



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

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, ACJ.

MAC APP. No. 04 of 2016

The Manager,
ICICI Lombard General Insurance,
Having its Branch Office at
3rd Floor, Ganeshyan Building,
Sevoke Road, Siliguri – 734 001,
West Bengal.

... **Petitioner/Appellant**

versus

1. Mrs. Meena Tamang (Chettri),
Aged about 33 years,
W/o Late Arjun Singh Kharka
2. Master Amann Kharka,
Aged about 06 years,
S/o Arjun Singh Kharka

Both residents of Lingmoo Tokday,
P.O. Lingmoo Kolthang & P.S. Ravangla,
South Sikkim.

... **Respondents/Claimants**

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance:

Mr. A. K. Upadhyaya, Senior Advocate with Mr.
Thupden G. Bhutia, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Ms. Bindu Gurung,
Ms. Tamanna Chettri, Mr. K. B. Chhetri and ms.
Malati Sharma, Advocates for the Respondents.



ORDER

(02.09.2016)

Satish K. Agnihotri, ACJ

The instant Appeal, under provisions of Section 173 of the Motor Vehicles Act, 1988 (for short "MVA"), is directed against the Judgment and Award dated 11.03.2016 rendered by the Motor Accidents Claims Tribunal (for short "the Tribunal"), East District at Gangtok, East Sikkim, in MACT Case No.11 of 2015, whereby and whereunder the Appellant/Insurer was directed to pay Rs.62,78,312/- (Rupees Sixty Two lakhs Seventy Eight thousand Three hundred and Twelve) only with interest @ 10% per annum, from the date of filing of the Claim Petition i.e. 05.05.2015, till its full realisation, to the claimants (the Respondents herein)/legal heirs of the deceased.

2. One Mr. Arjun Singh Kharka, while driving personal car (Make: Maruti Alto) bearing Registration No.SK-01P/2582 from Pangthang, East Sikkim to his home at Lingmoo, South Sikkim, met with an accident on 04.02.2015 presumably between 9 p.m. to 12 midnight, leading to falling of the said vehicle 200 feet below. Mr. Kharka succumbed to the injuries sustained in the accident leaving behind his widow, namely Mrs. Meena Tamang and minor son, Master Amann Kharka. He was



working as Lance Naik in Sikkim Armed Police, drawing a monthly salary of Rs.31,736/- (Rupees Thirty One thousand Seven hundred and Thirty Six) only. The widow and minor son filed the instant complaint case seeking compensation to the tune of Rs.70,87,476/- (Rupees Seventy lakhs Eighty Seven thousand Four hundred and Seventy Six) only under provisions of Section 166 of MVA.

3. The question, which arose for consideration before the Tribunal, was as to whether the claimants were entitled to the compensation claimed by them and if so, who was liable to pay the compensation, as Mr. Kharka was the owner of the vehicle and insured for indemnification of the liability to the third party. The Tribunal examined the case from all angles and determined the compensation as under:

“ 36. The total compensation in favour of the claimants is calculated as follows:

(i)	Loss of earnings/dependency:	Rs.60,93,312/-
(ii)	Funeral expenses:	Rs. 25,000/-
(iii)	Loss of estate:	Rs. 10,000/-
(iv)	Loss of love and affection:	Rs. 1,00,000/-
(v)	<u>Loss of consortium:</u>	<u>Rs. 1,00,000/-</u>
	<u>TOTAL:</u>	<u>Rs.63,28,312/-</u>

with a direction to pay the sum with interest as afore-stated.

4. The question, which has come up for consideration in the instant Appeal, is as to whether the owner, driving his own vehicle being the insured for third party liabilities, is entitled to



compensation as claimed under provisions of Section 166 of MVA?

5. Heard learned Counsel appearing for the parties, perused pleadings, impugned Judgment and Award and also relevant documents, which were part of the records before the Tribunal. Both the learned Counsel, appearing the parties, submit fairly that the issue, involved herein, is squarely covered by a Judgment dated 27.06.2016 of this Court in ***The Branch Manager, United India Insurance Company Ltd. vs. Jit Man Rai & Anr. : MAC App. No.15 of 2015.***

6. Under the insurance policy bearing No.3001/MI-02124180/00/000 of the insured Mr. Arjun Singh Kharka, owner of the car Maruti Alto, under "Schedule of Premium" there is a clear column for "Compulsory PA Cover Premium", i.e. Rs.100/-. Under "Limits of Liability Clause", it is clearly provided that "P.A. Cover under section III for Owner-Driver is Rs. 2.0 Lakhs".

7. The facts, in respect of the nature and contents of the policy, are not in dispute. The factum of being the owner of the personal vehicle and driving himself is also not disputed.

8. The facts, involved herein, are identical and, as such, the Court is of the view that the issue is equally covered by the



said Judgment rendered in *The Branch Manager, United India Insurance Company Ltd.* (supra).

9. In *The Branch Manager, United India Insurance Company Ltd.* (supra), this Court, referring, analyzing and appreciating the judicial pronouncements laid by the Supreme Court in *National Insurance Company Limited vs. Balakrishnan and Another*¹, *Ningamma & Anr. vs. United India Insurance Co. Ltd.*², *Dhanraj vs. New India Assurance Co. Ltde. And Anr.*³, *Oriental Insurance Co. Ltd. vs. Meena Variyal and others*⁴, *Oriental Insurance Co. Ltd. vs. Jhuma Saha (SMT) and Ors.*⁵ & *Oriental Insurance Company Limited vs. Rajni Devi and Others*⁶ and referring to decisions of this Court in *The Branch Manager, New India Assurance Company Ltd., Gangtok vs. Smt. Jasu Subba & Ors*⁷, *Branch Manager, National Insurance Company Limited vs. Master Suraj Subba and Another*⁸ and

 1 (2013) 1 SCC 731
 2 AIR 2009 SC 3056
 3 (2004) 8 SCC 553
 4 (2007) 5 SCC 428
 5 (2007) 9 SCC 263
 6 (2008) 5 SCC 736
 7 AIR 2011 SIKKIM 37
 8 2013 (4) TAC 32 (Sikkim)



Shri Tenzing Wangdi Lepcha vs. The Branch Manager, United India Insurance Company Limited : MAC App. No.24 of 2014, held that under comprehensive/package policy, all the occupants or an occupant of a car, being a gratuitous passenger(s) or a non-fare occupant, are covered under the policy. However, the occupant of the vehicle, who is the owner and driving the vehicle/car, is not entitled to compensation under the policy. It is further held as under :-

“21. As defined herein above, the insurance company/insurer indemnifies the insured against risk of loss, damage or liability arising from the occurrence of some specified contingency. The insured is indemnified against claims made by a third party, which suffers damage, injuries or loss on account of the running of the said motor cycle under the policy. The owner, under PAC is indemnified to the extent of Rs.2,00,000/- (Rupees Two lakhs) as specified in the policy. The Learned Counsel appearing for the Appellant/insurance company has fairly submitted to this extent.

22. The Learned Senior Counsel appearing for the respondents/claimants would refer to a decision of the High Court of Judicature at Madras in ***The National Insurance Co. Ltd., vs. Krishnan & Anr.***¹, wherein the Learned Single Judge had defined the “just compensation” in respect of the amount of Rs.3 lakhs awarded with interest @ 7.5% per annum, from the date of claim. In ***Ningamma & Anr.***² (*supra*), the Supreme Court considered scope of “just compensation” as contemplated under Section 166 of MVA, which is of no assistance to the facts of the case.

23. “Just compensation” is not an absolute term, it cannot be defined in an abstract form. The “just compensation” is determinable in the facts and circumstances of the case depending on the nature of policy and injuries caused thereto. It cannot be made applicable without examining nature of the policy and other incidental relevant factors.”



10. In the case of *The Branch Manager, United India Insurance Company Ltd.* (supra), the P.A. cover under the policy was to the extent of Rs.1.0 lakh (Rupees One lakh) as the premium payable was Rs.50/- (Rupees Fifty) only and the vehicle involved was a motor cycle. In the case on hand, the P.A. cover is limited to the extent of Rs.2.00 lakhs (Rupees Two lakhs) on the basis of the payment of Rs.100/- (Rupees One hundred) only as premium.

11. As a sequel, this Court is of considered view that the MACT has committed an error in awarding the compensation to the tune of Rs.63,28,312/- (Rupees Sixty Three lakhs Twenty Eight thousand Three hundred and Twelve), relying on the ratio laid down by the Supreme Court in *Balakrishnan's case*¹ (supra). Accordingly, the award is set aside.

12. However, it is ordered that the respondents shall be entitled to a sum of Rs.2,00,000/- (Rupees Two lakhs) under personal accident cover (PAC), payable forthwith.

13. Resultantly, the appeal is allowed. No order as to costs.

Acting Chief Justice
02.09.2016

pm

Approved for Reporting : Yes/No.
Internet : Yes/No.