CNR: SKHC01-000145-2024

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

MAC App. No. 20 of 2024

1. Rekha Chettri,
Wife of late Deepen Mukhiya @ Deepen Sunwar,
Aged about 33 years,

2. Master Dishant Sunwar,
Son of Late Deepen Mukhiya @Deepen Sunwar,
Aged about 5 years,
(Appellant no.2 being minor is being represented by his natural mother Appellant no.1).

3. Bhakta Bahadur Sunwar,
Son of Til Bahadur Sunwar,
Aged about 59 years.

4. Parbati Sunwar,
Wife of Bhakta Bahadur Sunwar,
Aged about 49 years.

All residents of Adarsh Goan, Lower Namphing,
P.O. Namphing and P.S. Temi,
District Namchi, Sikkim
Pin No-737134.

….. Appellants.

Versus

1. Tata AIG General Insurance Company,
Having its Branch office at Road level
Floor-1, Deep Building,
Gairi Goan, Tadong, Gangtok, East Sikkim
Pin No.737102

2. Rajendra Chettri,
S/o Late Jagat Bdr. Chettri,
R/o Chakung Chumdong Harabotey,
Sipsu, Soreng District West Sikkim,
Pin No: 737121.

3. Mani Kumar Chettri,
S/o Kul Prasad Chettri,
R/o Hee Goan Gyalshing, District West Sikkim
Pin No.737113.

….. Respondents.

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

{Impugned Judgment dated 31.05.2024 passed by the Learned Member, Motor Accidents Claims Tribunal, at Gangtok, Sikkim in M.A.C.T. Case No.06 of 2023, where the claim of the petitioners/claimants stand dismissed.

Appearance:

Mr. Sishir Mothay, Advocate for the Appellants.

Mr. Rahul Rathi and Ms. Khushboo Rathi, Advocates for the Respondent No.1.

Mr. Bhim Shankar Pradhan, Advocate (through V.C.) for Respondent Nos. 2 & 3.

Date of Hearing	:	31.07.2026
Date of Judgment	:	01.09.2026
Date on which uploaded	:	01.09.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. An application under section 166 of the Motor Vehicles Act, 1988 (the M.V. Act) claiming compensation of Rs.19,07,560/- on account of accidental death of Deepen Mukhia in a motor vehicle accident which occurred on 12.11.2019 was dismissed by the learned Motor Accident Claims Tribunal, Gangtok, Sikkim (the learned Tribunal) on the ground that the cause of accident was due to break failure and therefore there was no rash and negligent driving by the driver-Rajendra Chettri (respondent no.2).

2. There were four claimants. The claimant nos.1 to 4 (the appellant nos.1 to 4) are the wife, son, father and mother of late Deepen Mukhia who died as a result of the accident respectively.

3. The accident vehicle was owned by Mani Kumar Chettri (the respondent no.3).

4. The respondent no.1 i.e. TATA AIG General Insurance Company which had insured the accident vehicle did not appear despite publication of the summons and was proceeded *ex parte* before the learned Tribunal. However, they have chosen to appear in the present appeal in which they are respondent no.1.

5. The learned Tribunal has concluded that the deceased died in the accident which occurred on 12.11.2019 which is proved by the contents of the First Information Report (FIR) (exhibit-1) pertaining to Nayabazar P.S. Case No. 18/2019 dated 12.11.2019 under section 279, 337, 304A of the Indian Penal Code, 1860 (IPC) and the post mortem report (exhibit-6) is a testimony of the fact. The learned Tribunal has also concluded that the insurance policy (exhibit-4) and all the documents including the driving license (exhibit A2) were valid and effective.

6. Heard the learned counsel for the parties.

7. The learned counsel for the appellants confines his argument only to the extent that in spite of rejection of claim under section 166 of the MV Act it was nevertheless permissible for the learned Tribunal to have granted the no fault liability compensation under section 140 of the MV Act thereof. He therefore, prays that the provision of section 140 of the MV Act may be invoked to grant compensation to the heirs of late Deepen Mukhia who succumbed to his injuries sustained in the accident. The insurance certificate (exhibit-4) was a *"Auto Secure Commercial Vehicle Package Policy"*. The appellants contend that the insurance certificate (exhibit-4) of the accident vehicle was a package policy hence the deceased was fully covered by it.

8. The learned counsel for the respondent no.1 contend that the deceased being the tortfeasor, his heirs are not entitled to compensation.

CONSIDERATION

Insurance Policy/Certificate

9. The insurance certificate reflects that it is a *"Auto Secure Commercial Vehicle Package Policy"*. The limits of liability clause in the insurance certificate reads as follows:

> **"***Limits of liability; under section II-1(i) of policy (Death of or bodily injury): such amount as his necessary to meet the requirements of the Motor Vehicles Act, 1988.***"**

10. It is noticed that there is no clarity in the insurance certificate as to what section II-1(i) of policy (Death of or bodily injury) refers to.

11. Under the head "important notice" in the insurance certificate it is also stated:

> **"***This schedule policy terms and conditions available on company website and endorsements mentioned herein above shall read together and word or expression to which a specific meaning has been attached in any part of this policy of the schedule shall bear the same meaning wherever it may appear...........You may visit company website at www.tataaiginsurance.in for detailed benefits, terms and conditions and exclusions of the policy ......***"**

12. The website takes one to a brochure relating to *"Auto Secure Commercial Vehicle Package Policy"*. Section II thereof relates to liability to third parties. It reads as under:

> ***"II. Liability To Third Parties***
>
> *Subject to the limits of liability 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*

vehicle against all sums which the insured shall become legally liable to pay in respect of:

i. death of 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 Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

ii. damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

13. The website also takes one to *"Auto Secure Commercial Vehicle Package Policy"* which seems to cover goods carrying vehicle, passenger carrying vehicle and miscellaneous and special type of vehicles. In the section with the heading "Policy Wordings" section II relates to liability to third parties and it reads as under:

"SECTION II- LIABILITY TO THIRD PARTIES

1) subjects to the limits of liability 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 vehicle against all sums including claimants costs and expenses which the insured shall become legally liable to pay in respect of:

I. death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the vehicle.

II. damage to property caused by the use (including the loading and/or unloading) of the vehicle.

PROVIDED ALWAYS THAT

a) The Company shall not be liable in respect of death, injury damage caused or arising beyond the limits of any carriage way or thoroughfare in connection with the bringing of the load to the insured *vehicle for loading thereon or the taking away of the load from the insured vehicle after unloading there from.*

b) Except so far as is necessary to meet the requirements of the Motor Vehicle Act the Company shall not be liable in respect of death or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

c) Except so far as is necessary to meet the requirements of the Motor Vehicle Act in relation to the liability under the Workmen's Compensation Act 1923 the Company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the insured vehicle at the time of occurrence of the event out of which any claim arises.

d) The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody of the insured or a member of the insured's household or being conveyed by the insured vehicle.

e) The Company shall not be liable in respect of damage to any bridge and/or viaduct and/or to any road and/or anything beneath by vibration or by the weight of the insured vehicle and/or load carried by the insured vehicle.

f) Except so far as is necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death and/or bodily injury to any person(s) who is/are not employee(s) of the insured and not being carried for hire or reward, other than owner of the goods or representative of the owner of goods being carried in or upon or entering or mounting or alighting from the insured vehicle described in the Schedule of this Policy.

2) The Company will pay all costs and expenses incurred with its written consent.

3) In terms of and subject to the limitations of the indemnity granted by this section to the insured the Company will indemnify any driver who is driving the insured vehicle on the insured's order or with insured's permission provided that such driver shall as though he/ she were the insured observe fulfil and be subject to the *terms exceptions and conditions of this policy in so far as they apply.*

4) The Company may as its own option

a) arrange for representation at any Inquest or Fatal Inquiry in respect of any death which may be the subject of indemnity under this section and

b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Policy.

*5) In the event of the death of any person entitled to indemnity under this Policy the Company will in respect of the liability incurred by such person indemnify his/her personal representative(s) in terms of and subject to the limitations of this Policy provided that such personal representative(s) shall as though they were the insured observe fulfill and be subject to the Terms Exceptions and Conditions of this Policy in so far as they apply.***"**

14. As noticed above it is always a painstaking exercise to understand the terms and conditions of the insurance policy. The language in the insurance certificate does not give a clear picture to the extent of the indemnity of the insurance company. All that is clear is the quantum of payments made under various heads. Every insurance policy requires the insured to visit their web pages and comprehend for themselves if it is comprehensible. Every certificate of insurance issued should necessarily provide and clearly state the extent of insurance, the extent of indemnity they have undertaken and what they are liable for under any circulars or notices issued by the IRDA. This will ensure that the insured clearly knows all that is necessary for the insured to know is in the insurance certificate itself without voyaging into the labyrinth of pages and pages of their official website.

15. The insurance certificate issued by respondent no.1 is completely unclear. However, on a deeper probe into their webpage it reflects that the respondent no.1 had taken on the responsibility to indemnify the respondent no.3 in the event of an accident caused by or arising out of the use of motor vehicle against all sums which the respondent no.3 shall become legally liable to pay.

16. The respondent no.1 in the present case was proceeded *ex parte* by the learned Tribunal. The insurance certificate (exhibit-4) was filed by the claimants who would have no personal knowledge about it. The respondent no.3 who was the registered owner of the accident vehicle only stated that he possessed the relevant documents including the insurance certificate and filed it. Resultantly, the learned Tribunal was kept completely in a dark regarding the insurance policy.

17. In ***National Insurance Company Limited New Delhi*** vs. ***Jugal Kishore & Ors.***[1] the Supreme Court has observed:

> ***"10.*** *Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching*

[1] (1988) 1 SCC 626

> *this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.”*

18. I am also of the view that when a claim is made before the learned Tribunal by a claimant under an insurance certificate/policy and the insurance company appears after notice is issued, it is incumbent upon the insurance company to:

(i) first verify whether the insurance certificate/policy policy through which the claim is made is a valid insurance certificate/policy issued by them;

(ii) once it is clear to the insurance company that in fact it is a valid insurance certificate/policy issued by them then it is incumbent upon them to file the insurance policy with all its terms and conditions and inform the learned Tribunal what exactly the insurance policy covers and the extent of their indemnification;

(iii) the insurance company should also inform the learned Tribunal whether they are bound to follow certain directions issued by the IRDA from time to time relevant to the insurance certificate issued by them.

19. I say so because it is noticed that in every claim for compensation made by the victims or their dependents the claimants are the ones who are usually placing the insurance certificate issued by the insurance company to the owner of the vehicle although they may not have any personal information about it. In some cases, the claimants may not have the necessary particulars of the insurance policy taken by the insured. In such situations, it may not behove of the insurance company to hide behind the lack of information of the claimants and deprive them of the benefit of the benevolent legislation. In that sense the adjudication before the learned Tribunal may not be strictly adversarial as in other jurisdiction. Therefore, the insurance company who has issued the insurance certificate/policy providing the requisite information as above to the learned Tribunal would definitely clear doubts in the mind of the learned Tribunal to pass necessary effective orders as required without delay.

20. Section 140 of the MV Act reads as under:

> ***"140. Liability to pay compensation in certain cases on the principle of no fault***.*—(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.*
>
> *(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [1][fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [2][twenty-five thousand rupees].*
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> *(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.*
>
> *(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.*
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> *[3][(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:*
>
> *Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]***"**

21. In view of sub-section (4) of section 140 quoted above the argument of the learned counsel for the respondent no.1 that the deceased being the tortfeasor, his heirs are not entitled to compensation is not tenable and therefore, rejected.

22. The issue raised by the learned counsel for the appellants is no longer *res integra* as the judgments of the Supreme Court in ***Eshwarappa Alias Maheshwarappa & Anr.*** vs. ***C.S. Gurushanthappa & Anr***.[2], ***Indra Devi & Ors***. vs. ***Bagada Ram & Anr.***[3]***, Nishan Singh & Ors.*** vs. ***Oriental Insurance Company Limited***[4] and ***Ram Murti & Ors***. vs. ***Punjab State Electricity Board***[5] completely answers it. It is held that it would cover the liability of the insurer for payment of compensation for the occupant in a car. The Supreme Court has clearly laid down that fastening liability under section 140 of the MV Act on the owner of the vehicle is regardless of the fact that the subject vehicle was not driven rashly and negligently. It was also held that in such cases where the Tribunal comes to the conclusion that the vehicle was not driven rashly and negligently it could have been well advised to invoke section 140 of the MV Act providing for liability of the owner of the vehicle involved in the accident. In ***Smt. Thungala*** (supra) the Supreme Court held *"as rightly submitted by the claimant-respondents, in accordance with the circular of the IRDA dated 16.10.2009, insurance companies are liable to compensate for any occupant in the vehicle under a comprehensive/package policy."*

[2] (2010) 8 SCC 620
[3] (2010) 13 SCC 249
[4] (2018) 6 SCC 765
[5] Civil Appeal No.7143 of 2022

23. It is held that the learned Tribunal could have granted compensation under section 140 of the MV Act even though it had rejected the claim under section 166 of the MV Act. It is also held that the respondent no.3 is liable to pay compensation under section 140 of the MV Act. In the present case also the claim for compensation was made by the appellants as heirs of the deceased who was the occupant of the accident vehicle whose owner, the respondent no.3 had duly insured it. Consequently, the insurer i.e. the respondent no.1 is liable to indemnify the owner i.e. the respondent no.3 for his liability under section 140 of the MV Act.

24. As noticed in ***Ram Murti*** (supra), the Supreme Court while examining a similar situation found that the claimant who was entitled to compensation under section 140 of the MV Act could still be granted compensation under the now prevailing section 164 of the MV Act whereby the compensation in case of death has increased to Rs.5 lakhs and in case of grievous hurt to Rs.2.5 lakhs as it was a beneficial provision enacted by the Parliament.

25. In the present case the claim for compensation made by the claimants is for the accidental death of Deepen Mukhia. Under the then existing section 140 of the M.V. Act the claimants would be entitled to only Rs.50,000/-. Considering that this Court is granting compensation in the year 2026 for the death which occurred on 12.11.2019 and on a claim petition preferred on 14.02.2023, I am of the view that the appellants are entitled to the amount of Rs.5 lakhs as compensation to be paid by the respondent no.1. I, therefore, direct the respondent no.1 to pay the compensation amount of Rs.5 lakhs payable to the appellants from the date of the claim i.e. 14.02.2023 with interest @ 7% payable till actual payment.

26. The appeal is allowed to the above extent and disposed of. The Trial Court records should be remitted to the Court of learned Motor Accident Claims Tribunal, Gangtok.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**

to/