

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 21st May, 2024

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

MAC App. No.06 of 2023

Appellant : Khem Raj Chettri**versus****Respondents** : Hem Bahadur Chettri and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

AppearanceMr. Umesh Ranpal, Mr. Loknath Khanal and Ms. Rubusha Gurung,
Advocates for the Appellant.Mr. Nima Tshering Sherpa and Ms. Vidya Lama, Advocates for the
Respondents No.1 to 5.Mr. Pawan Gurung and Ms. Rachana Rai, Advocates for the
Respondent No.6.

J U D G M E N TMeenakshi Madan Rai, J.

1. The Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, (for short, "MACT") awarded a total compensation of ₹ 63,04,500/- (Rupees sixty three lakhs, four thousand and five hundred) only, to the Claimants (Respondents No.1 to 5 herein), and directed the Appellant, (Respondent No.1 before the Learned MACT), to make good the compensation to the Claimants. Dissatisfied by the liability thrust on him, in MACT Case No.16 of 2022, (*Hem Bahadur Chettri and Others vs. Khem Raj Chettri and Another*), dated 29-05-2023, the Appellant is before this Court.

2. The Claimant No.1 (Respondent No.1 herein) is the husband of the deceased, the Claimants No.2 and 3 (Respondents No.2 and 3 herein), are the father-in-law and mother-in-law respectively, of the deceased and the Claimants No.4 and 5

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(Respondents No.4 and 5 herein), are the children (son and daughter respectively) of the deceased.

(i) The parties shall hereinafter be referred to in terms of their litigative status before this Court.

(ii) On 22-03-2022, the deceased, the wife of the Respondent No.1, aged about thirty-three years, earning a monthly fixed salary of ₹ 30,000/-(Rupees thirty thousand) only, was travelling from Cheuribotey, West Pendam (East Sikkim) toward Pendam, riding pillion on the scooty belonging to and driven by the Appellant, bearing registration no.SK-08-P-2080. The scooty which was speeding, suddenly veered off the road, at 8th Mile, injuring the deceased, who succumbed to her injuries enroute to the District Hospital, Singtam. The scooty was duly insured with the Respondent No.6, the Insurance Company (Respondent No.2 before the Learned MACT), vide Exhibit 9, a package policy. Compensation of ₹ 70,36,500/- (Rupees seventy lakhs, thirty six thousand and five hundred) only, was claimed by the Respondents No.1 to 5.

(iii) The Claim Petition was resisted by the Appellant, who averred that he had a valid and effective driving licence on the date of the accident and the vehicle was duly insured with the Respondent No.6 being a "bundled policy" (first class insurance). That, the liability rested on the Respondent No.6 and he could not be rendered liable personally to pay the compensation to the Respondents No.1 to 5.

(iv) The Respondent No.6 was proceeded *ex-parte* having appeared only once on 14-09-2022 before the Learned MACT. No written statement was filed by the Respondent No.6.



(v) The Learned MACT settled three issues for determination;

(1) Whether the Petitioners/Claimants are entitled to the compensation or not? If so, who is liable to compensate?

(2) Whether the documents of the accident vehicle bearing registration no.SK-08-P-2080 were valid and effective at the time of accident?

(3) Whether the Claimants are entitled to any relief(s)?

(vi) The Learned MACT after considering the evidence and documents on record concluded in issue no.1 that, the pillion rider was not wearing a helmet, thereby contravening the provisions of Section 129 of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), which mandates the wearing of protective headgear. That, in the instant case the Appellant had allowed the deceased to ride pillion on his scooty, in clear violation of the said provision, hence it was concluded that the Respondents No.1 to 5 are entitled to the compensation, the liability of which rested upon the Appellant. In issue no.2, it was found that all the documents of the vehicle in accident including the driving licence were valid and effective at the time of accident and hence issue no.2 was decided accordingly. In issue no.3, the Learned MACT reached a finding that the income certificate, Exhibit 13, indicated that the deceased was earning ₹ 30,000/-(Rupees thirty thousand) only, per month, working as a supervisor in Sikkim Foils, located at Bardang, Singtam, Sikkim and having found that the age of the deceased was thirty-three years in terms of the inquest report Exhibit 4, the compensation was computed accordingly and the amount granted as already reflected.

3. Before this Court, it is contended by Learned Counsel for the Appellant that the Learned MACT was in error in directing the Appellant to pay the compensation as there was no violation of the terms of the insurance policy. Secondly, there was no proof whatsoever that the deceased was not wearing a helmet. Even if, the deceased was not wearing a helmet, there was no causal connection between the violation and the accident. Drawing succour from the ratio in ***Mohammed Siddique and Another*** vs. ***National Insurance Company Limited and Others***¹, it was contended that the Supreme Court observed therein that, the fact that the deceased was riding on a motor cycle, along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. There must be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. Strength was also derived from the decision in ***Anjana Narayan Kamble and Others*** vs. ***Branch Manager, Reliance General Insurance Company Limited and Another***² wherein the Supreme Court reiterated the principle laid down in ***Mohammed Siddique*** (*supra*). That, as the deceased was riding pillion on the scooty, which was driven in a rash and negligent manner and the scooty was duly insured vide a package policy, Exhibit 9, the Respondent No.6 was liable to pay the compensation granted and not the Appellant, the owner of the scooty.

4. Learned Counsel for the Respondents No.1 to 5 submitted that the Learned MACT has correctly granted the total compensation. That, this Court may consider as to who is

¹ (2020) 3 SCC 57

² Civil Appeal No.5113 of 2022 of the Supreme Court of India, decided on 04-08-2022.

liable to make good the compensation to the Respondents No.1 to 5 and they have no specific submissions to make in this context.

5. *Per contra*, it was contended by Learned Counsel for the Respondent No.6 that, in view of the violation of the mandatory provision of the MV Act that requires the riders on two wheelers to wear helmet, the owner was liable to pay the compensation granted. That, in terms of the contract of insurance, the liability of the insurance company in any event was limited. That, a Single Bench of this Court in ***The Branch Manager, United India Insurance Company Limited vs. Jit Man Rai and Another***³ had denied compensation to the person who was riding a bike and met with an accident leading to his death and hence this Judgment be taken into consideration as the Respondents No.1 to 5 are not entitled to compensation. Should they be found so entitled, the Respondent No.6 be exempted from payment of compensation as the liability rests with the Appellant.

6. The submissions advanced have been afforded due consideration, all evidence, documents and the impugned Judgment have been perused carefully, as also the citations made at the Bar.

7. Was the Learned MACT correct in directing the Appellant to pay the Award granted to the Respondents No.1 to 5 is the question to be determined here.

8. In the first instance, it is noticeable that the Respondent No.6 entered appearance before the Learned MACT on 14-09-2022. Thereafter, no response/written statement was filed to contest the Claim Petition nor did the party enter appearance

³ 2016 SCC OnLine Sikk 87

thereafter. In the obtaining circumstances, the question of the Respondent No.6 leading evidence in the matter obviously did not arise. The Appellant for his part had averred in his written objection that the policy was a "bundled policy" (first class insurance). There was no denial by Respondent No.6 to this assertion. Exhibit 9 relied on by the Appellant also reveals that it was a ".....Two Wheeler Policy – Bundled" with rates of various premium paid indicated on it.

(i) On careful consideration of the evidence on record, it is gleaned therefrom that, the scooty was driven at high speed by the Appellant, however the wearing or non-wearing of the helmet has not been extracted in the evidence. Assuming that the deceased was not wearing a helmet at the time when the accident occurred, it would definitely not be the proximate cause for the accident. In this context, in **Mohammed Siddique** (*supra*) which was reiterated in **Anjana Narayan Kamble** (*supra*), the Supreme Court held that;

"6.

"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed

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either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle.....”

(Emphasis Supplied).”

The law has thus been expounded on the aspect of causal connection with violation of mandated safety measures, in a motor vehicle accident with its consequences.

(ii) In consideration of the facts and circumstances and the legal pronouncements, while I am in agreement with the finding of the Learned MACT in issues no.2 and 3 settled by it, I cannot bring myself to agree with the finding of the Learned MACT with the second part of issue no.1 that, the liability to pay the compensation should be cast on the Appellant. This would be the case only if there was a violation of the terms of the insurance policy and a causal connection found between the violation and the accident, which in the instant case is not so. On this count, this Court in

Suresh Khati vs. Santosh Chettry and Others⁴ held as follows;

"13. In conclusion, summing up all the discussions which have emanated hereinabove, it is apparent that the insurer cannot escape its liability when it has failed to establish breach of the policy conditions. The question of pay and recovery in the

⁴ 2023 SCC OnLine Sikk 58

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case of an insured vehicle, as ordered by the Claims Tribunal would arise only in the eventuality of proof, that, there was a breach of the policy conditions. In the absence of such breach, as in the instant case, where it has been established that the owner had put a licensed driver in-charge of his vehicle, the question of pay and recovery does not arise. The Claims Tribunal has clearly misdirected itself on this aspect and erroneously ordered recovery of the insured amount from the Appellant, the Respondent No.3 and the Respondent No.4.”

The scooty being duly insured by the Appellant with the Respondent No.6, in the absence of proof of violation of the terms of the policy and the non-wearing of the helmet not being the causal connection to the accident, it is the Respondent No.6 who is liable to pay the compensation. Reliance on *Jit Man Rai (supra)* by the Respondent No.6 is misplaced and of no assistance to its case as in the said case Jit Man Rai, the deceased, was the driver/owner of the scooter and was therefore the insured. The issue of insurer, the insured and third party is not being delved into here as the matter under consideration is not concerned with such a question.

9. Now, addressing the quantum of compensation, the computation arrived at by the Learned MACT has not been challenged the Respondent No.6. On perusal of the compensation computed, it is seen that various amounts were calculated under the following heads;

Sl. No.	Head	Amount in ₹
1	Loss of earning	60,48,000
2	Funeral expenses	16,500
3	Loss of estate	15,000
4	Love and affection	1,00,000
5	Loss of consortium	1,00,000
6	Cost of litigation	25,000
7	TOTAL	₹ 63,04,500

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10. There are a catena of Judgments of the Supreme Court which lay down the heads under which compensation is to be calculated, computation under such heads have not been factored in by the Learned MACT, while those heads which are to be excluded have been included for the purposes of calculating the compensation. In such circumstances, I am of the considered view that the compensation is to be re-computed to arrive at a "just compensation";

Annual income of the deceased	(₹ 30,000/- x 12)	₹	3,60,000.00
Add 40% of ₹ 3,60,000/- as Future Prospects		(+)	₹ 1,44,000.00
[Since the deceased was on a fixed salary in terms of Paragraph 59.4 of the Judgment of <i>National Insurance Company Limited vs. Pranay Sethi and Others</i> : (2017) 16 SCC 680]			₹ 5,04,000.00
Less 1/3 rd of ₹ 5,04,000/-		(-)	₹ 1,68,000.00
[in terms of Paragraph 30 of the Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another</i> : (2009) 6 SCC 121 — deducted from the above amount as expenses that the deceased would have incurred towards herself had she been alive]			
Net yearly income		₹	3,36,000.00
Multiplier to be adopted '16'	(₹ 3,36,000/- x 16)	(+)	₹ 53,76,000.00
[The age of the deceased at the time of death was '33' and the relevant multiplier in terms of Paragraph 42 as per the Judgment of <i>Sarla Verma (supra)</i> is '16']			
Hence loss of earning is placed as		₹	53,76,000.00
Add Funeral Expenses		(+)	₹ 15,000.00
[in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i>]			
Add Loss of Estate		(+)	₹ 15,000.00
[in terms of Paragraph 59.8 of the Judgment of <i>Pranay Sethi (supra)</i>]			
Add Loss of Spousal Consortium		(+)	₹ 40,000.00
[@ husband of the deceased, in terms in terms of Paragraph 21 of the Judgment of <i>Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others</i> : (2018) 18 SCC 130]			
Add Loss of Parental Consortium	(₹ 40,000/- x 2)	(+)	₹ 80,000.00
[@ one son and one daughter of the deceased, in terms of Paragraph 21 of the Judgment of <i>Magma General Insurance Company Limited (supra)</i>]			
Total		=	₹ <u>55,26,000.00</u>

(Rupees fifty five lakhs and twenty six thousand) only.

Hence, the total compensation arrived at is ₹ 55,26,000/- (Rupees fifty five lakhs and twenty six thousand) only.

11. The Learned MACT had granted ₹ 1,00,000/- (Rupees one lakh) only, for love and affection, however more recently a three Judge Bench in ***United India Insurance Company Limited*** vs.

Satinder Kaur alias Satwinder Kaur and Others⁵ observed as extracted below;

"34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. **Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]*, has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In *Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153]*, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. **Loss of love and affection is comprehended in loss of consortium."**
(Emphasis Supplied)**

In terms thereof compensation granted for love and affection by the Learned MACT is being disregarded. Cost of litigation has not been granted in any of the Judgments *supra*, compensation granted by the Learned MACT under this head is excluded herein.

12. It is seen that the Learned MACT vide the impugned Judgment, has not divided the compensation awarded amongst the Respondents No.1 to 5. The Respondents No.2 and 3 being the parents-in-law of the deceased cannot be said to be her dependants. As her husband, their son is alive, it is safely assumed that they are his dependants. Consequently, in my considered view the Claimants/Respondents No.1, 4 and 5 are only entitled to the compensation.

13. The Respondent No.6-Insurance Company is directed to pay the awarded compensation to the Claimants-Respondents No.1, 4 and 5 within one month from today, with simple interest @ 9% per annum, with effect from the date of filing of the Claim Petition before the Learned MACT, i.e., 19-07-2022, till its full

⁵ (2021) 11 SCC 780

realisation failing which, it shall pay simple interest @ 12% per annum, instead for the period described.

14. Amounts, if any, already paid by the Respondent No.6-Insurance Company to the Respondents No.1, 4 and 5, shall be duly deducted from the awarded compensation.

15. The modified compensation along with interest as specified above, shall be divided amongst the Respondent No.1 being the spouse of the deceased and Respondents No.4 and 5 being the minor children, in the following manner, duly setting aside the order of the Learned MACT on this aspect.

- (i) *From the awarded compensation, Respondent No.1, spouse of the deceased, is entitled to 34%; and*
- (ii) *66% of the total amount of compensation awarded shall be divided equally amongst the Respondents No.4 and 5 (minor children of the deceased), i.e., 33% each.*
- (iii) *50% of the share of each child, shall be deposited in individual Fixed Deposits in a Nationalised Bank, until each child attains the age of majority.*
- (iv) *The remaining 50% of each of the minor's share shall be expended towards their education and upkeep.*

16. Appeal allowed and disposed of.

17. No order as to costs.

18. Copy of this Judgment be sent forthwith to the Learned MACT for information, along with its records.

(Meenakshi Madan Rai)
Judge
21-05-2024

Approved for reporting : **Yes**