

GAHC010132612022



2024:GAU-AS:7982

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

Case No. : MACApp./349/2022

THE ORIENTAL INSURANCE CO. LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, REPRESENTED
BY ITS REGIONAL MANAGER, ULUBARI, GUWAHATI 7, KAMRUP M
ASSAM

VERSUS

MRS. SARITA DEVI AND 2 ORS
D/O LATE RUDRA PRASAD SARMAH
RESIDENT OF VILLAGE AMLIGHAT, PS JAGIROAD, DIST MORIGAON,
ASSAM 782410

2:SRI NIRANJAN DEKA
S/O LATE SARU RAM DEKA
RESIDENT OF VILLAGE SINDHISAR
PS JAGIROAD
DIST MORIGAON
ASSAM
782410

3:SRI SURAJ TALUKDAR
S/O DULAN TALUKDAR
RESIDENT OF VILLAGE AMLIGHAT
PS JAGIROAD
DIST MORIGAON
ASSAM 78241

Advocate for the Petitioner : MR. S K GOSWAMI, MR. B K GOSWAMI, MR. R SHARMA

Advocate for the Respondent : MR A N IQBAL, MR J I MONDAL

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. S.K. Goswami,
Advocate.

For the Respondents : Mr. A.N. Iqbal,
Advocate.

Date of Hearing : 01.08.2024.

Date of Judgment : 16.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.K. Goswami, learned counsel representing the appellant as well as Mr. A.N. Iqbal, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.03.2022, passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M), Guwahati in MAC Case No.524 of 2017.

3. On 16.01.2025 at about 5.30 P.M., late Damayanti Devi was walking by the left hand side of the road. When she reached Amalighat under Jagiroad Police Station, one scooty bearing Registration No. AS-01- DB-2158 hit her. She sustained injuries. Ultimately, she was taken to GNRC, Guwahati for treatment.

4. As Damayanti Devi did not properly recover, she was admitted to Dispur Polyclinic and Nursing Home at Guwahati. After discharge from the said Hospital, Damayanti Devi breathed her last on 01.04.2018.

5. An FIR was lodged and the Jagiroad Police Station Case No.42/2017 was registered under Sections 279 and 338 of the Indian Penal Code.

6. The dead body of Damayanti Devi was subjected to post mortem examination and the doctors found that she had died due to cardio respiratory failure, as a result of pneumonitis.

7. A claim application was filed before the Tribunal.

8. The Insurance Company contested the said claim petition that Damayanti Devi did not die

because of the injuries sustained by her in any motor accident.

9. The Tribunal agreed with the Insurance Company that the deceased Damayanti Devi did not die because of the aforesaid motor accident. According to the Tribunal, the claimants are entitled to get the medical expenses incurred for treatment of Damayanti Devi.

10. The Tribunal ultimately directed the Insurance Company a compensation of ₹7,84,888/-.

11. Aggrieved by the aforesaid judgment, the Insurance Company has submitted that late Damayanti Devi was treated at the Dispur Polyclinic and Nursing Home at Guwahati, not for the treatment for the injuries sustained by her in the said accident. According to the Insurance Company, she was treated there for other ailments.

12. Mr. Iqbal has submitted that the Tribunal did not award any sum on account of pain and suffering.

13. I have considered the submissions made by the learned counsel of both sides.

14. After going through the materials available in the records, this Court is of the opinion that the plea taken by the Insurance Company has force in it. The claimants are entitled to receive the expenses incurred at GNRC, Guwahati only. Because there is no evidence to prove that she was treated at Dispur Polyclinic and Hospital for the injuries sustained in the accident.

15. The Insurance Company has already deposited ₹4,84,888/- in the Registry of this Court along with interest at the rate of 7.5% per annum to be calculated from the date of filing of the amended claim petition i.e. on 21.12.2018. No other sum of money shall be required to be paid by the appellant for medical expenses.

16. It is further directed that the Insurance Company shall pay an amount of ₹50,000/- along with interest at the rate of 7.5% per annum to be calculated from the date of filing of the amended claim petition i.e. on 21.12.2018 on pain and suffering head, within next 6(six) weeks.

17. Now, the claimants shall be entitled to receive ₹50,000/- only along with interest at the rate of 7.5% per annum to be calculated from the date of filing of the amended claim petition i.e. on 21.12.2018.

18. The claimants shall be allowed to withdraw the money already deposited in this Court by the appellant. Upon deposit of ₹50,000/- along with interest, the same shall also be disbursed in favour of the claimants without any rider.

19. With the aforesaid direction, the appeal stands disposed.

Send back the LCR.

JUDGE

Comparing Assistant