(2024) 12 SIK CK 0015

Sikkim High Court

Case No: Motor Accident Claim Appeal No. 12, 13 Of 2024

New India Assurance Co. Ltd. — APPELLANT

Vs

Sunita Pradhan — RESPONDENT

Date of Decision: Dec. 10, 2024

Acts Referred:

- Motor Vehicles Act, 1988 &mash; Section 146, 147, 166

Hon'ble Judges: Meenakshi Madan Rai, J

Bench: Single Bench

Advocate: Dipayan Roy, S. S. Hamal, Tashi Wongdi Bhutia, Mahesh Subba, Varun Pradhan, Pradeep Sharma, Ram Devi Chettri, Anjali Pradhan

Final Decision: Disposed Of

Judgement

Meenakshi Madan Rai, J

1. Two Appeals, being MAC App. No.12 of 2024 and MAC App. No.13 of 2024, assailing the Judgments, both dated 21-03-2023, of the Learned Motor Accidents Claims

Tribunal, at Gangtok, Sikkim, (hereinafter, the â€œMACTâ€), in MACT Case No.48 of 2019 S(ukmit Thapa vs. New India Assurance Co. Ltd. and Anothe)r and MACT

Case No.49 of 2019 (Sukmit Thapa vs. New India Assurance Co. Ltd. and Anothe)r respectively, are being disposed of by this common Judgment, as they concern a single

motor vehicle accident, in which the children (son and daughter), of the Claimant perished.

2. In MAC App. No.13 of 2024, the motor vehicle accident, involving a car (Maruti 800), snuffed out the life of eighteen year old, Romila Thapa, the daughter of the Claimant.

She was travelling in the ill-fated vehicle with her cousin, her neighbour and her brother, who was driving the vehicle, when it went off the road near Singtam, East Sikkim,

around 05.00 a.m, on 31-08-2005. The accident resulted in the fatality of all the occupants of the vehicle and their bodies remained unrecovered. Although the vehicle was

recovered, the documents remained untraced. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter, the â€œMV Actâ€), seeking compensation of

a sum of ₹ 9,89,800/- (Rupees nine lakhs, eighty nine thousand and eight hundred) only, before the Learned MACT, was filed by the Claimant, where the Appellant was

arrayed as a Respondent. The Appellant contested the Claim Petition before the Learned MACTi nter alia, on grounds that, as the Claimant was the registered owner of the

accident vehicle, the deceased being her daughter had stepped into the ownerâ€™s shoes and therefore did not qualify as a third party, thus disentitling the Claimant to

compensation. The deceased driver did not have a driving licence and in the facts of the case, there was neither any statutory liability nor contractual obligation, on the part of

the Insurance Company, to pay compensation to the Claimant or to indemnify the owner of the vehicle.

(i) In MAC App. No.12 of 2024, the facts of the case are similar to that of MAC App No.13 of 2024, save to the extent that the deceased was the son of the Claimant and he

was driving the vehicle in accident. The Claim Petition was contested by the Appellant (Respondent before the MACT), on the ground that, the deceased being the son of the

Claimant was a permissive user and not a third party. Besides, he did not have a driving licence and there no statutory liability nor contractual obligation of the Appellant to pay

compensation.

3. The Learned MACT on consideration of the pleadings of the parties, settled the exact same issues for determination in both the cases, i.e., MACT Case No.48 of 2019 and

MACT Case No.49 of 2019, save for issue no.2;

(1) Whether the claim petition/application is maintainable?;

(2) Whether the deceased died as a result of injuries sustained by her in the accident that occurred on 31.08.2005 while she was travelling in the accident vehicle

belonging to the claimant?; (MACT Case No.49 of 2019);

(2) Whether the deceased died as a result of the injuries sustained by him in the accident that occurred on 31.08.2005 while he was driving the accident vehicle

belonging to the claimant? (MACT Case No.48 of 2019);

(3) Whether the said vehicle was duly insured with the respondents at the time of the accident?;

(4) Whether the deceased driver had a valid and effective driving licence authorizing him to drive the accident vehicle and whether the said vehicle had valid

documents at the time of the accident?;

(5) Whether any terms and conditions of the concerned insurance policy have been violated in this case on the basis of which the respondents can avoid its

liability? and;

(6) Whether the petitioner/claimant is entitled to the reliefs prayed for by them?

(i) All issues were determined in favour of the Claimant in both cases. The Learned MACT while deciding issues no.1 and 6 together, in both cases, observed in Paragraphs

19, 20 and 21 of the impugned Judgments as follows;

â€œ19. Learned Counsel for the respondents on the other hand contended that the deceased was travelling in the accident vehicle as â€˜permissive userâ€™ and therefore,

cannot make this claim. In support of this argument, reliance was placed in the case of Ramkhiladi and Another v. United India Insurance Co. and Another, (2020) 2

SCC 50.

20. In this regard, it would be relevant to point out that the facts of the case relied by the respondents (supra) and the facts of the present case are different. In the case

referred above, the deceased was travelling in a vehicle (borrowed vehicle) which met with an accident with another vehicle which caused the accident (i.e. the offending

vehicle). The appellants claimed compensation (under Section 163A) from the owner and insurer of the borrowed vehicle. Though the allegation of rash and negligent driving

was made against the driver of offending vehicle, no claim was made against the driver/owner or insurer of the said offending vehicle. Under such circumstances, it was

held that the claimants could have claimed compensation against the driver/owner or insurer of the offending vehicle and not against the borrowed vehicle since the deceased

was a third party with respect to the offending vehicle.

21. The facts of the present case is quite different. There is no â€˜other vehicleâ€™ involved in the accident, i.e. there is no offending vehicle. The cause of accident is due

rash and negligent driving of the driver (Peter Rominsh Thapa) of the borrowed vehicle itself. Hence, the claim of the petitioner/claimant against the insurance company in the

present case is maintainable. â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦..â€

(ii) The income of the deceased, in MAC App. No.13 of 2024 although claimed to be ₹ 6,000/- (Rupees six thousand) only, per month, by the Claimant, was fixed at ₹ 6,600/-

(Rupees six thousand and six hundred) only, per month, by the Learned MACT, on grounds that, the victim being a student did not have any income at the relevant time.

Recourse was taken to the Notification of the Labour Department, Government of Sikkim, dated 01-11-2014 and her notional income was fixed at wages of ₹ 220/- (Rupees

two hundred and twenty) only, per day. Compensation was computed under various heads and a sum of ₹ 10,57,480/- (Rupees ten lakhs, fifty seven thousand, four hundred and

eighty) only, was granted to the Claimant, with interest @ 10% per annum, from the date of filing of the Claim Petition (i.e. 02-12-2019) till full and final payment.

(iii) The deceased driver in MAC App. No.12 of 2024 was aged twenty-two years at the time of the accident and it was claimed that he was earning ₹ 6,000/- (Rupees six

thousand) only, per annum. The Learned MACT on examination of the evidence reached a finding that, the victim was a college student and therefore unemployed. His

notional income was consequently fixed at ₹ 6,600/- (Rupees six thousand and six hundred) only, per month, taking into consideration Notification dated 01-11-2014, of the

Labour Department, Government of Sikkim (supra). Compensation of a sum of ₹ 11,12,200/- (Rupees eleven lakhs, twelve thousand and two hundred) only, was granted to the

Claimant, with interest @ 10% per annum, from the date of filing of the Claim Petition (i.e. 02-12-2019) till full and final payment.

4. In Appeal (in MAC App No.13 of 2024), it is contended by Learned Counsel for the Appellant that the insurance cover was only for three occupants of the vehicle. The

deceased daughter being the fourth person, disentitled the Respondent to the compensation claimed. Besides, she being the daughter of the Respondent, the owner of the

vehicle, she stepped into the shoes of the owner and is not a third party. The owner thus cannot claim compensation on the death of her daughter. The insured having paid an

additional premium of ₹ 300/- (Rupees three hundred) only, to cover the risk of unnamed passengers in the vehicle a limited liability of ₹ 2,00,000/- (Rupees two lakhs) only, per

person, was created in terms of India Motor Tariff (IMT 16), in the prescribed format of Insurance Regulatory and Development Authority of India (IRDAI).

(i) In MAC App No.12 of 2024, it was argued that the driver having driven rashly and negligently with no other vehicle being involved in the accident, the insurance company is

not liable to pay the compensation as held by the Supreme Court in National Insurance Co. Ltd. vs. Ashalata Bhowmick AIR 2018 SC 4133 and Jhuma Saha (Smt.) and

Others (2007) 9 SCC 263.

5. Per contra, Learned Senior Counsel for the Respondent argued that, the contention advanced by Counsel for the Appellant that they are not liable to make good the

compensation as the deceased persons had stepped into the shoes of their mother is sans reasoning. The mother/Claimant was the insured while the Appellant is the insurer,

thereby the deceased persons were third parties. A â€œthird partyâ€ has been succinctly elucidated by this Court in Branch Manager, National Insurance Co. Ltd.,

Gangtok vs. Master Suraj Subba and Another AIR 2014 Sikk 7, Passi Lamu Sherpa and Another vs. The Branch Manager, New India Assurance Co. Lt.d2024 SCC

OnLine Sikk 24 and The Branch Manager, The New India Assurance Co. Ltd. vs. Smt. Urmila Biswakarma (Chettri) and Other Ms ANU/SI/0030/2022 and by the

Supreme Court in Ashalata Bhowmik (supra). That, new grounds have been urged in Appeal which is legally impermissible, these having not been raised during trial viz.; that

an additional premium of ₹ 300/- (Rupees three hundred) only, having been paid for covering the risk of unnamed passengers in the vehicle, created a limited liability upon the

Insurance Company of ₹ 2,00,000/- (Rupees two lakhs) only, per person. No grounds regarding the clause in IMT 16 or the IRDAI were urged before. That, the Appeal

therefore ought to be dismissed.

6. The rival contentions of Learned Counsel for the parties having been heard in detail, in extenso and the records having been examined, the common question that falls for

consideration before this Court in both the Appeals is;

â€œWhether the MACT was correct in having granted compensation to the Respondent?â€

7. While addressing this question, it may relevantly be recapitulated here that, this Court in Master Suraj Subba (supra) had opined that where the deceased, the husband of

the insured, was not a party to the agreement of insurance, he had a valid driving licence and was driving the insured vehicle, he would undoubtedly fall within the meaning of

third party. The Learned MACT had held as follows;

â€œ10(i)â€¦

32. In this regard one may go through the Provisions of Section 146 of the M.V. Act which speaks of necessity for insurance against third party risk. The object of this

provision is to enable a thirty party to claim and recover damages from the Insurance company without recourse to the financial capacity of the driver or owner of the vehicle.

The policy of insurance is thus a result of a contract between the insurer and the insured under which the insurer agrees to indemnify the insurer against the liability incurred by

him. Hence other then the contracting party to the Insurance policy the expression â€œthe third partyâ€ should include everyone else. It may be worthwhile to refer to

the

following decision with regard to the said issue.â€

(i) This High Court upholding the said view, explained as to which person would qualify as a third party.

(ii) Bearing the above in mind, in the instant case, the Appellant is the insurer, the Respondent (owner) is the insured, any other person who is not a party to the insurance

policy would fall within the ambit of a third person. The term â€˜injuryâ€™ to any person as reflected in Section 147 of the MV Act, 1988, is wide enough to bring within its

ambit the deceased, who was not a party to the insurance policy and therefore not the insured.

(iii) In Passi Lamu Sherpa (supra), the deceased was the wife of the owner of the vehicle in which both of them were travelling. An accident resulted in the fatality of the

couple. The Insurance Company claimed that the policy did not cover the compensation claimed as it only covered the personal accident of the owner/driver amounting to ₹

15,00,000/- (Rupees fifteen lakhs) only. This Court while examining the provisions of Exhibit 7, the insurance policy, dealt with the limits of liability which is extracted

hereinbelow as follows;

â€œ8.

â€¦â€

(iii)â€¦â€

Limits of Liability

Limit of the amount the Companyâ€™s Liability Under Section II 1(i) in respect of any one accident: as per the Motor Vehicles Act, 1988.

Limit of the amount of the Companyâ€™s Liability Under Section II 1(ii) in respect of any one claim or series of claims arising out of one event: Up to ₹ 7,50,000.â€

It was observed that as per the IMT, the first (supra) pertains to liability covered in respect of the death as stated in Exhibit 7, as per the MV Act, which thereby makes the

insurer liable to pay compensation as computed in terms of the said Act. The second pertains to the damages caused to property of a third party. Thus, the contention

that the

claim therein would be limited to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only, was found to be an erroneous interpretation advanced by the Counsel for the

Insurance Company. This Court also observed that the argument that the deceased wife would step into the shoes of the owner/driver disentitling the Claimants to

compensation was a preposterous proposition, more so, when both the Respondent and wife succumbed to the accident. Compensation was allowed to the Claimants.

(iv) It is worthwhile to refer to, Amrit Lal Sood and Another vs. Kaushalya Devi Thapar and Other s(1998) 3 SCC 744 where the Supreme Court was considering a policy

termed as â€œComprehensive Policyâ€, which contained amongst others â€œSection II â€" Liability to Third Partiesâ€. It was held that, the expression â€œany personâ€

appearing therein, included the occupant of a car, who was travelling gratuitously and that under the terms of the policy, the insurer is liable to satisfy the award passed in

favour of the Claimant. The Supreme Court after noticing the relevant clause of the insurance policy found that, under Section II(1)(a) of the policy, the insurer had agreed to

indemnify the insured against all sums, which the insured shall become legally liable to pay, in respect of death or bodily injury to any person.

8. In the case at hand, Document-â€˜Bâ€™ is the certificate of insurance, which reveals that the policy is a â€œPackage Policy (Private Vehicle)â€, whereby the premium

was deposited for own damage and other liabilities, including compulsory personal accident cover premium and additional personal accident cover premium for three persons

(IMT 16). In light of the contents of Document-â€˜Bâ€™ the argument that the Insurance Company is liable to pay ₹ 2,00,000/- (Rupees two lakhs) only, per deceased person,

is a misplaced submission as the limits of liability under Section II(1)(i) is for death or bodily injury to any persons, including occupants carried in the vehicle.

(i) The reliance placed by the Appellant on Jhuma Saha (supra) lends no succour to his case, as in the said case (supra), the controversy related to fastening the liability on

the insurer, for the death of the owner of the registered vehicle in accident. The owner had died and no premium had been paid for death or bodily injury of the owner. The

instant case, is distinguishable from Jhuma Saha (supra), as the deceased persons were not the owner of the vehicle, but were the driver and occupant thereof. That apart, it

is indubitable that the insurance policy was a â€œpackage policy for private carâ€. While on this facet the observation of the Supreme Court in National Insurance Company

Limited vs. Balakrishnan and Another (2013) 1 SCC 731 is indispensible. Reference was made in the ratiocination to the decision of the High Court of Delhi inY ashpal

Luthra vs. United India Insurance Co. Ltd. 2011 ACJ 1415 (Del), wherein Circular dated 16-11-2009 was issued by IRDA to CEOs of all the insurance companies,

restating the factual position relating to the liability of insurance companies, in respect of a pillion rider on a two-wheeler and occupants in a private car, under the

Comprehensive/Package policy. The communication inter alia stated as follows;

â€œ22. â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦.. Insurers' attention is drawn to wordings of Section II(1)(ii) of Standard Motor Package Policy (also called â€˜the Comprehensive Policyâ€™)

for private car and two-wheeler under the (erstwhile) India Motor Tariff (IMT). For convenience the relevant provisions are reproduced hereunder:

Section IIâ€"Liability to Third Parties

(1) Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of

the insured vehicle against all sums which the insured shall become legally liable to pay in respect ofâ€

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is

necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of

such person by the insured.â€™

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 dated 18-3-1978 (regarding occupants carried in private car) effective from 25-3-1977.

(ii) MOT/GEN/10 dated 2-6-1986 (regarding pillion riders on a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured's liability in respect of occupant(s) carried in a private car and pillion rider carried on a two-wheeler is covered

under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide Circular No. 066/IRDA/F&U/Mar-08 dated 26-3-2008 issued under File and Use Guidelines has reiterated that pending further orders the insurers shall not

vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide

Circular No. 019/IRDA/NL/F&U/Oct-8 dated 6-11-2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the

erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the aforementioned circulars and any non-

compliance with the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

sd/-

(Prabodh Chander)

Executive Director.â€

(emphasis supplied)

(ii) The insurance companies were advised to strictly comply with the Circular dated 16-11-2009 and Order dated 26-11-2009 of the High Court. It is revealed that the

competent authority of the IRDA had stated on 02-06-1986 that, the Tariff Advisory Committee had admitted that the â€œComprehensive policyâ€ is presently called a

â€œPackage policyâ€. The decision would show that, the earlier Circulars dated 18-03-1978 and 02-06-1986, continued to be valid and effective and all insurance companies

are bound to pay the compensation in respect of the liability towards an occupant in a car, under the â€œComprehensive/Package policyâ€, irrespective of the terms and

conditions contained in the policy. The Supreme Court further noted that, in Yashpal Luthra (supra) the Delhi High Court had inter alia observed that

â€œComprehensive/Package policyâ€ of a private car covers the occupants and where the vehicle is covered under such policy, there is no need for the MACT to go into the

question whether the insurance company is liable to compensate for the occupants in a private car. In fact, in view of the Tariff Advisory Committeeâ€™s directives and those

of the IRDA, such a plea was not permissible and ought not to have been raised in the said case. The Supreme Court thus clarified that, if the policy is a

â€œComprehensive/Package policyâ€, the liability would be covered.

9. On the bedrock of the above pronouncement of the Supreme Court and taking into consideration the facts and circumstances and evidence in the instant case, including

Document-â€˜Bâ€™, the insurance policy of the vehicle, which is admittedly a â€œComprehensive/Package policyâ€, there is no reason to interfere with the impugned

Judgments of the Learned MACT which are accordingly upheld, save to the extent of modifying the interest rate of 10% granted by the MACT, by reduction to 9%, for the

purpose of maintaining uniformity in the interest rate, on the compensation in all MAC Appeals disposed of by this Court.

10. Both Appeals are disposed of on the above terms.

11. No order as to costs.

12. Copy of this Judgment be forwarded to the Learned MACT for information.

13. Lower Court records be remitted forthwith.