

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

S.B. : HON’BLE MR. JUSTICE S. P. WANGDI, JUDGE

MAC App. No.04 of 2015

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch Office,
M.G. Marg,
Gangtok.

versus

Respondents :

- 1. Mrs. Ranju Devi,
W/o Late Vinod Kumar @ Binod Kumar/
Binod Kumar Singh/Binod Prasad,
aged about 24 years
- 2. Ms. Saloni Raj,
D/o Late Vinod Kumar
aged about 9 years
- 3. Master Harsh Raj,
S/o Late Vinod Kumar,
aged about 7 years

All residents of Malikapura Village,
Mallikapura,
Anchal, Goraul,
District Vaishali,
Bihar.

At present – Ward No.V,
P.O. & P.S. Jorethang,
South Sikkim.
- 4. Smt. Darsana Devi Agarwal,
W/o Late Basudeo Agarwal
- 5. Shri Sunil Kumar Agarwal,
S/o Late Basudeo Agarwal

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6. Shri Raju Agarwal,
S/o Late Basudeo Agarwal

All residents of Jorethang Bazar,
South Sikkim.

Appeal under Section 173 of the Motor
Vehicles Act, 1988

Appearance

Mr. Manish Kumar Jain, Advocate for the
Appellant-Insurance Company.

Mr. Ajay Rathi, Advocate with Mr. Rahul Rathi,
Mr. Aditya Makkim, Ms. Pema Wangmu Bhutia
and Ms. Phurba Diki Sherpa, Advocates for the
Respondents No.1 to 3.

Mr. Ashok Pradhan, Advocate for the Respondents
No.4 to 6.

J U D G M E N T (ORAL)

(17th April, 2015)

Wangdi, J.

- 1.** This Appeal has been preferred to assail the
judgment of the Motor Accidents Claims Tribunal, East
Sikkim at Gangtok (for short the "Claims Tribunal") dated
10-10-2014 in MACT Case No.04 of 2014 by which
compensation of ` 14,50,454/- (Rupees fourteen lakhs fifty

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thousand four hundred and fifty four) was awarded to the Respondents No.1, 2 and 3 who are the wife, minor daughter and minor son respectively of the deceased, Vinod Kumar alias Binod Kumar Singh, who died in a truck accident in the evening hours of 28-10-2013. The vehicle having been registered with the Appellant-Insurance Company, claim for compensation of ` 16,11,554/- (Rupees sixteen lakhs eleven thousand five hundred and fifty four) was preferred, *inter alia*, against them under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) against various heads that included loss of consortium and loss of care and affection.

2. The case of the Appellant-Insurance Company as canvassed by Mr. Manish Jain, Advocate, appearing for the Appellant-Insurance Company, is confined only to the question as to whether compensation granted against loss of love and affection would be permissible when compensation against loss of consortium has been duly awarded to the Claimants. Relying upon paragraph 17 of the decision of the Apex Court in ***Rajesh and Others*** vs. ***Rajbir Singh and Others*** : (2013) 9 SCC 54, he would submit

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that such compensation would be impermissible having regard to the fact that the award for loss of consortium would be inclusive of such loss.

3. Mr. Ajay Rathi, Advocate, appearing on behalf of the Respondents No.1 to 3-Claimants, submits that considering the fact that the Respondents No.2 and 3 who are minors aged about 9 and 7 years respectively, award of compensation against such loss would be valid and stand fully covered by the decision in **Rajesh (supra)** where similar award granted to the minors-dependents were allowed.

4. In the judgment of this Court in **MAC App. No.23 of 2014** dated 16-04-2015 in the matter of **The Branch Manager, National Insurance Company Limited vs. Smt. Durga Rai and Others**, compensation granted against loss of love and affection was deleted as the sons of the deceased in that case were majors. However, in the case at hand, admittedly the dependents-daughter and son are minors and, therefore, as submitted by Mr. Ajay Rathi, the case would be fully covered by the decision in **Rajesh**

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(*supra*) and the decision of this Court dated 16-04-2015 in MAC App. No.23 of 2014.

5. For the aforesaid reasons, I do not find anything in the impugned judgment that calls for interference.

6. In the result, the Appeal stands dismissed.

7. As in MAC App. No.23 of 2014, in this case also, the interim payment that was directed to be paid by the Learned Claims Tribunal on 18-06-2014 during the proceedings of the case has still not been paid by the Appellant-Insurance Company. It has already been noted in MAC App. No.23 of 2014 that this Court takes serious note of such dereliction which would fall within the purview of the Contempt of Courts Act, 1971. Hoping that they shall not repeat such error in future, it is felt sufficient in the interest of justice, if an additional interest of 2% is paid over and above the 10% as directed in the impugned judgment making it 12%.

8. The Appellant-Insurance Company shall ensure that the awarded sum is paid to the Respondents No.1 to 3 within 15 (fifteen) days with the interest from hence, failing which they shall liable to paid interest @ 18% from

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the date of the claim, i.e., 01-04-2014, until full and final settlement of the claim.

9. The awarded amount be paid in three equivalent shares to the Respondents No.1 to 3-Claimants. Since the Claimants-Respondents No.2 and 3 are minor, it will be in their interest that their shares be kept in Fixed Deposits in a Nationalised Bank, for a period not less than ten years or until they attain the age of majority. In the event of any legal necessity arising, they shall be at liberty to approach this Court for appropriate orders.

10. A report of compliance of the directions shall be filed by the Appellant-Insurance Company on or before the expiration of the period as stipulated by this Court.

11. No order as to costs.

12. Let a copy of this judgment be transmitted to the Court of the Motor Accident Claims Tribunal, East Sikkim at Gangtok, forthwith for its due compliance.

(S. P. Wangdi)
Judge
17-04-2015

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Approved for reporting : Yes

Internet : Yes

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