GAHC010121032021

2026:GAU-AS:10424

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MACApp./172/2021

1. Oriental Insurance Company Ltd.,
Having Its Regional Office At Guwahati, Ulubari, Guwahati-781007, Rep. By The Deputy Manager, Gauhati Regional Office, Ulubari, Guwahati-781007, Kamrup(M), Assam.

.....Appellant

-Versus-

On the Death of Makon Hazarika Her Legal Heirs,
W/o-Late Hemo Hazarika,
R/o-Village-Rongamati Senchowa Gaon,
P.O.-Rongamati,
P.S.-Dergaon, District-Golaghat, Assam,
Pin-785614.

1. 1: Sri Bikram Hazarika,
S/o- Late Makon Hazarika,
R/o-Village-Rongamati Senchowa Gaon,
P.O.-Rongamati,
P.S.-Dergaon, District-Golaghat, Assam,
Pin-785614.

1.2: Miss Rupjyoti Hazarika,
D/o- Late Makon Hazarika,
R/o-Village-Rongamati Senchowa Gaon,

P.O.-Rongamati,
P.S.-Dergaon, District-Golaghat, Assam,
Pin-785614.

1.3: Sri Pankaj Hazarika,
S/o- Late Makon Hazarika,
R/o- Village-Rongamati Senchowa Gaon,
P.O.-Rongamati,
P.S.-Dergaon, District-Golaghat, Assam,
Pin-785614.

1.4: Miss Dipjyoti Hazarika,
S/o- Late Makon Hazarika,
R/o, Village-Rongamati Senchowa Gaon,
P.O.-Rongamati,
P.S.-Dergaon, Dist.-Golaghat, Assam,
Pin-785614.
Being Represented By Sri Bikram Hazarika.

2. Moloy Borah,
S/o-Sri Madhusudhan Borah,
R/o-Amlokhi Tea Estate,
P.O.-Salona,
P.S. Samoguri,
Dist.-Nagaon,Assam,
Pin-782101.

.....Respondents

For Appellant — Ms. R.D. Mozumdar, Advocate.

For Respondents — Mr. M. Dutta, Advocate.

WITH

CO/17/2022

Makon Hazarika Her Legal Heirs,
W/o-Late Hemo Hazarika,
R/o- Village-Rongamati Senchowa Gaon,

P.O.-Rongamati,
P.S.-Dergaon, District-Golaghat, Assam,
Pin-785614.

.....Cross-Objector

-Versus-

1. Oriental Insurance Company Ltd.,
Having Its Regional Office At Guwahati, Ulubari,Guwahati-781007, Rep. By The Deputy Manager, Gauhati Regional Office, Ulubari,Guwahati-781007, Kamrup(M), Assam.

2. Moloy Borah,
S/o-Sri Madhusudhan Borah,
R/o-Amlokhi Tea Estate,
P.O.-Salona,
P.S. Samoguri,
Dist.-Nagaon,Assam,
Pin-782101.

.....Respondents

Date of Hearing : **19.05.2026.**
Date of Judgment : **29.07.2026.**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

[1] Heard Ms. R.D. Mozumdar, learned counsel for the appellant. Also heard Mr. M. Dutta, learned counsel for the respondents/claimants as well as the cross-objector.

[2] By this common judgment, this court proposes to dispose of the instant MAC Appeal, i.e. MAC Appeal No. 172/2021, filed by the insurance company as well as the Cross-Objection No.

17/2022 filed by the claimants. The insurance company has filed the instant appeal impugning the judgment and award dated 17.03.2021, passed by the Motor Accident Claims Tribunal, Golaghat in MAC Appeal No. 41/2015, whereby the appellant/insurance company was directed to pay a compensation amount of Rs. 10,37,482/- to the claimants, along with an interest @ 6% per annum and thereafter, realize the same from the owner of the offending vehicle, whereas, the cross objection has been filed by the claimants/respondents praying for enhancement of the compensation awarded to the claimants.

[3] The facts relevant for adjudication of the present appeal as well as the cross objection, in brief, are that the husband of the original claimant (Makon Hazarika) namely, Late Hemo Hazarika was returning from Rongamati Mandir on 07.03.2015, at about 12 noon, on the National Highway No. 37, while pulling a hand cart. At that time one motor cycle bearing Registration No. AS-02/L-0493, being driven in a rash and negligent manner knocked him with a great force. As a result of the said accident, the husband of the original claimant sustained injuries on his person. Thereafter, he was immediately shifted to Dhemaji C.H.C., in a serious condition. He was later on referred to the Jorhat Medical College and Hospital and from there, he was again referred to the Gauhati Medical College and Hospital, however, ultimately, during

treatment, on 02.04.2015, the said Hemo Hazarika succumbed to his injuries.

[4] Thereafter, the wife of the deceased, namely, Smt. Makon Hazarika approached the Motor Accident Claims Tribunal, Golaghat by filing an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for death of her husband in the aforementioned motor vehicular accident. The said claim case was registered as MAC Case No. 41/2015. It is pertinent to mention herein that at the time of his death the deceased, Hemo Hazarika left behind his wife, two daughters and two sons.

[5] It is also pertinent to mention herein that after the accident, an FIR was lodged in respect of the said accident before the Dergaon Police Station and a case, i.e., Dergaon P.S. Case No. 56/2015 under Sections 279/338/304A of the Indian Penal Code, 1860against the rider of the offending motor cycle.

[6] The claim case was contested by the owner of the offending motor cycle by filing a written statement. The present appellant also contested the claim case while filing a written statement wherein, it took usual defence, which are normally taken by insurance company in claim cases.

[7] Upon pleadings of both the parties following issues were framed by the Motor Accident Claims Tribunal:-

"(1) Whether there was rash and negligent driving on the part of the driver of the vehicle bearing registration No. AS-02/L-0493 (Motorcycle) that caused the accident on 07.03.2015, at about 12 A.M., near Rongamati Mandir, on NH-37, under Dergaon Police Station, in the District of Golaghat, Assam and whether Hemo Hazarika died as a result of the said accident?

(2) Whether the claimant is entitled to get compensation? If so, what is the proper quantum and payable by whom?

(3) Any other relief?"

[8] The claimant, Smt. Makon Hazarika(since deceased), in support of her claim adduced the evidence of two witnesses, including herself as CW-1 and one Md. Kholil Ali as CW-2 and exhibited as many as 9(nine) documentary evidence. The owner of the offending vehicle did not adduce any evidence, whereas, the insurance company, i.e., the present appellant adduced evidence of three witnesses in defence, namely, Shri Pradeep Kr. Singh (as DW-1), Shri Sudipta Thakur (as DW-2) and Shri Arupjyoti Bora (as DW-3).

[9] Ultimately, by the judgment and award dated 17.03.2021, which has been impugned in the instant appeal, the Tribunal held that the claimant is entitled to get a compensation

amount of Rs. 10,37,482/-, along with an interest @ 6% per annum. It also directed a sum of Rs. 1,00,000/- each, out of the awarded compensation be kept in fixed deposit in a nationalized bank in the name of Shri Pankaj Hazarika, the minor son of the deceased and Ms. Deepjyoti Hazarika, the minor daughter of the deceased. However, it also came to a conclusion that there was breach of policy condition by the owner of the offending vehicle and as such, though the insurance company was directed to pay the aforesaid amount to the claimant at first, thereafter, a liberty was granted to the insurance company to realize the entire amount from the owner of the offending vehicle.

[10] Ms. R.D. Mozumdar, learned counsel for the appellant/insurance company has submitted that since the insurance company had been able to prove its defence of breach of policy condition as the driver of the offending vehicle was not having any driving license, the Tribunal has erred in directing the insurance company to first pay the compensation amount to the claimant and thereafter, recovered the same.

[11] She submits that when the breach of policy condition has been clearly established by the insurance company, it is not liable to indemnify the owner in case of any liability to pay compensation to the claimant by the owner. Alternatively, she also submits that even if the insurance company is required to pay the compensation first to the claimant and thereafter,

recovered the same from the owner, some directions are necessary as regards mode of recovery as clarified by the Apex Court in the case of "***Oriental Insurance Company Limited Vs. Shri Nanjappan and others***"reported in "***(2004) 13 SCC 224.***" She submits that the insurance company has already deposited 75% of the awarded amount before the Registry of this court and if it is required to deposit remaining amount in terms of the direction of the Motor Accident Claims Tribunal, same should not be released immediately to the claimants. She submits that in terms of the directions of the Apex Court in the case of ***Oriental Insurance Company Limited Vs. Shri Nanjappan and others (supra)*** before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount to which the insurance company will pay to the claimants.

[12] The learned counsel for the appellant also submits that the Tribunal also erred in assessing the income of the deceased @ Rs. 6,000/- per month without their being any evidence to that effect on record. She submits that though the Tribunal has correctly not relied upon Exhibit-7 exhibited by the claimants, however, thereafter, without any prove of income it assessed the monthly income of the deceased at Rs. 6,000/- per month merely on the basis that the deceased was an able-bodied person when he died. She submits that under such circumstances, the notional income of an unskilled person,

i.e., Rs. 3,000/- should be taken as income of the deceased. However, she fairly submits that under similar circumstances, the Apex Court in the case of "***Rani & Ors. Vs. National Insurance Company Ltd. & Ors.***" reported in ***"(2018) 8 SCC 492"*** has assessed the notional income of the deceased at Rs. 5,000/- per month. She submits that the income of the deceased may be similarly assessed in this case also.

[13] The learned counsel for the appellant further submits that the Motor Accident Claims Tribunal also erred in not clarifying in the impugned judgment that the insurance company is not liable to pay any interest on the amount which was added to the income of the deceased on account of future prospects. She submits that as the amount assessed against future prospect was relatable to be an income to be received in future and as such, there could not be any loss to the claimant for payment of future prospects at the time when the deceased met with an accident. Hence, no interest may be awarded against such an amount assessed on the basis of future prospects.

[14] In support of her submissions, she has cited following rulings:-

(1) "***Khusboo Chirania @ Kanta Chirania And 3 Ors. Vs. Kamal Kumar Sovasaria And Anr.***" *(Judgment dated 03.09.2018 in MAC Appeal No. 141/2014).*

(2) "***Nasima Begum Vs. Keramat Ali"*** reported in ***"2019 0 Supreme (Gau) 507;"***

(3) ."***The Oriental Insurance Co. Ltd. Vs. Smti Champabati Ray & 5 Ors."*** *(Judgment dated 01.10.2019 in MAC Appeal No. 378/2017).*

(4) "***Pappu And Ors. Vs. Vinod Kumar Lamba And Anr."*** *(Judgment dated 19th January, 2018 in Civil Appeal No. 20962/2017).*

[15] The learned counsel for the appellant has submitted that since in this case the owner of the offending vehicle was himself the driver and he was not possessing the driving license and he knowingly violated the policy conditions. Hence, the insurance company has duly proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding the use of vehicle by duly licensed driver. In support of her submissions, she has relied on the ruling of a co-ordinate bench of this court in the case of ***"National Insurance Company Limited Vs. Md. Iqbal Hussain @ Ekbal Hussain And 2 Ors."****(Judgment dated 04.04.2022 in MAC Appeal No. 292/2018).*

[16] On the other hand, Mr. M. Dutta, the learned counsel for the claimants has submitted that the Tribunal has erred in holding that there was a breach of policy condition. He submits that the Tribunal has erred in holding that it was the owner of the offending vehicle, who is ultimately liable to pay the

compensation to the claimants. He submits that the mere absence of driving license of the driver at the relevant time is in itself not a defence, which is available to the insurance company under Section 149 of the Motor Vehicles Act, 1988. He submits that as held by the Apex Court in the case of ***"National Insurance Co. Ltd. Vs. Swaran Singh & Ors."*** reported in ***"2004 (3) SCC 297",*** to avoid its liability towards the insured the insurance company has to prove that the insured was guilty of negligence and has failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licensed driver on one, who is not disqualified to drive at the relevant point of time. He submits that this fact could not be proved by the insurance company by adducing the evidence of DW-1, DW-2 and DW-3.

[17] The learned counsel for the respondents/cross objectors has further submitted that even if this court comes to an agreement with the finding of the Tribunal that there was a breach of policy condition by the owner of the offending vehicle still the Tribunal was not wrong in directing the insurance company to first pay the compensation to the claimant and thereafter, recover the same from the owner as it has been held in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*** (supra) that the Tribunal thus have right to direct pay and recovery in case of the breach of policy condition by the owner.

[18] He also submits that the contention of the learned counsel for the appellants that no interest may be awarded on future prospects is also not tenable in law in view of the judgment of the Apex Court in the case of ***"Oriental Insurance Co. Ltd. Vs. Niru and Ors."*** reported in "***MANU/SC/0894/2025."***

[19] He also submits that the Tribunal has also erred in assessing the monthly income of the deceased at only Rs. 6,000/-. He submits that though the Tribunal did not rely on Exhibit-7, however, Exhibit-8, which is the certificate issued by National Federation of Fishers Cooperatives Ltd. clearly shows that the deceased was a fish farmer and dealing with the business of fish farming and it is also in evidence that he had to maintain family of 6(six) dependants and therefore, the evidence of CW-1 that her husband use to earn an amount of Rs. 10,000/- per month should have been taken into consideration and the income of the deceased ought to have been assessed at Rs. 10,000/- per month.

[20] He also submits that the interest awarded on the amount of compensation assessed by the Tribunal had 6% is also on the lower side. He submits that there are rulings of the Apex Court wherein, the Apex Court has granted interest @ 9% on the awarded amount and same was held to be reasonable and justified. He, therefore, submits that the interest on the awarded amount should be enhanced to 9% per annum.

[21] He further submits that the Tribunal also erred in not granting any compensation against the head of parental consortium. He submits that since the deceased was survived by four children, they are entitled to get parental consortium at the rate of Rs. 44,000/- per head in addition to grant of spousal consortium to the wife of the deceased. He, accordingly, submits that the compensation awarded to the claimants may be enhanced and the cross objection may be allowed.

[22] In support of his submissions, the learned counsel for the claimants/cross objectors has cited following rulings: -

(1) ***"New India Assurance Co. Ltd. Vs. Rina Kumal And Anr."*** reported in "***2017 (3) GLT 696;***"

[23] I have considered the submissions made by the learned counsel for the both sides and have gone through the materials available on record, including the records of the MAC Case No. 41/2015 which was requisitioned in connection with this case. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[24] The point to be determined in this appeal is as to whether the Motor Accident Claims Tribunal, Golaghat was correct in computing the quantum of compensation which has been awarded to claimants and whether it was right in directing the present appellant/insurance company to pay the compensation first and thereafter, recover the same from the

owner of the offending vehicle. As regards the contentions of the learned counsel for both sides regarding assessment of annual income of the deceased by the Motor Accident Claims Tribunal, at the rate of Rs. 6,000/- (Rupees Six Thousand) per month is concerned, it appears that the Motor Accident Claims Tribunal, Golaghat, considering the fact that the claimants failed to produce any documentary evidence regarding the income of the deceased did not accept the oral testimony of claimants witness No. 1 to the effect that the earning of her deceased husband was Rs. 10,000/- per month as he was a member of the Brahmaputra Fish Sellers Co-operative Society, Rangamati. The Motor Accident Claims Tribunal, Golaghat, also took into consideration the fact that the deceased being a healthy person in the age group of 50 years can easily earn an amount of Rs. 6,000/- (Rupees Six Thousand) per month. Though, the learned counsel for the appellant has raised objection contending that the assessment ought to have been made on the basis of standard of notional income of an unskilled person, i.e.@ 3000/- (Rupees Three Thousand per month, however, she has fairly conceded that the Apex Court in the case of ***Rani &Ors. Vs. National Insurance Company Ltd. & Ors.*** (supra) assessed the notional income of the deceased in that case under similar circumstances at Rs. 5,000/- (Rupees Five Thousand) per month. Since in absence of any concrete evidence regarding the earning of the deceased some kind of guess work may be made by the Motor Accident

Claims Tribunal with some reasons, as has been done in this case, and same appears to be just assessment, hence, this court does not deem it proper to disturb the assessment of monthly income of Rs. 6,000/- (Rupees Six Thousand) made by the Tribunal.

[25] As regards grant of compensation on account of loss of parental consortium to the children of the deceased are concerned, the observation of the Apex Court in the case of ***"Magma General Insurance Co. Ltd. Vs. Nanu Ram"*** reported in ***"(2018) 18 SCC 130,"*** seems to be relevant and are reproduced herein below:-

> ***"21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse: [Rajesh v. Rajbir***

Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions

> ***world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child."***

[26] In view of the above observations, as regards compensation against loss of consortium to the children of the deceased in a motor vehicular accident is concerned, this court is of the considered opinion that the four children of the deceased are also entitled to compensation on account of loss of parental consortium.

[27] As regards the direction of the Tribunal for pay and recovery by the present appellant of the awarded amount is concerned, it appears that the insurance company by adducing the evidence of DW-1, 2 and 3 has shown that the driver of the offending vehicle was possessing a fake license on the date of the accident. Since the driver of the offending vehicle was also the owner of the offending vehicle, he was at fault of breaching the terms of insurance policy and as such, is not liable to be indemnified for any compensation paid by him on account of any accident involving the vehicle, which was

insured by the present appellant. However as the claimant's are stranger to the contract between the owner of the offending vehicle as well as the present appellant, the Tribunal cannot be faulted with in directing the insurance company to pay the compensation and thereafter, recovered the same in the light of the decision of the Apex Court in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*** (supra).

[28] As regards the question as to whether interest may be awarded on future prospects which is added to the income of the deceased or not, though in the cases, referred by the learned counsel for the appellant, of the coordinate benches of this court, it was held that no interest on future prospect should be given, however, the Apex Court has observed to the contrary in the case of the ***"Oriental Insurance Co. Ltd. Vs. Niru & Ors."*** reported in ***"(2025) INSC 822"***. The observations made by the Apex Court in the aforesaid judgment is quoted herein below:-

> ***"9. A very relevant issue agitated by the Insurance Company is the illegality in awarding interest for future prospects, which in any event is an amount received in advance, normally inuring to the benefit of the claimants only in future. This is the only contention taken in the connected appeal bearing SLP(C) No.22136 of 2024. We find absolutely no reason to accept this***

argument. In SLP(C) No.11340 of 2020, the multiplier applied looking at the life span of the deceased and the claimants is 13. Before the Tribunal itself, the case was pending for 12 years and the only amount received by the claimants was Rs.50,000/-. Hence though amounts are awarded for future prospects taking the multiplier of 13; in effect, the money is received only after the period for which the multiplier is adopted. Similar is the case in SLP(C) No.22136 of 2024 where the accident occurred in 2018, the multiplier applied is 17 and we are seven years from the date of accident.

10. We cannot but observe that there was nothing stopping the Insurance Company from settling the claim on a computation, on receipt of intimation of the accident, especially since the determination of compensation for loss of dependency, on death being occasioned in a motor vehicle accident, can be determined as evident from the judicial precedents; at least provisionally.

11. In fact, it is due to the repudiation of or refusal to consider the claim that the claimants are driven to the Tribunal. When the matter is

pending before the Tribunal or in appeal before the higher forums, the claimants are deprived of the compensation for future prospects. If they are paid in time, it could be utilized by the claimants and on failure, the loss of dependency would force the claimants to source their livelihood from elsewhere. This is sought to be compensated at least minimally by award of interest, which oftener them ever is nominal also since only simple interest is awarded. If the amounts were disbursed to the claimants on a rough calculation, on intimation of the accident to the Insurance Company, subject to the award of the Tribunal, necessarily there would not have been any interest liability atleast to the extent of the disbursement made. Hence, we reject the contention and direct that the entire award amounts would be paid with interest at the rate of 9% from the date of filing of the claim till the date of disbursement, deducting only Rs.50,000/- granted as interim compensation, in SLP(C) No.11340 of 2020 and 6% in SLP(C) No.22136 of 2024 as awarded by the High Court; deduction to be made for the amounts already paid."

[29] In view of the above observations, this court is of the opinion that the claimants are entitled to compensation with interest @ 7.5% per annum on the whole awarded amount including that on future prospects.

[30] In view of the discussions made in the foregoing paragraphs, the compensation to which the claimants are found entitled is computed herein below:-

Sl. No.	Description	Amount
1.	Monthly income of the deceased	Rs. 6,000/-
2.	Addition of 25% towards future prospects= Rs. 6,000+Rs.1500	Rs.7,500/-
3.	1/4th deduction towards personal and living expenses of the deceased=Rs.7500/- -Rs.1875	Rs.5625/-
4.	Loss of Dependency= Rs. 5625 X 12 X 13	Rs. 8,77,500/-
5.	Funeral expenses	Rs. 15,000/-
6.	Loss of estate	Rs. 15,000/-
7.	Loss of spousal consortium to the wife of the deceased	Rs. 40,000/-
8.	Loss of parental consortium to each of the four children @ Rs. 40,000/-	Rs. 1,60,000/-
9.	Expenditure incurred on medical treatment of the deceased	Rs. 89,992/-
10.	Total=	Rs. 11,97,492/-

[31] In view of above, the claimants are entitled to get compensation amount of Rs. 11, 97, 492/-with an interest @ 7.5 % per annum. The insurance company is directed to deposit the remaining amount before the Registry of this court within a period of 4(four) from the date of this judgment. On such deposit same shall be disbursed to the claimants (children of the original claimant) after proper verification.

[32] This appeal as well as cross-objection is, accordingly, disposed of.

JUDGE

Comparing Assistant

Munmun Boruah

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