

GAHC010112062020



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

Case No. : MACApp./199/2020

ORIENTAL INSURANCE CO LTD
HAVING ITS REGIONAL OFFICE AT GUWAHATI, ULUBARI, GUWAHATI
781007 REPRESENTED BY THE ASSTT. MANAGER, GAUHATI REGIONAL
OFFICE, ULUBARI, GUWAHATI 781007, KAMRUP (M), ASSAM.

VERSUS

SWEETY KAPOOR HUSSAIN AND 5 ORS
W/O LT. BIRUL HUSSAIN, R/O VILL. 3 NO. PUB DAGAON, P.O. AND P.S.
BOKAKHAT, DIST. GOLAGHAT, ASSAM, PIN 785612

2:SUHAIL HUSSAIN
S/O LATE BIRUL HUSSAIN
R/O VILL. 3 NO. PUB DAGAON
P.O. AND P.S. BOKAKHAT
DIST. GOLAGHAT
ASSAM
PIN 785612

3:MAIZAN BEGUM
M/O LT BIRUL HUSSAIN
R/O VILL. 3 NO. PUB DAGAON
P.O. AND P.S. BOKAKHAT
DIST. GOLAGHAT
ASSAM
PIN 785612(RESPONDENT NO. 2 IS REPRESENTED BY RESPONDENT NO. 1)

4:SURENDRA CHOUDHURY
S/O LT. K.L. CHOUDHURY
R/O BARIDUA AMARIGOG
NEAR EAST PETROL PUMP
P.O. AMERIGOG

P.S. KHANAPRA
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN 781023

5:SAHAR ALI
S/O MD. JAINUDDIN ALI
R/O VILL. BARIKATI
P.O. MATHTOLI
P.S. BOKO
DIST. KAMRUP
ASSAM
PIN 781136

6:KALU MOHAMMAD SEKH HUSSAIN
F/O LT. BIRUL HUSSAIN
R/O VILL. 3 NO. PUB DAGAON
P.O. AND P.S. BOKAKHAT
DIST. GOLAGHAT
ASSAM
PIN 7861

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent : MR. SK S N MOHAMMAD

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

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

For the Respondents: Mr. G. Jalan,
Advocate.

Date of Hearing : 29.02.2024.

Date of Judgment: 20.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Ms. R.D. Mozumdar, learned counsel representing the appellant. Also

heard Mr. G. Jalan, learned counsel representing the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and order dated 06.03.2020 passed by the Motor Accident Claims Tribunal No.3, Kamrup (M), Guwahati in MAC Case No.989/2017.
3. On 11.03.2017 at about 10.25 P.M., late Birul Hussain was coming out of the Assam Oil Petrol Pump at Bokakhat after refueling his newly purchased scooty. The said scooty was not registered nor was it insured at that time. On reaching the National Highway just in front of the Petrol Pump, the scooty driven by Birul Hussain, was hit from behind by a speeding Mahindra Bolero Pickup van bearing Registration No.AS-01-BC 5962. Birul Hussain was taken to the hospital immediately but he died on the way to the hospital.
4. A claim application was filed seeking compensation for the death of Birul Hussain.
5. The appellant Insurance Company contested the claim petition by stating that the scooty of Birul Hussain also contributed to the accident and therefore, the scooty should have been made a party in the case before the Tribunal.
6. On the basis of the pleadings, the Tribunal framed the following issues:
 - I. Whether the victim late Birul Hussain died in the alleged accident dated 11.03.2017 involving the vehicle bearing Registration No.AS-01-BC-5962 (Mahindra Pickup) and whether the said accident took place due to the rash and negligent driving of the driver of the offending vehicle?
 - II. Whether the claimant is entitled to get any compensation for the death of late Birul Hussain in the vehicular accident and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?
7. During the hearing of the petition, the claimants examined three witnesses and the Insurance Company examined one witness.

8. On the basis of the evidence on record, the Tribunal awarded a compensation of ₹53,83,744/- only along with an interest at the rate of 7.5% per annum to be calculated from the date of filing of the claim petition.
9. Being aggrieved by the aforesaid judgment, the present appeal has been filed only on one ground that the scooty of Birul Hussain had equally contributed to the accident and therefore, some amount of responsibility must be attributed to the scooty of Birul Hussain.
10. I have carefully gone through the evidence adduced by the claimants/respondents.
11. The claimants have examined one witness named Sahidur Rahman, an eye witness to the occurrence. At the relevant time of occurrence he was present near the place of occurrence and he took the injured Birul Hussain to the hospital. This witness has stated in his evidence that the vehicle bearing Registration No.AS-01-BC-5962 had hit the scooty of Birul Hussain from behind.
12. The Insurance Company has examined one witness named Nitumoni Choudhury. He was an Investigator of the appellant Insurance Company. He has stated in his evidence that after the accident, police has got the scooty of Birul Hussain examined by a Motor Vehicle Inspector (MVI) and the said officer had given a Report stating that the scooty was damaged on the front side only.
13. During cross-examination, Nitumoni Choudhury has stated that he has not submitted his Investigation Report before the Tribunal. He has further stated that the scooty and the Bolero Pickup had a head-on-collision, is based on presumption only though there is no documentary or other evidence to that effect.
14. After going through the evidence on record, I find that the learned Tribunal has correctly appreciated the evidence on record and arrived at a correct finding. I find that the scooty of late Birul Hussain did not contribute to the accident.
15. I am of the considered opinion that the impugned judgment need not be interfered with.

16. As a result, the appeal is found to be devoid of merit and stands dismissed accordingly.

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JUDGE

Comparing Assistant