

GAHC010046952021



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

**Case No. : MACApp./66/2021**

SUNITA BORAH AND ANR.  
D/O LATE NOREN BORAH, R/O VILLAGE SANTIPUR, PO DERGAON, PS  
DERGAON, DIST. GOLAGHAT, ASSAM, PIN-785614

2: BITUPON BORAH  
S/O LATE NOREN BORAH  
R/O VILLAGE SANTIPUR  
PO DERGAON  
PS DERGAON  
DIST. GOLAGHAT  
ASSAM  
PIN 78561

VERSUS

PROTUL SARMA BORUAH AND ANR.  
S/O LATE MANIK SARMA BORUAH ALIAS LATE MANIK CH. BORUAH, R/O  
CHANDMARI, WARD NO. 10, PO GOLAGHAT, DIST. GOLAGHAT, ASSAM,  
PIN-785621

(OWNER AND DRIVER OF MARUTI CAR BEARING REGISTRATION NO. AS-  
05/9822)

2:NATIONAL INSURANCE COMPANY LIMITED  
HAVING ITS REGIONAL OFFICE AT LOHIA MANSION  
G.S. ROAD  
BHANGAGARH  
GUWAHATI-781005  
REP. BY THE REGIONAL MANAGER  
GUWAHATI REGIONAL OFFICE  
BHANGAGARH  
GUWAHATI-781007

(INSURER OF MARUTI CAR BEARING REGISTRATION NO. AS-05/9822)

**Advocate for the Petitioner : MR. M DUTTA**

**Advocate for the Respondent : MR. A J SAIKIA**

**PRESENT**

**THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Appellants :	Mr. M. Dutta, Advocate.
For the Respondents:	Mr. A.J. Saikia and Mr. S.J. Sarma, Advocates.
Date of Hearing :	14.05.2024.
Date of Judgment:	28.05.2024.

**JUDGMENT AND ORDER (CAV)**

Heard Mr. M. Dutta, learned counsel representing the appellants. Also heard Mr. A.J. Saikia and Mr. S.J. Sarma learned counsel appearing for the respondents.

**2.** This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and order dated 03.02.2021 passed by the Motor Accident Claims Tribunal at Golaghat in MAC Case No.74/2014.

**3.** On 18.03.2014 at about 4 P.M. late Saru Borah was standing by the side of the road in front of Rajiv Bhawan, Dergaon in order to catch a bus for coming to Golaghat. At that time, a Maruti Car bearing Registration No.AS-05-9822 coming from the side of Jorhat, knocked her down. Late Saru Borah died on the spot.

**4.** Late Saru Borah, aged about 54 years has left behind one daughter named Sunita Borah and one son named Bitupan Borah. Late Saru Borah became a widow after the death of her husband and she was earning the family pension of ₹7,155/- per month.

**5.** Her two children have filed a claim petition before the Tribunal seeking compensation.

**6.** The Insurance Company has contested the claim case by filing a written statement. The Insurance Company has pleaded that both the children of late Saru Borah have already attained majority and they were not dependent upon their mother. The Insurance Company further pleaded that the driver of the Maruti Car bearing Registration No.AS-05-9822 did not have valid driving licence at the time of the accident as it was valid up-to 18.07.2010.

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

- I. Whether there was any rash and negligent driving on the part of the driver of the vehicle bearing Registration No.AS-05-9822, at about 4 P.M. at Dergaon Town, under Dergaon Police Station, in the District of Golaghat?
- II. Whether late Saru Borah died as a result of the said accident?
- III. Whether the claimants are entitled to any compensation. If so, what would be the proper quantum and payable by whom?
- IV. Any other reliefs?

**8.** During the hearing of the claim petition, the claimants examined one witness and the Insurance Company examined two witnesses.

**9.** On the basis of the evidence on record, the Tribunal awarded a compensation of ₹1,71,669/- along with interest at the rate of 6% per annum to be calculated from the date of filing of the claim petition.

**10.** The present appeal has been filed upon the following grounds –

1. The interest over the compensation amount should have been 9% per annum.
2. Though late Saru Borah was earning a family pension of ₹7,155/-, being

a home-maker, another amount of ₹6,000/- should have been added to the said family pension amount.

3. Considering the age of the deceased to be 54 years, 10% should be added as loss of future income.
4. The Tribunal instead of deducting 1/3<sup>rd</sup> of the yearly income towards personal and living expenses, deducted 15% from the yearly income as savings.

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

**12.** According to existing Assam Government Rules, unmarried daughter continues to receive family pension. So, the claimant Miss Sunita Borah would continue to receive the family pension of ₹7,155/-. There is no loss of income.

**13.** So far as addition of ₹6,000/- per month to the income of late Saru Borah is concerned, it is not an acceptable proposition in this case because the addition of ₹6,000/- would be applicable to a woman who does not earn any family pension like late Saru Borah.

**14.** So far as dependency of Sri Bitupan Borah is concerned, according to *Smti. Sarala Verma and Ors. –vs- Delhi Transport Corporation and Anr.*, reported in (2009) 6 SCC 121, he cannot be considered to be a dependent upon his mother.

**15.** I have decided to agree with the appellants that on account of personal expenses, 1/3<sup>rd</sup> of ₹7,155/- should have been deducted.

**16.** The Insurance Company has examined Sri Prabin Gogoi, the Insurance Investigator and Sri Budhin Saikia, the Administrative Officer of National Insurance Company Limited, Golaghat Branch.

**17.** The witness Prabin Gogoi has stated in his evidence that the DTO, Golaghat had issued a letter to him stating that the driving licence of the driver of the Maruti Car bearing Registration No.AS-05-9822 did not have valid driving licence on the day of the accident. Exhibit-B is the said letter of DTO.

**18.** Prabin Gogoi was cross-examined by the claimants. I find that there is nothing therein to disbelieve him.

**19.** So, it is proved on the basis of preponderance of evidence that on the day of the accident, the driver of the Maruti Car bearing Registration No.AS-05-9822 did not have a valid driving licence.

**20.** So far as the calculation of the compensation is concerned, I am of the considered opinion that the calculation done by the Tribunal is erroneous.

**21.** The calculation should be like this –

$$₹7,155/- \times 12 = ₹85,860/-.$$

$$1/3^{\text{rd}} \text{ of Rs.85,860/- deducted} = ₹57,240/-.$$

$$₹57,240/- \times 11 = ₹6,29,640/-$$

$$\text{Funeral expenses etc.} = ₹70,000/-$$

**22.** So, the claimant Sunita Borah only would be entitled to receive ₹6,29,640 + ₹70,000 = ₹6,99,640/-.

**23.** It is proved with mere preponderance of evidence that the driver of the Maruti Car bearing Registration No.AS-05-9822 did not have valid driving licence on the date of the accident. On the basis of the dictum of *National Insurance Company Limited vs. Swaran Singh*, reported in (2004) 3 SCC 297, the Insurance Company is directed to pay the compensation to the claimant Sunita Borah. The Insurance Company shall be at liberty to recover the said money from the owner of the vehicle Maruti Car bearing Registration No.AS-05-9822 .

**24.** The appeal is allowed. The impugned judgment stands modified. The Insurance Company shall pay a compensation of ₹6,99,640/- along with interest at the rate of 6% per annum to be calculated from the date of filing of the claim petition to the claimant Sunita Borah.

The appeal is disposed of. Send back the LCR.

**JUDGE**

**Comparing Assistant**