



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MACApp. No. 3 of 2025

Date of Decision: 09.04.2026

Oriental Insurance Company Ltd.,
 G.S. Road, Police Bazar,
 Shillong, Meghalaya - 793001,
 Represented by its authorized signatory.

.... **Appellant**

Vs.

1. Smt. Tsering Dolma,
 w/o. Shri Ngawang Gyaltsen,
 R/o. Mawbah Bazar,
 Shillong, East Khasi Hills, Meghalaya

2. Shri Amit Kumar Sah,
 S/o. Shri Satyanarayan Sah,
 R/o. 11/No. 107, Lower Paltan Bazar,
 Shillong
 (Owner of Motorcycle No. ML05 K 7356)

.... **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Jindal, Adv. Mr. S. Goenka, Adv.
For the Respondent(s)	:	Mr. N.M. Mansuri, Adv. for R 1.



JUDGMENT AND ORDER

1. Records would show that an FIR dated 21.05.2014 was lodged by one Shri. Dorjee Wangdak informing the Officer-in-Charge of Lumdiengjri Police Station, Shillong of a Motor accident which occurred on 08.05.2014 at about 07:50 PM or so.

2. It is the narration of the informant that his brother Shri. Ngawang Gyaltsen, was returning home from Police Bazaar, Shillong riding his scooty bearing registration No. ML-05-L-4231, on reaching MES point, near Military Hospital, Shillong, all of a sudden, one motor bike (Pulsar) bearing registration No. ML-05-K-7356 driven by Shri. Amit Shah, coming from the opposite direction in a rash and negligent manner, dash against his brother's scooty, as a result of which, his brother sustained serious and grievous injuries on the left side knee, hips and face for which, he was immediately removed to Civil Hospital, Shillong for treatment. However, after one hour, he was referred to Nazareth Hospital, Shillong, and after two days, he was then shifted to Apollo Hospital, Chennai for specialize treatment.

3. In due course, Smti. Tsering Dolma, wife of the injured, Shri. Ngawang Gyalsten, filed an application under Section 163 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, East Khasi Hills, Shillong, detailing the facts and circumstances of what had happened on the



date of the incident and the consequent injuries sustained by her husband as a result of such accident. A claim detailing the medical expenses, travelling expenses, loss of earning/profit etc., amounting to ₹ 53,45,230/- (Rupees fifty-three lakhs forty-five thousand two hundred thirty) only was made, demanding the same to be paid by the Oriental Insurance Co. Ltd., the insurer of the said bike No. ML-05-K-7356 along with the owner of the said bike.

4. Upon admission of the said claim application, both the insurance company and the owner of the bike has contested the claim by filing respective written statement. On the Tribunal framing relevant issues, evidence of the claimant's witnesses being recorded, the Opposite Parties declining to adduce evidence on their part, the matter was taken up for final hearing. On consideration of the argument of the parties, the learned Tribunal has then passed the impugned judgement and award dated 25.10.2024 by which award the Opposite Party/Insurance company was directed to pay a sum of ₹ 12,93,787.11/- (Rupees twelve lakhs ninety three thousand seven hundred eighty seven and eleven paise) only together with interest @ 8% per annum from the date of filing of the claim petition that is, 18.08.2014 till payment of the same.

5. The Oriental Insurance Company being highly aggrieved and dissatisfied with the said impugned judgment and award, has now approached



this Court with this instant appeal with a prayer to set aside/modify the impugned judgment and order on the grounds set out in the memo of appeal.

6. Heard Mr. S. Jindal, learned counsel for the appellant/Oriental Insurance Co. Ltd., who has submitted that amongst other grounds made out to assail the impugned judgment and award, the issue of maintainability of the claim has also been raised.

7. That since it was the husband of the claimant/respondent No. 1 herein who has sustained injuries in the said accident, therefore, it is the said injured/husband who should have filed the claim petition. The provision of Section 166(1) of the Motor Vehicle Act has been referred to, which provides that an application for compensation arising out of an accident of the nature specified in sub-Section (1) of section 165 may be made...(a) by the person injured; or (d) by any agent duly authorised by the person injured... In this case, the claimant/wife not being the injured herself or an agent in that sense, the application at the first instance, cannot be sustained, submits the learned counsel.

8. The next issue raised by the learned counsel is that, in the impugned judgment, the learned Tribunal has noted at para 24 that CW-3, the Investigating Officer has stated that the pillion rider has recalled that at the time of the accident, there was one unknown OMNI private car moving in the



same direction which hit the bike and then hit the scooty which was coming from the opposite direction and both the bike and the scooty fell down. This aspect of the accident was completely overlooked by the Tribunal in evidence, as by such statement, the cause of the accident and the fault thereof, can be attributed to the driver of the said OMNI car, but what was held is that it was the driver of the motorbike who was negligent and responsible for the said accident. However, mere filing of a chargesheet without any concrete evidence cannot make the bike owner/respondent No. 2 criminally liable for the accident. Even, if there is such finding or evidence, the same cannot have any bearing on the findings of the MACT as has been held in the case of **Mahita Dhanvati v. Phulwant Mahendra Singh, 1993 SCC Online MP 92**, para 10.

9. Yet another issue raised is one involving the policy conditions, which according to the learned counsel, has not been properly adjudicated by the learned Tribunal, inasmuch as, on reaching a finding that there was a breach of the condition of insurance policy by Opposite Party No. 2/Owner of the motorbike/respondent No. 2 herein, such findings based on the evidence that the said owner of the bike at the time of the accident was only holding a learner licence, and though, there was also a pillion rider with him at that time, yet there is no evidence that such pillion rider possessed a valid driving



licence, hence a breach of the relevant policy condition has occurred. However, inspite of such findings, the learned Tribunal instead of exonerating the appellant/Insurance Company from any liability, has foisted the entire liability upon the Insurance Company to pay the awarded amount, which is an incorrect approach, submits the learned counsel. The case of **United India Co. Ltd v. Gian Chand, (1997) 7 SCC 558**, para 10 as well as the case of **Ram Chandra Singh v. Rajaram (2018) 8 SCC 799** was referred to in this regard.

10. As to the amount of compensation awarded, the learned counsel has submitted that firstly, the learned Tribunal has awarded an amount of ₹ 11,03,787.11/- (Rupees eleven lakhs three thousand seven hundred eighty-seven and eleven paise) only for medical treatment, travelling expenses and accommodation at Chennai which did not match with the documents in record. Secondly, the award of ₹ 60,000/- (Rupees sixty thousand) only on account of loss of income, taking the income of the injured as ₹ 10,000/- per month without any proof of such monthly income, could not have been done so. Under such circumstances, the thumb rule adopted by the courts is that the notional income is to be calculated based on the minimum wages in force as on the date of the accident, which have not been followed in this case. The case of **Shanti Devi v. Bhagwan Das** in which vide order dated 06.04.2009,



the Hon'ble Delhi High Court at para 8 & 9 has dealt with this issue has been relied upon by the learned counsel.

11. The learned counsel has also questioned the imposition of interest @ 8% p.a. on the awarded amount from the date of filing of the claim by the learned Tribunal to say that the same is not in conformity with the rate of interest that has been judicially settled by this Court in the case of **New India Assurance Insurance Co. Ltd. V. Khein Kharsati, 2021 SCC Online Megh 218**, para 26. As such, this Court may reduce the rate of interest to @ 6% per annum or at most to @ 7% per annum.

12. In view of the submission made, the learned counsel has urged that the appellant/Oriental Insurance Co. Ltd cannot be fasten with the liability of the award to pay compensation to the claimant/respondent No. 1 to the claim filed under Section 166 M.V. Act, 1988.

13. Per contra, Mr. N.M. Mansuri, learned counsel for the respondent/claimant, while defending the stand taken by the learned Tribunal and the findings thereof, as has been indicated in the impugned judgment and order, has submitted that the accident in question has resulted in injuries sustained by the victim/injured. This fact has been proved through documentary and oral documents including the FIR, medical report and also the testimony of the Investigating Officer which would cover the case of the



respondent/claimant to sustain a claim for compensation under Section 166 of the Motor Vehicle Act 1988. As such, there is no dispute as to the maintainability of the claim application.

14. With regard to the issue of negligence, that the learned Tribunal has come to a finding that the cause of the accident was due to the rash and negligent driving of the owner of the motor bike who has dashed against the injured husband of the claimant on 08.05.2014 at about 7:50 PM at MES point near first gate of Military Hospital, Shillong, has also been proved through cogent evidence.

15. In this connection, the learned counsel has led this Court to the evidence of the I/O who has deposed before the Tribunal as CW-3, when in his examination in chief he has stated that *“As per the sketch map I found the scooty as well as the bike was parked in a corner of the road side 2 meters away from the Military gate and on analyzing the debris found in the place of occurrence was 2 meters away from the Military gate total width of the road Nos. 12.70 meters and it was also evident that the bike bearing registration No. ML-05-K-7356 was in a totally wrong side.*

It was due to rushed (sic rash) and negligent driving of the rider of the motor cycle bearing registration No. ML-05-K-7356 the accident took place”.



16. Even, from the evidence of the victim/injured himself, when he has deposed before the Tribunal as CW-2 he has stated “...*after closing my shop in the evening I proceeded towards my resident at Mawbah Bazar, Shillong on my Scooty and on reaching near MES point near first Gate Military Hospital, Shillong, I noticed one Motor Bike bearing Registration No. ML-05-K-7356 driven in high speed by Opposite Party No. 2 approaching me from the opposite direction, dashed against my Scooty, resultantly I was thrown up in the air and fell on the other side of the road adjacent to the footpath and lost my complete consciousness...*”. This evidence has not been shaken or contradicted by the owner of the motor bike, as such, on this ground alone, rash and negligent driving on the part of the rider of the motor bike has been clearly established.

17. As to the contention of the learned counsel for the appellant/Insurance Company that there was a breach of the policy condition, that is, that the rider/owner of the said motor bike was not having a valid driving licence, inasmuch as, he was only holding a learner’s licence, therefore, for having breached the policy condition in this regard, the appellant/Insurance Company is therefore not liable to be fastened with any liability, even to the satisfaction of the awarded amount. As has been directed by the learned Tribunal in the impugned judgment, the learned counsel has



submitted that this contention cannot be sustained, since it is the consistent view taken by the Hon'ble Supreme Court in a number of judgments that mere breach of a policy condition such as the absence of a proper driving licence, would not absolve the insurer from its statutory liability, vis-à-vis, third parties. The case of **National Insurance Company Ltd., v. Swaran Singh, AIR 2004 SC 1531**, para 105 was referred too, to support his contention.

18. While referring to the facts of the case of the parties herein, the learned counsel has further submitted that the contention that a person holding a learner licence must be accompanied by a person who is holding a valid driving licence as contemplated under the Motor Vehicle Act, 1988, and the Central Motor Vehicle Rules, 1989, the same does not apply to drivers of a motor cycle holding a learners licence. The learned counsel has submitted that, this assertion has the backing of a related judgment of the Hon'ble Karnataka High Court in the case of **Senior Divisional Manager, National Insurance Co. Ltd. v. Shri Jyotiba Appaji Shigate and Ors.**, at para 10, 23, 24 and 28 of the same passed in Miscellaneous First Appeal No. 20655/2011 (MV), Order dated 21.08.2019.

19. Going further on this, the learned counsel has submitted that the learned Tribunal on its own, had presumed that the pillion rider has no valid licence inspite of no evidence produced in this respect.



20. That the learned Tribunal has invoked the principle of pay and recovery, being made applicable to the appellant/insurance company as far as the said award is concerned, the learned counsel has submitted that even, if it is clear that there was no breach of any policy condition, the fact that the learned Tribunal has allowed the appellant insurance company to satisfy the award at the first instance and then to recover the same from the insured/owner of the motor bike, the same is a concession which should have been accepted by the appellant/Insurance Company herein. The principle of pay and recover in compensation cases arising out of a motor vehicle accident has also found placed in many a decision of the Hon'ble Supreme Court, for instance, in the case of **Swaran Singh (supra)**.

21. The objection of the appellant/insurance company as regard the quantum of compensation awarded, particularly the contention as to the expenses said to have been incurred by the injured in course of his medical treatment, including cost of accommodation, transportation (flight charges), that the same does not tally with the documentary evidence, is also not well-founded, since all the expenses incurred have been placed before the learned Tribunal, and on calculation of the same, compensation was awarded towards such expenses, as such, it cannot be said that there was wrongful gain by the injured in this regard, submits the learned counsel.



22. The learned counsel has then submitted that the amount of compensation has not yet been paid to the injured or to the claimant, except in course of proceedings a sum of ₹ 1,00,000/- (Rupees one lakh) or so, has been received by the injured.

23. On the income of the injured, the learned counsel has submitted that the injured is a businessman and his monthly income is definitely more than ₹ 6,000 per month, the learned Tribunal has thought it fit to calculate his monthly income @ ₹ 10,000/- per month, even though the claimant has sought for calculation of monthly income @ ₹ 25,000/- per month.

24. As far as the rate of interest awarded by the learned Tribunal, the same sought to be reduced by the appellant herein, the learned counsel has submitted that the claim application was filed way back in the year 2015, when the rate of interest then was 7% per annum for savings account. Therefore, it would not be prudent to reduce the rate of interest as awarded.

25. In view of the above, the learned counsel has submitted that the impugned judgment and award have been passed by the learned Tribunal after meticulously appreciating both oral and documentary evidence on record, such findings may therefore, not be disturbed by this Court.

26. The case of the parties herein has been set out hereinabove, as such, the facts need not be repeated, except if so required. This is a case where



a motor vehicle accident involving the husband of the respondent No.1/claimant, who was injured as a result thereof, has not been disputed. The fact that a claim for compensation has been preferred before the Member, Motor Vehicle Accident Claims Tribunal, Shillong with a prayer for compensation for the cost of medical treatment of the injuries sustained as well as other incidental costs is also a matter of records. That the learned Tribunal has eventually allowed the prayer made in the impugned judgment and award, is therefore the subject matter of this appeal.

27. The first objection raised by the appellant/Insurance Company is the issue of maintainability. That since the claim before the Tribunal has been filed by the wife of the injured, who does not fit the description of an ‘Agent’ as per the provision of Section 164 of the MV Act, 1988, the claim has become invalid, the application ought to have been dismissed on this ground alone was the contention of the appellant.

28. On the issue of maintainability, this Court has noticed that the claim application has been preferred under Section 163 of the Motor Vehicle Act, however Section 163 of the Act speaks of a scheme for payment of compensation in case of hit and run motor accidents, which is not the case herein. This is obviously an error committed by the claimant which at the relevant point of time have not been raised before the Tribunal by any of the



parties. This error would not be so material in the light of the manner in which the proceedings have been carried out before the Tribunal, which for all intent and purposes, have proceeded as one under Section 166.

29. Section 166 of the Act provides for application for compensation, inter-alia, by the person who has sustained the injury: or by any agent duly authorised by the person injured..... In this case, in the evidence of the claimant, she has clearly stated that she had filed the claim petition on behalf of her injured husband on being duly authorised. The injured, in his evidence as CW-2 has also stated that the claim application has been filed by his wife since at the relevant point of time, he was recovering from his injuries and was bedridden, as such, he has authorised his wife to file claim application.

30. The learned counsel for the appellant has sought to qualify the term 'Agent' as found in Section 166(1)(d) as a person employed to do any act for another, and that in this case, the husband could not have employed his wife to act on his behalf. However, the meaning is very clear, inasmuch as, the wife of the injured husband has been authorised and employed, that is, '*engaged*' to represent him in dealings with a third person. Therefore, there is nothing forbidden or illegal as far as the conduct or the act of the said wife (agent) is concerned. This Court would therefore hold that the claim application is valid and maintainable in the manner in which it was filed.



31. On the issue of negligence, the injured has deposed before the Tribunal as CW-2. In his evidence, he has clearly narrated the manner in which the accident had occurred, and has stated that at that time when he reached near MES point, he noticed the said motor bike driven by the owner/opposite party No. 2, coming at a high speed towards him and had dashed his scooty resulting in him being thrown up in the air and falling to the other side of the road, and soon after, he lost consciousness. This particular assertion has not been specifically contradicted by the owner of the said motor bike or by the Insurance Company in their respective cross examination. Therefore, the testimony of the injured as CW-2 has to be taken as a testimony of an eye-witness. Such witness has to be considered a sterling witness and his evidence to be accepted as wholly reliable. Accordingly, even on this ground, the issue of rash and negligent driving has to be decided to pinpoint the same to no one else, except to the owner of the said motor bike.

32. Again, on the issue of breach of policy conditions that is, that the appellant/Insurance Company is not liable to pay compensation or to indemnify the loss said to be incurred by the owner of the said motor bike on the ground that he has violated the policy condition, wherein since he was admittedly having only a learner's driving licence at the time of the accident, there is no proof that he was accompanied by a person holding an effective



driving licence at the time of an accident. Thus, the requirement said out in Rule 3(b) of the Central Motor Vehicles Rules, 1989, has been violated, the same which reads as follows:

“3. General. —The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

....(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle.”

33. The response of the respondent No.1/claimant to this, that is, that although the said rules mandates that a person holding a learner driving licence must be accompanied by an instructor or a duly licence driver seated beside him, such rule does not apply in case of a person holding a learner’s driving licence who is riding a motor cycle. The practicality of it, is that, it is not possible even for a person who is an instructor or one who is holding a valid driving licence to be seated as a pillion rider in a motor cycle and from his situation to be able to control the said motor cycle while in motion. The reference to the case of Jyotiba Appaji Shigate (supra) at para 24 of the same, wherein the Hon’ble Karnataka High Court has observed that the proviso to Rule 3 (supra) would be applicable only to a person who holds a learner’s licence for a motor vehicle, but not a motor cycle, is also found acceptable by this Court.



34. The offshoot of this, is whether a person who holds a learner licence can be considered as one who holds a valid driving licence, the answer to this is ‘yes’. The Hon’ble Supreme Court in the case of **Swaran Singh (supra)** at para 88 and 105 (viii) has observed as follows:

“88. Motor Vehicles Act, 1988 provides for grant of learner's licence. (See Section 4(3), Section 7(2), Section 10(3) and Section 14). A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

105. The summary of our findings to the various issues as raised in these petitions are as follows:

“(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.”

35. Under such circumstances, it can be said that there is no breach of any policy conditions by the insured who was holding a valid licence (albeit a learner licence) at the time of the said accident. For his negligence, the insurer is liable under the principle of vicarious liability. There being no contest as to the fact that the said motor cycle in question was insured with the appellant/Insurance Company at the relevant period, the same being duly valid, therefore, for the liability initially fasten upon the insured motor cycle,



the Insurer/Oriental Insurance Co. Ltd. is liable to indemnify such liability, vis-à-vis, the claimant or by extension, the injured herein.

36. Having established the fact that the appellant/Insurance Company is liable to satisfy the award of compensation as has been made by the Tribunal, the objection of the appellant as to the amount of expenditure expended by the injured, this Court, on perusal of the manner in which the Tribunal has calculated the said amount based on the bills and vouchers produced by the claimant, there appears to be no fault on the part of the Tribunal in reaching such conclusion. Accordingly, the same is hereby accepted as it is. Even the award made on non-pecuniary loss, such as, loss of income, award on account of pain and suffering etc., this too deserves no modification by this Court.

37. However, as to the rate of interest imposed by the Tribunal, this Court would agree with the learned counsel for the appellant/Insurance Company as well as on the basis of the prevailing economic condition of the Country, that the rate of interest awarded should be 7% per annum instead of 8% per annum as has been awarded. To the amount awarded as fair compensation, the same will also carry an interest of 7% per annum from the date of filing of the claim application till payment of the same.



38. As has been observed hereinabove, in the final analysis, this Court finds that the award of compensation as has been calculated by the Tribunal is found just and proper, the same is hereby maintained. However, as to who is liable to satisfy the same, under the circumstances, the appellant/Oriental Insurance Co. Ltd is found liable to satisfy the same. To this extent, the impugned judgment is modified accordingly.

39. Therefore, the total amount on being calculated including interest thereon is to be paid to the claimant/respondent No.1 by the appellant/Oriental Insurance Co. Ltd., within 45(forty-five) days from the date of receipt of the certified copy of this order.

40. In view of the above, this appeal is hereby disposed of. No costs.

41. Registry to return back the Lower Court case record.

Judge