

**IN THE HIGH COURT OF SIKKIM  
CIVIL APPELLATE JURISDICTION**

M.A.C. App. No. 23 OF 2015

The Branch Manager,  
National Insurance Company Ltd.,  
Gangtok Branch,  
East Sikkim – 737 101. ----- Appellant.

**.VERSUS.**

1. Shri Pankaj Kumar Balabhai Kapadia,  
S/o Late Balabhai Vadilal Kapadia,
2. Smt. Daxa Pankaj Kumar Kapadia,  
W/o Shri Pankaj Kumar Balabhai Kapadia,
3. Shri Raj Ritesh Kapadia,  
S/c Shri Raj Ritesh Balabhai Kapadia,  
Petitioners are permanent resident of:  
A – 7, Prerna Vihar Tower, Near Rose Wood Estate,  
Opposite Gokul Awas, Jodhpur Village Road,  
Jodhpur, Satellite, Ahamadabad,  
State of Gujarat – 380 015.
4. Shri Krishna Prasad Giri,  
S/o Late Bhim Lall Giri,  
Presently residing at:  
Tintek Busty, Near Block Development Office,  
P. O. Rakdong & P. S. Gangtok, East Sikkim – 737 107.  
(Owner of Mahindra & Mahindra  
Max – Passenger Carriage Vehicle bearing  
Registration No. SK – 01/J/0897) ----- Respondents.

PETITIONER  
ADVOCATE (S)  
FOR ----- Ms. Vidya Lama.

RESPONDENT  
ADVOCATE (S)  
FOR -----

Case No.....

| Serial No. | Date     | Order (s) with Signature (s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| 03.        | 04.04.16 | <p><b>MAC APP. No. 23/2015</b></p> <p><b>BEFORE</b></p> <p><b>MR. JUSTICE S.K. SINHA, CJ.</b></p> <p>Present: Mrs. Vidya Lama, Advocate for the Appellant.</p> <p>Mr. Ajay Rathi and Ms Phurba Diki Sherpa, Advocates for Respondents 1, 2 and 3.</p> <p>Mr. Ashok Pradhan, Advocate for Respondent No. 4.</p> <p>...</p> <p>Heard on admission.</p> <p>Admit.</p> <p>Also heard on IA No. 01/2016.</p> <p>This is an Application for grant of interim stay.</p> <p>The claimants are grand-parents and younger brother of deceased Yashvi Ritesh Kapadia, who died in a motor accident on 28.05.2014. She was aged about 8 years and was studying in 3<sup>rd</sup> Standard. The Tribunal has awarded a sum of Rs.6,17,500/- with interest @ 10% per annum as compensation to the Respondents/claimants for the death of deceased.</p> <p>Mrs. Vidya Lama, learned counsel appearing on behalf of the Appellant, submits that the income of the deceased has been assessed as Rs.200/- per day, which is on the higher side. That apart, Rs.25,000/- has been awarded as funeral expenses which is also on higher side.</p> <p>Mr. Rathi, learned counsel appearing for Respondents 1, 2 and 3 submits that Rs.200/- per day has been awarded on the basis of an earlier decision of this</p> |

Case No. 111A.C. App. No. 2312015

| Serial No. | Date | Order (s) with Signature (s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|            |      | <p>Court and the same cannot be held as exorbitant. So far as funeral expense is concerned, he submits that it has been awarded on the Judgment of <b>Rajesh &amp; Ors. vs. Rajbir Singh &amp; Ors. : (2013) 9 SCC 54</b>. He prays for rejection of the Application.</p> <p>On due consideration of the submissions made by the learned counsel for the parties and the grounds taken in the Application, as also in Memo of Appeal, I am of the view that the ends of justice would be served if the Appellant/Insurance Company is directed to deposit Rs.2.00 lakhs immediately.</p> <p>It is, therefore, directed that on the Appellant's depositing Rs.2.00 lakhs before the Tribunal within two weeks' from today, the remainder shall remain stayed till the final disposal of this Appeal. Out of this amount, an amount of Rs.1.00 lakh shall be released in favour of claimants 1 and 2 and the remaining amount of Rs.1.00 lakh shall be kept in a fixed deposit in a Nationalised Bank for a period of 3 (three) months, renewable from time to time.</p> <p>IA No. 01/2016 stands disposed off.<br/>List for further orders on 26.04.2016.</p> <p style="text-align: right;">/s/ Chief Justice<br/>04.04.2016</p> |

pm/ jk  
Index : Yes / No  
Internet : Yes / No

**IN THE HIGH COURT OF SIKKIM  
CIVIL APPELLATE JURISDICTION**

M.A.C. App. No. 24 OF 2015

The Branch Manager,  
National Insurance Company Ltd.,  
Gangtok Branch,  
East Sikkim – 737 101. ----- Appellant.

**-VERSUS-**

1. Shri Pankaj Kumar Balabhai Kapadia,  
S/o Late Balabhai Vadilal Kapadia,
2. Smt. Daxa Pankaj Kumar Kapadia,  
W/o Shri Pankaj Kumar Balabhai Kapadia,
3. Shri Raj Ritesh Kapadia,  
S/o Shri Raj Ritesh Balabhai Kapadia,  
Petitioners are permanent resident of:  
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Opposite Gokul Awas, Jodhpur Village Road,  
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State of Gujarat – 380 015.
4. Shri Krishna Prasad Giri,  
S/o Late Bhim Lall Giri,  
Presently residing at:  
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P. O. Rakdong & P. S. Gangtok, East Sikkim – 737 107.  
(Owner of Mahindra & Mahindra  
Max – Passenger Carriage Vehicle bearing  
Registration No. SK – 01/J/0897) ----- Respondents.

PETITIONER  
ADVOCATE (S)  
FOR ----- Ms. Vidya Lama.

RESPONDENT  
ADVOCATE (S)  
FOR -----

Case No.....

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| 03.        | 04.04.16 | <p><b>MAC APP. No. 24/2015</b></p> <p><b>BEFORE</b></p> <p><b>MR. JUSTICE S.K. SINHA, CJ.</b></p> <p>Present: Mrs. Vidya Lama, Advocate for the Appellant.</p> <p>Mr. Ajay Rathi and Ms Phurba Diki Sherpa, Advocates for Respondents 1, 2 and 3.</p> <p>Mr. Ashok Pradhan, Advocate for Respondent No. 4.</p> <p>...</p> <p>Heard on admission.</p> <p>Admit.</p> <p>Also heard on IA No. 01/2016.</p> <p>This is an Application for grant of interim stay.</p> <p>The claimants are father-in-law, mother-in-law and minor son of deceased Neha Ritesh Kumar Kapadia, who died in a motor accident on 28.05.2014. She was a house wife. The Tribunal, assessing her income to be 1/3<sup>rd</sup> of her husband's income and using multiplier of 16, has awarded a sum of Rs.40,05,550/- with interest @ 10% per annum as compensation to the Respondents/claimants for her death.</p> <p>Mrs. Vidya Lama, learned counsel appearing on behalf of the Appellant, has argued that the income has not been properly assessed and the multiplier is also on higher side. That apart, Rs.25,000/- has been awarded as funeral expenses which is also on higher side. Therefore, the award may be stayed.</p> |

Case No. MAC APP No. 24/2015

| Serial No. | Date | Order (s) with Signature (s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|            |      | <p>On the other hand, Mr. Rathi, learned counsel appearing for Respondents 1, 2 and 3 opposes the said arguments.</p> <p>On due consideration of the submissions made by learned counsel for the parties and the grounds taken in the Application, as also in Memo of Appeal, it is directed that on the Appellant's depositing Rs.5.00 lakhs before the Tribunal within two weeks' from today, the remainder shall remain stayed till the final disposal of this Appeal. Out of this amount, an amount of Rs.2.00 lakhs shall be released in favour of claimants 1 and 2 and the remaining amount of Rs.3.00 lakhs shall be kept in a fixed deposit in a Nationalised Bank for a period of 3 (three) months, renewable from time to time.</p> <p>IA No. 01/2016 stands disposed off.</p> <p>List for further orders on 26.04.2016.</p> <p style="text-align: right;">Chief Justice<br/>04.04.2016</p> |

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