

GAHC010257492017



2026:GAU-AS:3694

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./890/2018

SMTI BHABANI BORO and 2 ORS
W/O LATE PRASANTA BORO, R/O VILL. SILAKOROIBARI, P.O. CHANGSARI,
P.S. KAMALPUR, DIST. KAMRUP (R) ASSAM

2: MISS RISHITA BORO
D/O LATE PRASANTA BORO
R/O VILL. SILAKOROIBARI
P.O. CHANGSARI
P.S. KAMALPUR
DIST. KAMRUP (R) ASSAM

3: MISS TULIKA BORO
D/O LATE PRASANTA BORO
R/O VILL. SILAKOROIBARI
P.O. CHANGSARI
P.S. KAMALPUR
DIST. KAMRUP (R) ASSAM (APPELLANT NOS. 2 AND 3 BEING MINOR ARE
DULY REPRESENTED BY THEIR MOTHER APPELLANT NO. 1

VERSUS

M/S NATIONAL INSURANCE COMPANY LIMITED and 2 ORS
HAVING ITS REGIONAL OFFICE AT BHANGAGARH, GUWAHATI 781005
(INSURER OF VEHICLE NO. AS-01/DC-9740)

2:MBL INFRASTRUCTURE LTD.
DR. R.P. BARUAH ROAD
NEAR DURAG RESIDENCY
LAST GATE
DISPUR
GUWAHATI 781006
KAMRUP (M)
ASSAM. (OWNER OF VEHICLE NO. AS-01/DC-97040)

3:SRI TUTUMONI GHARPHALIA

S/O SRI TUKESWAR GHARPHALIA
R/O MOUTHONIGAON
P.O. NAHARZAR KHOWANG
PIN 785676
DIST. DIBRUGARH
ASSAM (DRIVER OF THE VEHICLE NO. AS-01/DC-9740

Advocate for the Petitioner : Mr. H Das, MR. P HAZARIKA, MR.P HAZARIKA,MR. T K MISRA,MR A BARMAN,MR D SAIKIA

Advocate for the Respondent : Mr. R.C Paul, MRS. S ROY (R1),

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 05.03.2026

Date of pronouncement of judgment : 13.03.2026

Whether the pronouncement is of the operative part of the judgment ? : No.

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. P Hazarika, learned counsel for the appellant and Ms. S Roy, learned counsel for the respondent No. 1 Insurance Company. None appears for the remaining respondents i.e. the owner and driver of the offending vehicle.

2. This appeal is directed against the judgment & award dated 06.03.2017 passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup in MAC Case No. 1747/2011, whereby the claim petition of the present

appellant was allowed but the Insurance Company was absorbed of the liability, which was thrust upon the owner of the offending vehicle.

3. The facts of the case may be briefly stated. On 20.09.2011 the husband /father of the appellants namely, Prasanta Boro was travelling on a motor cycle from Sonapur side towards Guwahati along with one Babul Sonowal on the left side of the road. At the time when they reached Kamarkuchi on National High Way, suddenly a Tata Dumper Tipper Truck bearing registration No. AS-01-DC-9740 coming from the opposite side driven in very high speed in rash and negligent manner knocked down the deceased. Due to the accident, Prasanta Boro died on spot. The other rider of the motor cycle namely, Babul Sonowal died in hospital on the next date. A corresponding case being Sonapur Police Station Case No. 211/ 2011 was registered under Section 279 / 33 / 304 (A) IPC against the driver of the Truck and after completion of the investigation police filed charge sheet against the driver of the Truck.

4. The appellant herein filed a MAC case being MAC Case No. 1747/2011 under Section 166 of the MV Act, 1988 praying for compensation for death of their Husband/ father Prasanta Boro. The said case was taken up by the learned MACT No. 1, Kamrup (M).

Another MAC case was filed by the dependants of Babul Sonowal who was co-passenger of Prasanta Boro. The case said was registered as MAC Case No. 2257 / 2011 and the said case was also taken up by the learned MACT No. 1, Kamrup (M).

5. The insurer of the offending vehicle i.e. Tata Dumper Tipper Truck bearing registration No. AS-01-DC-9740 i.e. National Insurance Company appeared in MAC Case No. 1747/2011 and filed written statement. By filing a additional written statement the insurance company pleaded that the vehicle AS-01-DC-9740 was involved in the accident but it was not insured with National Insurance Company at the relevant time.

6. The learned Tribunal after closure of evidence in MAC Case No. 1747 / 2011, by Judgment and Award dated 06.03.2017 held that the accident occurred due to sole negligence of the driver of vehicle No. AS-01-DC-9740 (issue No. 1 and 2 at page 33 of the Memo of Appeal) but the learned Tribunal held that the said vehicle was not insured with National Insurance Company and insurance policy mentioned in the claim petition pertains to another vehicle, therefore, insurance company is not liable to pay the compensation and thereby fastened the liability upon the owner of the vehicle by awarding Rs. 11,90,000/- along with interest @6% from the date of the filing of the claim.

7. On the other hand the same Insurance company appeared in the other MAC Case No. 2257/2011 arising out of the same accident by filing written statement and did not state that the vehicle bearing registration No. AS-01-DC-9740 was not insured with National Insurance Company. The insurance company only took the plea in MAC Case No. 2257 / 2011 to the effect that the accident took place due to rash and negligent driving of the vehicle No. AS-01-DC-9740. The same officer of National had filed the written statement in both the cases.

8. The said learned Tribunal by judgment and award dated 03.06.2016 passed in the other MAC Case No.2257 / 2011 arising out of same accident held that the offending vehicle No. AS-01-DC-9740 was solely responsible for the accident and also held that the offending vehicle was insured with National Insurance Company, hence the insurance company is liable to pay the compensation at the tune of Rs. 15,17,500/- along with interest @6% from the date of the filing of the claim. Both the cases were taken up by the same Tribunal and by the same Presiding Officer.

9. It is submitted by the learned counsel for the appellant that the impugned Judgment and Award dated 06.03.2017 is vitiated in view of the contradictory and misleading stand taken by the insurance company and thereby the learned Tribunal had arrived at an erroneous finding. In paragraphs 4 and 5 of the Additional Written Statement of the National Insurance Company, it has been pleaded that the vehicle No. AS-01-DC9740 was involved in the accident but was not insured with National Insurance Company, which is absolutely misleading, taking into account the stand taken by the same insurance company in the other MAC Case No. 2257/2011 arising out of same accident. In the said case, the same insurance company and the same officer of the insurance company who filed the written statement had taken a contradictory stand and did not take the said plea that the said vehicle was not insured with them at the relevant point of time. It was only pleaded in the said case that accident had not occurred due to rash and negligence driving of the vehicle No. AS-01-DC-9740. It is pertinent to mention that vide Judgment and Award dated 03.06.2016 passed in the other MAC Case No.2257 / 2011, the insurance company was fastened the liability to pay the award and the insurance company

did not prefer any appeal against the said Judgment and satisfied the award.

10. It is further submitted that it is a settled position of law that the litigants cannot take contradictory stands in the same case. On the same facts a party cannot be permitted to approbate and reprobate and take inconsistent and shifting stands. It is further submitted that both the MAC Case No. 1747/ 2011 and MAC case No. 2257 / 2011 were taken up by the same Tribunal simultaneously and also rendered judgment simultaneously. The same Presiding Officer had taken up both the cases and both the records were before the said Presiding Officer. In MAC Case No. 2257/ 2011, Judgment was delivered on 03.06.2016 wherein liability to pay the compensation was cast upon the Insurance company, whereas, judgment in MAC Case 1747/2011 involving the present appeal was delivered subsequently i.e. on 06.03.2017. The Presiding Officer of the Ld. Tribunal overlooked the said fact which renders the impugned Judgment and Award dated 06.03.2017 as unreasonable and unsustainable in the eye of law.

11. The second ground of challenge in the present appeal is the compensation awarded by the learned Tribunal is not "just and reasonable" award. The deceased was a carpenter and his age was considered above 30 years, i.e. age group of 31-35 years. The Ld. Tribunal in absence of proof of income had taken the notional income of Rs.5,000/-per month. The Apex Court held that when no evidence are available regarding income of a self employed person, taking note of the nature of employment, the principle of minimum wages fixed under the Minimum Wages Act can be applied. The deceased was a carpenter and a 'semi skilled' worker considering his nature of work. At the relevant time, as per

Notification dated 15.03.2012 of the State of Assam during the years 2011-2012, the monthly income of 'Semi Skilled' worker was Rs.7,875/-.

12. According to the appellant, by taking note of the pronouncement of the Hon'ble Apex Court, the total compensation may be calculated as follows:

The monthly income of Semi-Skilled worker during the year 2011-12 under Minimum Wages Act (Assam) stands at= Rs. 7875.00/- [2022 (6) GLT 811 , paragraph 20]

Accident took place on 20.09.2011 and the deceased was a carpenter and therefore, by taking the wage of semi-skilled worker during the period 2011-2012:

Monthly Income of deceased =Rs.7,875.00/- Future prospect @50% (as the deceased was below 40 years) = Rs.3,937.50/- 5

Total Monthly income = (Rs. 7,875.00 + Rs. 3,937.50) = Rs. 11,812.50

Total Annual Income =Rs. 11, 812.50 x 12 =Rs. 1,41,750.00

After deducting one third of income as personal expenses of the deceased total Annual Income = Rs. 94,500.00

(As per Sarala Verma's case, the learned Tribunal has taken multiplier of 16 considered by taking the age group of 31-35 years,

the age of the deceased was as above 30 years)

Loss of dependency Rs. 94,500 x 16 = Rs. 15,12,000.00

Funeral Expenses = Rs. 25,000.00

Loss of Estate = Rs. 5,000.00

Loss of care and guidance for

minor Children = Rs. 1,00,000.00

Loss of Consortium = Rs. 1,00,000.00

Total Compensation = Rs. 17,42,000.00 alongwith interest @6% from the date of filing of the claim petition.

13. At this stage it is important to revisit the stand taken by the Insurance Company before the learned Tribunal by way of an additional written statement therein, which is as follows:

“3. It is stated that the clalmants in their claim petition mentioned that the policy No.101800/31/11/6300002124 against the vehicle bearing registration No. AS01/DC-9740 (Tata Dumper Tipper) issued by M/s. National Insurance Company Ltd, Kolkotta. But after proper

verification of the said policy, it was found that the policy No.101800/31/11/6300002124 was issued against the vehicle bearing registration No.MP-19-HA-1203 (TATA TIPPER LPK2518/38) not the vehicle No. AS-01/DC-9740 (Tata Dumper Tipper). As such the opposite party No.1 is not liable to pay the compensation to the claimants under the provisions of Motor Vehicles Act, 1988 as the said vehicle was not insured with the opposite party No.1. 4.

4. After verification of the police report, it was found that the said Tata Dumper Tipper No.AS-01/DC-9740 was involved with the accident and a police case was registered against the said vehicle as Sonapur P.S.Case No.211/11 U/Setion-279/338/304(A) IPC. 5.

5. As the said Tata Dumper Tipper bearing No. AS-01/DC-9740 involved with the accident was not insured with M/s. National Insurance Company Ltd, i.e. opposite party No.1 and the said Tata Dumper Tipper was not covered under the said policy. As such the opposite party No.1 is not liable to pay the compensation to the claimants under the provisions of Motor Vehicles Act, 1988 as the said vehicle was not insured with the opposite party No.1 and if any liability arises against the said Tata Dumper Tipper No. AS01/DC-9740, the opposite party No.1 is to be exonerated from any liabilities.”

17. On this aspect of the matter, the learned tribunal found as follows:

“Sri Tapan Chakraborty, Administrative Officer, is examined as DW-1. He has stated that they sent mail to the Division Office, Kolkotta, and the said office sent policy to them. As per policy, the vehicle no. MP-19-HA-1203 Tata Tipper. In the claim-petition the vehicle no. is AS-01/DC-9740. As per policy given to them, the vehicle was not insured with National Insurance Co Ltd. Ex-A is the insurance policy.

During cross-examination he has admitted that as per the claim-petition, the policy no. is matching with the policy no. given in Ex-A. As per seizure list, the engine no. and chasis no. are similar given in Ex-A. The type of vehicle mentioned in the claimpetition is Tipper Dumper is same in Ex-A. He has admitted that he has no knowledge if Kolkatta office made contact with the owner regarding policy. As per R/C copy, the vehicle no., chasis no. and engine no. are same mentioned in claim-petition.

So, from the above evidence as well as documentary evidence, particularly, copy of insurance policy, it is found that the vehicle bearing no. MP-19/HA-1203 (Tata Tipper LPK2518/38) and not the vehicle no. AS-01/DC-9740 (Tata Dumper Tipper). Hence, the OP No. 1 is not liable to pay compensation to the claimants under the provisions of MV Act, 1988 as the said vehicle was not insured with the OP No. 1.

From the evidence of DW-1 as well as policy, leaves no room

for doubt that the company cannot be saddled with any liability to indemnify the owner of the vehicle. It is the owner who is liable to pay compensation to the claimant. The issues are accordingly decided in favour of the claimants."

21. A perusal of Exhibit-3, the seizure list, would show that the engine number and chassis number mentioned in the said seizure list are the same as the ones mentioned in Exhibit A, the insurance policy, which pertains however to a different vehicle number being MP-19-HA-1203. The type of vehicle i.e. tipper dumper is also the same as mentioned in the seizure list as well as in Exhibit A, the insurance policy. Therefore, it is quite inexplicable as to why there is a mismatch between the registration number of the vehicle as mentioned in the seizure list and in the insurance policy.

22. However, it is pertinent to note that in the seizure list, the insurance policy number has been mentioned as National Insurance Policy No. 101800/1/11/0300002174 (which is different from the Policy Number mentioned in the claim petition) against vehicle number AS-01-DC-9740, valid up to 30.08.2012. However, this aspect of the matter appears not to have been noticed by the learned Tribunal. The inquiry by the learned Tribunal ought to have been directed towards clearing up the aforesaid discrepancies and more specifically to inquire as to whether the aforesaid policy number was issued by the National Insurance Company against any vehicle, and if so, the registration number of the said vehicle.

23. As already noticed above, the policy number mentioned by the claimant in the claim petition is different from the one mentioned in the seizure list and it is on that basis that the insurance company denied having issued the said

insurance policy, as mentioned in the claim petition, against the vehicle bearing registration number AS-01-DC-9740, which is mentioned in the seizure list as well as in the claim petition. The fact cannot be lost sight of that the insurance company in MAC Case No. 2257/2011, arising out of the same accident and involving the same vehicle, did not deny that the said vehicle AS-01-DC-9740 was covered by a valid insurance policy. Therefore, while making the award in that case, the learned Tribunal fastened liability upon the insurance company. In that view of the matter, this is a fit case for remanding the matter back to the learned Tribunal for making further enquiry in the light of the aforesaid observations and thereafter to take a fresh decision as to whether the insurance company would be liable for satisfaction of the award.

25. In the present case, prayer has also been made for enhancement of the compensation amount. Since the matter is being remanded back, I would refrain from undertaking that exercise and leave it to the Tribunal to revisit the said aspect as well. Needless to say, in the event any party is aggrieved by any order that may be passed by the learned Tribunal, it would be open for the aggrieved party to take recourse to law. Accordingly, the impugned judgment & award is set aside and the matter stands remanded. Send back the TCR.

26. It is expected that since the matter is long pending, the learned Tribunal would make an endeavour to dispose of the matter within a short period, preferably within a period of three months from the date of receipt of the TCR.

27. The appeal stands disposed of accordingly.

JUDGE

Comparing Assistant