

GAHC010036022023



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

Case No. : MACApp./235/2023

ICICI LOMBARD INSURANCE COMPANY LTD .
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT ICICI BANK
TOWERS, BANDRA KURLA COMPLEX, MUMBAI 400051 ITS ZONAL OFFICE
AT APEEJAY HOUSE, 15 PARK STREET, 7TH FLOOR. KOLKATA 700016 AND
A BRANCH OFFICE AT KAMAKHYA TOWER 3RD FLOOR, OFFICE NO. 305
AND 305 G S ROAD, GUWAHATI 781005, ASSAM

VERSUS

PARUL TALUKDAR AND 3 ORS
W/O LATE DINESH TALUKDAR, RESIDENT OF VILLAGE BELTOLA TINAILI,
PS BASISTHA, DIST KAMRUP M ASSAM 781028

2:MISS GEETANJALI TALUKDAR

D/O LATE DINESH TALUKDAR

RESIDENT OF VILLAGE BELTOLA TINAILI
PS BASISTHA
DIST KAMRUP M ASSAM 781028

3:SRI NABAJIT SARMA
S/O LATE PRAFULLA SARMAH

RESIDENT OF VILLAGE BARNARDDI
PS BARNARDDI
PS BELSWAR
DIST NALBARI
ASSAM 781304

4:SAFIKUR RAHMAN
S/O MD. AZIZUR RAHMAN

RESIDENT OF VILLAGE CHURCHURI

PO BARMARDDI
PS BELSWAR
DIST NALBARI
ASSAM 78130

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : MR A BRAHMA

Linked Case : MACApp./223/2023

PARUL TALUKDAR AND ANR.
W/O LATE DINESH TALUKDAR

RESIDENT OF VILLAGE BELTOLA TINIALI
PS BASISTHA
DIST KAMRUPM ASSAM 781028

2: MISS GEETANJALI TALUKDAR

D/O LATE DINESH TALUKDAR

RESIDENT OF VILLAGE BELTOLA TINIALI
PS BASISTHA
DIST KAMRUPM ASSAM 781028
VERSUS

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD. AND 2 ORS.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT ICICI BANK
TOWERS
BANDRA KURLA COMPLEX
MUMBAI 400051
ITS ZONAL OFFICE AT APPEJAY HOUSE
15 PARK STREET
7TH FLOOR
KOLKATA 700016 AND A BRANCH OFFICE AT KAMAKHYA TOWER 3RD
FLOOR
OFFICE NO. 305 AND 306
G.S ROAD
GUWAHATI 781005

ASSAM

2:SRI NABAJIT SARMA
S/O LATE PRAFULLA SARMAH

RESIDENT OF VILLAGE BARNARDDI
PO BARNARDDI
PS BELSWAR
DIST NALBARI
ASSAM
781304
3:SAFIKUR RAHMAN

S/O MD. AZIZUR RAHMAN

RESIDENT OF VILLAGE CHURCHURI
P BARMARDDI
PS BELSWAR
DIST NALBARI
ASSAM
781304

Advocate for : MR. A LAL

Advocate for : MR. R GOSWAMI (r-1) appearing for ICICI LOMBARD GENERAL
INSURANCE COMPANY LTD. AND 2 ORS.

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

Date of Hearing : 02.04.2024.

Date of Judgment: 19.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. Goswami, learned counsel representing the appellant/respondent as well as Mr. A. Lal, learned counsel appearing for the respondent(s)/ appellant(s).

2. This is a common judgment for two appeals arising out of the same judgment dated 07.11.2022 passed by the Motor Accident Claims Tribunal No.1, Kamrup (M), Guwahati in MAC Case No.2151/2015.

3. On 23.06.2015 at about 11.50 P.M., the car WaganR bearing Registration No. AS-01/AV-0386 was hit by a Pickup Van bearing Registration No.AS-25-AC-7687. As a result of the accident, driver of the WaganR car died.
4. On the basis of the said accident, Dispur P.S. Case No.1490/2015 was registered.
5. The wife and daughter of the deceased filed a claim petition before the tribunal.
6. The Insurance Company of the Pickup Van (bearing Registration No.AS-25-AC-7687) contested the case by filing a written statement. The Insurance Company expressed doubt as to the truthfulness of the allegation that the Pickup Van had hit the WaganR car.
7. On the basis of the pleadings of the parties, the trial court framed the following issues –
 - I. Whether Dinesh Talukdar died as a result of injuries sustained by him in the alleged road accident dated 23.06.2015 involving vehicle bearing Registration No.AS-25-AC-7687 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle or otherwise?
 - II. Whether the claimants are entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties the said compensation amount will be payable?
8. During the hearing of the case, the claimants examined two witnesses.
9. The contesting Insurance Company examined one witness.
10. On conclusion of the hearing, the Tribunal held that the accident was caused by the Pickup Van bearing Registration No.AS-25-AC-7687 and awarded a compensation of ₹64,35,935/- along with interest at the rate of 6% p.a. to be calculated from the date of filing of the claim petition. The contesting Insurance Company was directed to pay the aforesaid amount.

11. The MAC Appeal No.235/2023 has been filed on the basis of the claim of the Insurance Company that the deceased while driving the WaganR car bearing Registration No. AS-01/AV-0386, had hit the traffic rotary in front of Janata Bhawan and succumbed to his injuries. The appellant submits that the Pickup Van bearing Registration No.AS-25-AC-7687 has been implanted in this case to squeeze out compensation money.
12. The MAC Appeal No.223/2023 has been filed on the ground that the Tribunal has erroneously granted 6% interest upon the compensation amount. According to the appellant, the interest amount should have been 9% per annum.
13. I have gone through the impugned judgment. I have also heard the learned counsel of both sides at length.
14. In order to prove that while driving the WaganR car bearing Registration No. AS-01/AV-0386, the deceased late Dinesh Talukdar had hit the traffic rotary and died. The Insurance Company examined Shri Prasana Borah, the Legal Manager of the Insurance Company. This witness has stated in his evidence that local newspapers flashed the news that Dinesh Talukdar, while driving the Maruti WaganR car bearing Registration No. AS-01/AV-0386, had hit the traffic rotary in front of Janata Bhawan and died accordingly. Some newspaper cuttings were also produced by him.
15. Now, I shall take up the evidence of Shri Chandra Baruah, an eye witness who was examined by the claimant. He had seen the accident caused by the Pickup Van bearing Registration No.AS-25-AC-7687. This witness was cross-examined by the contesting Insurance Company. There is nothing in his cross-examination to disbelieve him.
16. In *Quamarul Islam v. S.K. Kanta*, 1994 Supp (3) SCC 5, the Supreme Court has held as under –

“48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the

Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act.

....."

17. So, it is proved with mere preponderance of probability that the WaganR car bearing Registration No. AS-01/AV-0386 was hit by the Pickup Van bearing Registration No. AS-25-AC-7687 and as a result of which, the driver of the WaganR car late Dinesh Talukdar died.

18. I am of the considered opinion that the learned Tribunal has correctly appreciated the evidence on record and arrived at a correct finding. The judgment of the Tribunal does not deserve to be interfered with.

19. In order to buttress his argument, Mr. Lal has relied upon a judgment of this Court that was delivered in *Puspa Maheswari v. United India Insurance Company Ltd.*, 2017 SCC OnLine Gau 740. Paragraph 17 of the judgment reads as under:

"17. The tribunal granted interest @ 7%. The claimant has also prayed for enhancement of interest placing reliance on the decision of the Apex Court in *Yeramma v. Tamil Nadu ST Corporation*, (2015) 2 SCC 764, *United India Insurance Co. Ltd. v. Abdul Matin*, 2015 (4) GLJ52, *Smt. Paravabi Goswami (Sharma) v. Nabiruddin Ahmed*, 2015 (2) GLJ 289, *Smt. Golap Lata Goswami (Sharma) v. Ajit Deka*, 2016 (4) GLJ 167. Following the principle laid down in the above decisions as well as the mandate of the Apex Court in *Narendra Singh v. Nishant Sarma and Nishant Sharma*, (2015) 14 SCC 353, where Apex Court observed as under: "15. Further, an interest at the rate of 6% per annum on the compensation was awarded by the Tribunal which was enhanced to 7.5% by the High Court. The interest rates determined by both the courts below are bad in law as per the legal principles laid down in *MCD V. Upahaar Tragedy Victims Assn.*, wherein this court has awarded interest at the rate of 9% per annum on the compensation awarded in favour of the appellants. Applying the same legal principles, we grant at the rate of 9% per annum on the compensation awarded by this court. Following the said principle interest is enhanced to 9%". I am of the view, that the claimant deserves enhancement of the rate of interest to 9%."

20. At this stage, a brief visit of Section 171 of the Motor Vehicles Act, 1988 would be fruitful. Section 171 reads as under:

"171. Award of interest where any claim is allowed. – Where any Claims Tribunal allows a claim

for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

21. Section 171 of the Motor Vehicles Act gives the power to the Tribunal to award a simple interest over the amount of compensation. The law says that the Tribunal may award compensation. It means that at the time of awarding interest over the compensation, the Tribunal has to exercise judicial mind. Normally, when a Tribunal awards an interest over the compensation amount, the Tribunal considers the prevalent Bank interest rates on deposits.

22. In *Puspa Maheswari* (supra), no ratio decidendi has been laid down. This Court is of the opinion that the learned Tribunal has correctly exercised discretion and awarded interest at the rate of 6% per annum over the compensation amount. No interference is warranted on this issue also.

23. As a result, I find both the appeals to be devoid of merit and therefore, they are dismissed.

Send back the LCR.

JUDGE

Comparing Assistant