

HIGH COURT OF SIKKIM, GANGTOK
(Civil Appellate Jurisdiction)

HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE

MAC App. No. 22 of 2015

Shri Mani Kumar Rai,
S/o Laximi Prasad Rai,
R/o Lower Tarku,
P.O. Mangley, P.S. Temi,
South Sikkim.

... **APPELLANT**

Versus

1. Dilliram Sharma,
S/o Kuber Prasad Sharma,
C/o Hom Nath Rai,
A/p residing at Namphok Busty,
P.O. Yangang, P.S. Ravangla,
South Sikkim.
(Driver of Vehicle No. SK 01-D-2615 Truck)
2. Shri Hom Nath Rai,
S/o Gaj Bahadur Rai,
R/o Namphok Busty,
P.O. Yangang, P.S. Ravangla,
South Sikkim.
(Owner of Vehicle No. SK 01-D-2615 Truck)
3. The Branch Manager,
New India Assurance Co. Ltd.,
M.G. Marg, Gangtok,
P.O. Gangtok, P.S. Sadar,
East Sikkim.

... **RESPONDENTS**

Appeal under Section 173 of the Motor Vehicles Act, 1988.

Appearance :

Mr. Kumar Sharma and Mr. Bhushan Nepal, Advocates for the Appellant.

Mr. Ajay Rathi, Mr. Rahul Rathi, Mr. Aditya Makhim and Ms. Phurba Diki Sherpa, Advocates for Respondents 1 and 2.

Mr. Bhupendra Giri, Advocate for Respondent No. 3.

ORDER**(21.06.2016)****SUNIL KUMAR SINHA, CJ.**

1. Deceased, Ujjal Maya Rai *alias* Ujani Maya Rai, was aged about 76 years. She was hit by the offending truck bearing Registration No. SK 01-D-2615 on 21.11.2012 at around 1500 Hrs. and died on the spot. The Appellant/Claimant being her grandson filed Claim Petition No. 16 of 2014 before Motor Accident Claims Tribunal, South Sikkim at Namchi. He claimed compensation of Rs.3,72,500/- along with interest thereon. The learned Claims Tribunal called upon the Respondents, took their written statements and framed following issues for consideration:-

1. Whether the deceased Ujjal Maya Rai *alias* Ujani Maya Rai was hit and crushed by the truck bearing registration No. SK-01D/2615 on 21.11.2012 at around 1500 Hrs. near Sipsu bridge, Sipchuthang, South Sikkim (*belonging to the OP No. 2 and driven by*

the OP No. 1 at the time of the accident) and succumbed to her injuries at the spot?

2. Whether the accident vehicle was duly insured with the OP No. 3 at the time of the accident and all its documents were in order?
3. Whether any terms and conditions of the concerned insurance policy, if any, was violated at the time of the accident?
4. Whether the driver of the accident vehicle i.e., the OP No. 1, was having a valid driving licence at the time of the accident?
5. Whether the deceased was 76 year old at the time of the accident and can be taken to have notional income of Rs.6000/- (*Rupees six thousand*) only per month?
6. Whether OPs or any of them are liable to compensate the claimant who is the grandson of the deceased?
7. Whether the claimant is entitled to the reliefs paid for by him?

2. The Tribunal decided issues No. 1 to 5 in favour of the Appellant and held that the deceased was aged about 76 years and her income would be taken as Rs.6,000/- per month. However, the Tribunal decided other issues i.e. Issues No. 6 and 7 against the Appellant and held that the Appellant was not the own grandson of the deceased and that he failed to prove that he would be regarded as falling within the category of “legal representative” of the deceased. The Claim Petition, therefore, was dismissed.

3. Mr. Kumar Sharma, learned counsel for the Appellant, submits that the Claims Tribunal simply took the fact that the Appellant was not the real grandson of the deceased but it did not consider that the deceased was throughout residing with the Appellant. He submits that the other nearer relations of the deceased, namely, Laximi Prasad Rai (father of the Appellant), Chandra Bahadur Rai and Bir Bahadur Rai (uncles of the Appellant) though were there but all were residing separately and they had no interest in the estate of the deceased. His submission is that all above surviving heirs had not shown any interest in the estate of the deceased because the deceased was living separately with the Appellant since long back and they, in fact, had suggested the Appellant to file Claim Petition forgiving their rights. His submission is that since the above three heirs of the deceased could not be examined before the Tribunal, therefore, the position was not clarified and the Claim Petition was dismissed. His submission is that it is for all these reasons he has filed an Application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (IA No. 01/2016) with the evidence on affidavit of Laximi Prasad Rai (father of the Appellant), Chandra Bahadur Rai (uncle of the Appellant) and Bir Bahadur Rai *alias* Som Bahadur Rai (uncle of the Appellant). He submits that their evidence may be taken on record, which would prove that the Appellant alone

was the person who could have filed the Claim Petition and his claim, accordingly, be allowed.

4. On the other hand, Mr. Ajay Rathi and Mr. Bhupendra Giri, learned counsel appearing on behalf of the respective Respondents, oppose these arguments and submit that the evidence of these three persons could have been filed before the Tribunal itself; even if their evidence on affidavit is taken on record, that itself would not be admissible unless it is tested by way of cross-examination by the Opposite Parties.

5. I have heard counsel for the parties.

6. To see as to whether the additional evidence (three affidavits) led by the Appellant is relevant or not and whether it should be taken on record, I have gone through the contents of these affidavits. The first affidavit has been filed by Laximi Prasad Rai, who is father of the Appellant. Paragraphs 9 and 10 of the affidavit are relevant in which he deposed that he has no claim on account of death of deceased and he has no objection if the compensation is awarded to the Appellant. The second affidavit is filed by Chandra Bahadur Rai. Paragraph 10 of the said affidavit is relevant in which he has also supported the Claim Petition filed by the Appellant. Same is the position with the third affidavit filed by Bir Bahadur Rai. Paragraphs 9 and 10 of his affidavit are relevant.

7. On perusal of all these affidavits, I find that the deponents have clearly supported the case of the Appellant saying that they have no objection if the claim is allowed in favour of the Appellant on the ground that deceased was residing with him and he alone was looking after the deceased being her grandson.

8. For the reasons stated above, the additional affidavits appear to be quite relevant for the purpose of decision of this Claim Petition, therefore, they are required to be taken on record.

9. Accordingly, IA No. 01/2016 is allowed and the three affidavits filed by the Appellant are taken on record.

10. IA stands disposed of.

11. Admittedly, the deponents of the affidavit would be required to be cross-examined by the other side and then only a finding on contents of affidavits may be recorded. I am of the view that for this purpose it would be appropriate that the matter is remitted back to the Tribunal for taking additional evidence by examining the above three witnesses on issues No. 6 and 7 and then to pass a fresh award in accordance with law. And I do it accordingly. Needless to say that remittance is being made for limited purpose of recording fresh findings on issues No. 6 and 7 and the Tribunal will not go into other issues which have already been decided in favour of the Appellant.

12. The Appeal is accordingly disposed of. Registry is directed to remit this file along with a copy of the order to the Tribunal within ten days from today. The Tribunal thereafter shall take up the matter on urgent basis and shall pass a fresh award accordingly.

Chief Justice
21.06.2016

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

pm / jk