funeral Expenses [in terms of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Others</i> :(2017) 16 SCC 680]	(+)	Rs. 15,000.00
Loss of Estate [in terms of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	Rs. 15,000.00
Loss of Filial Consortium [in terms of the Judgment of <i>Magma General Insurance Co. Ltd. vs. Nanu Ram and Others</i> : (2018) 18 SCC 130]	(+)	<u>Rs. 1,20,000.00</u>
Total		= <u>Rs.42,44,064.00</u>

(Rupees forty-two lakhs, forty-four thousand and sixty-four) only.

9. The Appellant-Insurance Company shall pay the compensation computed *supra* to the Respondents No.1, 2 and 3. The Claimants-Respondents shall be entitled to simple interest @ 10% per annum on the above amount with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal, i.e., 14-09-2017, until its full realisation.

The Branch Manager, National Insurance Company Limited vs. Rohit Kumar Gurung and Others

10. The Appellant-Insurance Company is directed to pay the awarded amount to the Claimants-Respondents within one month from today, failing which it shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition, till full realisation, duly deducting the amounts, if any, already paid by the Appellant-Insurance Company to the Claimants-Respondents.

11. Appeal disposed of accordingly.

12. No order as to costs.

13. Copy of this Judgment be sent to the Learned Claims Tribunal for information.

(Meenakshi Madan Rai)
Judge
03-07-2021

Approved for reporting : **Yes**