

GAHC010014572015



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

Case No. : MACApp./115/2015

THE NATIONAL INSURANCE COMPANY LIMITED
SUBSIDIARY OF GENERAL INSURANCE CORPORATION OF INDIA
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA 700071,
REPRESENTED BY THE MANAGER, GAUHATI REGIONAL OFFICE,
BHANGAGARH, GUWAHATI-781005

VERSUS

SMTI DAMAYANTI BORO and 4 ORS
W/O PARESH BORO

2:PARESH BORO

S/O UNKNOWN

3:RENUKA BORO

S/O PARESH BORO
ALL ARE R/O SILA
KARAIBARI
P.S. KAMALPUR
DIST. KAMRUP
ASSAM.

4:KASHINATH PAUL

S/O LATE K.P. PAUL
GHOSAL PARA LANE
P.O. HALISAHAR
P.S. BIJPUR
DIST. NORTH 24 PARGANAS
WEST BENGAL

PIN 743134

5:MD. SHEKH FARID

S/O MD. J. SHEKH
E-2 ESAT DOCK JUNCTION
KOLKATA-88
WEST BENGAL

Advocate for the Petitioner : MS.R D MOZUMDAR

Advocate for the Respondent : MR D MONDAL

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant: Mrs. R.D. Mozumdar,
Advocate.

For the Respondents: Mr. D. Mondal,
Advocate.

Date of Hearing: 06.06.2023.

Date of Judgment: 15.06.2023.

JUDGMENT AND ORDER (CAV)

Heard Mrs. R.D. Mozumdar, learned counsel representing the appellant as well as Mr. D. Mondal, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 11.12.2014 and order dated 07.02.2015 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup in MAC Case No.1950/2012.

3. On 30.09.2012, the deceased Rinku Boro was driving a Pulser motorcycle bearing registration No.AS-01-AR-2775. Sri Ajit Boro was riding the pillion. Both of them were going from Changsari towards Chowki Gate. When they reached near Lakhi Nagar, they were knocked down by an incoming truck bearing registration No.NL-01-K-3827 (Trailor). Because of the impact, Rinku Boro instantly died.

4. Rinku Boro was 20 years old at the time of his death and as a private service holder, he earned ₹8,000/- per month. He was unmarried and left behind his parents and a sister.

5. The mother Damayanti Boro filed a claim case for seeking compensation. The Insurance Company contested the claim case by filing written statement.

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

- I. Whether the deceased Rinku Boro died due to injury sustained in a motor vehicle accident that occurred on 30.09.2012 involving the vehicle bearing registration No.NL-01-K-3827 (Trailor)?
- II. Whether the vehicle in question was driven by the driver in a rash and negligent manner?
- III. Whether the driving licence and insurance policy were valid on the day of the accident to cover up the accident?
- IV. Whether the claimant is entitled to get any compensation?

7. During the hearing, the claimant side examined two witnesses,

namely- the claimant Damayanti Boro and the pillion rider Ajit Boro. The insurance company also examined one witness, named Tapan Kr. Chakraborty. On conclusion of hearing, the Tribunal awarded a compensation of ₹5,45,000/- to be paid by the Insurance Company.

8. The only ground of appeal taken by the Insurance Company is that the Insurance Company is not solely responsible for payment of compensation because the accident was a head on collision between two moving vehicles and therefore, part of the responsibility also goes to the other vehicle.

9. The pillion rider Ajit Boro has stated in his evidence that it was a head on collision between the motorcycle and the other vehicle. There is clear-cut evidence that it was a head on collision between the motorcycle and the Tractor.

10. From the evidence, it is established that the motorcycle had equally contributed to the accident. Therefore, the Tractor is not solely responsible for the accident. This Court is of the opinion that the Tribunal had committed error by overlooking this fact.

11. The appeal is allowed. The appellant Insurance Company is liable to pay 50% of the awarded compensation i.e ₹2,72,500/- to the claimant.

The appeal is disposed of. Send back the LCR.

JUDGE

Comparing Assistant