

GAHC010019682017



undefined

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

Case No. : MACApp./183/2017

MD SAMED ALI and 3 ORS
S/O LATE INTAJ ALI

2: MRS. MONOWARA BEGUM

W/O MD. SAMED ALI

3: MISS HASIBA BEGUM

D/O MD. SAMED ALI

4: MD. MUSAHIDUR RAHMAN

S/O MD. SAMED ALI
ALL ARE R/O VILL. NO. 1 NARAMARI
P.S. DHARAMTUL
DIST. MORIGAON
ASSAM
PRESENT ADDRESS SIJUBARI
GUWAHATI
PS. HATIGAON
DIST. KAMRUP M
ASSAM
APPELLANT NOS. 3 and 4 BEING MINORS ARE REPRESENTED BY THEIR
MOTHER
APPELLANT NO.

VERSUS

NATIONAL INSURANCE CO LTD and ANR
REPRESENTED BY THE REGIONAL MANAGER, GUWAHATI REGIONAL
OFFICE, G.S. ROAD, BHANGAGARH, GUWAHATI-5

2:MD. GULJAR HUSSAIN

S/O MD. ABDUL KUDDUS
VILL. and P.S. GARUKHUTI
PIN CODE 782103
P.S. DHARAMTUL
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MS.I SARMA, MS B DEVI

Advocate for the Respondent : MR.A DUTTA R-1, MS R TADO,MR. P J BARMAN,MRS.P M DUTTA(R-1)

:::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Ms. B. Devi,
Advocate.

For the Respondent(s): Mr. P.J. Barman,
Advocate.

Date of Hearing : 11.06.2024.
Date of Judgment : 24.09.2024.

JUDGMENT AND ORDER (CAV)

Heard Ms. B. Devi, learned counsel representing the appellants as well as Mr. P.J. Barman, learned counsel appearing for the Respondent No.1.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 03.01.2017 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M), Guwahati in MAC Case No.762/2014.

3. On 19.10.2012 at about 8.30 A.M., the deceased Sharif Uddin Ahmed was driving a motorcycle bearing Registration No. AS-21-D-1871. He was going from his house at Salbari towards Naramari No.1. The deceased hit a road side tree. As a result of the said accident, the deceased and the pillion rider fell into the nearby water body and were drowned.

4. At that time, the deceased was 23 years old and was unmarried. As a carpenter he was earning Rs.3,000/- -per month.

5. His parents, sister and the brother filed a claim application before the Tribunal seeking compensation.

6. The respondent Insurance Company contested the claim application on the ground that the Insurance Policy did not cover the driver as no premium was paid to that effect. It was also averred that the premium was paid to cover the risk of the registered owner towards his personal accident only and the deceased was not the registered owner of the said motorcycle. The insurance company claimed that the claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988 and the deceased was not the victim of rash and negligent driving of any other vehicle.

7. The registered owner of the said motorcycle is Gulzar Hussain. He stated that the deceased Sarifuddin Ahmed was his relative and on the date of the accident the deceased had borrowed his motorcycle from him for some personal work.

8. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether on 29.10.2012 at about 8.30 A.M. at No.1 Naramari village under Dharamtul Police Station in the district of Morigaon, Assam the accident took place due to the driving and involvement of the vehicle No.AS-21-D 1871 (motorcycle) ?

2. Whether the deceased Sharif Uddin Ahmed, driver of the said vehicle sustained grievous injuries and thereafter died due to the accident in question?

3. Whether the claimants are entitled to get compensation if any or as prayed for? If so, from whom and to what extent?

9. During the hearing, the claimants examined two witnesses and the opposite party examined one witness.

10. On the basis of the judgment of the Hon'ble Supreme Court that was delivered in *Ningamma and Anr. v. United India Insurance Company Limited*, reported in (2009) 13 SCC 710, the Tribunal dismissed the claim petition.

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

12. In Ningamma (supra), it was held that whenever a person borrows a vehicle from someone, he steps into the shoes of the real owner of the vehicle. It is an admitted fact that the Insurance Company has claimed that the Insurance Policy was valid for the personal accident of the registered owner. Therefore, the said policy is also valid for the borrower of the vehicle because he had stepped into the shoes of the original registered owner.

13. Now, this court is of the opinion that the learned Tribunal has erroneously interpreted the judgment of the Hon'ble Supreme Court. The appellants are entitled to compensation.

14. According to the established law, the father Md. Samed Ali and the brother Md. Musahidur Rahman are not entitled to any compensation as they cannot be held as the dependent of the deceased. Only the mother and the unmarried sister are entitled to compensation.

15. In the case in hand, there is no evidence that the deceased was earning rupees three thousand as a carpenter. He was 23 years old. Considering his age, the monthly income of the deceased is notionally held to be ₹1,500/. He was unmarried.

16. The calculation will be like this –

1500 X 12	=	₹18,000/-.
50% deducted	=	₹9,000/-.
Multiplier 18 – Rs.9,000 X 18	=	₹1,62,000/-.
Funeral expenses	=	₹15,000/-.
<u>Love and affection</u>	=	<u>₹20,000/-.</u>
Total -		₹1,97,000/-.

17. Therefore, the claimants Smti. Monowara Begum and Smti. Hasiba Begum are entitled to receive an amount of ₹1,97,000/- along with interest at the rate of 6% per annum from the date of filing of this appeal. The National Insurance Company Limited/Respondent No.1 is directed to pay the said amount

to the aforesaid two claimants.

18. Accordingly, the appeal is allowed and disposed of.
LCR shall be returned.

JUDGE

Comparing Assistant