

GAHC010249952018



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

**Case No. : MACApp./1001/2018**

ORIENTAL INSURANCE COMPANY LTD  
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT  
GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI 781007 REPRESENTED BY  
THE DEPUTY MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI,  
GUWAHATI 781005

VERSUS

SRI SANJIB SARKAR AND 2 ORS  
S/O GOPAL SARKAR, R/O VILL. DAKSHIN DHARAMTUL, P.O.  
DHARAMTUL, P.S. JAGIROAD, DIST. MORIGAON, ASSAM, PIN 782412

2:MD. AFSAR ALI

S/O MD. ABDUL MALEK  
C/O BABUL KHAN  
R/O H/N-20  
DHIRENPARA ITABHATRA  
P.O. AND P.S. FATASIL AMBARI  
DIST. KAMRUP  
ASSAM  
PIN 781025 (OWNER)

3:DIPAK NATH  
S/O LATE INDRA MOHAN NATH  
R/O VILL. ADARSHAPARA  
P.O. AND P.S. DHUPDHORA  
DIST. GOALPARA  
ASSAM  
PIN 783123 (DRIVER)

**Advocate for the Petitioner : MS. R D MOZUMDAR**

**Advocate for the Respondent : MR. P K DAS**

**PRESENT**

**THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Appellant : Mr. R.D. Mozumdar,  
Advocate.  
For the Respondent(s) : Mr. T. Kalita and  
Mr. P.K. Das  
Advocates.  
Date of Hearing : 01.06.2023.  
Date of Judgment : 15.06.2023.

**JUDGMENT AND ORDER (CAV)**

Heard Mrs. R.D. Mozumdar, learned counsel representing the appellant as well as Mr. T. Kalita and Mr. P.K. Das, learned counsels appearing for the respondent.

**2.** This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 18.08.2018 passed by the learned Member, Motor Accident Claims Tribunal, Morigaon in MAC (Injury) Case No.07/2016.

**3.** On 19.06.2015 at about 9.30 A.M., the respondent/claimant was waiting by the side of the road for going to college. Suddenly, the vehicle bearing registration No.AS-01-BJ/5178 (Swift Dzire) coming from Nagaon side to Guwahati, hit the claimant from behind. He sustained grievous injuries. He had to take treatment at Guwahati Medical College

Hospital as well as other private hospitals at Guwahati and at Patna. He had incurred more than ₹4 lakh for his medical treatment. In spite of that, the claimant became 100% disabled. He used to earn ₹8,000/- per month as a skilled labourer. He was 22 years old at the time of accident. He filed the claimed petition seeking compensation of ₹25 lakhs.

**4.** The Insurance Company contested the claim petition by filing written statement. It was pleaded that Shri Dipak Nath, the driver of the Swift Dzire car having D.L. No.3060/GLP/F was authorized to drive heavy motor vehicle only.

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

- I. Whether the accident took place on 19.06.2015 at about 9.30 A.M. near Satsang Kendra at Dharamtul under Jagiroad Police Station due to rash and negligent driving on the part of the driver of the vehicle bearing registration No.AS-01-BJ/5178 (Swift Dzire)?
- II. Whether the claimant sustained injury as a result of the motor vehicle accident that took place on 19.06.2015 at about 9.30 A.M. near Satsang Kendra at Dharamtul under Jagiroad Police Station?
- III. Whether the claimant/injured is entitled to get any compensation and if so, by whom it is payable and to what extent?

**6.** The claimant examined him and one Medical Officer to prove his

case. The Insurance Company examined one witness.

**7.** On the basis of the evidence on record, the Tribunal awarded a compensation of ₹17,84,800/-.

**8.** Mrs. Mozumdar submits that the driver of the Swift Dzire car did not have a licence to drive a light motor vehicle because he had the driving licence to drive a heavy motor vehicle and therefore, the Insurance Company is not liable to pay compensation.

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

**10.** In *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir*, (2008) 8 SCC 253, the Supreme Court has held as under:

“14. In *National Insurance Co. Ltd. v. Swaran Singh* [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] this Court opined : (SCC pp. 336-37, para 89)

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', 'invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor',

'trailer' and 'transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for 'motorcycle without gear', (sic may be driving a vehicle) for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The said decision has been considered by this Court in *Kusum Rai* [(2006) 4 SCC 250 : (2006) 2 SCC (Cri) 214]. “

**11.** The Supreme Court has held that if the holder of a driving licence for light motor vehicle is found to be driving a Maxi Cab, Motor Cab or Omni Bus, for which he has no licence and in that case, evidence has to be led before the Tribunal and a decision has to be taken whether the fact of driver possessing licence of one type of vehicle, found to be driving another type of vehicle is the main or contributory cause of the accident. If on facts it is found that the accident was caused solely because of some other unforeseen or intervening causes, like mechanical failure or similar other causes having no nexus with the driver not possessing required type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of condition concerning driving licence.

**12.** In the case in hand, except the fact that the driver did not have the licence for driving LMV, no evidence regarding other unforeseen or intervening cause like mechanical failures or similar other causes having no nexus with the driver not possessing the required type of licence were led by the Insurance Company. Therefore, the Insurance Company will not be allowed to avoid its liability to pay the compensation.

**13.** Under the aforesaid premised reasons, the appeal is found to be devoid of merit and stands dismissed accordingly.

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**JUDGE**

**Comparing Assistant**