

GAHC020003842023

2025:GAU-NL:435



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

Case No. : MACApp./2/2023

THE UNITED INDIA INSURANCE CO.LTD.
REPRESENTED BY ITS BRANCH MANAGER,
DIMAPUR, NAGALAND

VERSUS

SMTI. TARAMAI GOGOI AND 3 ORS.
W/O SHRI DIGANTA GOGOI,
PRESENTLY RESIDING AT TUENSANG BAZAR AREA,
TUENSANG, NAGALAND,
ALTERNATE ADDRESS AT KADAM GOHAIN GAON,
P.O KADAM, P.S BOGINADI,
DISTRICT LAKHIMPUR, ASSAM

2:SHRI DIPEN GOGOI

SON OF SHRI DIGANTA GOGOI

PRESENTLY RESIDING AT TUENSANG BAZAR AREA

TUENSANG
NAGALAND

ALTERNATE ADDRESS AT KADAM GOHAIN GAON

P.O KADAM
P.S BOGINADI

DISTRICT LAKHIMPUR
ASSAM

3:SHRI DIGANTA GOGOI

SON MANIKANTA GOGOI

PRESENTLY RESIDING AT TUENSANG BAZAR AREA

TUENSANG
NAGALAND

ALTERNATE ADDRESS AT KADAM GOHAIN GAON

P.O KADAM
P.S BOGINADI

DISTRICT LAKHIMPUR
ASSAM

4:SHRI ROBIN KONWAR

SON OF PADMESWAR KONWAR

RESIDENT OF VILLAGE
KADAM GOHAIN GAON
P.O KADAM

P.S BOGINADI

DISTRICT LAKHIMPUR
ASSAM

(OWNER OF MOTOR CYCLE B/REGD. NO. AS-07-D/3382

Advocate for the Petitioner : TAYONGCHUBA, MEDO VERO,PFOSEKHO PFOTTE

Advocate for the Respondent : B. N. SARMAH, IMTIWAPANG

Linked Case : I.A.(Civil)/93/2023

THE UNITED INDIA INSURANCE CO. LTD.

REPRESENTED BY ITS BRANCH MANAGER

DIMAPUR
NAGALAND

VERSUS

SMTI. TARAMAI GOGOI AND 3 ORS

WIFE OF SHRI DIGANTA GOGOI

PRESENTLY RESIDING AT TUENSANG BAZAR AREA

TUENSANG
NAGALAND

ALTERNATE ADDRESS AT KADAM GOHAIN GAON

P.O KADAM
P.S BOGINADI

DISTRICT LAKHIMPUR
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4:SHRI ROBIN KONWAR

SON OF PADMESWAR KONWAR

RESIDENT OF VILLAGE
KADAM GOHAIN GAON

P.O KADAM
P.S BOGINADI

DISTRICT LAKHIMPUR
ASSAM

Advocate for : TAYONGCHUBA

Advocate for : appearing for SMTI. TARAMAI GOGOI AND 3 ORS

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT

Date : 08-09-2025

Judgment and Order (Oral)

The instant appeal under section 173 of the Motor Vehicle Act has been filed by the insurer against the impugned judgment and order dated 24.01.2023 passed by the learned member MACT Tuensang Nagaland in MAC Case No.04/2021.

2. The claim petition before the MACT Tuensang Nagaland was filed by the claimant/respondent No.1 under section 166 of the Motor Vehicles Act against the owner cum driver and the insurer of the

Motorbike B/R No.AS-07-D/33/82 claiming compensation for the accidental death of her son stating that on 14.01.2020 while the deceased was travelling as pillion rider on the Motorcycle driven by the respondent No.4 was coming from North Lakhimpur Assam towards Laluk and on reaching Nowboicha Higher Secondary School, the said Motorcycle lost control and dashed against the railing of an RCC bridge. Due to the impact, the pillion rider was thrown on the main road and as a result of which the pillion rider received grievous injuries and succumbed to his injuries in the hospital. As such, the claimant filed the claim case claiming compensation of Rs.41,52,000/- for the accidental death of her son.

3. I have heard the learned counsel for the appellant/Insurer Mr. Tayongchuba as well as Mr. B.N. Sarmah, learned counsel for the respondent 1/claimant.

4. The learned counsel for the appellant submits that the insurer has contested the claim case by filing written statement denying its liabilities. The appellant/insurer had also filed an application for discharging the insurer from the liability on the ground that the policy opted by the respondent No.4/driver was a "Liability only Policy", which did not have the coverage for the pillion rider for the reason that the respondent No.4 cum owner of the motorcycle had not paid the requisite premium for covering the risk of the pillion rider as well as the owner cum driver.

5. It is submitted that the learned MACT Tuensang without taking into consideration the evidence and materials available on record has passed the judgment dated 24.01.2023 awarding

compensation of Rs.19,24,400/- in favour of the claimant/respondent Nos.1, 2 & 3 directing the appellant to make payment of the awarded amount along with interest at the rate of 7.5% per annum from the date of filing the claim petition within a period of 30 days from the date of the judgment.

6. The learned counsel for the appellant has stated that in the written statement of the appellant/insurer, it has been specifically stated that the deceased was a pillion rider in the offending motorbike, and that it is apparent from the insurance policy that the insured owner has not paid extra premium for coverage of the pillion rider in case of any eventuality and as such, the insurer is not liable for any compensation.

7. The learned counsel submits that the MACT Tuensang had failed to take into consideration that the liability of the insurance company under the "liability only policy" is not extended to a pillion rider of the Motorcycle unless a requisite amount of premium is paid for covering the risk of the pillion rider. Further, the learned MACT Tuensang also failed to appreciate that no additional premium was paid to cover the risk of pillion rider as well as owner cum driver in the instant case.

8. The learned counsel for the appellant also submits that the learned MACT in its judgment dated 24.01.2023 held that the "*counsel for the insurer also filed a petition along with uncertified photocopy of the insurance Company. Such document is not proved as required by the Evidence Act. Unless the documents are marked and exhibited it has no evidentiary value in the eye of law.*" It is submitted that the

learned Trial Court could not have arrived at such a finding as the original policy had been exhibited by the claimants and the insurer did not have the original copy of the policy.

9. The learned counsel for the appellant submits that the insurer had filed an additional affidavit praying for discharging the insurer from the liability of the case annexing a copy of the insurance policy. However, the learned MACT Tuensang did not consider the said additional affidavit filed by the insurer. The learned counsel for the appellant has relied on the following cases:-

1. ***Oriental Insurance Company Limited*** reported in **AIR 2008 SC 2729**
2. ***General Manager United Insurance Company Limited vs M. Laxmi and others*** reported in ***AIR 2009 SC 626***
3. ***United India Insurance Co.Ltd, Shimla vs Tilak Singh and Others*** reported in ***2006 (2) T.A.C.312 (S.C)***

10. The learned counsel for the respondent No.1 Mr. B.N. Sarmah on the other hand has argued that it is the duty of the insurer to prove his case and to prove that he is not liable and the burden of proof is on the insurer to duly exhibit the original insurance policy to show that the policy did not cover the pillion rider or that no premium was paid for the same. However, in the instant case, the insurer failed to produce the original insurance policy and moreover when the claimant was examined as PW, no question was put by the insurer regarding the details of the insurance policy. Therefore, the insurer failed to prove their case by adducing cogent evidence before the MACT.

11. The learned counsel for the claimant/respondent No.1 has relied on the following judgments to substantiate his contentions:-

1. ***National Insurance Co.Ltd vs Swaran Singh and Others*** reported in ***(2004) 3 SCC 297.***
2. ***Pappu and Others vs Vinod Kumar Lamba and Another*** reported in ***(2018) 3 SCC 208***
3. ***The New India Assurance Co.Ltd vs Joga Maya Chetri & Ors*** reported in ***(1992) 1 GLR 137***
4. ***Bimla devi and Others vs Himachal Road Transport Corporation and Others*** reported in ***AIR 2009 (SC) 2819***
5. ***Janabai WD/O Dinkarrao Ghorpade and Others vs ICICI Lambord Insurance Company Limited*** reported in ***(2022) 10 SCC 512***
6. ***National Insurance Co.Ltd Chandigarh vs Nicolletta Rohtagi and Others*** reported in ***(2002) & SCC 456***

12. I have given due consideration to the submissions made by the opposing counsel and also perused the pleadings as well as the Trial Court Records and the judgments relied upon by the parties.

13. It is not disputed that the appellant/insurer in the written statement before the MACT had stated that the insured owner had not paid any extra premium for coverage of the pillion rider. The appellant had also contended in the written statement that the insurer has no liability as the deceased was a pillion rider in the offending Motorbike.

14. When the insurer denies liability, it is not enough that the claimant has already filed and proved the existence of the insurance

policy. Once the claimant discharges his initial burden by producing the policy, the insurer must produce the insurance policy in original or a certified copy if it relies on any specific exclusion. The insurer is in possession of all the documents and therefore also has to prove its defence with evidence by leading evidence of the exclusion in the policy. The burden to prove the breach of conditions or breach of the policy under Section 149(2) of the MV Act lies squarely on the insurer as held by the Hon'ble Supreme Court in the case of **Swaran Singh (supra)** which is a judgment passed by a larger bench.

15. The Supreme Court in the case of **Swaran Singh (supra)** held that *"to avoid their liability, the insurer must not only establish the available defence but must also establish 'breach' on the part of the owner of the vehicle, and the burden of proof wherefore would be on the insurer. The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case."* Merely denying the liability is not enough and the insurer must prove its defense with the policy and supporting evidence.

16. Upon going through the trial Court records, it is seen that the claimant's evidence/PW was closed on 30.05.2022. Thereafter, the insurer was given opportunity to produce DWs on 23/6/2022, 19/7/2022, 11/8/2022, 24/8/2022, 22/9/2022, 21/10/2022/ 24/11/2022 and 16/12/2022. Only after giving sufficient opportunity the learned MACT closed the evidence and proceeded for final arguments.

17. Therefore, this Court is of the view that enough opportunity had been given by the learned MACT but the insurer/appellant failed to

adduce evidence in support of their defence. This Court finds no infirmity in the decision of the learned MACT inasmuch as the insurer/appellant produced only an uncertified photocopy of the insurance policy and no evidence was adduced inspite of countless opportunity granted by the learned Trial Court to adduce their evidence.

18. In view of the above discussion and observations, this Court is of the view that the appellant has not been able to make out a case for interference of this Court. Accordingly, the appeal is dismissed.

19. Registry to send back the trial court records.

JUDGE

Comparing Assistant