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2026:GAU-AS:12738

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

Case No. : MACApp./526/2025

ORIENTAL INSURANCE COMPANY LTD
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI-781007 REP. BY THE MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI-781007.

VERSUS

MANIKA MANDAL BISWAS AND 4 ORS
W/O. LT. PORITOSH BISWAS

3:NIKITA BISWAS
D/O. LT. PORITOSH BISWAS
ALL ARE R/O. VILL.- SONARI GAON
P/O. DONGIBIL
P/S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784161

4:AJOY KUMAR BISWAS
S/O. NIKHIL BISWAS
R/O. VILL.- SONARIGAON
KEWAMORA
P/O. DONGIBIL
P/S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784161

5:SIMANTA DAS
S/O. SRI ANIRAM DAS
R/O. VILL.- KEYAMORA

P/O. AND P/S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : MS. C MOZUMDAR, MS. R D MOZUMDAR,MR. S P SHARMA

Advocate for the Respondent : MR H DAS, MS. S DUTTA,MR. P GOGOI

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellant(s) : Ms. R.D. Mozumdar.

Advocate(s) for the Respondent(s) : Mr. H. Das.

Date on which judgment is reserved : 27.08.2026.
Date of pronouncement of judgment : 03.09.2026.
Whether the pronouncement is of the operative part of the judgment? : YES.
Whether the full judgment has been pronounced? : YES.

JUDGMENT AND ORDER (CAV)

Heard Ms. R.D. Mozumdar, the learned counsel representing the appellant Insurance Company as well as Mr. H. Das, the learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 19.08.2024 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M) Guwahati in MAC Case No.2549/2019.

3. The present respondents filed the claim petition before the Tribunal for the injuries sustained by Sri Poritosh Biswas in a motor accident that took place on 13.03.2019. He was travelling in a motorcycle bearing Registration No.AS-07-M-1301 as a pillion rider. The motorcycle was driven by Sri Srimanta Das.

4. At the end of the proceeding, the Tribunal held that the driver of the said motorcycle did not have a valid driving licence though there was a valid Insurance Policy. The Tribunal held that failure to have a valid driving licence is a violation of Insurance Policy. The Tribunal accordingly directed the

Insurance Company to pay the compensation and to recover the same from the owner of the motorcycle.

5. The Insurance Company is aggrieved by the aforesaid order and therefore filed the present appeal.

6. On the basis of a judgment passed by this Court in MAC Appeal No.55/2014, Ms. Mozumdar has submitted that this Court has already held that the Motor Accident Claims Tribunal cannot direct the Insurance Company to pay the compensation and subsequently to recover the same from the owner of the vehicle. Ms. Mozumdar has submitted that this power to pay and recovery can be done by the Hon'ble Supreme Court in its extra-ordinary jurisdiction under Article 142 of the Constitution of India.

7. Ms. Mozumdar, therefore, submits that the Tribunal should have asked the owner of the motorcycle to pay the compensation instead of directing pay and recovery proceeding.

8. *Per contra*, Mr. Das has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *K. Nagendra v. New India Insurance Co. Ltd. and Others*, reported in *2025 SCC OnLine SC 2297*. Paragraphs 9 and 10 of the said judgment are quoted as under:

> "**9.** The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.
>
> **10.** At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim *vis-à-vis* the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference."

9. Mr. Das has further relied upon another judgment of the Hon'ble Supreme Court that was delivered in *Parminder Singh v. New India Assurance Co. Ltd.*, *(2019) 7 SCC 217*. Paragraph 7.1 of the said judgment is quoted as under:

> "**7.1.** This Court in *Shamanna* v. *Oriental Insurance Co. Ltd.* [*Shamanna* v. *Oriental Insurance Co. Ltd.*, (2018) 9 SCC 650 : (2018) 4 SCC (Civ) 561 : (2019) 1 SCC (Cri) 863] , held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the

owner of the offending vehicle."

10. I have considered the submissions made by the learned counsels of both sides.

11. In *Parminder Singh* (supra), the Hon'ble Supreme Court has referred to its own judgment passed in *Shamanna* v. *Oriental Insurance Co. Ltd.* [*Shamanna* v. *Oriental Insurance Co. Ltd.*, (2018) 9 SCC 650, and has held that when the driver of the offending vehicle does not have a valid driving licence, the principle of pay and recovery can be ordered to direct the Insurance Company to first pay compensation to the victim and then to recover the same from the owner of the offending vehicle.

12. In MAC Appeal No.55/2014, this Court had expressed the aforesaid view on the basis of a judgment of the Hon'ble Supreme that was delivered in *National Insurance Company Limited v. Baljit Kaur & Ors.*, reported in *(2004) 2 SCC 1*.

13. But *Parminder Singh* (supra) is a judgment that is reported in *(2019) 7 SCC 2017*. *K. Nagendra (supra)*, was also reported in *2025 SCC OnLine SC 2297*. These two judgments are passed long after *Baljit Kaur* (supra). Therefore, this Court has decided to follow the ratios laid down in *Parminder Singh* (supra) and *K. Nagendra* (supra).

14. Following those two judgments, this Court is of the opinion that this appeal has no merit at all and accordingly, the appeal stands dismissed and disposed of.

The Tribunal records shall be returned.

JUDGE

Comparing Assistant