(2025) 12 SIK CK 0020

Sikkim HC

Case No: Motor Accident Appeal No. 06 Of 2025

Manager, HDFC ERGO General Insurance Co. Ltd.		APPELLANT
	Vs	
Laxmi Sherpa & Ors		RESPONDENT

Date of Decision: Dec. 11, 2025

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 171, 173, 177A, 184
- Indian Penal Code, 1860 - Section 279, 304A, 337, 338

Hon'ble Judges: Bhaskar Raj Pradhan, J

Bench: Single Bench

Advocate: Rahul Rathi, Khushboo Rathi, Sudesh Joshi, Adarsh Gurung, Anil Gurung

Final Decision: Disposed Of

Judgement

Bhaskar Raj Pradhan, J

1. The Motor Accident Claims Tribunal (the learned Tribunal) allowed an application under Section 166 of the Motor Vehicles Act, 1988 (the MV Act) filed by the claimant (respondent no.1) for compensation on account of her injury vide judgment dated 11.07.2024 in her favour. The learned Tribunal awarded an amount of ₹87,58,739/- with interest @ 10% per annum from the date of filing of the claim petition i.e. 28.08.2023 until its full realization with a direction to deposit the admissible court fees. HDFC Ergo General Insurance Company Limited (the Insurance Company) the appellant herein is unhappy with the amount awarded and has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

The Claim

2. The respondent no.1 had filed a claim under Section 166 of the M.V. Act before the learned Tribunal. The respondent no.1 sought compensation for an amount of ₹20,50,000/- compensation for injuries sustained by her due to an accident of the

motor vehicle on 29.11.2020 in which she sustained traumatic paraplegia, fracture of the right humerus shaft and she sufferred disability to the extent of 75%. She claimed that she was the owner of the accident vehicle. The respondent no.1 also alleged that the driver lost control of the vehicle as he was driving in a rash and negligent manner.

The Written Objections

3. The appellant filed written objection contending that as the respondent no.1 was the registered owner and travelling in the accident vehicle she is not entitled to any relief. The appellant contended that the accident vehicle was registered in the name of the deceased driver. The appellant contended that as the injured was the owner of the accident vehicle she was the second party to the contract of insurance between her and the appellant. Therefore, the respondent no.1 could not have preferred a third party claim. It was also contended that the appellant could have been made liable to pay compensation in case of the death of the owner provided that additional premium was paid for Personal Accident Cover".

4. The respondent no.2 also filed his written objection contesting the claim petition made by the respondent no.1. The respondent no.2 asserted that he had a valid driving license at the time of the accident; the respondent no.1 had given her consent to him to drive the vehicle; he had not driven the vehicle in a rash and negligent manner and therefore, respondent no.2 was not liable to pay compensation.

The Evidence

5. Except for the respondent no.1, neither the appellant nor the respondent no.2 led any evidence.

6. Before the learned Tribunal the respondent no.1 exhibited the First Information Report (FIR) (exhibit-2), the registration certificate of the accident vehicle (exhibit-3), the driving license of the respondent no.2 (exhibit-4); the certified copy of the insurance certificate/policy (exhibit-5), the charge sheet (exhibit-6); certified copy of authorisation letter issued by the respondent no.1 in favour of respondent no.2 (exhibit-7) and the medical papers {referral certificate for admission (exhibit-8), discharge certificate (exhibit-9), medical reports (exhibit-10), discharge slip (exhibit-11)} as well as the disability certificate (exhibit-12), trade licenses (exhibit-13), income certificate (exhibit-14), medical bills (exhibit-15) and other documents.

7. The FIR (exhibit-2) alleged that the vehicle driven by the respondent no.2 met with an accident on 29.11.2020 in which there were four occupants including the respondent no.1. One of the occupants succumbed to her injuries on the way to the hospital. The charge sheet alleged that there was prima facie material against the respondent no.2 under Section 279, 337, 338, 304A of the Indian Penal Code, 1860

read with Section 177A/184 of the MV Act.

8. The authorisation letter (exhibit-7) confirmed that the respondent no.1 had infact authorised the respondent no.2 to drive the vehicle and it was valid from 01.10.2020 to 31.03.2021.

9. The medical documents exhibited by the respondent no.1 confirm that she suffered from traumatic paraplegia. The certificate of disability (exhibit-12) certified that respondent no.1 suffered from traumatic paraplegia and permanent physical disability to the extent of 75%. The income certificate (exhibit-14) issued by the Sub-Divisional Magistrate, Gangtok confirmed that the respondent no.1 had income of ₹60,000/-per month from her businesses.

The Tribunals Findings

10. The learned Tribunal on examination of the evidence on record and materials before him concluded that the respondent no.1 was entitled to claim compensation though she was the owner of the accident vehicle. However, the percentage of the disability could not be computed as 100% as the disability certificate does not mention that she requires assistance for life but recommends reassessment of a disability after one year. The learned Tribunal concluded that the insurance policy (exhibit-5) was a bundled motor policy, which is a comprehensive motor insurance. It was also found that the respondent no.1 had paid premium for personal accident cover. Thus the learned Tribunal concluded that the respondent no.1 was entitled to claim compensation. The learned Tribunal relied upon the judgment of the Supreme Court in **Bhagyalakshmi & Ors.** vs. **United Insurance Company Limited & Anr**. (2009) 7 SCC 148 and **National Insurance Company Limited vs.Balakrishnan & Anr**. (2013) 1 SCC 731. The learned Tribunal also relied upon the judgment of the Madras High Court in **National Insurance Company Limited Tiruchengode-637211, Namakkal District** vs.**Krishnan** 2013 SCC OnLine Mad 992. The learned Tribunal therefore awarded an amount of ₹87,58,739/- as compensation payable and directed the payment thereof with interest @ 10% per annum from the date of filing of the claim until realization.

The Appellants Grievance

11. The appellant seeks a reversal of the impugned judgment dated 11.07.2024 on the ground that it is ex-facie illegal, contrary to materials on record and suffers from non-application of mind. It is contended that the respondent no.1 failed to prove that she had sustained grevious injuries in the alleged accident. The appellant also contended that the amount of compensation awarded by the learned Tribunal is exorbitant and wrongly assessed.

12. Mr. Rahul Rathi, learned counsel for the appellant submits that the respondent no.1 being the owner of the accident vehicle and the insured was not entitled to compensation. The learned counsel also submitted that the income certificate

(exhibit-14) was not supported by any books of account of the businesses claimed to have been run by the respondent no.1 and therefore the income was not correctly assessed.

Consideration

13. The factum of rash and negligent act of the respondent no.2 has been adequately proved before the learned Tribunal. Thus, the claim made by the respondent no.1 under Section 166 of the MV Act was maintainable. The respondent no.1 has proved that she had suffered grevious injuries by leading both oral and documentary medical evidence which could not be controverted by the appellant. The respondent no.1 claimed to have been greviously injured and suffered traumatic paraplegia and fracture of the right humerus shaft, paralysed and bedridden with 75% disability under continues medical treatment. In her evidence she proved all the medical records and the disability certificate. Nothing substantial to defeat her oral and documentary evidence was brought out by the appellant during her cross-examination. It was not a routine personal injury. Therefore, the argument of the appellant that the respondent no. 1 had failed to prove that she was greviously injured was incorrect. The contention of the appellant that the accident vehicle was registered in the name of the deceased driver was misplaced as the driver is respondent no.2 before this Court.

14. The first question, which is, to be decided is as whether the respondent no.1 was entitled to claim compensation under the insurance policy (exhibit-5) as she had paid a premium of ₹325/- for the compulsory personal accident cover.

15. In **Balakrishnan** (supra) it was found that a comprehensive policy is also called a package policy and that such a policy would cover the liability of the insurer for payment of compensation of the occupant in a car. Thus, what remains to be examined is whether a bundled motor policy is a comprehensive/package policy?

16. During the hearing when asked whether a bundled motor policy as indicated in the insurance policy (exhibit-5) is also a comprehensive package policy, the learned counsel for the parties submitted that it was so. The insurance policy (exhibit-5) reflects that it is infact a bundled policy with insurance of one year for own damage valid from 03.10.2020 to 02.10.2021 and third party insurance for three years from 03.10.2020 to 02.10.2023. It is also noticed that the insurance policy had a compulsory personal accident cover and respondent no.1 had paid a premium of one year of ₹325/-.

17. A comprehensive insurance policy (exhibit-5) is a complete coverage of the vehicle which includes third party liability plus own damage coverage. The insurance companies recommend a comprehensive car insurance policy if one does not want to spent huge amount of money on repair charges. As the present insurance policy (exhibit-5) reflects that the respondent no.1 had insured herself both under own

damage and third party liability it can safely be concluded that the bundled motor policy taken by her can also be called a comprehensive package policy.

18. The learned counsel for the appellant also contended that as the insurance policy (exhibit-5) specified in the limits of liability clause that the cover for owner-driver under Section III (CSI) is only ₹15,00,000/- and therefore the learned Tribunal could not have granted anything more as compensation. As noticed earlier the insurance policy (exhibit-5) also reflects that the respondent no.1 had taken a compulsory PA cover and paid a premium of ₹325/-. This would mean that she had insured her liability for personal accidents as well and paid an additional premium. It is not in dispute that respondent no.1 suffered injuries due to the accident of the vehicle which was insured.

19. In **Common Cause, A Registered Society vs. Union of India & Ors.** (1999) 6 SCC 667 at Paragraph 128 the Supreme Court, held as follows:

128. The object of an award of damages is to give the Plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups : pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what Mcgregor says, is generally more important than money : it is the best that a Court can do. In Re : The Medianna, 1900 AC 113, Lord Halsbury L.C. observed as under:

How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the Pain and Suffering which a person has undergone by reason of an accident But nevertheless the law recognises that as a topic upon which damages may be given.

20. The learned Tribunal has relied upon the binding precedents laid down by the Supreme Court in **Bhagyalakshmi** and **Balakrishnan** (supra) as well as a reasoned judgment of the Madras High Court in **National Insurance Co. Ltd., Tiruchengode-Namakkal District** (supra) which answers all the issues raised by the learned Counsel for the appellant to hold that the respondent no.1 was entitled to claim compensation though she was the owner of the accident vehicle. This Court is in agreement with the reasoning.

21. Although it was the appellant‟s contention in the written objection that it could be made liable to pay compensation provided additional premium is paid for personal accident cover it did not state that in the present case no additional premium was paid. In fact, the appellant led no evidence. The insurance policy (exhibit-5) clearly reflects that in fact additional premium of ₹325/- was paid by the

respondent no.1. Therefore, following the reasoning above this Court finds no fault in the impugned judgment rendered by the learned Tribunal.

22. The submission of the learned counsel for the appellant that the income of the respondent no.1 was not adequately proved is next to be examined. The learned Tribunal has taken into account the income certificate (exhibit-14) issued by the Sub-Divisional Magistrate, Gangtok which stated that the monthly income of respondent no.1 was ₹60,000/-.

23. The learned Tribunal also considered the fact that the respondent no.1 was running a hotel, bar, restaurant and had license to run a liquor store. The trade license issued by the Gangtok Municipal Corporation (exhibit-13) for running a hotel/resort reflects that it was issued in the year 2013 and renewed on 25.04.2023 on payment of ₹5700/-. License fee for the year ending 31.03.2024 had also been paid by the respondent no.1. The license for retail sale of registered brands of liquor (exhibit-13) issued by the Excise Department, Government of Sikkim dates back to the year 2022 and it was valid till 20.03.2024 having paid the license fee of ₹11,000/- on 06.03.2023. The license for serving registered brands of liquor in restaurants also shows that the license was issued in the year 2023. On payment of license fee of ₹5000/- on 25.05.2023 its validity was till 20.03.2024. Therefore, it reflects that the respondent no.1 had three running businesses and earning well. Consequently, there is no reason why this Court should doubt the income certificate issued by the Sub-Divisional Magistrate, Gangtok (exhibit-14) which is a public document when the learned Tribunal has thought it fit to rely upon it.

24. The learned Tribunal has granted compensation by calculating the annual income before the accident as ₹7,20,000/- i.e. (₹60,000/- per month x 12 months). The learned Tribunal has also calculated loss of future earning per annum as ₹5,40,000/- i.e. (75% of prior annual income). Multiplier of 15 has been taken with reference to the age of the respondent no.1 which was 41 years at the time of accident. Therefore, the loss of future earning was quantified as ₹81,00,000/- i.e. (₹5,40,000 x 15).

25. Consequently, the quantum of compensation payable by the appellant to the respondent no.1 was calculated under the following heads:

Sl.No.	Head	Amount in ₹
1.	Loss of earning	81,00,000
2.	Medical expenses	4,58,739
3.	Future medical treatment	1,00,000
4.	Loss of amenities	1,00,000
	Total	₹ 87,58,739/-

26. The learned counsel for the appellant also contended that the learned Tribunal could not have granted interest from the date of the claim but only from the date of the judgment. In view of Section 171 of the MV Act this argument of appellant is flawed and is rejected. Accordingly, the grant of interest granted by the learned Tribunal is also upheld.

27. In **Sarla Verma vs. Delhi Transport Corporation & Anr**. (2009) 6 SCC 121 the Supreme Court had directed the use of multiplier M-14 for the age group of 41 to 45 years. We find from the record that the age of the respondent no.1 at the time of the accident was 41 years. Therefore, the learned Tribunal should have used multiplier M-14 instead of M-15. Accordingly, the calculation of loss of future earning is reduced from ₹81,00,000/- to ₹60,000 x 12= ₹7,20,000 x 75%= ₹5,40,000 x 14= ₹75,60,000/-. Consequently, in view of this calculation the loss of future earning is taken as ₹75,60,000/- and therefore the total amount payable to the respondent no.1 is ₹82,18,739/-(Rupees Eighty Two Lakhs Eighteen Thousand Seven Hundred Thirty Nine) only along with interest as awarded which is calculated as under:

28. With the above modification of the impugned award, the appeal is disposed of rejecting all other contentions.

29. The Trial Court records shall be remitted to the Motor Accident Claims Tribunal, Gangtok.