

GAHC010000262018



2024:GAU-AS:11087

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

Case No. : MACApp./26/2018

M/S UNITED INDIA INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD, CHENNAI 600014
WITH ONE OF ITS REGIONAL MANAGER

VERSUS

NASIRA BEGUM
R/O VILL. AMIN PATTY, P.O. AND P.S. NAGAON-782001, DIST. NAGAON,
ASSAM.

2:FARIHA IMDAD (MINOR)
R/O VILL. AMIN PATTY
P.O. AND P.S. NAGAON 782001
DIST. NAGAON
ASSAM.

3:JUNAINAH IMDAD (MINOR)
R/O VILL. AMIN PATTY
P.O. AND P.S. NAGAON 782001
DIST. NAGAON
ASSAM.

4:ON THE DEATH OF SURATNESSA HER LEGAL HEIRS
R/O VILL. AMIN PATTY
P.O. AND P.S. NAGAON 782001
DIST. NAGAON
ASSAM.

5:ALHAZ NUR HUSSAIN CHOUDHURY
R/O VILL. AMIN PATTY
P.O. AND P.S. NAGAON 782001
DIST. NAGAON

ASSAM.

7:NURUL ISLAM
SURVEY
BELTOLA
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

9:DEEPAK CHOUDHURY

S/O LATE ALHAJ NUR HUSSAIN CHOUDHURY
RESIDENT OF VILLAGE- TELIA BEBJIA (MORANGAON)
P.O. -JURIA
P.S.- JURIA
DISTTRICT- NAGAON
ASSAM PIN- 78212

Advocate for the Petitioner : MR. A AHMED, MR. S. PEGU,M CHETIA,MR. A J SAIKIA,MR. A DUTTA,MRS. P M DUTTA

Advocate for the Respondent : MD A ALI (R1-R3), MR. K BHATTACHARJEE (R1-R3),MS B TALUKDAR (R1-R3),MR. O K SHRESTHA (R1-R3),MS. S B CHOUDHURY (R4)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. A.J. Siakia,
Advocate.

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

Date of Hearing : 23.07.2024
Date of Judgment: 13.11.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.J. Saikia, learned counsel representing the appellant. 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 08.02.2017 passed by the Motor Accident Claims Tribunal, Nagaon in MAC Case No.189/2014.

3. On 06.01.2014 at about 6.30 P.M., late Imdad Hussain Choudhury @ Ashif Choudhury was travelling in a vehicle bearing Registration No.AS-01-MA-6876(Premier RIO LX) as an occupant. When the vehicle reached Rangaloo, on the National Highway No.36, the driver of the said vehicle dashed the car into a parked OIL Tanker bearing Registration No.AS-01-J-5415. It is claimed that the OIL Tanker was parked on the middle of the road without any parking lights. Because of the said accident, Imdad Hussain Choudhury @ Ashif Choudhury instantly died. It may be mentioned that another occupant of the said vehicle also lost his life in the said accident. It is claimed that because of rash and negligent driving of the OIL Tanker the accident took place. Therefore, a claim petition was filed under Section 166 of the Motor Vehicles Act.

4. The appellant Insurance Company contested the case. It claimed that at the relevant time of the occurrence, the OIL Tanker driver did not have a valid driving licence and therefore, the Insurance Company is not liable to pay any compensation.

5. On the basis of the aforesaid pleadings the Tribunal framed the following issues:

- a. Whether the claim petition is maintainable?
- b. Whether the accident occurred due to rash negligent driving of the driver of the vehicle AS-01-J-5415 (OIL Tanker) AND AS-01-MA-6876 (RIO)
- c. Whether the claimant is entitled for compensation? If so, what relief/reliefs the claimant is entitled to?
- d. To what amount the claimant is entitled to and who will be liable to pay the amount?

6. The claimant examined three witnesses. The appellant did not examine any witness.

7. On the basis of the evidence on record, the Tribunal awarded a compensation of ₹57,74,864/- to the claimant. Both the vehicles were insured by the appellant Insurance Company. However, the Tribunal held that the OIL Tanker was 70% liable and the RIO car was 30% liable. For the OIL Tanker the appellant was directed to pay ₹40,42,404.80 and for the RIO car, the Insurance Company was directed to pay ₹17,34,459.20.

8. Aggrieved by the aforesaid judgment, the appellant Insurance Company filed the present appeal. The only noticeable point that has appeared in the memorandum of appeal is that from the service record, the age of the deceased was found to be 51 years at the time of death but the Tribunal erroneously held him to be 45 years old.

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

10. From the evidence available, the Tribunal held that by parking the OIL Tanker in the middle portion of the road without any parking lights, that too in the month of

January at about 6.30 P.M., the OIL Tanker was more responsible for the accident. The Tribunal further held that the RIO car driver must have been driving the vehicle in a very high speed and therefore, he could not stop the vehicle. According to the Tribunal, if the RIO was driven in a moderate speed, the already parked OIL Tanker would have been visible to the driver and he could have stopped the vehicle before collision.

11. This Court is of the opinion that the view taken by the Tribunal is correct on the basis of the evidence of the record and the said view does not require any interference of this Court. In the written statement the appellant Insurance Company claimed that drivers of the OIL Tanker and the RIO car did not have valid driving licences. That fact was not proved at the time of hearing before the Tribunal. Even for proving the age of the deceased, no evidence was adduced by the appellant Insurance Company.

12. Under the aforesaid circumstances, this Court is of the opinion that this appeal has no merit. The appeal is dismissed and disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant