GAHC010117872019

2026:GAU-AS:12732

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

Case No. : MACApp./330/2019

SMTI. PADMA BORA GOGOI
W/O- LATE DHANI RAM GOGOI, R/O- VILL.- AGDOLA, P.S. BAIHATA CHARIALI, DIST.- KAMRUP, ASSAM.

2: SRI RUP JYOTI GOGOI
S/O- LATE DHANI RAM GOGOI
R/O- VILL.- AGDOLA
P.S. BAIHATA CHARIALI
DIST.- KAMRUP
ASSAM.

3: SRI BORISH GOGOI
S/O- LATE DHANI RAM GOGOI
R/O- VILL.- AGDOLA
P.S. BAIHATA CHARIALI
DIST.- KAMRUP, ASSAM

VERSUS

1:SRI MRIDUL GOGOI
S/O- SRI RATNESWAR GOGOI
R/O- VILL.- RANGPURIA GAON
P.O. SARBODAYA
DIST.- DIBRUGARH
ASSAM. (OWNER OF VEHICLE NO. AS06/L-0142).

2:THE BRANCH MANAGER

M/S. NATIONAL INSURANCE CO. LTD.
DIBRUGARH BRANCH
KHEMKA BUILDING
R.K. BORDOLOI PATH
DIBRUGARH
ASSAM.

3:THE REGIONAL MANAGER
M/S. NATIONAL INSURANCE CO. LTD.
G.S. ROAD
BHANGAGARH
GUWAHATI-5, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellants **:** Mr. K. Bhattacharjee, Advocate

For the Respondents **:** Mr. P. J. Barman, Advocate
(for respondent Nos. 3 and 4)

Date of Hearing **: 16.07.2026**
Date of Judgment **: 02.09.2026**

JUDGMENT & ORDER

1. Heard Mr. K. Bhattacharjee, the learned counsel for the appellants. Also heard Mr. P. J. Barman, the learned counsel for the respondent Nos. 3 and 4.

2. This appeal under Section 173 of Motor Vehicles Act, 1988 has been preferred by the appellants/claimants, namely, (i) Smt. Padma Bora Gogoi, (ii) Sri Rup Jyoti Gogoi and (iii) Sri Borish Gogoi, impugning the judgment dated 09.05.2019, passed by the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati, in MAC Case No. 2174/2016, whereby, the claim filed by the present appellants under Section 166 of MV Act, seeking compensation for death of the

husband of the claimant No. 1, namely, late Dhani Ram Gogoi was dismissed.

3. The facts relevant for consideration of the instant MAC appeal, in brief, are that on 14.08.2016, at about 9:00 PM, when the husband of the claimant No. 1, namely, late Dhani Ram Gogoi was going by the side of the road on foot, he was hit by an unknown vehicle. As a result of which, he sustained injuries on his person and later on succumbed to death. After the said accident, the claimant No. 1 lodged an FIR before the Officer-in-charge of Digboi Police Station. On the basis of the said FIR, Digboi P.S. Case No. 136/2016, under Sections 279/338 of the Indian Penal Code was registered and investigation was initiated.

4. Later on, the present appellants approached the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati, by filing an application under Section 166 of the MV Act, 1988 seeking compensation for the death of their husband/father in the aforesaid vehicular accident. On the basis of said application, MAC Case No. 2174/2016 was registered. The driver and owner of the offending vehicle did not contest the claim of the present appellants/claimants and the inquiry proceeded *ex-parte* against them. However, the Insurance Company contested the claim of the present applicants and filed a written statement.

5. On perusal of the records of the MAC Case No. 2174/2016, it appears that no specific issues or point of determination was formulated by the Motor Accident Claims Tribunal in the aforesaid MAC case. However, by the judgment and order dated 09.05.2019, which has been impugned in this appeal, the claim case of the present appellants was dismissed on the ground that the claimant have failed to satisfactorily show that Maruti Swift bearing Registration No. AS-06-L-0142 was involved in the accident and the husband/father of the claimants

died due to rash and negligent driving of the said vehicle.

6. Mr. K. Bhattacharjee, the learned counsel for the claimants has submitted that the trial court erred in dismissing the claim case filed by the present appellants ignoring the materials available on record. He submits that though the FIR filed by the claimant No. 1 did not mention about the registration number of the offending vehicle, however, later on during the course of the investigation, the offending vehicle was seized as apparent from the seizure list in the connected criminal case. He submits that the seizure list, which is exhibited as Exhibit- 5(7) as well as the MVI report, which is exhibited as Exhibit- 5(8) clearly mentions about the registration number of the offending vehicle as AS-06-L-0142. He submits that, therefore, the Motor Accident Claims Tribunal has erred in dismissing the claim of the present appellants merely on the ground that in the first information report as well as in the charge-sheet, the mention of the registration number of the offending vehicle is not there. He submits that the mere fact that initially the FIR records the offending vehicle as unknown would not be fatal for the prosecution if later on the identity of the said vehicle is known during the course of investigation.

7. He submits that in the instant case, apart from the seizure list [Exhibit- 5(7)] and the MVI report [Exhibit- 5(8)], the testimony of PW-2, who was one of the eyewitnesses, clearly indicates the registration number of offending vehicle as AS-06-L-0142. He further submits that even the witness of the Insurance Company i.e., the Investigator, who was examined as DW-1, has deposed in his testimony that he met the owner of the offending vehicle and the registration number of the offending vehicle has been mentioned in the MVI report as well as in the seizure list. He submits that the Tribunal erred in ignoring the evidence

of DW-1 while raising suspicion about involvement of vehicle bearing Registration No. AS-06-L-0142 as the vehicle causing the accident and resultantly the death of the husband/father of the present appellants.

8. He submits that the DW-2 has categorically deposed in his testimony that though the charge-sheet has not mentioned the registration number of the offending vehicle, however, the name of the driver of the offending vehicle has been mentioned categorically in the charge-sheet as an accused which is sufficient to indicate that the vehicle which was involved in the accident is the Maruti Swift bearing Registration No. AS-06-L-0142.

9. The learned counsel for the appellants has submitted that the mere fact that initially in the FIR, the vehicle responsible for the accident was mentioned as unknown vehicle would not be fatal to the claimant's sides if later on materials on record indicate that a particular vehicle has been involved in the accident. He submits that in a motor accident claims case, it may not be possible on the part of the claimants to prove beyond reasonable doubt that the accident has been caused by a particular vehicle in a particular manner. The claimants are required merely to establish their case on the touchstone of the preponderance of probability. In support of his submission, the learned counsel for the appellants has cited following rulings:-

(i) "***The Divisional Manager, National Insurance Company Ltd. Vs. Swapna Debbarma and Ors***." reported in "***MANU/TR/0088/2018***";

(ii) "***Kuncham Lavanya Vs. Bajaj Allianz General Insurance Co. Ltd"*** [*Special Leave Petition (Civil) No. __ of 2025 @ Diary No.44210 of 2019*].

10. The learned counsel for the appellants has submitted that the deceased was the sole earning member of the family of the appellants and after his death,

they had to face immense financial hardship and as such, a just compensation may be awarded to the claimants by setting aside and reversing the judgment of the Motor Accident Claims Tribunal.

11. On the other hand, Mr. P.J. Barman, the learned counsel for respondent Nos. 3 and 4, namely, the National Insurance Company Limited has submitted that the Tribunal has correctly dismissed the claims case filed by the present appellants as the claimants have failed to establish the involvement of Maruti Swift vehicle bearing Registration No. AS-06-L-0142 in the alleged accident. He submits that both in the FIR, which was lodged in connection with the alleged accident, as well as the general diary entry made by the police on the day of the alleged accident, it is stated that an unknown Indica vehicle hit the deceased, whereas the respondent Nos. 3 and 4 are the insurer of Maruti Swift vehicle bearing Registration No. AS-06-L-0142 and there is no material to indicate the involvement of the said vehicle in the accident which caused the death of the deceased Dhani Ram Gogoi.

12. He submits that the claimants have also failed to adduce any evidence to prove that the driver of Maruti Swift car bearing Registration No. AS-06-L-0142 was negligent as a result of which the accident was caused. He submits that in absence of proof of rash and negligent driving on the part of driver of the Maruti Swift vehicle, no relief can be granted in an application under Section 166 of the Motor Vehicles Act, 1988. As such, he submits that the Motor Accident Claims Tribunal has correctly dismissed the claim petition filed by the present claimants. In support of his submission, the learned counsel for respondent Nos. 3 and has cited following rulings: -

(i) "***National Insurance Company Ltd. v. Subi Chandra Tripura***" reported in

"***2016 (2) TRILR 724***";

(ii)"***Surender Kumar Arora and Another Vs. Dr. Manoj Bisla and Others"*** reported in "***(2012) 4 SCC 552***";

(iii) "***Bhanwar Lal and Arjun Ram and Anr"*** reported in "***2016 0) AAC 448***";

(iv) ***Oriental Insurance Company Limited Vs. Premlata Shukla and others***, reported in "***(2007) 13 SCC 476***".

13. I have considered the submissions made by the learned counsel for both sides and have gone through the materials on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

14. The point to be determined in this appeal is as to whether the Motor Accident Claims Tribunal has erred in coming to the conclusion that Maruti Swift car bearing Registration No. AS-06-L-0142 was not involved in the accident in which the deceased late Dhani Ram Gogoi died and as such no case is made out against the M/s National Insurance Co. Ltd.

15. On perusal of the impugned judgment, it appears that the Motor Accident Claims Tribunal has dismissed the claim of the present appellants mainly on the ground that in its opinion, the claimants have failed to prove the involvement of vehicle bearing Registration No. AS-06-L-0142 (Maruti Swift) in the accident which caused the death of Dhani Ram Gogoi. The Motor Accident Claims Tribunal mainly took into consideration the fact that the FIR lodged in connection with the accident as well as GD entry made in the Digboi Police Station in connection with the accident mentions that an unknown Indica car caused the accident. Hence, the Tribunal raised strong suspicion regarding involvement of Maruti Swift vehicle bearing Registration No. AS-06-L-0142 in the said accident. This Court is however, unable to agree to the conclusions arrived

at by the Motor Accident Claims Tribunal for the reasons which are mentioned herein below.

16. On perusal of the materials available on record, it appears that it is the wife of the deceased, namely, Smt. Padma Bora Gogoi, who had lodged the FIR wherein it was mentioned that one unknown Indica car had hit the deceased. However, it also appears from her testimony that she was not the eyewitness of the accident. As such, her account of the incident mentioned in the FIR may not be regarded as absolute truth. Whereas, in her testimony, she has categorically deposed that the deceased was accompanied at the time of accident by two of his colleagues, namely, Shri Arup Sarmah and Shri Gunakanta Bora. It is pertinent to note herein that Shri Gunakanta Bora was examined by the claimant side as PW-2 in aforementioned claims case and in his testimony; the PW-2 has categorically deposed that one high-speed Maruti Swift car bearing Registration No. AS-06-L-0142, which was driven in a very rash and negligent manner, knocked down Dhani Ram Gogoi from backside as a result of which he sustained injuries and ultimately succumbed to his injuries. This oral testimony could not be demolished by the Insurance Company during cross-examination of the PW-2. During his cross-examination, the testimony regarding involvement of vehicle bearing Registration No. AS-06-L-0142 remained un-demolished.

17. Moreover, the seizure list in Digboi P.S. Case No. 136/2016, which was registered in connection with the aforesaid accident clearly indicates that the Swift vehicle bearing Registration No. AS-06-L-0142 was seized in connection with the said case. Similarly, the report of the Motor Vehicle Inspector, which has been exhibited as Exhibit-5(8) also indicate that the vehicle involved in the accident was Maruti Swift vehicle bearing Registration No. AS-06-L-0142.

18. Further, it also appears that the G.D. entry bearing No. 438, dated 14.08.2016, made in the Digboi Police Station in connection with the aforesaid accident, was made on the basis of information given by one Arup Sarmah. However, said Arup Sarmah has not been examined by the Insurance Company to establish the veracity of information given by him to the police on the date of the accident. As such, merely because of the fact that the FIR, which was filed by the wife of the deceased, who was not an eyewitness to the accident, indicates that an unknown vehicle has caused the accident, the Tribunal was not correct in relying on the same in view of the uncontroverted testimony of the DW-2, who was the eyewitness and who has categorically mentioned the involvement of Maruti Swift vehicle bearing Registration No. AS-06-L-0142 in the accident in which the deceased sustained injuries and ultimately died.

19. This Court is of considered opinion that in a Claims case arising out of motor vehicle accident, the claimants are required to establish their case on the touchstone of preponderance of probability and in the instant case, the claimants are able to establish that it was the Maruti Swift vehicle bearing Registration No. AS-06-L-0142 which has caused the accident.

20. The testimony of PW-2, who was one of the eye-witness to the accident, clearly shows that the accident was caused due to rash and negligent driving of the Maruti Swift vehicle bearing Registration No. AS-06-L-0142 by its driver. It also appears from record that on the date of the accident which caused the death of late Dhani Ram Gogoi, the aforementioned vehicle was under insurance coverage of National Insurance Company Limited and as such, the said Insurance Company (respondent Nos. 3 and 4 in this appeal) is liable to pay the compensation to the claimants on account of death of their husband/father in

the aforementioned accident.

21. Since, the evidence on record clearly indicates that the deceased Dhani Ram Gogoi was an employee of Forest Department under Government of Assam and was getting a monthly salary of Rs.32,317/- at the time of his death, the monthly income of the deceased is computed at Rs.32,109/- after deducting Rs.208/- towards professional tax.

22. Since the deceased was aged about 49 years at the time of his death, the multiplier of 13 would be applicable to calculate the loss of dependency of the claimants. Further, since the deceased was having three dependents, namely, the wife and two sons, the deduction towards living and personal expenses would be to the extent of 1/3rd of his total earnings. Further, as the deceased was within the age group of forty to fifty years, an addition of 30% of his actual income towards future prospects has to be made. The claimant No. 1, who is the widow of the deceased and claimant Nos. 2 and 3, who are the sons of the deceased, are also entitled to Rs.40,000/- each against the heads "loss of spousal consortium" and "loss of parental consortium" respectively.

23. In view of the discussions made herein above, the compensation to which the claimants are entitled to is computed herein below: -

Sl. No.	**Discription**	**Amount**
1.	Monthly income of the deceased after deduction of professional tax- (Rs.32,317/- – Rs.208/-)	Rs.32,109/-
2.	Addition of future prospect of 30% (Rs.32,109/- + Rs.9,632/-)	Rs. 41,741/-

3.	Deduction of 1/3rd for living and personal expenses of the deceased (Rs.41,741 – Rs.13,913/-).	Rs.27,828/-
4.	Annual income (Rs.27,828 X 12)	Rs.3,33,936/-
5.	Loss of dependency (Rs. 3,33,936/- X 13)	Rs.43,41,168/-
6.	Funeral expenses	Rs.15,000/-
7.	Loss of estate	Rs.15,000/-
8.	Loss of spousal consortium to claimant No. 1	Rs.40,000/-
9.	Loss of parental consortium to claimant Nos. 2 and 3 @Rs.40,000)	Rs.80,000/-
10.	Total Compensation payable	**Rs.44,91,168/-**
Total Rupees Forty Four Lakh Ninety One Thousand One Hundred and Sixty Eight only		

24. The insurer of the offending vehicle, namely, the National Insurance Company Limited is liable to pay the aforesaid amount along with an interest at the rate of 7.5% per annum till realization from the date of filing of the claim application.

25. In view of the discussions made and reasons stated in the foregoing paragraph, the impugned judgment and award of the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati in MAC Case No. 2174/2016 is hereby set aside and reversed.

26. The respondent Nos. 3 and 4 Insurance Company is accordingly directed to pay the compensation amount as assessed herein before to the claimants within a period of six weeks from the date of this judgment.

27. Let the record of MAC Case No. 2174/2016 be sent back to the concerned Tribunal along with a copy of this judgment.

Abhishek Prem

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JUDGE

Comparing Assistant