(2016) 10 SIK CK 0003

SIKKIM HIGH COURT

Case No: MAC App. No. 2 of 2016.

The Branch Manager, United Insurance Co. Ltd., Deorali Bazar, N.H. 31A, Gangtok, East Sikkim - Appellant @HASH Ms. Lily Ongmu Lepcha, D/o Late Loden Tshering Lepcha, R/o Upper Burtuk, P.O. and P.S. Gangtok, East Sikkim	Vs	APPELLANT RESPONDENT

Date of Decision: Oct. 25, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2017) AAC 257 : (2016) 4 ACC 603 : (2017) 1 TAC 5

Hon'ble Judges: Mrs. Meenakshi Madan Rai, J.

Bench: Single Bench

Advocate: Mr. Thupden G. Bhutia, Advocate, for the Appellant; Mr. Umesh Ranpal and Ms. Kesang Choden Tamang, Advocates, for the Respondent

Final Decision: Partly Allowed

Judgement

Meenakshi Madan Rai, J. - The Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (for short "the Claims Tribunal"), in MACT Case No.15 of 2015, vide its impugned Judgment and Award dated 31-12-2015, directed the Appellant/Insurer herein, to pay an amount of Rs. 21,75,000/- (Rupees twenty one lakhs and seventy five thousand) only, with an interest @ 10% per annum, from the date of filing of the Claim Petition, till its full realisation to the Claimant/Respondent.

2. Dissatisfied with the said impugned Judgment and Award, the instant Appeal has been preferred. Reiterating the averments in the pleadings, Learned Counsel for the Appellant in his opening arguments, contended that in a Petition under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act"), the entire responsibility lies with the Respondent to prove the factum of rash and negligent driving on the part of the driver of the vehicle in accident and in the instant case the Petition is not maintainable as the deceased himself was driving the vehicle and no other vehicle was involved in the accident. That, the accident was entirely the outcome of the rash and negligent driving of the deceased which led to his death, resulting in registration of a case under Sections 279 and 304A of the Indian Penal Code, 1860 (for short the "IPC") against him, therefore, the Claimant is not entitled to the compensation. On this count, he drew support from the ratiocination of Oriental Insurance Co. Ltd. v. Jhuma Saha (Smt) and Others : (2007) 9 SCC 263, Oriental Insurance Co. Ltd. v. Meena Variyal and Others : (2007) 5 SCC 428 and Tamil Nadu State Transport Corporation, Tanjore Rep. by its MD v. Natarajan and Others : (2003) 6 SCC 137. That, the Respondent in fact ought to have filed a Claim under Section 163A of the Act, under which the Respondent is not required to establish negligence or fault on the part of the owner or the driver of the vehicle. It was also averred that, the Learned Claims Tribunal erred in deducting ⅓rd instead of ⅔ as living expenses, as the deceased was a bachelor and, therefore, failed to comply with the decision of the Hon''ble Apex Court in Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another : (2009) 6 SCC 121 and Munna Lal Jain and Another v. Vipin Kumar Sharma and Others : (2015) 6 SCC 347. Hence, the impugned Judgment and Award deserves to be set aside.

3. Per contra, resisting the stance of the Appellant, Learned Counsel for the Respondent urged that there is no error in the finding of the Learned Claims Tribunal which is apparent on glancing through Exhibit 7, the Insurance Policy of the vehicle in accident which grants coverage to the deceased. According to him, the Policy is a "Private Car Package Policy" and the limits of liability have been clearly laid out therein. The requirement for a person to drive the vehicle under the Policy is that he must hold an effective Driving Licence at the time of the accident and should not be disqualified from holding or obtaining such a Licence. The deceased was holding a Driving Licence, Exhibit 4, which has not been disproved by the Appellant neither was he disqualified from holding it, hence, none of the provisions of the Insurance Policy have been violated. That, a First Information Report (FIR), Exhibit 3, had been lodged in connection with the accident before the Rangli Rangliot Police Station, Darjeeling, West Bengal, which was duly registered under Section 279/304A/427 of the IPC, prima facie, pointing to rash and negligent driving on the part of the deceased. All the occupants of the vehicle succumbed to injuries due to the accident and the sole eye-witness P.W.4 has supported the fact that the vehicle was speeding downhill indicating rashness and negligence thereby establishing the requirement of Section 166 of the Act, hence, the Appeal be dismissed.

4. I have heard Learned Counsel at length and given due consideration to their submissions. I have also meticulously examined the evidence and documents relied on by the parties and perused the impugned Judgment and Award. In order to appreciate the rival stands of the parties, it would be essential to briefly adumbrate the facts of the case.

5. The deceased, Samuel Simon Sangay Lepcha, aged about 29 years and earning Rs. 10,000/- (Rupees ten thousand) only, per month, was driving the vehicle on the fateful day. He was the brother of the Claimant. He along with his wife Mingma Doma Sherpa, his elder sister Katherine Sangay Lepcha (the owner of the vehicle), his brother-in-law Kalzang Galay Sherpa, had gone to Darjeeling, West Bengal, on 09-06-2016, in the vehicle (Chevrolet Beat) bearing registration No. SK 01 P 8498, to visit an ailing relative. While returning to Gangtok from Darjeeling at around 04.20 p.m., the vehicle met with an accident at "Badaray Golai", Peshok, Darjeeling, allegedly due to over-speeding by the said deceased. Consequently, he lost control of the vehicle which fell to about 60-70 feet below the road resulting in his death as well as the death of the other occupants. An FIR was thereafter duly registered before the nearest Police Station being the Rangli Rangliot P.S. under Sections 279/304A/427 of the IPC against the driver of the said vehicle.

6. The Claimant being another sister of the deceased put forth her Claim before the Learned Claims Tribunal under Section 166 of the Act. The Opposite Party, i.e., the Insurance Company, contested the Claim, inter alia, on the ground that the Claim was not maintainable as the accident was the result of the negligence of the driver himself and, therefore, no advantage accrues to the "tortfeasor". A similar ground has been raised in the Appeal, i.e., if the accident is caused due to the sole negligence of the driver of the vehicle in accident and no other person is involved there cannot be a Claim under Section 166 of the Act.

7. The Learned Claims Tribunal framed a single issue viz.;

(i) Whether the claimants are entitled to the compensation claimed? If so, who is liable to pay the compensation?

After taking into consideration the evidence furnished before it and giving due consideration to it and to the rival contentions of the parties, the Learned Claims Tribunal pronounced the impugned Judgment and Award.

8. What, therefore, arises for consideration before this Court is;

(i) Whether the Learned Claims Tribunal was in error in passing the impugned Judgment and Award?

9. In the first instance, it would be expedient to understand the provisions and purport of Section 166 of the Act. This Section provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a

third party, or both, can be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where the death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. The proviso to Section 166(1) provides that all the legal representatives of the deceased who have not joined as Claimants are to be impleaded as Respondents to the application for compensation. That, the Claims Tribunal shall treat any report of accident forwarded to it under Section 158(6) as an application for compensation. The above provisions are thus self-explanatory.

10. The Act, insofar as it relates to Claims for compensation arising out of accidents is a benevolent piece of legislation intended to mitigate the difficulties of Claimants who seek compensation amongst others, on the death of a near one. A Claim for compensation is based on tortious liability while a contract of insurance is a contract of indemnity. The third party for whose benefit the insurance is taken and who files a Claim under Section 166 of the Act has to establish that the driver was negligent in driving the vehicle which thereby resulted in the accident; that the owner was vicariously liable and the Insurance Company was bound to indemnify the owner. Hence, a Claimant is entitled to get compensation under Section 166 of the Act when the driver who is the "tortfeasor" was driving the vehicle rashly and negligently.

11. Now, what arises for consideration is what does "rashly" and "negligently" mean. What constitutes Negligence has been analysed in Halsbury''s Laws of England, as follows;

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence; where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the respective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect

between the two."

[See An Exhaustive Commentary on Motor Vehicles Act, 1988 along with Motor Vehicles Rules, 1989 and allied Laws by Justice Rajesh Tandon, 2015, New Edition, at Page I.646-1.647]

12. Rashness although closely allied to Negligence is distinguishable in that in cases of a rash act the party does an act which he is bound to forbear. From the principles enunciated supra and from a consideration of the evidence and documents on record, there is undoubtedly an act of rashness and negligence on the part of the deceased. The evidence of P.W.4 Upan Thapa, a resident of Peshok, has established that the vehicle was speeding downhill. According to him on 09-06-2013, at around 4.20 p.m. when he was driving a Utility (Pick Up Truck) from Teesta uphill to Peshok, on reaching "Badaray Golai", Peshok, he noticed one blue coloured Chevrolet beat Car coming downhill, from Peshok, at high speed and as he was about to cross the Car, he witnessed the Car skid off the road and crash towards the bend of the road below. He noticed that the Car was at excessive speed and driven in a rash and negligent manner. He along with others stopped their vehicles to see the accident after which he left the place. The fact that he had witnessed the accident stood the test of cross-examination. Thus, the eyewitness account clearly indicates that the vehicle was speeding downhill which could be either due to the fact that the driver was speeding recklessly and negligently or due to the fact that the brakes of the vehicle had failed. In either case, it would indicate negligence on the part of the driver since if he was speeding downhill, it would tantamount to rashness. If it was due to brake failure, as the driver of the vehicle on the relevant day, he ought to have exercised necessary precaution by checking the brakes before embarking on the steep downhill journey. The legal burden of proving negligence without a shred of doubt rests on the Claimant, but there could be situations where it would be impossible for the Claimant to know the precise cause of the accident, as in the instant case where all the occupants had died and there was none to narrate the facts. This hardship can be overcome by resorting to the principle of res ipsa loquitur. Consequently, in the instant case, apart from the evidence of P.W.4, the circumstances also speak for themselves. The Appellant on its part in its averments has admitted that the accident was caused solely due to the rash and negligent driving of the deceased.

13. On re-visiting the averments of the Appellant, I cannot help but observe that the Appellant has made contradictory submissions in Paragraphs 7, 8 and 9 of the Appeal, which are reproduced herein below;

"7. That the onus lies with the Respondent/Claimant in claims filed under Section 166 of the Motor Vehicles Act, 1988, to prove rash and negligent act on the part of the person driving the vehicle-in-accident which resulted in the fatal accident.

8. That on the ill-fated day the vehicle was driven by the ''said deceased'' himself and no other vehicle/vehicles or person(s) were involved in the accident. .....

....."

Pausing here, it is pertinent to observe that in the remaining portion of the paragraph it is averred as follows;

"8. ..... The accident was caused solely due to rash and negligent driving of the deceased which lead to his death and as a matter of fact, a case under Sections 279 & 304 ''A'' of the Indian Penal Code, 1860 was registered against the driver.

....."

Other contradictions are also apparent in the averments as extracted below:

"9. That the accident also resulted in the death of other occupants travelling in the vehicle-in accident and claims under Section 166 of the Motor Vehicles Act, 1988 on account of their deaths were filed before the Tribunal, which was registered as MACT MACT (sic) Case No.13 & 14 of 2015.

It is pertinent to mention herein that the Tribunal while arriving at the finding that the accident occurred due to rash and negligent driving on the part of the ''said deceased'', have awarded all the claims."

At Paragraph 11, to the contrary, it is averred that:

"11. That the aspect of negligence was over looked by the Ld. Tribunal and while passing the Award/Judgment in a claim filed under Section 166 of the Motor Vehicles Act, 1988 (sic). Therefore, the legal heir/dependents cannot claim for compensation for rash and negligent act on the part of the deceased."

14. From the submissions herein above, it is clear that on the one hand the Appellant claims that the onus of proving rash and negligent driving lies with the Claimant and then admits that the accident was caused solely due to the rash and negligent driving of the deceased, as a result of which a case was registered under Sections 279 and 304A of the IPC. It was also submitted that the Learned Claims Tribunal arrived at the finding that the accident occurred due to rash and negligent driving on the part of the deceased and then contradicting its own submission, the Appellant states that the aspect of negligence was overlooked by the Learned Claims Tribunal while passing the impugned Award. From the averments extracted above, it is categorical that the Appellant appears to be confused about its stand. If we look to Section 58 of the Indian Evidence Act, 1872, it provides as follows:

"58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, on which, before the hearing, they agree to admit by any writing under their hands,

or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

Thus, if the Appellant himself is of the opinion that the accident occurred due to rash and negligent driving on the part of the driver as put forth in the Appeal, there is no reason for the Respondent to have established this aspect.

15. It would be apposite now to consider whether the Claimant can seek compensation on account of the death of the "tortfeasor", as a third party. It is not denied that the owner had insured the vehicle with the Appellant. The Insurance Policy between the insurer and the insured is a contract between the two parties. The insurer undertakes to indemnify the insured against the Claim of a third party and to compensate the loss suffered by the insured on account of risks covered by the Insurance Policy. The scheme of Section 147 of the Act envisages, inter alia, that the policy of insurance is to be issued by the authorised insurer and must insure the specified person or classes of persons against any liability incurred in respect of death or bodily injury to any person or damage to any property of a third party. Sub-Section (2) of Section 147 of the Act lays down the extent of liability. In the case of property of a third party the limit of liability is six thousand only with a proviso, whereas Sub-Section (3) provides that the policy of insurance will be of no assistance unless and until the insurer has issued a certificate of insurance in the prescribed form.

16. This Court in Branch Manager, National Insurance Co. Ltd., Gangtok v. Master Suraj Subba and Anr. : AIR 2014 Sikkim 7 upholding the decision of the Learned Motor Accidents Claims Tribunal, East and North Sikkim, at Gangtok, in MACT Case No.21 of 2010, dated 28-09-2012, held that in case where the deceased was the husband of the insured, had a valid driving licence and died while driving the insured vehicle, as he was not a party to the agreement of insurance would undoubtedly fall within the meaning of ''third party''. The Learned Claims Tribunal in the said case had held that &#65533;

"10(i).

.....

"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 third 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 "the third party" should include everyone else. It may be worthwhile to refer to the following decision with regard to the said issue."

This High Court while upholding the above opinion also added as follows:

"10(i).

.....

(ii) Apart from the above, we may also consider this in the light of the statutory provisions contained in Section 147 of the Act. For better appreciation, relevant Clause of Sub-Section (1) of Section 147 is reproduced as under :

"147. Requirements of policies and limits of liability. - (1) .....

(a) to (b) .....

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

....."

(iii) The portion under Sub-Clause (i) of Clause (b) of Sub-section (1) of Section 147 reproduced above commencing with the "injury to any person" ending with the words "carried in the vehicle", was introduced by Act 54 of 1994 with effect from 14-11-1994 signifying the intention of the Legislature to add substance to Chapter XI of the Act as a piece of benevolent legislation. The term "injury to any person" is wide enough to bring within its ambit the deceased who was not a party to the Insurance policy and, therefore, not the ''insured''. This aspect of the matter has been analysed in detail by this Court in Smt. Namita Dixit (AIR 2010 Sik 50) (supra) relying upon a catena of decisions rendered by the Apex Court. ....."

17. Thus, this Court while upholding the decision of the Learned Claims Tribunal in Suraj Subba (supra) has clearly elucidated as to who would qualify as a third party. The circumstances in the case at hand are much the same as the brother of the insured was driving the vehicle, neither was he not employee nor was he a party to the Policy, but had been permitted to drive the vehicle by his sister. This would without a doubt make him a third party. That, having been said, the Insurance Policy, Exhibit 7, reflects that it is a ''Package Policy'' and not an ''Act Policy''. The relevant portions of the Insurance Policy have already been extracted herein above and does not require reiteration. Hence, the decision in Suraj Subba (supra) as pronounced by this Court, not even having been assailed, ought to have been referred to by the Appellant.

18. Now, coming to the argument that the Respondent ought to have been filed the Claim under Section 163A of the Act. If we refer to this Section, it is clear that it was

incorporated by the Legislature under a welfare scheme to provide benefits to the family of the victim or insured person falling within the income group to the extent of Rs. 40,000/- (Rupees forty thousand) only, per annum, therefore, it is for the purpose of granting relief to an aggrieved person in that specified income bracket. The option of filing a Claim Petition under Section 163A of the Act is also extended when such a person does not seek to prove rash and negligent driving of the offending vehicle as the cause of the accident. In the instant case rash and negligent driving has not only been established by the Claimant but has also been admitted by the Appellant. Exhibit 10, the Office Order pertaining to the deceased indicates that he was appointed on ad hoc basis on a consolidated pay of Rs. 10,000/- (Rupees ten thousand) only, per month and was posted at Namthang Block Administrative Centre. His income is undoubtedly above Rs. 40,000/- (Rupees forty thousand) only, per annum, and hence, recourse has been taken to Section 166 of the Act. In any event, no person can be compelled or coerced to file a Petition under Section 163A of the Act if he seeks to establish his case under Section 166 of the Act and his income is above Rs. 40,000/- (Rupees forty thousand) only, per annum.

19. It would, however, be worthwhile to notice here that the accident occurred on account of the rash and negligent driving of the deceased which would tantamount to contributory negligence on his part. In Suraj Subba (supra) this Court has referred to the decision of Raj Rani and Others v. Oriental Insurance Company Limited and Others : (2009) 13 SCC 654 of the Hon''ble Apex Court, wherein on this aspect it has held that;

"17. So for as the issue of "contributory negligence" is concerned, we may notice that the Tribunal has deducted ⅓rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This Court in Usha Rajkhowa v. Paramount Industries [(2009) 14 SCC 71] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that (SCC p. 75, para 20)

"20. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak [(2002) 6 SCC 455]. That was also a case of collision between a car and a truck. It was observed in SCC p.458, para 8:

''8. ..... The question of contributory negligence arises when there has been some act or omission on the claimant''s part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".''

18. The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this Court. In Krishna Vishweshwar Hede v. Karnataka SRTC [(2008) 15 SCC 771] this Court upheld the judgment of the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in the ratio of 50:50 on the driver of the bus and the appellant."

On the touchstone of the decision above, as contributory negligence exists on the part of the deceased, it is axiomatic that the liability of the compensation has to be apportioned accordingly. Thus, the Claimant is entitled to only 50% of the total amount of loss of dependency.

20. Now to deliberate on the decisions relied on by the Appellant. In Jhuma Saha (supra) it was argued that the facts of the case were similar to the facts at hand and the Claim Petition was dismissed as the deceased was the owner of the vehicle and driving the vehicle negligently himself at the time of the accident,. However, to the contrary, on perusing the Judgment, I find that in fact the insurer had resisted the Claim on the ground that the owner was not entitled to get compensation, if he drives the vehicle and meets with an accident as the Insurance Policy is third party in nature. In Paragraph 11 it was concluded as follows;

"11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

Reference was also made to in the same Judgment to Dhanraj v. New India Assurance Co. Ltd. : (2004) 8 SCC 553, wherein it was held as follows:

"12. In Dhanraj v. New India Assurance Co. Ltd. [(2004) 8 SCC 553] it is stated as follows: (SCC pp. 555-56, paras 8 & 10)

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

* * *

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading ''Own damage'' is for covering liability towards personal injury. Under the heading ''Own damage'', the words ''premium on vehicle and nonelectrical accessories'' appear. It is thus clear that this premium is towards

damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

Thus, a conspectus of the above deliberations indicate that the Insurance Policy covers the liability incurred by the insured in respect of damages to a third party arising out of the use of a vehicle. That, Section 147 of the Act does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle. Hence, the circumstances of Jhuma Saha''s case (supra) and Dhanraj''s case (supra) and the instant case do not tally with each other as the driver herein was not the owner nor was he an employee of his sister or a party to the Insurance.

21. The facts in Meena Variyal''s case (supra) also relied on by the Appellant has no relevance to the instant matter as the deceased therein was an employee of the Company and could not be considered to be a third party. To the contrary, it is no one''s case in the case at hand that the deceased was an employee of Katherine Sangay Lepcha, he was, in fact, her brother, and had been permitted to drive the vehicle on that day.

22. In Tamil Nadu State Transport Corporation (supra), the driver of the bus in accident who was an employee of the Appellant Company and was found to have contributed to the accident filed the Claim Petition. The Apex Court in its Judgment at Paragraph 9 held as follows:

"9. From the facts of the case and nature of the claim stated above, we find absolutely no justification in law for the Division Bench of the Madras High Court in its impugned order imposing liability to the extent of 50% on the appellant Corporation. The Division Bench of the High Court completely overlooked that the claimant himself was driver of the corporation bus and was found negligent to the extent of 50% for causing accident. In view of the above finding of contributory negligence on the part of the claimant as driver of the corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of the claimant himself. ..... The Division Bench of the High Court therefore committed a serious error in apportioning and fastening 50% liability of compensation on the appellant Corporation. This part of the award therefore deserves to be set aside. The liability of the respondent Insurance Company as insurer of private bus is found to be only to the extent of 50% of the total compensation determined. ....."

The facts of the said case are again distinguishable from the facts at hand as the driver therein was an employee of the Company. With regard to contributory negligence, this Court has considered this aspect and apportioned the liability accordingly.

23. The records of the Learned Claims Tribunal would indicate that the Claimant had examined herself and one Pema Tshering Lepcha, Shahlen Sada and Upan Thapa as

witnesses and established rash and negligent driving of the deceased. Exhibit 4, the Driving Licence, of her brother Samuel Simon Sangay Lepcha who was driving the vehicle was relied on as well. Exhibit 7 the Insurance Policy and Exhibit 3 in two pages as the FIR dated 09-06-2013 regarding the occurrence of the accident. If we are carefully walk through Exhibit 7, the Insurance Policy, it is a "Private Car Package Policy" in the name of Mrs. Katherine Sangay Lepcha. The premium paid by her is Rs. 7,121/- (Rupees seven thousand one hundred and twenty one) only. For convenience, the following clauses mentioned in the Insurance Policy are reproduced hereunder;

".....

Persons or Class of Persons entitled to drive :

Any person including Insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner''s Licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of the Central Motor Vehicle Rule, 1989.

.....

Limits of liability :

Under Section�II-I (i) Death of or bodily injury in respect of any one accident :As per Motor Vehicles Act 1988 Under Section-II-I (ii) Damage to third party property in respect of any one claim or series of claims arising out of one event: Rs. 750,000.00

Personal Accident cover for Owner & Driver CSI: 200000

....."

The Insurance Policy has laid down the limits of the liability and on pain of repetition, it may be stated that it is no one''s case that the deceased was an employee of his elder sister, thereby removing him from the ambit of an employee. There is no breach of the terms of the contract of Insurance as the deceased was holding a driving licence and was not debarred from obtaining it.

24. Therefore, in conclusion, it is evident that the Claimant is entitled to the compensation. As held in Raj Rani (supra) 50% of the total amount of loss of dependency is to be deducted for contributory negligence. The argument that as he was a bachelor and 1/2 ought to be deducted from loss of dependency is an erroneous submission as it appears from the records that he was married to one Mingma Doma Sherpa. The other findings of the Learned Claims Tribunal with regard to the funeral expenses, loss of estate and non-pecuniary damages warrant no interference by this Court.

25. Thus, the amount of compensation stands re-calculated and modified as follows:-

Monthly income of the deceased	Rs. 10,000.00
Annual income of the deceased (Rs. 10,000 x 12 months)	Rs. 1,20,000.00
Add 50% of Rs. 1,20,000/- as Future Prospects	(+) Rs. 60,000.00
Net yearly income	Rs. 1,80,000.00
Less ⅓rd of Rs. 1,80,000/- as Married	(-) Rs. 60,000.00
	Rs. 1,20,000.00
Multiplier to be adopted ''17'' (Rs.1,20,000 x 17)	Rs. 20,40,000.00
Less 50% of Rs. 20,40,000/- on account of Contributory Negligence	(-) Rs. 10,20,000.00
	Rs. 10,20,000.00
Funeral expenses	(+) Rs. 25,000.00
Loss of estate	(+) Rs. 10,000.00
Loss of love and affection	(+) Rs. 1,00,000.00
Total =	Rs. 11,55,000.00
(Rupees eleven lakhs and fifty five thousand) only.	

26. The Respondent shall be entitled to simple interest @ 10% per annum on the above amount with effect from the date of filing of the Claim made before the Learned Claims Tribunal until its full realisation.

27. The impugned Judgment of the Learned Claims Tribunal stands modified accordingly.

28. The Appellant is directed to pay the awarded amount to the Respondent within two months from today, failing which he shall pay simple interest @ 12% per annum till realisation.

29. In the result, the Appeal is allowed to the extent indicated above.

30. No order as to costs.

31. Copy of this Judgment be sent to the Learned Claims Tribunal for information and compliance.

32. Records of the Learned Claims Tribunal be remitted forthwith.