

GAHC010002412015



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

Case No. : MACApp./258/2019

UNION OF INDIA and ANR.

REPRESENTED BY THE CHIEF ENGINEER, PROJECT VARTAK (GREF) C/O
99 APO

2: OFFICER COMMANDING

90 RCC GREF
C/O 99 AP

VERSUS

SMT NIMA LAMA and 3 ORS
W/O LATE MINGMAR LAMA, R/O CHARIDUAR, P.O and P.S. CHARIDUAR,
DIST. SONITPUR, ASSAM

2:SRI NONO LAMA

S/O LATE MINGMAR LAMA
R/O CHARIDUAR
P.O. and P.S. CHARIDUAR
DIST. SONITPUR
ASSAM.

3:SRI DOLMA LAMA
S/O LATE MINGMAR LAMA
R/O CHARIDUAR
P.O. and P.S. CHARIDUAR
DIST. SONITPUR
ASSAM.

4:SRI PEMA LAMA

S/O LATE MINGMAR LAMA
R/O CHARIDUAR

P.O. and P.S. CHARIDUAR
DIST. SONITPUR
ASSAM

Advocate for the Petitioner : C.G.C.

Advocate for the Respondent : MS B TALUKDAR (R-1 TO 4)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Ms. A. Gayan,
C.G.C.

For the Respondents: Mr. K. Bhattacharjee,
Advocate.

Date of Hearing : 21.05.2024.

Date of Judgment: 28.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Ms. A. Gayan, learned counsel representing the appellants. Also heard Mr. K. Bhattacharjee, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and award dated 10.04.2014 passed by the Motor Accident Claims Tribunal, Sonitpur in MAC Case No.311/2008.

3. On 08.01.2008, the deceased Mingmar Lama was driving a vehicle bearing Registration No.06E-66746. Suddenly, due to break fail, the vehicle fell into a 100 meter deep gorge. As a result of the accident, Mingmar Lama died.

4. The deceased Mingmar Lama was a casual employee under the Commandant of GREF. His widow filed a claim petition before the Tribunal seeking compensation.

5. The appellants contested the case by filing written statement. The appellant pleaded that an amount of ₹2,35,627/- was already paid to the claimants as compensation.

6. The appellants further pleaded that at the relevant time, the vehicle bearing Registration No.06E-66746 had skidded on the ice and that is why the incident took place. The appellants denied the plea of failure of the breaking system.

7. On the basis of the pleadings, the Tribunal framed the following issues:

I. Whether the victim Mingmar Lama died as a result of vehicular accident of the vehicle bearing Registration No.06E-66746 as alleged?

II. Whether the claimants are entitled to compensation as prayed for?

8. At the time of hearing, the Claimant No.1/Respondent No.1 Smti. Nima Lama examined herself.

9. On the basis of the evidence on record, the Tribunal awarded a compensation of ₹5,67,000/- along with interest at the rate of 9% per annum.

10. The present appeal has been filed with the plea that the aforesaid amount of ₹2,35,627/- should be deducted from the compensation granted by the Tribunal.

11. Mr. Bhattacharjee has submitted that as per the Notification No. F.No.BRDB/04(224)/2006-GE.II dated 14.01.2009 issued by the Border Roads Development Board under the Ministry of Shipping, Road Transport and Highways, ex gratia payment of ₹2,35,627/- was made and according to this Notification, the said ex gratia payment would be in addition to the Workmen's compensation as applicable as per Workmen's Compensation Act, 1923. Mr. Bhattacharjee therefore submitted that the aforesaid amount of ₹2,35,627/- is not deductible from the compensation amount awarded by the Tribunal.

12. I have considered the submissions made by the learned counsel of both sides.

13. An employee dies in a motor accident and therefore, the employer pays ex gratia money to the legal heirs of the deceased employee. Thereafter, the legal heirs of the deceased employee files a petition seeking compensation from the same employer and the Tribunal awards a compensation amount to be paid by the same employer.

13. Therefore, the employer would be liable to pay money twice for the same incident. In my considered opinion, this proposition of fact is not acceptable. Had the legal heirs of the deceased filed an application seeking compensation from the Insurance Company, then the position would have been different. But here, the same person has been made liable to pay compensation twice for the same incident.

14. Under the aforesaid circumstances, I have decided to agree that the amount of ₹2,35,627/- is liable to be deducted from the compensation granted by the Tribunal.

15. The appeal is allowed. The impugned judgment and award stands modified. The appellants shall pay the compensation granted by the Tribunal after deducting ₹2,35,627/- therefrom.

The appeal is disposed of. Send back the LCR.

JUDGE

Comparing Assistant