

GAHC010257462017



2024:GAU-AS:12813

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

Case No. : MACApp./135/2019

UNITED INDIA INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD, CHENNAI AND
ONE OF THE REGIONAL OFFICE AT G.S. ROAD, GUWAHATI, ASSAM.

VERSUS

SMTI DHIRU BORA and ANR
W/O SRI SIVA BORA, R/O VILL. BALIDUWA BALIPARA, P.O. SILGHAT, P.S.
KALIABOR, DIST. NAGAON, ASSAM 782143

2:G .L. RESORT LTD.

G.S. ROAD
ULUBARI
GUWAHATI 78100

Advocate for the Petitioner : MR. K K BHATTA, MR. A TALUKDAR, MR. J JOHN, MS. J TALUKDAR

Advocate for the Respondent : MR. M H RAJBARBHUIYAN, MR. B CHETRI (r-1), MS. D J BORAH (r-1), MS. S RASUL, MS. D J BORAH, MR. A R TAHBILDAR, MR H GUPTA, MRS. R DEVI

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. K.K. Bhatta,
Advocate.

For the Respondents : Mr. B. Chetri,
Advocate.

Date of Hearing : 23.07.2024.
Date of Judgment : 17.12.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. K.K. Bhatta, learned counsel representing the appellant as well as Mr. B. Chetri, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 27.07.2016 passed by the learned Member, Motor Accident Claims Tribunal, Nagaon, Assam in MAC Case No.544/2012.
3. On 07.01.2011 at about 1.30 P.M., the 18 year old deceased was travelling in a Maruti Gypsy bearing Registration No.AS-05/6916. He was sitting on the back side seat of the vehicle. The vehicle was owned by G.L. Resorts Limited. It was going from the direction of Jakhlabandha towards Jorhat. When the vehicle reached G.L. Resort, the vehicle took a right turn to enter into the resort. At that time, the boy fell from the vehicle. He sustained injuries. Next day, on 08.01.2011, he died at GMCH, Guwahati. It is claimed that said accident took place because of rash and negligent driving of the driver of the vehicle.
4. The Insurance Company contested the claim petition in the Tribunal by filing a written statement. It has claimed that the driver of the said vehicle did not have a valid and effective driving licence at the time of the accident. The Insurance Company denied the fact that the accident occurred due to rash and negligent driving of the driver of the vehicle. It has denied that the deceased was 18 years old at the time of occurrence and being an employee of G.L. Resort, he used to earn a salary of ₹6,000/- per month.
5. On the basis of the pleadings, the Tribunal framed four issues. The issues are as under:
 - a. Whether the claim petition is maintainable?
 - b. Whether the accident occurred due to rash and negligent driving of the driver of the Vehicle No.AS05/6916?
 - c. Whether the claimant is entitled for compensation? If so, what relief/reliefs the claimant is entitled to?
 - d. To what amount the claimant is entitled to and whom will be liable to pay the amount?
6. During the hearing, the claimant examined herself. The Insurance Company did not examine any witness.
7. On the basis of the evidence on record, the Tribunal directed the Insurance company to pay ₹7,13,000/- along with interest at the rate of 7% per annum from the date of the passing of the judgment to the claimant. The Tribunal also directed to the Insurance Company to pay another ₹1,000/- as cost of litigation.
8. Being aggrieved by the said judgment, the Insurance Company has filed the present appeal only on a single point. It has claimed that the Insurance policy relating to the Vehicle No.AS-05/6916 was an Act policy and no additional premium was paid by the owner of the vehicle for coverage of an occupant of the vehicle. This plea was never taken up before the Tribunal. Referring to the decision of the Hon'ble Supreme Court that was rendered in the *United India Insurance company Limited, Shimla*

vs. Tilak Singh, reported in (2006) 4 SCC 404. The Insurance Company has pleaded that the insurance policy does not cover the risk of death or injury of an occupant of a car or scooter if the occupant is a gratuitous passenger.

9. I have heard the learned counsel of both sides at length.

10. A gratuitous passenger is a person who is carried in a vehicle as a favor, without being authorized or paid. The Motor Vehicles Act, 1988 does not define the term "gratuitous passenger". However, the Supreme Court has ruled that the term does not include passengers traveling in goods vehicles. The court's reasoning is that the intention of the legislature was to provide insurance coverage for the owner of the goods or their authorized representative, not for passengers.

11. G.L. Resorts Limited is the owner of the Vehicle No.AS-05/6916. The driver of the vehicle had valid driving licence. Like the deceased, the driver was also an employee of G.L. Resorts Limited.

12. The owner of the vehicle is the first party and the Insurance Company is the second party. The deceased is the third party. There is no doubt that the Act policy always covers a third party. A gypsy vehicle has 6 nos. of seats including the driver. Four seats are on the back side and two seats including that of the driver are on the front side. If a person travels in a gypsy vehicle occupying one of its seats, he cannot be called a gratuitous passenger. It has been proved in the Tribunal that the deceased was an employee earning monthly salary at G.L. Resort.

13. The Insurance Company failed to prove that the deceased was a gratuitous passenger. Under the given circumstances of the case, this Court is of the opinion that the deceased was not a gratuitous passenger in the said gypsy.

14. The impugned judgment is a well reasoned one and does not require any interference of this Court. The present appeal is found to be devoid of merit and stands dismissed accordingly.

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JUDGE

Comparing Assistant