

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

DATED: 10.04.2019

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI

MAC App. No. 01 of 2018

Appellant : The Branch Manager,
Reliance General Insurance Company
Limited,
Himalaya House, 8th Floor,
38-B, J.L. Nehru Road,
Kolkata, 700071.

versus

Respondents : 1. Sa-Ngor Chotshog Centre,
Rongyek, Bhusuk Road,
P.O. & P.S. Gangtok,
East Sikkim.

2. Mrs. Karuna Chettri,
Wife of Mr. Nirmal Chettri,
R/o 49 K.M. Sarani,
South Port, Kolkata,
West Bengal.

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

Appearance:

Mr. Manish Kumar Jain, Advocate for the Appellant.

Mr. Ajay Rathi, Mr. Deepu Prasad and Ms. Phurba Diki,
Advocates for Respondent No. 1.

None present for Respondent No. 2.

J U D G M E N T

Meenakshi Madan Rai, J

1. Assailing the award granted by the learned Motor
Accidents Claims Tribunal, East Sikkim at Gangtok (for short

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'learned Tribunal') in MACT Case No. 14 of 2016 (Sa-Ngor Chotshog Centre vs. Mrs. Karuna Chettri & Anr.), the instant Appeal has been preferred. The learned Tribunal awarded compensation amounting to Rs.15,02,500/- (Rupees fifteen lakhs, two thousand and five hundred) only, to the Respondent No. 1, on account of the death of Tamding Wangchuk (hereinafter 'deceased'), having reached a finding that the cause of accident was due to the rash and negligent act of the driver one Nirmal Chettri, and that the Respondent No. 1 was the legal representative of the deceased.

2. The Respondent No. 1 herein was the Claimant (hereinafter 'Respondent No. 1 Centre') and Respondent No. 2 was the Opposite Party No. 1 before the learned Tribunal. The Appellant herein was the Opposite Party No. 2 before the learned Tribunal. Parties shall be referred to in their order of appearance before this Court.

3. The facts which have led to the instant Appeal are that the deceased aged about 32 years, was a permanent resident of the Respondent No. 1 Centre, a monastic institution and a study centre under the Shakya clan of Buddhism in Gangtok, East Sikkim. He had renounced the world having severed all ties with his family since the age of nine, was working as a Teacher at the Respondent No. 1 Centre and earning a monthly salary of Rs.10,000/- (Rupees ten thousand) only. On 20.08.2012, the deceased was travelling in vehicle bearing

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Registration No. WB-76-4625 (Tata Spacio), driven by one Nirmal Chettri, which met with an accident at Hanuman Jhora under the jurisdiction of Kalimpong Police Station, District Darjeeling, West Bengal, at around 20:00 Hrs. On 21.08.2012, the deceased succumbed to his injuries in a Hospital in Kalimpong. One Jiten Chettri lodged the First Information Report pertaining to the accident on 21.08.2012 at 7.15 Hrs at Reang Police Post, under Kalimpong Police Station where a case under Sections 279, 337, 338, 304A of the Indian Penal Code, 1860 (for short 'IPC, 180') was registered against the driver of the vehicle. The body of the deceased, on completion of inquest and post mortem examination was handed over to the Manager of the Claimant Centre for the last rites. The cause of accident was, as per witnesses, due to the rash and negligent driving of the driver Nirmal Chettri. The Respondent No. 1 Centre thus sought compensation of Rs.21,42,500/- (Rupees twenty one lakhs, forty two thousand and five hundred) only, claiming to have suffered a major setback by losing an eminent scholar.

4. The Appellant denied and disputed the claim of the Respondent No. 1 Centre on grounds that the deceased had no relation with the Respondent No. 1 Centre and was not dependent on his alleged income of Rs.10,000/- (Rupees ten thousand) only, per month. Besides his needs were provided by the Respondent No. 1 Centre of which he was a spiritual head but never a Teacher. That, the parents of the deceased were

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not impleaded as parties, hence the claim petition suffers from mis-joinder and non-joinder of parties over and above which the rash and negligent driving could not be established as apparent from the Judgment of acquittal rendered by the Court of the learned Additional Chief Judicial Magistrate, Kalimpong in G.R. Case No. 126 of 2012 (State vs. Nirmal Chettri). That the documents are manufactured and fabricated for the purposes of the case, hence, the claim petition was liable to be dismissed.

5. The Respondent No. 2 the owner of the vehicle, in her Written Objection before the learned trial Court averred that although the cause of accident has been shown to be due to the rash and negligent act of the driver, however the driver was in fact acquitted in the criminal case registered against him, therefore rash and negligent driving has remained unproved. That, at the time of the accident, the documents pertaining to the vehicle were valid as also the Insurance Certificate, the terms of which were not violated, hence the Opposite Party No. 1 had no liability.

6. The learned Tribunal framed a single issue which is extracted as follows;

“Whether the Claimant is entitled to the compensation claimed? If so, who is liable to compensate him?”

The learned Tribunal then pronounced the impugned Judgment based on the evidence and documents furnished before it.

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7. Learned Counsel for the Appellant before this Court, reiterated the argument pertaining to non-joinder of necessary parties as the legal representatives of the deceased being his parents, were not added as parties. That, rash and negligent act of the driver is unestablished, besides the Respondent No. 1 Centre failed to show dependency on the deceased. That, the compensation awarded was exorbitant without application of mind by the learned Tribunal and hence on these grounds alone, the claim petition deserved to be dismissed.

8. *Per contra*, learned Counsel Mr. Ajay Rathi for the Respondent No. 1 Centre, while relying on the decision of **Montford Brothers of St. Gabriel and Another vs. United India Insurance and Another**¹, contended that the Hon'ble Supreme Court has clarified who a 'legal representative' is. That, in terms thereof the Respondent No. 1 Centre is well within the ambit of 'legal representative' hence the question of impleading the parents as parties did not arise as the deceased had severed all ties with his family. That, no error arises in the calculation of compensation, therefore the impugned Judgment warrants no interference.

9. I have heard *in extenso* and considered the rival submissions of learned Counsel for the parties. I have also perused the impugned Judgment including the documents and evidence on record.

¹(2014) 3 SCC 394

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10. Taking up the first question with regard to rash and negligent driving, it was the contention of both the Appellant and the Respondent No. 2 that the criminal case registered against the driver had resulted in an acquittal, hence the question of rash and negligent driving did not arise. It would be appropriate to state here that in a criminal trial the matter is to be proved beyond a reasonable doubt, however this is not the standard required while considering a matter before the Motor Accidents Claims Tribunal. On this question, we may refer to the decision of the Hon'ble Supreme Court in **N.K.V. Bros. (P) Ltd. vs. M. Karumai Ammal and Others**², wherein it was held as follows;

"2.*The Facts:* A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an overhanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal, which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly: several lost their limbs likewise. The High Court, after examining the materials, concluded:

We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of RW 1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant.

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The

²(1980) 3 SCC 457

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requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to reopen the holdings on culpability and compensation.

Thus it is a settled position of law that a conviction recorded by a Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently but his acquittal on the other hand would be no ground to dismiss the claim petition.

11. The witness for the Respondent No. 1 Centre, Jamyang Sangpo Bhutia, as pointed out by the learned Tribunal at Paragraph 6 of his Evidence-on-Affidavit Exhibit 10, stated that *the cause of accident was the rash and negligent act of the accused driver, Mr. Nirmal Chettri as he was driving the vehicle rashly and negligently.* No cross-examination despite opportunity given was conducted on this point. Therefore, there is no reason for this Court to differ with the finding of the learned Tribunal.

12. So far as the question of "legal representative" is concerned, it is evident that nothing emerged in cross-examination to demolish the claim of the witness for the Respondent No. 1 Centre that they were the legal representatives of the deceased. In **Montford Brothers of St. Gabriel and Another (supra)**, the Appellant No. 1 i.e. the Montford Brothers of St. Gabriel was a charitable society

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registered under the Societies Registration Act, 1960 and its members after joining the Appellant Society renounce the world and are known as "Brother." That, such a "Brother" severs all his relations with the natural family and is bound by the constitution of the Society. The constitution of the Society provides that whatever the "Brother" receives by way of salary, subsidies, gifts, pension or from insurance or other such benefits belongs to the community as by right and goes into the common purse. The Hon'ble Supreme Court while discussing what a "legal representative" means also held that before the learned Motor Accidents Claims Tribunal there was no evidence in support of such pleading that the Claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable. The Appellant No. 1 Society, through its duly authorized agent Appellant No. 2 claimed compensation under the Motor Vehicles Act, 1988 in relation to the death of the said member of the Society in the accident. The Motor Accidents Claims Tribunal awarded compensation to the Claimant. In a Writ Petition under Article 227 of the Constitution of India, the Hon'ble High Court set aside the order of the learned Tribunal. The Hon'ble Supreme Court, while upholding the order of the Motor Accidents Claims Tribunal discussed what a "legal representative" would mean as follows;

"9. The Act does not define the term "legal representative" but the Tribunal has noted in its judgment and order that clause (c) of Rule 2 of the Mizoram Motor Accidents Claims Tribunal Rules, 1988, defines the term "legal

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representative" as having the same meaning as assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908, which is as follows:

"2. (11) 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;"

10. From the aforesaid provisions it is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

11. The learned counsel for the Insurance Company tried to persuade us that since the term "legal representative" has not been defined under the Act, the provisions of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited the judgment of this Court in *Gujarat SRTC v. Ramanbhai Prabhatbhai* [AIR 1987 SC 1690]. In that case, covered by the Motor Vehicles Act, 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term "legal representative" is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of the Fatal Accidents Act. It was specifically held that the Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act.

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12. Para 13 of the Report of *Gujarat SRTC case* reflects the correct philosophy which should guide the courts interpreting the legal provisions of beneficial legislations providing for compensation to those who had suffered loss: (SCC p. 250)

"13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* [2 AIR 1977 Guj 195] and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

13. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, we find no merit in the submission advanced on behalf of the respondent Insurance Company that the claim petition is not

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maintainable because of the provisions of the Fatal Accidents Act.”

(Emphasis supplied)

The ratio *supra* puts to rest any doubts raised on ‘legal representative.’ On careful perusal of the pleadings before the learned Tribunal all that the Appellant has stated is that;

“3. ... The claimants being a institution (*sic*) is not dependent upon the income of the deceased, further the deceased was a earning (*sic*) member but a spiritual head at the institution. That as there is no dependency upon the income the claim petition cannot sustain on its present form and as such there is no loss of dependency.

.....
27. ... The statement that the deceased had renounced the world and severed all the relationship with his parents since the age of 9 years and was staying with the petitioner, a monastic institution and a study center for Buddhist scholars of shakya clan in Gangtok is totally false and hence denied in total. The statement and averments are contrary to the legal representative as defined in the motor vehicles act. ...”

Besides the Appellant was not able to establish that the parents had any links with the deceased or were dependent upon him. The Appellant also failed to lead any evidence to disprove the contention of the Respondent No. 1 Centre that the deceased had renounced all ties with his family and consequently they were the legal representatives of the deceased. Hence, in consideration of the facts *supra* the finding of the learned Tribunal on this count cannot be faulted.

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13. Coming to the question of compensation, the deceased was aged about 32 years, therefore the Multiplier of "16" was rightly adopted in consonance with the decision in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another**³.

14. The learned Tribunal has granted 50% of monthly income while computing future prospects, on this point, in **National Insurance Company Limited vs. Pranay Sethi & Ors.**⁴, it was held as follows;

59.1. The two-Judge Bench in *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121], a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

59. In view of the aforesaid analysis, we proceed to record our conclusions:

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.2. As *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54] has not taken note of the decision in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65], which was delivered at earlier point of time, the decision in *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54] is not a binding precedent.

³(2009) 6 SCC 121

⁴ AIR 2017 SC 5157

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59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

(Emphasis supplied)

Hence, in view of the ratio of the Hon'ble Supreme Court in **Pranay Sethi's** case *supra*, it is evident that where the deceased was on a fixed salary and below the age of 40 years, an addition of 40% of the established income should be made towards future prospects. Exhibit 4 relied on by the Respondent No. 1 Centre reveals that the deceased was on a consolidated pay of Rs.10,000/- (Rupees ten thousand) only, per month. Thus, 40% shall be calculated as future prospects instead of 50% as calculated by the learned Tribunal.

15. So far as loss of estate and funeral expenses are concerned, the Hon'ble Supreme Court in **Pranay Sethi** (*supra*) at Paragraph 59.8, *inter alia* held as follows;

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. ..."

(Emphasis supplied)

In view of the aforecited Judgment, Rs.15,000/- (Rupees fifteen thousand) only, is granted towards funeral expenses and a sum

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of Rs.15,000/- (Rupees fifteen thousand) only, granted towards loss of estate.

16. With regard to the amount of Rs.10,000/- (Rupees ten thousand) only, having been granted towards "Cost of transportation of the victim to the Hospital and the body of the victim from Central Referral Hospital, Manipal to Zitlang, Rangpo, East Sikkim" is concerned, apart from the statement made by witness for the Respondent No. 1 Centre Jamyang Sangpo Bhutia at Paragraph 9 of his Evidence-on-Affidavit Exhibit 10 to the effect that the *dead body of the deceased was then handed over to me for last rites and subsequently the Sub-Registrar of Births and Deaths, Executive Assistant, Teesta Gram Panchayat issued the Death Certificate of the deceased to me*, no documents have been furnished to support the claim of the witness towards payment of transportation. Therefore, the Respondent No. 1 Centre is not entitled to compensation towards "cost of transportation."

17. The question of compensation on account of loss of love and affection as granted by the learned Tribunal, in view of the circumstance is superfluous, hence the Respondent No. 1 Centre is not entitled to compensation towards loss of love and affection.

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18. In conclusion, in light of the above discussions and findings, the compensation stands re-calculated and modified, as follows;

Monthly Income of the deceased	Rs.10,000.00
Annual Income of the deceased (Rs.10,000x12)	Rs.1,20,000.00
Add 40% of Rs.1,20,000.00 as future prospects	<u>Rs.48,000.00</u>
Yearly income of the deceased	Rs.1,68,000.00
Less 1/2 of Rs.1,68,000.00 [deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.]	<u>Rs.84,000.00</u>
Net yearly income	Rs.84,000.00
Multiplier of ' 16 ' adopted in terms of Sarla Verma's case (supra) (Rs.84,000 x 16)	Rs.13,44,000.00
Add Funeral expenses	Rs.15,000.00
Add Loss of estate	<u>Rs.15,000.00</u>
Total	<u>Rs.13,74,000.00</u>

(Rupees thirteen lakhs and seventy four thousand) only.

19. The Respondent No. 1 Centre shall be entitled to simple interest @ 9% per annum on the above amount, with effect from the date of filing of the Claim Petition before the learned Tribunal, until its full realisation.

20. The Appellant is directed to pay the awarded amount to the Respondent No. 1 Centre within one month from today, failing which, the Appellant shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant to the Respondent No. 1 Centre.

21. Appeal allowed to the extent above.

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- 22.** No order as to costs.
- 23.** Copy of this Judgment be sent to the learned Tribunal for information.
- 24.** Records of the learned Tribunal be remitted forthwith.

(Meenakshi Madan Rai)
Judge
10.04.2019

Approved for reporting: **Yes**
Internet: **Yes**

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