

GAHC010005022016



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

Case No. : MACApp./338/2018

THE RELIANCE GENERAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT RECTIFIER HOUSE
570, NIGAM CROSS ROAD RD, WALDHA MUMBAI 400031 AND ITS BRANCH
OFFICE AT ANIL PLAZA ABC GS ROAD GUWAJATI 781005 REP BY THE
MANAGER GUWAHATI OFFICE

VERSUS

SMTI AINA BALA ROY
LATE LAKHI KANTA ROY @ LAXMI KANTA ROY
VILL RATIADAHA PART II PO RATIADAHA PS GOLKGANJ DIST DHUBRI
ASSAM

2:KRISHNA ROY
LATE LAKHI KANTA ROY @ LAXMI KANTA ROY VILL RATIADAHA PART
II PO RATIADAHA PS GOLKGANJ DIST DHUBRI ASSAM

3:BISHNU ROY
LATE LAKHI KANTA ROY @ LAXMI KANTA ROY VILL RATIADAHA PART
II PO RATIADAHA PS GOLKGANJ DIST DHUBRI ASSAM

4:RADHIKAR ROY
LATE LAKHI KANTA ROY @ LAXMI KANTA ROY VILL RATIADAHA PART
II PO RATIADAHA PS GOLKGANJ DIST DHUBRI ASSAM

5:SUBRATA MUKERJEE
LATE KALYAN KUMAR MUKHERJEE
RO VILL GOSANI ROAD DINHATA DIST COOCH BEHAR WEST BENGAL

6:NOOR ISLAM
SO BASIRUDDIN MIAH
RO VILL BORO ATHIABARI

PS DINHATA DIST COOCH BEHAR WEST BENGA

:::BEFORE:::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Advocates:

For the appellants : Mr. R. Goswami, Advocate

For the respondents: Mr. D. Kalita, Advocate

Mr. U.C. Rabha, Advocate

Date on which judgment is reserved: 19.02.2026

Date of pronouncement of judgment: 20.02.2026

**Whether the pronouncement is of the
Operative part of the judgment :**

**Whether the full judgment has been
Pronounced : Yes**

Judgment & Order (CAV)

1. Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. D. Kalita, learned counsel for the respondents No. 1 to 4 and Mr. U.C. Rabha, learned counsel for the respondents No. 5 and 6.

2. This appeal under Section 173 of the Motor Vehicle Act, 1988, has been preferred by the Reliance General Insurance Company Limited, impugning the judgment and award dated 05.10.2015, passed by the MACT, Dhubri, in MAC Case No.297/2008, whereby, the appellant was directed to pay compensation amount of Rs.4,56,800/- (Rupees four lakh fifty six thousand eight hundred only) to the claimant along with interest @ 6% per-annum from the date of filing of the claim petition till realization.

3. The relevant facts for consideration of the instant appeal, in brief, are that on 26.11.2007, at about 5:15 pm, when the husband of the claimant No.1 and father of rest of the claimants respectively namely Lakhikant Roy @ Laxmi Kanta Roy was coming to his house from Ratiadaha Bazar by his by-cycle, a super bus bearing registration No. WB-63/3017, which was going towards Gauripur from Boxirhat knocked him on National Highway No.31 from back side. As a result of the aforesaid accident, Lakhikant Roy @ Laxmi Kanta Roy sustained grievous injuries. He was immediately taken to Dhubri Civil Hospital. However, on the same day, he succumbed to the injuries sustained by him in the accident.

4. The present respondent No.1 to 4 preferred an application under Section 166 of the M.V. Act, 1988, before the Motor Accident Claims Tribunal, Dhubri, claiming compensation for death of Lakhi Kanta Roy @ Laxmi Kanta Roy in the aforementioned vehicular accident.

5. The appellant being the opposite party No.3 in the aforesaid claim case, contested the claim by filing written statement therein. During the enquiry, two witnesses were examined on behalf of the claimants' side, whereas, the present appellant adduced evidence of one Bitupon Gogoi. However, by the impugned judgment and award, the claim was allowed and the compensation was awarded to the claimants in the manner as already described in the foregoing paragraphs.

6. Mr. R. Goswami, the learned counsel for the appellant has submitted that the main issue to be decided in this appeal as to whether when a specific date of giving effect to the policy has been mentioned in the Cover Note/Policy of the Insurance Policy itself, then whether the policy would be effective from the said date and time or from the date and time at which the policy was bought or purchased. He submits that in the instant case, the premium of the

comprehensive policy in respect of the offending bus was purchased by the owner of the offending bus on 26.11.2007 at 1:00 pm, and the same was to expire on the midnight of 26.11.2008. He submits that the present appellant is not disputing the date and time of the accident mentioned in the Form No.54 i.e., at 5:15 pm, on 26.11.2007. However, he submits that it was clearly mentioned in the Cover Note of the Insurance Policy that the policy would be effective from 1:00 pm of 27.11.2007 till midnight of 26.11.2008. Thus, he submits that the policy was not effective when the offending bus met with the accident. He submits that as there was a stipulation in the policy itself, to which, the insured also agreed to at the time of obtaining the policy by putting his signatures, hence, the general rule that the Insurance Policy would be effective from the date and time of purchase would not be applicable in this case. He submits that the Apex Court in a catena of judgments has made it clear that when no specific time has been stated as to when the policy was bought, it would be operative from the previous midnight of the day when the policy was bought. However, if there is specific stipulation to the contrary, giving some other date and time for policy for becoming effective, then it would be effective only from the time specifically mentioned in the policy. In support of his submissions, he has cited the following judgments:-

- i) New India Assurance Company Limited –vs- Bhagwati Devi reported 1998 6 SCC 534;
- ii) National Insurance Company Limited –vs- Jijubhai Nathuji Dabhi and Others reported in (1997) 1 SCC 66;
- iii) New India Assurance Company Limited –vs- Smt. Sita Bai and Others reported in (1999) 7 SCC 575;

iv) National Insurance Company Limited –vs- Sobina Iakai & Ors reported in (2007) 7 SCC 786 &

v) New India Insurance Company –vs- Bhagwati Devi and Ors, reported in (1998) 6 SCC 534

7. The learned counsel for the appellant submits that the Motor Accident Claims Tribunal, Dhubri erred in allowing the claim case filed by the respondents No. 1 to 4, by overlooking the settled law in this regard, therefore, he prays for allowing the instant appeal and setting aside the impugned judgment.

8. On the other hand, Mr. D. Kalita, learned counsel for the respondents No. 1 to 4 and Mr. U.C. Rabha, learned counsel or the respondent No. 5 and 6 has submitted that the trial Court has rightly awarded the compensation in the claim case filed by the respondents No. 1 to 4 in terms of the prevailing law and the same is not required to be interfered with in this appeal and they pray for dismissing the appeal.

9. It is submitted by the learned counsel for the respondents that as per Section 64VB (2) of the Insurance Act, 1938, the risk for which premium can be ascertained in advance, may be assumed not earlier from the date on which premium has been made in cash or by cheque to the insurer. He submits that in the instant case, there is no dispute that the premium for the insurance policy was paid on 26.11.2007 at 1:00 pm. He submits that there is no dispute that the accident occurred in the evening of the day when the insurance policy was bought. He submits that the policy was purchased before 1:00 pm on 26.11.2007 by paying the premium, whereas, the accident occurred after about four hours at 5:15 pm on 26.11.2007. He submits that the judgment of the Apex Court cited by the appellant has also made it clear that the Insurance Policy

would become effective from the time, which is mentioned in the policy regarding purchase of the said policy. In support of their submissions, learned counsels for the respondents have cited the following judgment: -

i) Oriental Insurance Company Limited –vs- Dharam Chand and Others reported in (2010) 15 SCC 141

10. Mr. U.C. Rabha, learned counsel for the respondents No. 5 and 6 has also submitted that when the policy was purchased on 26.11.2007 at 1:00 pm, providing for stipulation for making the policy effective from the subsequent date i.e., 27.11.2007, would be against the public policy as well as legislative policy contained in the Motor Vehicle Act since the Motor Vehicle Act, 1988 is a beneficial legislation providing for relief to the persons, who suffer due to motor vehicular accidents.

11. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by learned counsel for both sides in support of their respective submissions.

12. The sole bone of contention, in this appeal, is the question as to whether the Insurance Policy would be effective from the time and date on which, it was bought or whether it would be effective on a future date stipulated in the policy.

13. In the instant case, the Insurance Policy was bought on 26.11.2007, and its Cover Note was signed and sealed by the authorized signatory of the Insurance Company as well as it was issued on 26.11.2007 at 1:00 pm. It also appears that the accident in which the husband of the claimant No.1 late Lakhikant Roy @ Laxmi Kanta Roy expired occurred on the same date i.e., 26.11.2007, at about 5:15 pm. However, in the proposal from Cover Note, it has

been stated that policy would be effective from 1:00 pm of 27.11.2007 till midnight of 26.11.2008.

14. In this regard, it appears that the Motor Accident Claims Tribunal while making the appellant liable to pay compensation to the claimants, took into consideration rulings of the Apex Court cited by the claimants' counsel. Almost same citations are referred by the learned counsel for the parties in this appeal also.

15. If we go through the judgments of the Apex Court in the cases which were cited by learned counsel for the Insurance Company as indicated in paragraph No.6 of this judgment, it appears that in all the cases cited by the learned counsel for the appellant, the accident had occurred prior to the time at which the Insurance Policy was bought. However, in the instant case, the accident had occurred almost four hours after purchase and issuance of the Insurance Policy. Hence, the facts of the instant case are distinguishable from the facts of the cases cited by the learned counsel for the appellant.

16. In all the cases cited by the learned counsel for the parties, the Insurance Policy was held to be effective from the date and time at which they were bought.

17. The judgment of the Apex Court in the case of "*Oriental Insurance Company Limited -vs- Dharam Chand and Others*" (supra), the principle of law that the Insurance Policy commences strictly in terms of Section 64 VB(2) of the Insurance Act, 1938 was recognized. Further, putting a stipulation in the Insurance Policy, which is in all cases a standard form contract prepared by the Insurance Company, against the interest of the insured as well as against the legislative policy cannot be used for escaping liability by the Insurance

Company. More so, when same also appears to be against the public policy of giving protective umbrella of insurance cover to a third party, who is not a party to the contract of insurance. Moreover, in terms of Section 64 VB of the Insurance Act, 1938, the liability of the insurer ought to commence from the time when the payable premium against the Insurance Policy has been received by the Insurance Company.

18. In the light of the discussions made and reasons stated in the foregoing paragraphs, this Court does not find any merit in this appeal and accordingly, this appeal is dismissed.

19. The appellant Insurance Company shall pay the compensation which is due to the claimants in terms of the impugned judgment and award within a period of 6 (six) weeks of the date of this order.

20. Send back the records of the MAC Appeal to the concerned tribunal along with a copy of this judgment.

JUDGE

Comparing Assistant