

GAHC010143652022



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

**Case No. : MACApp./388/2022**

MD. FAKRUL ISLAM  
S/O. MD. ABDUL SUFAN, R/O. VILL. THUMUAI, P.O. SINGARIA  
BAZAR, P.S. AND DIST. KARIMGANJ, ASSAM.

VERSUS

SRI RADHE SHYAM SAHU AND 2 ORS  
S/O. LT. ANKALU SAHU, VILL. SOLGOI TEA ESTATE, WARD NO.8,  
P.O. SALGOI, P.S. PATHERKANDI, DIST. KARIMGANJ, ASSAM,

2:THE NATIONAL INS. CO. LTD.  
REP. BY ITS DIVISIONAL MANAGER  
CLUB ROAD  
CAPITAL TRAVELS BUILDING  
P.O. AND P.S. SILCHAR  
DIST. CACHAR  
ASSAM.

3:MD. ABDUL MALIQUE  
S/O. MD. SAMS UDDIN  
VILL. HATHKHALA  
P.O. KANAI BAZAR  
P.S. PATHER KANDI  
DIST. KARIMGANJ  
ASSAM

**Advocate for the Petitioner : MR H R A CHOUDHURY**

**Advocate for the Respondent : MR. M TALUKDAR**

Linked Case : I.A.(Civil)/2081/2022

MD. FAKRUL ISLAM  
S/O. MD. ABDUL SUFAN  
R/O. VILL. THUMUAI  
P.O. SINGARIA BAZAR  
P.S. AND DIST. KARIMGANJ  
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Advocate for : MR H R A CHOUDHURY  
Advocate for : MR. M TALUKDAR appearing for SRI RADHE SHYAM  
SAHU AND 2 ORS

Linked Case : I.A.(Civil)/3026/2019

MD. FAKRUL ISLAM  
S/O. MD. ABDUL SUFAN  
R/O. VILL. THUMUAI  
P.O. SINGARIA BAZAR  
P.S. AND DIST. KARIMGANJ  
ASSAM.

VERSUS

SRI RADHE SHYAM SAHU AND 2 ORS  
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Advocate for : MR H R A CHOUDHURY  
Advocate for : MR. M TALUKDAR appearing for SRI RADHE SHYAM  
SAHU AND 2 ORS

**BEFORE  
HONOURABLE MR. JUSTICE BUDI HABUNG**

**ORDER**

**Date : 28-02-2024**

1. Heard Ms. R. Choudhury, learned counsel for the appellant. I have also heard Mr. M. Talukdar, learned counsel appearing on behalf of the respondent no. 1/claimant and Mrs. S. Roy, learned counsel appearing on behalf of respondent no. 2/ National Insurance Company. None appears on behalf of respondent no. 3, although Mr. A. H. M. R. Choudhury, learned counsel has appeared earlier on behalf of respondent no. 3.
2. This is an appeal under section 173 of the Motor Vehicles Act, 1988, filed by the appellant against the judgment and award dated 09.03.2018, in MAC case no. 708/2011 passed by the learned Member, MACT, Cacar, Silchar awarding Rs. 2,69,558/- along with interest at the rate of 6 % per annum from the date of filing of the claim application till the realization of the full amount and with a further direction to deposit the compensation amount within 30 days from the date of the order.
3. The case in brief is that on 05.11.2010, the victim, Sri. Ashish Kumar Sahu boarded the auto rickshaw bearing Registration No. AS-10C-0881 at Salgoi for going to Patherkandi to his private tutor's house, but the driver was driving the same in a rash and negligent manner and when the vehicle reached Radhapyari Bazar, it met with an accident as it capsized on the road. As a result, the victim sustained grievous injuries and was immediately shifted to Patherkandi P.H.C. wherein he was referred to Karimganj Civil Hospital, but, for his better

treatment, he was shifted to South City Hospital and admitted there as indoor patient.

4. Thereafter, the father of the victim filed the MAC case. No. 708/2011 before the MACT, Cachar, Silchar, for award of compensation of Rs. 3,95,000/- for injuries sustained by his minor son namely, Shri. Ashis Kumar Sahu due to the said motor accident that took place on 05.11.2010 at about 10 AM near Radhapyari Bazar under the jurisdiction of Patherkandi Police Station in the district of Hailakandi.

5. During the inquiry, the learned Tribunal framed five issues. They are:

“1. Whether the case is maintainable on the point of territorial jurisdiction?

2. Whether victim sustained injuries due to the motor accident that took place on 05-11-2010 at about 10 AM due to rash and negligent driving of the driver of the vehicle bearing Registration No. AS-10C-0881?

3. Whether the claimant is entitled to compensation? If so what amount is just and reasonable?

4. To what other relief/reliefs the claimant is entitled?

5. Who is liable to pay compensation to the claimant?”

On completion of the Trial, the learned Tribunal passed an order directing the respondent appellant to deposit the award compensation of Rs. 2,69,558/- only with interest there on at the rate of 6 % per annum with effect from the date of filing of the claim application till the

realization of the full. It was further directed that the amount of compensation was to be deposited within 30 days from the date of the order.

6. Aggrieved by the said judgment and award, the appellant filed an application under Order 9 Rule 13 CPC read with section 151 CPC praying for setting aside the award dated 09.03.2018, passed in MAC case no. 708/2011 on the ground that no notice or summon were served upon them. However, the said application filed by the appellant was rejected by the learned Tribunal on 22.04.2019 passed in Misc Case no. 16/2018 on the ground that notice to the appellant was duly served. And since the appellant failed to contest the case even after receipt of the notice, the application under Order 9 Rule 13 CPC was rejected.

7. Aggrieved by the said judgment and award, the payment filed this MAC Appeal No. 388/2022 amongst others on the ground that:

(i) the summon was sent by registered post with acknowledgment card and the said card was returned back with illegible signature and the learned Tribunal on the basis of the said illegible signature observed that the notice was duly served upon the appellant and, accordingly, passed ex-parte order as the appellant failed to contest the proceeding. However, no notice was served upon the appellant.

(ii) that while the signature of the acknowledgment card was illegible, the learned Tribunal ought to have passed an order for fresh steps as the signature on the acknowledgment card was illegible and, could have directed the claimant to take fresh steps upon the appellant in accordance with Order V Rule 9(1) in addition to Order 5 Rule 9 (3).

8. The learned counsel for the appellant submits that the incident took place on 05.11.2010, and as per the Accident Information Report (AIR), the insurance of the appellant's vehicle bearing registration No. AS-10C-0881 was valid only upto 03.03.2010, and on the basis of the said Accident Information Report (AIR), the learned Tribunal came to the conclusion that since the order did not renew the policy after 03.03.2010 and the vehicle was not covered on the date of the accident, the learned Tribunal held the owner of the vehicle liable to pay the compensation first and to approach the learned Tribunal to claim the compensation of the insurer of the vehicle. However, the insurance policy of the vehicle of the owner was valid up to 03.03.2011, which was not being computed by the Tribunal, as the appellant was not given an opportunity to produce the Insurance Policy Certificate of the appellant. Hence, the learned counsel for the appellant prays for setting aside of the award in respect of the issue no. 5, as to who is liable to pay compensation to the claimant and direct to allow her to produce the Insurance Certificate before the Tribunal or any other documents by exhibiting the same.

9. The learned counsel for the respondent nos. 1 and 2, Mr. M. Talukdar and Mrs. S. Roy, also fairly submits that since the appellant is aggrieved with the decision in the issue no. 5, as it imposes the liability on the owner of the vehicle, the decision with regard to other issues nos. 1, 2, 3 and 4 maybe allowed to remain intact.

10. In view of the above, and considering the limited prayer of the appellant, this appeal is disposed of with a direction that the decision with regards to issue no. 5, is hereby set aside and the matter is remanded back to the learned Tribunal to re-decide the issue no. 5, and

allow the appellant to produce documents and adduce evidences on the point of policy documents and also to allow the opposite party to cross-examine on the documents so produced by the appellant. And, after giving opportunity to the parties the learned Tribunal shall decide the case as per the settled principles of law. It is made clear that the decision with regard to issue nos. 1, 2, 3 and 4 shall remain intact. The parties are directed to appear before the Tribunal on 18.04.2024. It is further made clear that the learned Tribunal shall dispose of the matter within 3 months from the date of appearance. As all the parties are duly represented no fresh notice may be issued.

11. The appeal stands disposed of.

12. Send back the LCR.

**JUDGE**

**Comparing Assistant**