

GAHC010188232018



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

Case No. : MACApp./822/2018

ORIENTAL INSURANCE COMPANY LTD
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT
GUWAHATI, ULUBARI, GUWAHATI 781007 REPRESENTED BY THE ASSTT.
MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI 781007

VERSUS

SMTI SANTWANA GOSWAMI AND 4 ORS
W/O LATE PABITRA JYOTI BARUAH, R/O TARAJAN SMASHAN ROAD,
TARAJAN, DIST. JORHAT, ASSAM, PIN 785001 (FOR SELF AND ON BEHALF
OF HER MINOR CHILDREN SRI PRACHURJYA JYOTI BARUAH AND
KUMARI PRAGYA PRIYA BARUAH)

2: PARESH CH. SHARMA
S/O LATE G.C. SHARMA
R/O KENDUGURI
2 NO. BRAHMIN GAON
P.O. CHENGALI GAON
DIST. JORHAT
ASSAM
PIN 785010

3: SHRI SANTOSH GOWALA
S/O SRI CHANDRA GOWALA
R/O DULIA GAON
GUWAL BASTI
P.O. GARMUR
DIST. JORHAT
ASSAM
PIN 785107

4: SRI JADAV CH. BORDOLOI

S/O SRI G.K. BORDOLOI
R/O PULIBOR
P.O. R.R. LAB
P.S. PULIBAR
DIST. JORHAT
ASSAM
PIN 785006 (OWNER)

5:THE BRANCH MANAGER
NEW INDIA ASSURANCE CO. LTD.
SIVASAGAR BRANCH
DIST. SIVASAGAR
ASSAM
PIN 78564

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent : MR P BORTHAKUR

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

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

For the Respondents: Mr. M. Dutta,
Mr. A.J. Saikia and
Mr. D. Gogoi,
Advocates.

Date of Hearing : 26.09.2023.

Date of Judgment : 05.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Ms. R.D. Mozumdar, learned counsel representing the appellant as well as Mr. M. Dutta, Mr. A.J. Saikia and Mr. D. Gogoi, learned counsels appearing for the respondents.

- 2.** This is an appeal under Section 173 (1) of the Motor Vehicles Act, 1988 against the judgment dated 24.04.2018 passed by the learned Member, Motor Accident Claims Tribunal, Jorhat in MAC Case No.32/2011.
- 3.** On 03.01.2011 at about 5 A.M, Late Pabitra Jyoti Baruah went out of the house for a walk. When he was walking on the left side of the road, a truck bearing Registration No.AS-03 D/9161 came from behind. The truck suddenly applied brakes, as a result of which, the rear portion of the truck skidded and hit Pabitra Jyoti Baruah. He sustained serious injuries and lost his life.
- 4.** A claim application was filed before the Tribunal. The said truck was covered by an insurance policy of the appellant Oriental Insurance Company Limited.
- 5.** Oriental Insurance Company Limited contested the claim case by stating that the truck bearing Registration No.AS-03 D/9161 was actually hit by another vehicle bearing Registration No. AS-03 B/0558 from behind and that is why, the accident took place.
- 6.** Truck bearing Registration No. AS-03 B/0558 was insured by New India Assurance Company Limited. After going through the written statement of Oriental Insurance Company Limited, the Tribunal impleaded New India Assurance Company Limited, a party in the claim case.
- 7.** The New India Assurance Company Limited contested the case by filing written statement wherein they denied the claim raised by Oriental Insurance Company Limited.

8. Finally, the Tribunal held the Oriental Insurance Company Limited responsible for the accident and directed it to pay a compensation of ₹24,10,000/- (rupees twenty-four lakhs ten thousand only).

9. The present appeal has been filed on two grounds – the first ground is that the vehicle bearing Registration No. AS-03 B/0558 was equally responsible for the accident. Therefore, it's Insurance Company i.e. the New India Assurance Company Limited should have been fastened with the liability to pay a part of the compensation and the second ground is that the monthly income of the deceased was erroneously held to be ₹18,000/-.

10. I have considered the submissions made by the learned counsels of both sides.

11. The Oriental Insurance Company Limited pleaded that the vehicle bearing Registration No. AS-03 B/0558 was equally responsible for the accident as it hit the other vehicle from behind. But the Oriental Insurance Company Limited did not examine any witnesses to prove that fact. Therefore, the plea taken by the Oriental Insurance Company Limited remained not proved.

12. The deceased Pabitra Jyoti Baruah was working with the Railways and he took voluntary retirement from service. Before his retirement, he was earning a salary of ₹1,20,000/- (rupees one lakh twenty-thousand only). After his retirement, he was earning pension. The learned Tribunal assessed his income on the basis of his salary which he used to earn before his retirement. The Tribunal also relied upon a judgment of the Hon'ble Supreme Court that was delivered in *National Insurance*

Company Limited v. Pranay Sethi and Ors., reported in (2017) 16 SCC 680 for assessing the income of the deceased. I find that the learned Tribunal has correctly assessed the monthly income of the deceased.

13. Under the aforesaid premised reasons, this Court is of the opinion that the present appeal is devoid of merit and stands dismissed accordingly.

Send back the LCR.

JUDGE

Comparing Assistant