

GAHC010239332017



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

Case No. : MACApp./384/2017

SHAZINA BEGUM and 3 ORS
W/O LATE ARAB ALI

2: MD. SHAHIDUL ISLAM

16 YEARS
S/O LATE ARAB ALI

3: MD. SAFIQUUL ISLAM
14 YEARS
S/O LATE ARAB ALI

4: MISS ARZINA BEGUM
8 YEARS
D/O LATE ARAB ALI
MOTHER DELIZA BEGUM
ALL ARE R/O HOUSE NO. 4
JUMMA PATH
SATGAON AMBARI
GUWAHATI 781027
DIST. KAMRUP M
ASSAM

VERSUS

REGIONAL MANAGER NEW INDIA ASSURANCE CO. LTD and ANR
NEW INDIA ASSURANCE CO. LTD. G.S. ROAD, BHANGAGARH, GUWAHATI,
DIST. KAMRUP M, ASSAM.

2:ABDUL KHALEQUE ALI

S/O LATE TALEB ALI
R/O SATGAON
AMBARI

GUWAHATI 781027
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.K RAHMAN

Advocate for the Respondent : MR. M A SHEIKH

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. K. Rahman,
Advocate.

For the Respondent(s) : Ms. R.D. Mozumdar,
Advocate.

Date of Hearing : 18.05.2023.

Date of Judgment : 26.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. K. Rahman, learned counsel representing the appellants as well as Ms. R.D. Mozumdar, learned counsel appearing for the respondent(s) Insurance Company.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 28.03.2016 passed by the learned Member, Motor Accident Claims Tribunal No.3, Kamrup, Guwahati in MAC Case No.1135/2010.

3. On 20.02.2010, late Arab Ali was driving a Maruti Car bearing Registration No.AS-01 AA 6581. Md. Anowar Ali was a passenger in the

said vehicle. The car was going from Guwahati to Bomdila in the State of Arunachal Pradesh. Before reaching Bomdila, the car fell into a 300 meters of deep gorge. Because of the accident, Arab Ali instantly died. Anowar Ali was rescued in an injured condition.

4. The wife and other legal heirs of Arab Ali filed a claim case seeking compensation for his death. The Tribunal held that Arab Ali had borrowed the car from Anowar Ali, who is the registered owner of the vehicle and therefore, Arab Ali was not a third party as he had stepped into the shoes of the real owner. This view of the Tribunal is based on *Ningamma and Anr. v. United Indian Insurance Company Limited*, reported in (2009) 13 SCC 710. Holding the said view, the Tribunal dismissed the claim petition.

5. I have given my anxious considerations to the submissions of the learned counsel of both sides.

6. The claimants/appellants examined two witnesses including Md. Anowar Ali. This witness has stated in his cross-examination that late Arab Ali was his uncle. The witness Shazina Begum has stated in her cross-examination that the said maruti car belonged to a person called Abdul Khalek who is the elder brother of her deceased husband Arab Ali. According to Shazina Begum, her husband worked as a driver of the said vehicle.

7. In *Ningamma (supra)*, the deceased was travelling in a motorcycle, which he had borrowed from his real owner and said motorcycle had a collision with a bullock cart carrying iron sheets. Because of the said accident, he lost his life. The Tribunal awarded compensation and on appeal, the High Court allowed the appeal on the ground that there was

not tortfeasor involved in the accident and asked the claimants to refund the money.

8. The Supreme Court has held that the legal representatives of the deceased had stepped into the shoes of the owner of the motorcycle and they could not have claimed compensation under Section 163A of the Motor Vehicles Act.

9. Reverting to the case in hand, the available evidence clearly shows that Arab Ali was working as a driver of the car which belonged to his elder brother. There is no evidence in this case to prove that Arab Ali had borrowed the car from the real owner. I failed to find any reasons as to how the Tribunal had come to the conclusion that Arab Ali had borrowed the car from its real owner. This view of the Tribunal is without any evidence and therefore, such view is erroneous. A younger brother may work as an employee of his elder brother and such a proposition is not irrational.

10. Above all, one must keep in mind that the provisions of the Motor Vehicles Act relating to payment of compensation to victims of motor accidents are beneficial legislatures. The Tribunal should have a positive view rather than holding a negative view while dealing with claims cases.

11. Under the aforesaid circumstances, this Court is of the opinion that the Tribunal had erroneously oriented itself and arrived at an erroneous finding.

12. I find merit in this appeal. The appeal is allowed. The impugned judgment dated 28.03.2016 passed by the learned Member, Motor

Accident Claims Tribunal No.3, Kamrup, Guwahati in MAC Case No.1135/2010 is set aside.

12. The case is remanded to the Tribunal for passing a fresh judgment after hearing argument of both sides.

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JUDGE

Comparing Assistant