

GAHC010001382016



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

**Case No. : MACApp./563/2019**

GS- 182793 MR RUDRA BAHADUR GURUNG  
HQ 119 RCC GREF, C/O 99 APO AND PERMANENT R/O VILL. SONAIMIRI,  
P.O. LOKRA, RANGAPARA, SONITPUR, ASSAM 784102

VERSUS

SRI RAMESH GUPTA  
S/O SRI MAHAJAN GUPTA, VILL. NEW DOLABARI GUTLONG, P.O. and P.S.  
TEZPUR, DIST. SONITPUR, ASSAM.

2:UNION OF INDIA  
Represented by The Commandant  
Eastern Base Workshop (EBW)  
Tezpur  
C/O 99 APO

**Advocate for the Petitioner** : MR. D BORAH, MRSR BORAH

**Advocate for the Respondent** : MR. P SUNDI, MR H GUPTA (CGC)

Linked Case : I.A.(Civil)/2997/2023

GS- 182793 MR RUDRA BAHADUR GURUNG  
HQ 119 RCC GREF  
C/O 99 APO AND PERMANENT R/O VILL. SONAIMIRI  
P.O. LOKRA  
RANGAPARA  
SONITPUR

ASSAM 784102

VERSUS

SRI RAMESH GUPTA AND ANR  
S/O SRI MAHAJAN GUPTA  
R/O VILL. NEW DOLABARI GUTLONG  
P.O. and P.S. TEZPUR  
DIST. SONITPUR  
ASSAM.

2:UNION OF INDIA  
REPRESENTED BY THE COMMANDANT  
EASTERN BASE WORKSHOP(EBW)  
TEZPUR  
C/O 99 APO

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Advocate for : MRS. R BORAH  
Advocate for : MR. P SUNDI appearing for SRI RAMESH GUPTA AND ANR

Linked Case : I.A.(Civil)/1840/2016

GS-182793 MR. RUDRA BAHADUR GURUNG  
HQ 119 RCC GREF  
C/O 99 APO AND PERMANENT R/O VILL. SONAIMIRI  
P.O. LOKRA  
RANGAPARA  
SONITPUR  
ASSAM 784102

VERSUS

RAMESH GUPTA  
S/O SRI MAHAJAN GUPTA  
VILL. NEW DOLABARI GUTLONG  
P.O. and P.S. TEZPUR  
DIST. SONITPUR  
ASSAM.

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Advocate for : MR.D BORAH  
Advocate for : appearing for RAMESH GUPTA

Linked Case : I.A.(Civil)/3586/2019

GS- 182793 MR RUDRA BAHADUR GURUNG  
HQ 119 RCC GREF  
C/O 99 APO AND PERMANENT R/O VILL. SONAIMIRI  
P.O. LOKRA  
RANGAPARA  
SONITPUR  
ASSAM 784102

VERSUS

SRI RAMESH GUPTA  
S/O SRI MAHAJAN GUPTA  
VILL. NEW DOLABARI GUTLONG  
P.O. and P.S. TEZPUR  
DIST. SONITPUR  
ASSAM.

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Advocate for : MR. D BORAH  
Advocate for : appearing for SRI RAMESH GUPTA

**BEFORE  
HONOURABLE MR. JUSTICE BUDI HABUNG**

Date : 04-12-2024

**JUDGMENT AND ORDER (CAV)**

Heard Mrs. R. Borah, learned counsel for the appellant. I have also heard Mr. P. Sundi, learned counsel appearing on behalf of the respondent No.1 and Mr. H. Gupta, learned counsel appearing for the respondent No.2.

**2.** The appellant challenged the judgment and award dated 17.9.2015 passed by the learned Member, MACT Sonitpur at Tezpur in MAC Case No.67/2007.

**3.** The fact of the case in brief is that, the appellant is a government employee. On 30.8.2006, he was detailed for conveyance of one Shri H. B. Dhawan, SE, (E&M), FS to Tezpur University, and back. While coming back from Tezpur University, the appellant noticed that an army gypsy was approaching towards him from the opposite direction. At that moment a Rickshaw puller pulled a Rickshaw carrying passenger, in an imbalance condition. However, in order to avoid hit and collision with the army gypsy, the appellant apparently negotiated the offending vehicle to the left. However, despite of such effort made by him, the army gypsy touched the offending vehicle on the rear side. As such, the offending vehicle hit the rickshaw. Due to the impact of the offending vehicle, the Rickshaw fell down to the left of the road, and as a result, both the passenger and the rickshaw puller sustained injuries. One of the passenger of the rickshaw, Md.Muzami Hussain, sustained grievous injury, and as a result, he succumbed to his injury. Later on, the wife of the deceased Mrs. Afia Begum (claimant), filed MAC Case 27/2007.

**3.** After the accident, the claimant Ramesh Gupta filed a claim petition before the Member, MACT, Sonitpur, inter alia stating therein that on 30.8.2006 at about 9.30 AM while the claimant's son, Sri. Govinda Gupta (13 years) and Sri Dharmendra Kr. Gupta (6 years), were playing in front of the neighbours house, the offending vehicle 407, bearing No.99 C-18916, under the command of the Officer Commanding EBW (GREF) C/0 99 APO, reached Gutlong and hit the rickshaw from its back which was carrying two passengers. After hitting the Rickshaw, the offending vehicle 407 Bus, dashed against army gypsy No.AS-23/A-8590 towards right hand side. As a result, the Rickshaw puller and other two passengers were grievously injured. The claimant further stated that one of the two passengers, Md. Muzami Hussain died in the said accident. The claimant

further stated, that the Army gypsy turtle down on the left side of the road and fell down upon the son of the claimant Sri Govinda Gupta. In the said accident, his son sustained grievous injuries, fractured his leg and bleeding injury on the stomach.

**4.** The case was contested by filing written statement by the opposite party. The owner of the offending vehicle, the Union of India, represented by Officer Commanding EBW (GREF) C/0 99 APO, and the driver/appellant filed a written statement jointly, and the respondent No.2, represented by Commanding Officer, 174 Field Regiment, C/O 99 APO, filed a separate written statement.

**5.** Basing on the pleadings of the parties, the learned Tribunal framed two issues: -

*i. Whether the alleged accident took place due to rash and negligent driving of the driver of vehicle No. 407 bearing No.99 C-18916? And;*

*ii. Whether the claimant is entitled to any compensation, if yes; what will be the quantum of compensation and by which of the respondents this amount shall be paid.*

**6.** On completion of trial, the learned Tribunal, by its judgment and award dated 17.9.2015, partly allowed the petition. The learned Tribunal awarded an amount of Rs.1,50,000/- as compensation amount under different heads.

Opposite party No.3/appellant GS 182793 Mr. B. Gurung, is made liable to pay the compensation to the claimant and directed to pay the total compensation, together with simple interest @ Rs.6% P.A, from the date of presentation of the claim petition, within 60 days from the date of the said order. It is further provided, that failure to make payment of compensation within the stipulated period of 60 days, an interest @8% P.A shall be calculated on the amount of

compensation until payment.

**7.** Being aggrieved by the said judgment and award dated 17.9.2015, the appellant preferred this appeal amongst others on the following grounds: -

(i) That the learned Tribunal failed to consider the fact, even though issue No.1 is said to be decided in favour of the respondent/claimant, the offending vehicle is mentioned to be as AS-01-W-7710 (Truck), whereas, the offending vehicle in actually is the 407 Truck bearing No.99-C-18916.

(ii) That the learned Member MACT, Sonitpur, failed to take into consideration the most important fact, that the appellant was on bonafide Government duty, and as such, any fault on his part have to be compensated by the Union of India, and not by the appellant, since the issues are not discussed against the appellant personally. Further, in the same accident, involving the same offending vehicle, the learned Member, MACT, Sonitpur, in MAC Case No.27/2007, by the judgment and order dated 22.10.2009, directed to the Union of India to pay the compensation amount of Rs,4,48,000/- with interest @9% P.A, from the date of filing the claim petition to the claimants.

(iii) That the learned Tribunal failed to consider the fact, that the appellant was merely working as Driver in the GREF, and he is not financially capable of making the payment of the compensation amount to the respondent/claimant.

**8.** For the reasons stated above, the judgment and award dated 17.9.2015, passed by the Member, MACT, Sonitpur, according to the appellant, suffers from perversity of law, and it amounts to the denial of justice. Hence, prays for setting aside the judgment and award dated 17.9.2015.

**9.** The learned counsel for the appellant submits that in a similar case, in MAC Case No.27/20067 and MAC Case No.28/2007, arising out of the same

accident, involving with the same offending vehicle, under the same facts and circumstances, the learned Tribunal has directed the Union of India to pay compensation to the claimants with interest. However, in the instant case, the learned tribunal by the impugned judgment and award dated 17.9.2015, wrongly directed the appellant, who is merely the driver of the vehicle bearing No. No.99-C-18916, belonging to the Commanding Officer, Eastern Base Workshop, to pay the compensation. It is further submitted that at the time of the accident, the appellant/driver was working under the Union of India represented by C/O EVW GREF C/O 99 APO. As such, the Union of India, who is the employer of the appellant driver should have been saddled with the liability to make the payment of compensation instead of the appellant.

10. The learned counsel for the appellant further submits, that since in the said accident two offending vehicles were involved that is- vehicle No. No.99-C-18916, and army gypsy No. No.AS-23/A-8590, therefore, the compensation should be made liable to both the owners of the offending vehicles and prays for a direction for payment of compensation by the Union of India at the ratio 50:50.

11. The learned C.G.S.C. appearing for the respondents, fairly submitted that in the similar case, arising out of the same vehicular accident in MAC Case No.27/2007 (Afia Begum vs Union of India and 2 Ors), and MACV Case 28/2007 (Afia Begum vs Union of India and 2 Ors), the learned Member, MACT, Sonitpur, has granted compensation to the claimant, and directed the Union of India to pay the compensation with interest. Since the present case has also arisen out of the same accident, involving with the same offending vehicle, one belonging to the Union of India, represented by the Commanding Officer EBW (GREF) C/o 99 APO (vehicle No.99C-18916), and the another vehicle belonging to Union of

India, represented by the Commanding Officer 174, Field regiment, C/O 99 APO, the learned Tribunal has mistakenly directed the appellant, who is the driver, working under the respondent No.1, instead of directing against the owner of the vehicle; i.e the Union of India, represented by Commanding Officer, EBW (GREF) C/o 99 APO (vehicle No.99C-18916), and another vehicle belonging to the Union of India, represented by the Commanding Officer 174, Field regiment, C/O 99 APO. Hence, the learned counsel has no objection, if a direction is given to the Union of India, for payment of compensation at the ratio of 50:50 each.

12. I have heard the learned counsel for the parties. I have also considered the impugned judgment and award passed by the learned Tribunal.

13. On perusal of the record, it appears that three MACT cases were filed by three different claimants, seeking compensation arising from the same motor vehicle accident, that took place on 30.8.2006. In the two-claims petitions- MAC Case No.27/2007, and MAC Case No.28/2007 - the learned Tribunal, while granting compensation to the claimants, directed the respondents (Union of India) to pay the compensation with interest as indicated in the said orders. However, in the instant case, the learned Tribunal apparently wrongly directed the driver of the offending vehicle to pay the compensation to the claimant, as the aforementioned two cases also arose from the same accident involving the same two offending vehicles. Furthermore, the appellant driver was an employee working under the Union of India represented by the Commanding Officer, EBW (GREF), C/o 99 APO. In view of above and the reasons stated, the impugned judgment and award dated 17.9.2015, is liable to be interfered with and is hereby interfered with accordingly.

14. As a result, the impugned judgment and order dated 17.9.2015, passed by the learned Member, MACT, Sonitpur, Tezpur, in MAC 67/2007, is hereby set

aside and quashed insofar as its direction for payment of compensation by the driver is concerned. Accordingly, the Union of India, represented by the Commanding Officer, EBW (GREF), C/o 99 APO, and the Commanding Officer, 174 Field regiment, C/O 99 APO, are hereby directed to pay the compensation amount of Rs.1,50,000/- to the claimant along with simple interest at 6% per annum from the date of presentation of the claim petition, within a period of 60 days from the date of this order.

15. With the above observations and directions, the appeal is allowed to the extent as indicated above. Accordingly, the judgment and award dated 17.9.2015, passed by the learned Tribunal, stand modified as stated above. The appeal is disposed of.

16. Let the record be sent back.

**JUDGE**

**Comparing Assistant**