GAHC010015302017

2026:GAU-AS:5379

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MACApp./95/2017

The Oriental Insurance Co. Ltd.,
A Co. Registered Under The Companies Act 1956, Represented By Its Regional Manager, Ulubari, Guwahati 7,
District-Kamrup, Assam.

.....Appellant

-Versus-

1. Mrs Sushila Devi and 8 Ors.
   W/o Late Subhash Ch. Yadav.,

2. Miss Sital Kumari,
   D/o Late Subhash Ch. Yadav.

3. Miss Kajal Kumari,
   D/o-Late Subhash Ch. Yadav.

4. Miss Puja Kumari,
   D/o Late Subhash Ch. Yadav.

5. Miss Anjali Kumari,
   D/o Late Subhash Ch. Yadav.

6. Asish Yadav,
S/o-Late Subhash Ch. Yadav.

7. Niki Kumari,
D/o Late Subhash Ch. Yadav,
All Are The R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

8. Smti Bhuboneswari Sharma,
W/o Pawan Kr. Sharma,
Village-Kalimandir,
Lachit Nagar,
Guwahati,
District-Kamrup(M), Assam.

9. Utpal Talukdar,
S/o Bashu Dev Talukdar,
Village-Batikuriha,
Barpeta, Assam.

.....Respondents

For Appellant — Mr. S.K. Goswami, Advocate.

For Respondent(s)
1. Mr. D. Mondal, Advocate.
2. Ms. N. Deka, Advocate.
3. Ms. J. Baishya, Advocate.

WITH

CO/17/2019

1. Mrs.Sushila Devi,
W/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,

P.S. Paltan Bazar,
District-Kamrup(M), Assam.

2. Miss Sital Kumari,
D/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

3. Miss Kajal Kumari,
D/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

4. Miss Puja Kumari,
D/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

5. Miss Anjali Kumari,
D/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

6. Sri Asish Yadav,
S/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,

C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

7. Miss Niki Kumari,
S/o Late Subhash Ch. Yadav,
R/o B.K. Kakoti Road,
Opposite P.W.D. Road,
C/o Abdul Karim,
P.S. Paltan Bazar,
District-Kamrup(M), Assam.

.....Cross Objectors

-Versus-

1. The Oriental Insurance Co. Ltd.,
Represented By Its Regional Manager, Ulubari, Guwahati-781007,
District-Kamrup, Assam.

2. Smt. Bhuboneswari Sarma,
W/o-Pawan Kumar Sarma,
R/o-Kalimandir,
Lachit Nagar, Guwahati-781007.(Owner of the Offending Vehicle AS-25-A-6593).

3. Sri UtpalTalukdar,
S/o-Bashu Dev Talukdar,
R/o-Village-Batikuriha,
District-Barpeta, Assam(Driver of the Vehicle Truck No. AS-25-A-6593).

……**Respondents**

For Cross Objectors — Mr. D. Mondal.

For Respondent(s)
1. Mr. S.K. Goswami, Advocate.
2. Ms. N. Deka, Advocate.
3. Ms. J. Baishya, Advocate.

Date of Hearing : **06.01.2026**
Date of Judgment : **20.04.2026**

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

[1] Heard Mr. S. K. Goswami, the learned counsel for the appellant. Also heard Mr. D. Mondal, the learned counsel for the respondent Nos. 1 to 7/claimants as well as the cross objectors. Also heard Ms. N. Deka, the learned counsel for the respondent No.8 as well as Ms. J. Baishya, the learned counsel for the respondent No.9.

[2] By this common judgment this court intends to dispose of the MAC Appeal No. 95/2017 filed by the Insurance Company, namely, Oriental Insurance Company Limited as well as the Cross Objection No. 17/2019 filed by the respondents no. 1 to 7/claimants.

[3] At the beginning of making his submissions, Mr. S. K. Goswami, the learned counsel for the appellant, has pointed out to this court that before the Motor Accident Claims Tribunal, No. 2, Kamrup (M), Guwahati in the MAC Case No. 1218/2013, the claimant No. 1 had put her left thumb impression in the claims application. Whereas, before this Court while filing *vakalatnama* in the instant MAC Appeal No.

95/2017, she has put her signatures, which is a matter of grave concern and which raises doubt regarding the identity of the claimant no.1.

[4] On this aspect, the learned counsel for the respondent Nos. 1 to 7/cross objectors has submitted that though it is true that the claimant has put her thumb impression in the claims petition, however, while giving her testimony as PW-1 before the Tribunal, she has inscribed her signatures in Hindi on the deposition form and the said signature tallies with the signature given by the claimant No. 1 in the *vakalatnama* before this Court. Hence, he submits that there is no doubt regarding the identity of claimant No. 1 in this case.

[5] The facts relevant for consideration of this MAC Appeal, in brief, are that, on 26.04.2013, at about 12.30 pm, the husband of the claimant No.1, namely Subhash Chandra Yadav was proceeding on the left side of the MRD Road, at New Guwahati under Chandmari Police Station. At that time a mini city bus bearing registration No. AS-25-A-6593 coming from Noonmati side in a rash and negligent manner knocked him down. As a result of the said accident said Subhash Chandra Yadav sustained grievous injuries and was immediately shifted to Guwahati Medical College and Hospital. However, he succumbed to his injuries. Thereafter, the claimant No.1, who is the wife of the deceased Subhash Chandra Yadav and claimant No.2 to 7 who are the children of

the deceased filed an application under Section 166 of the Motor Vehicles Act, 1988, before the Motor Accident Claims Tribunal, No.2 Kamrup (Metro) Guwahati, seeking compensation for the death of late Subhash Chandra Yadav in the aforementioned vehicular accident. The said claim case was registered as MAC Case No.1218/2013.

[6] The present appellant i.e., the Oriental Insurance Company Limited contested the claim case by filing written statement. Whereas, the driver and the owner of the offending vehicle did not appear before the Motor Accident Claims Tribunal and the claims case proceeded *ex-parte* against them.

[7] Upon pleadings of the parties the Motor Accident Claims Tribunal framed the following issues:

(i) Whether the death was caused to the victim Subhash Chandra Yadav due to involvement of vehicle bearing Registration No. AS-25-A-6593 (Tata Bus), on 26.04.2013 at about 12.30 pm, at (MRD Road) at New Guwahati, FCI?

(ii) Whether the vehicle was driven by the driver in a rash and negligent manner?

(iii) Whether the vehicle was duly insured with the insurance company?

(iv) What relief/reliefs the claimants are entitled to?

[8] During the course of the inquiry, the claimants examined three witnesses whereas the insurance company examined two defense witnesses. Ultimately, by the judgment and award dated 05.09.2016, passed in MAC Case No.1218/2013 the Motor Accident Claims Tribunal, No.2, Kamrup (Metro) decided all the issues in favor of the claimants, however, it also held that the claimant Nos.2 to 7 cannot be considered as dependent of the deceased, hence, they were not found eligible to get any compensation and only claimant No.1, who is the widow of the deceased was found to be entitled to get compensation of Rs.24,48,576/- only with an interest at the rate of 6% per annum till payment of the compensation.

[9] Mr. S.K. Goswami, the learned counsel for the appellant has submitted that the Motor Accident Claims Tribunal, No.2, Kamrup (Metro) has erred in directing the present appellant to pay compensation to the claimant No.1 without taking into consideration the fact that the policy conditions were breached by the owner of the offending vehicle, therefore, the insurance company is not liable to indemnify him for payment of compensation to the claimant No.1 due to death of her husband in the motor vehicular accident involving the offending vehicle.

[10] He submits that the Motor Accident Claims Tribunal had failed to take into consideration the clear and cogent evidence of DW-1 and DW-2 to the effect that the driver of the offending

vehicle, namely, Utpal Talukdar was not having a valid driving license on the date of the alleged accident i.e., on 26.04.2013.He submits that though, the driver was having a driving license, but it had expired on 02.10.2009 and the driving license was not renewed after the said expiry date, therefore, the driver was not having any valid driving license on the date of the alleged accident. He submits that the said fact has been established by the DWs by exhibiting the report to that effect from District Transport Officer(DTO) Nalbari, which is exhibited as Exhibit-A. He submits that the DW-1 and DW-2 were not cross-examined by the claimant's counsel before the Tribunal, therefore, the evidence adduced by DW-1 and DW-2 remain uncontroverted and same is binding on the Motor Accident Claims Tribunal. However, the Motor Accident Claims Tribunal merely on the ground that exhibit regarding validity of driving license of the driver of the offending vehicle was not exhibited by the DTO, had given a contrary view.

[11] The learned counsel for the appellant has also submitted that during the course of the inquiry before the Motor Accident Claims Tribunal, the insurance company had also filed an application for summoning the DTO, Nalbari to prove the fact that the driver was not entitled to drive the offending vehicle. However, the Motor Accident Claims Tribunal, by its order dated 14.07.2016, had rejected the said prayer mainly on the ground that the claimant did not challenge the witness of OP No.1 regarding the validity of the driving license. However, at

the same time in the impugned judgment and award, it did not rely on the testimony of DW-1 and DW-2 and rejected the plea of the insurance company regarding the lapse of the validity of the driving license held by the driver of the offending vehicle at the time of the accident.

[12] The learned counsel for the appellant has submitted that the reasoning given by the Tribunal in the paragraph No. 38 of the impugned judgment that the opposite party No.1should have examined the District Transport Officer (DTO), Nalbari to prove the authentication of the driving license is contrary to the reasoning given by the same Tribunal in its order dated 14.07.2016, wherein it had rejected the prayer of the insurance company for summoning the District Transport Officer (DTO) Nalbari to prove the driving license only on the ground that the claimant did not challenge the witnesses for opposite party No.1 (the insurance company) wherein the fact of lapse of the validity of the driving license, on the date of the accident, was affirmed and it was deposed by the DW-1 that on the date of alleged accident the validity of driving license held by driver of the offending vehicle had expired.

[13] The learned counsel for the appellant has submitted that as the witnesses for the Insurance Company, namely,DW-1 and DW-2 were not cross-examined by the claimants' side, their testimony remained uncontroverted and under such circumstances, the testimony of the such witnesses as well as

documents exhibited by them more specifically, Exhibit-A ought to have been relied upon by the Tribunal and by not doing so, it has committed illegality and the judgment of the Tribunal is, accordingly, erroneous and illegal.

[14] The learned counsel for the appellant has submitted that the driving license on the driver of the offending vehicle had expired on 02.10.2009, whereas the accident in this case had occurred on 26.04.2013 i.e., nearly about four years after the lapse of the validity of the driving license. The same ought to have been checked by the owner before allowing the said driver to continue to drive the offending vehicle and as there is a breach of condition of policy by the owner of the offending vehicle in allowing the vehicle to be driven by a driver without having a valid license for a period of almost four years after the lapse of the validity of the driving license. He submits that as there is a breach of the policy condition the appellant/ insurance company is not liable to indemnify the owner of the offending vehicle for paying the compensation to the claimants/respondents.

[15] The learned counsel for the appellant has submitted that under such circumstances even if the claimants are held to be entitled to get compensation, it is for the owner of the offending vehicle to pay such compensation. He submits that as there is a breach of policy condition, the insurance

company cannot be made liable to indemnify the owner. He submits that the insurance company under such circumstances is even not required to pay the compensation to the claimants at the first instance and, thereafter recover the same from the owner.

[16] The learned counsel for the appellant has submitted that the power to direct the insurance company to pay the compensation to the claimant even if it is not liable to indemnify the owner and, thereafter, recover the same from the owner may be exercised by the Apex Court only under its powers under Article 142 of the Constitution of India and High Court does not have any such powers to direct pay and recovery by the insurance company once it is held that the insurance company is not liable to indemnify the owner for breach of any policy conditions.

[17] In support of his submissions, the learned counsel for the appellant has cited following rulings:

i. ***"Beli Ram Vs. Rajinder Kumarand another"*** reported in "***(2020)4 SCT 221;"***

ii. ***"National Insurance Company Limited Vs. Parvathneniand Another"*** reported in "***(2009) 8 SCC 785;"***

iii. ***"The Oriental Insurance Company Limited Vs. Mohiuddin Molya & Another"*** reported in "***(2022) 3 GLT 344;"***

iv. ***"Oriental Insurance Company Limited Vs. Arati Chik @Sik and Others"*** reported in"***(2019) 3 GLT 47***."

[18] Regarding the cross objection filed by the claimants/respondent No.1 to 7 in this appeal, the learned counsel for the appellant has fairly submitted that the Motor Accident Claims Tribunal had erred in deducting 50% of the total income from the income of the deceased as personal expenses of the deceased in as much as the deceased was having more than one dependents. The learned counsel for the appellant submits that the deduction towards personal expenses of the deceased may be reduced according to the number of dependents of the deceased in light of the ruling of the Apex Court in the case of ***"National Insurance Company Limited Vs. Pranay Sethi"*** reported in "***(2017) 16 SCC 680***."

[19] He, however, submits that the Motor Accident Claims Tribunal had erred in regarding the incentive given to the disease in addition to his monthly salary as part of his salary, therefore, on that count the quantum of compensation granted to the

claimant is required to be rectified. He also submits that in this regard the PW-3, who was examined by the claimants' side, during the inquiry before the Motor Accident Claims Tribunal, has categorically stated in her cross-examination that the incentive is not a part of salary and the basic salary of the deceased was Rs.10,300/- only.

[20] On the other hand, Mr. D. Mondal, the learned counsel for the respondents/claimantsNo.1 to 7 has submitted that the Motor Accident Claims Tribunal was right in fastening the liability to pay compensation in the aforesaid motor accident claims case on the insurance company, as it had failed to prove breach of any policy condition by adducing admissible and cogent evidence.

[21] He submits that mere pleading of invalid driving license would not absolve the insurance company from the liability to indemnify the owner in case of payment of compensation to the claimants. He submits that to avoid the liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive and the time of accident. He submits that the Motor Accident Claims Tribunal was correct in holding, in paragraph No. 38 of the impugned judgment, that the

opposite party No. 1 should have examined the District Transport Officer to prove the fact that the driver of the offending vehicle was not possessing a valid driving license on the date of the alleged accident.

[22] He submits that mere fact that by order dated 14.07.2016, the Motor Accident Claims Tribunal had rejected the prayer of the insurance company to summon the District Transport Officer, Nalbari as a witness for the insurance company on the ground that the claimant did not challenge the witnesses of the OPNo.1, who were already examined, would not invalidate the reasoning given by the Tribunal in paragraph No.38 of the impugned judgment. He submits that the insurance company could have challenged the order dated 14.07.2016 passed in MAC Case No.1218/2013. However, by not doing so, they cannot take advantage of the said order even if the order itself lacks a cogent reason for rejecting the said prayer.In support of his submission, the learned counsel for respondent Nos. 1 to 7 has cited the ruling of the Apex Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and Others"*** reported in "***(2004) 3 SCC 297***." He also submits that even if for the sake of arguments, it is assumed that there was a breach of policy condition, still in view of the aforesaid judgment, the appellant insurance company is liable to pay the compensation to the claimants at

the first instance and thereafter, it may recover the same from the owner.

[23] The learned counsel for the respondent/claimant has submitted that the Tribunal has also erred in deducting 50% of the total income of the deceased for the personal expenses of the deceased in violation of the guidelines laid down by the Apex Court in the case of ***Pranay Sethi (Supra).*** He submits that during the cross examination of PW-1, Sushila Devi, she has categorically stated that her deceased husband left five daughters and one son and her eldest daughter on the date of deposition by the PW-1 (i.e., 02.06.2015) was of 19 years of age only which itself indicates that all the sons and daughters of the deceased were minor on the date of the alleged accident. As such, he submits that the deduction towards personal expenses of the deceased from the total income of the deceased ought to have been $1/5^{th}$ instead of 50% of the income of the deceased.

[24] The learned counsel for respondent Nos. 1 to 7 has also submitted that as is apparent from the testimony of PW-1 that all the children of the deceased were minors at the time of the accident when their father died. They were dependent on the deceased and as such, they are also entitled to a compensation against the head loss of parental consortium. In support of submission, the learned counsel for respondent No. 1 to 7 has cited the following rulings.

1) ***"Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others"*** reported in "(***2018)18 SCC 130***;"

2) ***"United India Insurance Company Limited Vs. Satinder Kaur and Others"*** reported in "***(2021) 11 SCC 780***."

[25] The learned counsel for respondents also cited the ruling of the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi"*** reported in ***(2017) 16 SCC 680*** in support of his submissions. He submits that the compensation granted to the claimants only by the Motor Accident Claims Tribunal may be enhanced, accordingly.

[26] On the other hand, Ms. N. Deka, the learned counsel for the respondent No.8 as well as Ms. J. Baishya, the learned counsel for the respondent No.9 have submitted that the Motor Accident Claims Tribunal, in the paragraph No.38 of the impugned judgment, has correctly discarded the defense of invalid license taken by the insurance company, as it has failed to prove the same by adducing admissible and reliable evidence. They submit that the Motor Accident Claims Tribunal was correct in holding that the validity of driving license could have been proved only by the District Transport Officer (DTO), Nalbari and though, the report of the investigator, which was exhibited by the DW-1 has a mention about lapse of the

validity. However, the said fact was stated on the basis of report of the DTO whereas the DTO himself was not examined by the insurance company. Therefore, they submit that the insurance company have failed to prove the defense of invalidity of driving license of the driver of the offending vehicle on the date of accident. In support of their submission, they have cited the following rulings of the Apex Court:

1) ***"National Insurance Company Limited Vs. Swaran Singh and Others"*** reported in "***(2004) 3 SCC 297***;"

2) ***"General Insurance Company Limited Vs. Geeta Devi and Others"*** reported in "***(2024) 13 SCC 755***;"

3) ***"Rishi Pal Singh vs. New India Assurance Company Limited and others***, reported in "***2022 live law (SC) 646***."

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

[28] First of all, let us deal with the contention raised by the learned counsel for the appellant regarding the identity of the claimant No. 1. Though, no such contention was raised before the Motor Accident Claims Tribunal, it appears from records

that in the claims petition filed by the claimants before the Motor Accident Claims Tribunal, the claimant No.1 has put her thumb impression of right hand, whereas in the *vakalatnama* filed before this Court in the instant appeal, the claimant No. 1 has put her signatures. It also appears that before the Motor Accident Claims Tribunal also while deposing as PW-1, the claimant No. 1 has inscribed her signatures in Hindi on the deposition forms. The signatures put by the claimant No. 1, in the deposition form, before the Motor Accident Claims Tribunal as well as signatures in the *vakalatnama* in this appeal tallies. Under such circumstances, merely because her thumb impressions were taken on the claims petition cannot be the ground to doubt her identity, therefore, the contention raised regarding identity of the claimant No.1 is rejected.

[29] The appellant herein has challenged the impugned judgment mainly on the ground that the owner of the offending vehicle has violated a condition stipulated in the insurance policy regarding holding of a valid driving license by the driver of the offending vehicle. It is contended that the insurance company by adducing the evidence of PW-1 as well as exhibiting the report of the investigator, which also contains a communication from DTO regarding the fact that the validity of driving license of the driver of the offending vehicle had lapsed on the date of the accident. The said exhibit has been exhibited as Exhibit-A by the insurance company before the Motor Accident Claims Tribunal.

[30] The Apex Court while dealing with questions regarding breach of policy condition by the owner due to use of the offending vehicle by driver without a valid driving license has observed as follows in the case of ***National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297**:

> *"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.*
>
> *(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.*
>
> *(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.*

[31] From the above observations made by the Apex Court in the aforesaid judgment, it appears that mere absence or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defense available to the insurer to avoid liability against either the insured or the third party. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly

licensed driver or one who was not disqualified to drive at the relevant time. The insurance company with a view to avoid the liability must not only establish the available defenses in the said proceeding, but must also establish breach on the part of the owner of the vehicle. It is also a settled law that the breach which has been pleaded by the insurance company for avoiding its liability towards the insured must be the breach so fundamental as found to have contributed to the cause of the accident.

[32] To put it simply, it is for the insurance company to prove the facts of breach of any policy condition by the insured in order to avoid its liability of indemnifying the insured for payment of any compensation to any claimant in the motor accident claims case.

[33] In the instant case, it appears that the Motor Accident Claims Tribunal has held that the testimony of DW-1 and DW-2 is not sufficient to prove the fact that the driving license of the driver of the offending vehicle was lapsed. It was observed by the Tribunal that to prove the said fact, the examination of concerned District Transport Officer, i.e., DTO, Nalbari was necessary.

[34] This Court finds no infirmity or error in the aforesaid reasoning of the Motor Accident Claims Tribunal for discarding the testimony of DW-1 and DW-2 as regards the fact of proving

the lapse of validity of the driving license of the driver of the offending vehicle. Merely because by its order dated 14.07.2016, the Motor Accident Claims Tribunal disallowed the prayer of the insurance company to examine to summon the DTO, Nalbari as a witness cannot be a reason to find fault with the reasoning of the Motor Accident Claims Tribunal given in paragraph No. 38 of the impugned judgment.

[35] The Insurance company could have challenged the order dated 14.07.2016 if it was not satisfied with the said order. Nowhere in the said order, it was observed by the Motor Accident Claims Tribunal that the testimony of DW-1 and DW-2 regarding invalidity of the driving license would be relied upon by the Motor Accident Claims Tribunal while passing the final judgment or that the said testimony is sufficient to prove the said fact.

[36] Apparently, it appears that the reasoning of the Motor Accident Claims Tribunal in discarding the prayer of the insurance company for summoning the DTO, Nalbari in order dated 14.07.2016 was a fallacious reasoning. However, that cannot be a reason or that cannot stop the Motor Accident Claims Tribunal in taking a correct decision while disposing of the MAC Case No.1218/2013 by the impugned judgment. This Court is of considered opinion that the reasoning of the Motor Accident Claims Tribunal in paragraph No. 38 of the impugned judgment, whereby it discarded the testimony of DW-1

regarding the fact of lapse of validity of driving license of the driver of the offending vehicle, cannot be regarded as perverse.

[37] This Court is of considered opinion that the insurance company has failed to establish the breach of policy condition by the insured by adducing admissible and cogent evidence. Accordingly, this Court is of the considered opinion that the reasoning made by the Motor Accident Claims Tribunal in paragraph No. 38 of the impugned judgment and award, cannot be faulted with and the insurance company cannot be absolved of its liability to indemnify the owner for the compensation to be paid to the claimants for death of their husband/father in the accident which occurred on 26.04.2013.

[38] The appeal filed by the insurance company is, therefore, devoid of any merit and accordingly, dismissed.

[39] As regards the cross-objection filed by the respondents/claimant Nos. 1 to 7, it appears that while computing the annual income of the deceased, the Motor Accident Claims Tribunal has, in paragraph No. 31 of the impugned judgment and award in the Court, deducted 50% of the income of the deceased towards his personal and living expenses.

[40] If we go through the testimony of PW-1 (the claimant No.1), it appears that she has categorically stated, during her cross-

examination, that the deceased left behind five daughters and one son and the eldest daughter, at the date of deposition by PW-1,wasof 19 years of age. It appears that the PW-1 was cross-examined by the counsel for insurance company on 26.04.2015, whereas the accident in question had occurred on 26.04.2013 i.e., two years prior to recording of deposition of PW-1 in the above mentioned claims case. It thus become clear that on the date of accident, all the children of the deceased were minor and, therefore, there is no doubt that he left behind seven dependents at the time of his death. The Apex Court in the case of ***Sarla Varma (Supra)*** and ***Pranay Sethi (Supra)*** has held that where deceased has left more than six numbers of defendants at the time of his death, the deduction towards personal and living expenses of the deceased has to be one fifth of his income. As such the Tribunal has erred in deducting the 50% amount from the income of the deceased against personal and living expenses.

[41] As regards, the computation of the income of the deceased, the Motor Accident Claims Tribunal took the gross salary of the deceased to be ₹23,388/-, on the basis of the salary slip for the month of March 2013[Ext. 3(11)]. It is pertinent to mention here in that the month of March 2013 was the last month before the accident, for which the deceased got his full salary, as in the next month itself, i.e., on 26th April, the accident took place.

[42] It also appears that the Claimant No.1 has exhibited total 11 salary slips of the deceased as Exhibit- 3(1) to Exhibit- 3(11) and the gross earnings and net earnings of the deceased in every salary slip appears to be different. It also appears that to the gross earning of the deceased, incentive earning under the heads: labour OT wages and labour incentive and sometime labour OT incentive are added.

[43] In his cross-examination, the PW-2 has deposed that he worked with the deceased as a colleague in the same capacity and his basic salary is ₹24,860/-. He has also deposed that they used to get incentive on crossing the limit of carrying 105 bags. He has also stated that incentive vary from day to day.

[44] The Apex Court, in the case of "***Kavita Devi and others versus Sunil Kumar And another" [2025 INSC 938]*** has held that the question as to whether allowance can be regarded as a component of salary or not is dependent on the fact that such allowances were regularly received by the deceased and used for family's benefit. In the instant case, the evidence of PW-2 and PW-3 shows that receipt of incentive by the deceased was dependent on carrying more than 105 bags and if one carries only 105 bags, he may not get any incentive.

[45] On perusal of the pay-slip for the month of November 2012, which is exhibited as Exhibit- 3(2), it appears that, in that

month the incentive earning of the deceased was only ₹2432/-. Whereas, for other months, this amount was different. Thus, there is no fixed amount which can be taken as regular monthly incentive earnings of the deceased. As such, this court is of considered opinion that the Tribunal was right in taking last gross salary minus incentive received by the deceased as the basis for computation of his earnings for the purpose of awarding just compensation to his dependents.

[46] Accordingly, taking the last full salary of the deceased i.e., for the month of March 2013 which included allowances at Rs. 23,388/- as the monthly income of the deceased, the annual income of the deceased comes at Rs. 2,80,686/-. As was done by the Motor Accidents Claims Tribunal,10% of the income of the deceased is deducted towards income tax and as such the actual annual income of the deceased was computed at Rs. 2,52,591/-(Rs. 2,80,656/- minus Rs. 28,065/-).Thereafter, as was correctly done by the Motor Accident Claims Tribunal in paragraph No. 29 of the impugned judgment, after adding 30% of the income of the deceased towards his future prospects, the annual income of the deceased comes at Rs. 3,28,368/-.

[47] Thereafter, as deduction against the personal and living expenses of the deceased has to be only one fifth of his total income, the one fifth of the total income i.e., Rs. 65,673/-is deducted from Rs. 3,28,368/-. The total income of the

deceased comes at Rs. 2,62,695/- only. Thereafter, multiplying the said amount with the multiplier of 14, the loss of dependency comes at **Rs. 36,77,730/-.**

[48] The Apex Court has while considering the compensation to be paid against the conventional heads in the Motor Accident Claims Tribunal, observed in the case of ***Pranay Sethi (Supra)*** as follows:

> *"The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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.*

> *The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.*

[49] From the above, it appears that the reasonable figures on conventional head namely loss of estate, loss of consortium and loss of funeral expenses should be Rs.15,000/- ,Rs.40,000/- and Rs.15,000/- respectively.

[50] In the case of ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others (Supra),*** the Apex Court has observed that in legal parlance, the word consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. Spousal consortium is generally defined as right pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of company, society, cooperation, affection and aid of other in every conjugal relation. Similarly parental consortium is granted to child upon premature death of parent for loss of parental aid, protection, affection, society, discipline, guidance and training.

[51] In the instant case as discussed herein above, all the six children of the diseased were dependent on him along with his wife as such all of them also are invited to get compensation against loss of parental consortium. Hence, by applying the principle of awarding compensation under convention heads as laid down in the case of ***Pranay Sethi (Supra),***the funeral expenses is reduced from Rs.25,000/- to Rs. 15,000/-, loss of estate is reduced from Rs. 25,000/- to Rs.15,000/- and each of the dependents is awarded an amount of Rs.40,000/- each against loss of spousal consortium (for claimantNo.1) and loss of parental consortium (for claimant Nos.2 to 7). Thus, an amount of Rs. 2,80,000/- is awarded to the claimants against loss of consortium on death of their husband/father.

[52] Thus, if with the total amount towards loss of dependencyassessedatRs.36,77,730/- an addition of Rs. 15,000/- towards funeral expense and further addition of Rs.15,000/- towards loss of estate as well as an addition of Rs.2,80,000/- towards loss of consortium of the claimants is made, it would bring the total amount of compensation payable to the claimants at **Rs. 39,87,730/-**.

[53] The aforesaid awarded amount shall carry an interest at the rate of 7.5 % per annum from the date of filing of the claim petition till its realization.

[54] The awarded amount is to be apportioned in to seven parts and each claimant will get one part therefrom. Out of their respective shares of each of the minor dependents, an amount of Rs. 3,00,000/- shall have to be kept in fixed deposit in any nationalized bank till the date of attainment of age of maturity by the said minor claimants. As regards the claimants who have already attained the age of maturity, their respective shares may be disbursed to them immediately.

[55] The awarded compensation may be deposited before the concerned Motor Accident Claims Tribunal by the appellant within a period of six weeks from the date of this judgment. Thereafter, same shall be disbursed in the manner as indicated herein above.

[56] The instant appeal and the cross objection are accordingly decided.

[57] Send back the records of MAC Case No. 1218/2013 to the Motor Accident Claims Tribunal, No. 2, Kamrup (M), Guwahati along with a copy of this judgment.

JUDGE

Comparing Assistant