

GAHC010054552020



2024:GAU-AS:12306

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

Case No. : MACApp./132/2020

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

VERSUS

SMT. PURNIMA KUMARI and 5 ORS,
W/O LATE MAHESH KUMAR

2:KAUSHIK KUMAR
S/O LATE MAHESH KUMAR

3:BIKASH KUMAR
S/O LATE MAHESH KUMAR

4:SISHI KUMAR
MOTHER OF MAHESH KUMAR
ALL ARE R/O BONGRA
SALESULA
P.S.PALASHBARI
DIST. KAMRUP
ASSAM.

5:BASANTA DAS

S/O LT. SRI HARI CHARAN DAS
R/O MIRZA
P.S. PALASHBARI
DIST.KAMRUP
ASSAM.

6:MD. NARESH SUTRADHAR
S/O LT. RAMA SUTRADHAR
R/O SAKTIGARH
P.S. DISPUR
GUWAHATI
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MS. C MOZUMDAR, MS.R D MOZUMDAR

Advocate for the Respondent : MRS A BUJARBARUAH, MS.R BORGOHAIN(R- 1-4),MR.T
HUSSAIN(R- 1-4)

Linked Case : I.A.(Civil)/809/2020

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Advocate for : MS. C MOZUMDAR
Advocate for : appearing for SMT. PURNIMA KUMARI and 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT

Date : 05-12-2024

Heard Ms. R.D. Mozumdar, learned counsel for the appellant. I have also heard Mrs. A. Bujarbaruah, learned counsel appearing on behalf of respondent Nos. 1 to 4.

2. The present appeal has been filed under section 173 of the Motor Vehicle Act, 1988 assailing the judgment and order dated 02.7.2015, passed by the Member, MACT No.2 Kamrup in MAC Case No.1118/2012.

3. The brief fact of the case is that the respondents/claimants filed a claim petition seeking compensation of Rs.9,90,000/- from the opposite

party/appellant for the death of the late Mahesh Kumar in Motor Accident. Upon completion of the trial, by the impugned judgment and order dated 02.7.2015, the learned Tribunal directed the appellant/Insurance Company to pay the awarded amount to the claimants within 90 days from the date of the order, along with interest at the rate of 6% per annum until its realization.

4. However, at the very outset, the appellant clarified that the factum of the case is not disputed. It is submitted that the appellant is aggrieved by the quantum in the judgment dated 2.7.2015, passed by the learned Member, MACT No.2, Kamrup, in MAC Case No.1118/2012. Accordingly, the appellant preferred this appeal on the quantum of compensation amongst other on the following grounds: -

(i) That the learned Tribunal failed to consider the fact, that the appellant company adduced evidence in the case, to the effect that the driver did not have the valid and effective license. To that effect, all the relevant documents were exhibited before the Tribunal by the appellant company, but the learned Tribunal ignored the entire evidences, and directed that the appellant company will make payment of compensation.

(ii) That the owner of the vehicle, knowingly allowed the vehicle to be driven without valid rout permit. Thus, there was violation of policy condition. However, the learned Tribunal overlooked the settled proposition of law, and directed the appellant company to make the payment of compensation. The learned Tribunal failed to consider that once payment is made, it is not possible to recover the amount without any security.

(iii) That the learned Tribunal committed error in directing the appellant company to make the payment, and recover the same from the owner without

directing the owner to provide security against the payment.

(iv) That the learned Tribunal committed error of law by ignoring the basic principles as laid down by the Apex Court.

5. For the above reasons, the learned counsel for the appellant submits that the judgment dated 02.7.2015, is flawed to the extent that it imposes a liability of payment of Rs.11,68,460/- along with interest at the rate of 6% per annum as compensation to the claimants. Nevertheless, the learned counsel for the appellant has clarified at this stage that she is not pressing the other grounds raised in the appeal memo. She submits and prays that the quantum of compensation should be determined according to the law established in the case of **National Insurance Company Limited vs Pranay Sethi and Others**, reported in **(2017) 16 SCC 680**.

6. The learned counsel for the appellant further submitted that the law is clear regarding the pay and recovery: before releasing the amount to the insured owner of the vehicle, a notice must be issued to the owner, requiring him to furnish security for the entire amounts that the insurer will pay to the claimants. In support of her submission, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of the **Oriental Insurance Co. Ltd vs Shri Nanjappan and others** reported in **(2004) 13 SCC 224**. The learned counsel for the appellant also referenced the decision of this Court in the case of **I.A (Civil) 3149/2017 in MAC App 467/2017**.

7. The learned counsel for the respondents/claimants fairly submitted that the quantum of compensation requires some corrections. While conceding to the submissions made by the learned counsel for the appellant, she has no objection if the quantum of compensation is calculated and granted according to

the decision in **Pranay Sethi case (supra)**.

8. In view of the above, and as agreed upon by both learned counsel for the parties, the compensation awarded under the following heads shall be revised as follows:

Funeral expense shall be Rs.15,000/- instead of Rs.25,000/-

Consortium shall be Rs.40,000/- instead of Rs.1,00,000/-

Loss of care and guidance for minor, originally set at Rs.1,00,000/- shall be excluded as the claimants are not entitled to it.

Loss of estate shall be enhanced to Rs.15,000/- instead of Rs.5000/-

Transport of the victim's body, originally set at Rs.5000/-, shall be excluded.

9. Thus, the corrected compensation amount are as follows: -

Loss of dependency Rs.9,18,000/-

Medical expenditure Rs.15,462/-

Funeral expenses Rs.15,000/-

Consortium Rs.40,000/-

Loss of estate Rs.15,000/-

Total **Rs,10,03,462/-**

(Rupees Ten lakhs Three Thousand four hundred sixty-Two) only.

10. The appellant Insurance company is directed to pay the awarded amount of Rs.10,03,462/- to the claimants within 60 days from the date of this order. The amount shall carry interest at the rate of 6% per annum from the date of judgment until realization.

11. The appellant Insurance Company shall be at liberty to recover the awarded amount from the owner in due course. Before releasing the amount, the learned Tribunal shall issue a notice to the insured owner of the vehicle, who shall be required to furnish security for the entire amount that the insurer will pay to the claimants, in accordance with the law laid down in **Oriental Insurance Co. Ltd vs Shri Nanjappan (supra)**. The offending vehicle shall be attached as part of the security. If necessary, the Executing Court shall take assistance from the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with the law regarding the manner in which the insured owner of the vehicle shall make payment to the insurer.

12. In case there is any default, it shall be open to the Executing Court to direct the realization through the disposal of the required securities to be furnished or from any other property or properties of the owner of the vehicle.

13. The appeal is allowed to the extent indicated above, and the judgment and award of the Tribunal dated 02.7.2015 stand modified.

14. With the above observation, the appeal stands disposed of.

15. Let the record be sent back.

JUDGE

Comparing Assistant