GAHC010029422017

2026:GAU-AS:16104

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

**Case No. : MACApp./325/2017**

THE ORIENTAL INSURANCE COMPANY LTD
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI REPRESENTED BY THE REGIONAL MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI-781007

VERSUS

MST RUKIYA KHATUN and 6 ORS
W/O LATE RAFIKUL ISLAM

## BEFORE
## HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Appellant(s) : Ms. R. D. Mozumdar, Advocate

For the Respondent(s) : Mr. J. Mollah, Advocate
: Mr. R. Ali, Advocate

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **03.11.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : NA

**JUDGMENT AND ORDER (ORAL)**

Heard Ms. R. D. Mozumdar, the learned counsel appearing on behalf of the Appellant and Mr. J. Mollah, the learned counsel appearing on behalf of the Respondent Nos. 1 to 5. I have also heard Mr. R. Ali, the learned counsel appearing on behalf of the Respondent Nos. 6 & 7.

2. This is an Appeal directed against the judgment and award dated 20.02.2017 passed in MAC Case No. 389/2012 whereby the learned Motor Accident Claims Tribunal No.2, Kamrup (Metro) at Guwahati (hereinafter referred to as "the learned Tribunal") held that the owner of the vehicle was liable to pay an amount of Rs.10,66,000/- along with interest at the rate of 6% per annum from the date of filing of the application under Section 166 of the Motor Vehicles Act, 1988 (for short, the "Act of 1988") till the date of payment and further, the Appellant would be entitled to recover the entire awarded compensation amount from the owner in due course.

3. The Appellant herein who is the Insurance Company, is aggrieved by the directions passed in the Award dated 20.02.2017 (hereinafter referred to as the "impugned Award") on the ground that the learned Tribunal ought not to have directed the Appellant

Insurance Company to make payment after having come to a finding that the vehicle was driven by an unauthorized driver. It was also submitted that the victim was a gratuitous passenger. It is in that premise, the present Appeal was filed on 05.05.2017.

4. For the purpose of deciding the present Appeal, this Court finds it relevant to take note of the brief facts.

5. On 20.11.2011, at around 7:20 AM, one Rafiqul Islam (since deceased) was carrying goods by the vehicle bearing Registration No.AS-01-DD-1590 (Bolero Lamper) as owner of the goods from Mukalmua towards Guwahati and on the way, when the same vehicle reached at Agyathuri, the vehicle met with an accident as a result of which Late Rafiqul Islam sustained grievous injuries. Subsequent thereto, he was rushed to the GMCH, Guwahati, where he succumbed to his injuries on the same day.

6. An FIR was lodged before the Hajo Police Station, which was registered as Hajo P.S. Case No. 330/2011 under Sections 279, 337, 338 and 304(A) of the Indian Penal Code. Subsequent thereto, the claim petition was filed by the Respondent Nos. 1 to 5 as claimants before the learned Tribunal which was registered and numbered as MAC Case No. 389/2012.

7. The Respondent Nos. 6 and 7 herein who were the Opposite Party Nos. 1 and 2 in the claim proceedings did not contest. However, the Appellant who was the Opposite Party No.3 before the learned Tribunal submitted a written statement. On the basis of such pleadings, two issues were framed, which were:

> "*1. Whether the victim Late Rofikul Islam died in the alleged road accident dated 20-11-2011 involving vehicle No.AS-01-DD-1590 (Bolero Lamper) and whether the said accident took place due to the rash and negligent driving of the driver of the offending vehicle?*
>
> *2. Whether the claimant(s) are entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?"*

8. On behalf of the claimants, two witnesses were examined and various documents were exhibited. On behalf of the Appellant Insurance Company, two witnesses were examined.

9. The learned Tribunal vide the Award dated 20.02.2017 allowed the claim proceedings by determining the just compensation. In doing so, the learned Tribunal while deciding the Issue No.1, came to a categorical finding that the accident occurred due to the rash and negligent driving of the driver of the offending Bolero Lamper vehicle.

10. Insofar as the Issue No.2, which related to the just and proper compensation, the learned Tribunal by applying the ratio of the judgment of the Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation***, *reported in* ***(2009) 6 SCC 121*** along with the judgment of the Supreme Court in the case of ***Rajesh and Others Vs. Rajbir Singh and Others*** *reported in* ***(2013) 9 SCC 54*** determined that the just compensation would be Rs.10,66,000/-. The learned Tribunal also went into the question of whom to be saddled the liability and after examining the insurance policy, came to an opinion that the insurance policy was valid at the time when the accident occurred but also opined that the driving license was fake and the owner of the vehicle had allowed an unauthorized driver to drive the vehicle.

11. The learned Tribunal, further taking into account the judgment in the case of ***National Insurance Co. Limited Vs. Swaran Singh*** *reported in* ***(2004) 3 SCC 297***, came to a categorical opinion that this is a fit case wherein directions can be issued to the Appellant Insurance Company to pay the compensation and thereupon to recover from the owner.

12. In the backdrop of the above, this Court heard the learned counsels appearing on behalf of the parties.

13. The pivotal question which arises in the instant proceedings is as to whether the impugned Award as it stands is required to be interfered with by this Court in exercise of its appellate jurisdiction. The challenge so made is solely on the question that the learned Tribunal ought not to have directed the Appellant to make payment of the compensation and then to recover, inasmuch as, it is the case of the Appellant that after the learned Tribunal had found that the vehicle was driven by a person who was unauthorized to drive, the liability should have been saddled only upon the owner of the vehicle without the involvement of the Appellant Insurance Company.

14. Ms. R. D. Mozumdar, the learned counsel appearing on behalf of the Appellant further submitted that the learned Tribunal failed to issue appropriate directions as to how after making payment by the Appellant Insurance Company, the recovery would be made, inasmuch as the directions should have been in tune with the observations of the Supreme Court in the case of ***Oriental Insurance Company Limited Vs. Nanjappan and Others*** *reported in* ***(2004) 13 SCC 224***. Specific reference was made to paragraph No.8 of the said judgment.

15. Mr. J. Mollah, the learned counsel appearing on behalf of the

claimants submitted drawing reference to a judgment of the Supreme Court in the case of ***Hind Samachar Limited (Delhi Unit) Vs. National Insurance Company Limited and Others*** *reported in* ***(2026) 2 SCC 773***, that merely because a driving licence is fake, the Insurance Company is not absolved of its liability to make payment, inasmuch as the Insurance Company have an additional responsibility to discharge that the owner also had due knowledge that the vehicle in question was driven by a person using a fake driving license.

16. Mr. R. Ali, the learned counsel who appears on behalf of the Respondent Nos. 6 and 7 submitted that the instant Appeal so filed has no legs to stand in view of the judgment of the Supreme Court in the case of ***Hind Samachar Limited (supra)*** as well as the recent judgment dated 11.02.2026 of the Supreme Court in the case of ***Kaminiben and Others Vs. The Oriental Insurance Company Limited and Others***, wherein the Supreme Court categorically observed that when the victim was a gratuitous passenger, directions can be issued against the insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the insured in the same proceedings.

17. This Court has given an anxious consideration to the

respective submissions.

18. The owner of the vehicle have not put to challenge the Award dated 20.02.2017. In fact, the owner of the vehicle, who is the Respondent No.6, even did not participate in the said proceedings by filing the written statement. The findings of fact insofar as the Issue No.1 calls for no interference as there appears to be in consonance with the evidence so led. Insofar as the discussion and the determination of the just compensation, it is the opinion of this Court that the same is in consonance with the settled principles of law holding the field at the time when the Judgment and Award was pronounced.

19. The only question which arises in the instant Appeal is as to whether the directions so passed by the learned Tribunal upon the Appellant Insurance Company to make payment of the compensation and recover the same from the Respondent No.6 herein (Opposite Party No.1 in the claim proceedings) calls for no interference.

20. This Court has given an anxious consideration and have also perused the settled principles of law including the judgment of the Supreme Court in the case of ***Swaran Singh (supra)*** as well as

***Nanjappan (supra)*** wherein the Supreme Court categorically held that the principle of pay and recover can be adopted for satisfying the awarded compensation by issuing directions upon the insurance company to make the payment and thereafter recover the same from the owner of the vehicle.

21. This Court has also taken note of the judgment of the Supreme Court in the case of ***Hind Samachar Limited (supra)*** but in the present facts, the said judgment would not be applicable considering the fact that there is a clear finding of fact at paragraph No.31 of the impugned judgment that the owner of the vehicle had allowed an unauthorized driver to drive the vehicle and without that finding of fact being put to challenge, the said judgment in the case of ***Hind Samachar Limited (supra)*** would not apply.

22. The recent judgment of the Supreme Court in the case of ***Kaminiben (supra)*** also adopts the pay and recover principle by observing inter alia that even in the case of gratuitous passengers, directions can be issued upon the insurance company to make payment for satisfying the award and thereupon to make the recovery.

23. Considering the above, this Court does not find any merit in the instant Appeal challenging the directions so passed by the learned Tribunal in the impugned Award dated 20.02.2017. Accordingly, the Appeal stands dismissed.

24. Six weeks' time is granted to the Appellant Insurance Company to deposit the compensation as awarded by the learned Tribunal along with interest at the rate of 6% as awarded by the learned Tribunal.

25. It has been duly submitted by Ms. R. D. Mozumdar, the learned counsel appearing on behalf of the Appellant that 50% of the compensation was deposited before the Registry pursuant to the order dated 17.07.2018.

26. Mr. J. Mollah, the learned counsel appearing on behalf of the claimants submitted that an application was filed for withdrawal of the said amount however the same was objected to and as such, the application still remains pending. Under such circumstances, this Court directs that upon an application being filed by the Appellant before the Registry along with providing details of the deposit of the entire compensation along with interest before the Tribunal as directed hereinabove, the amount so deposited by the

Appellant Insurance Company before the Registry in pursuance to the order dated 17.07.2018 be refunded to the Appellant.

27. In addition to that, upon production of an order from the learned Tribunal that the amount so directed hereinabove to be deposited along with interest have been deposited before the learned Tribunal, the Appellant Insurance Company be also refunded the statutory deposit of Rs.25,000/-.

28. This Court, before parting with the records, however, finds it also relevant to observe that while disbursing the amount by the learned Tribunal to the claimants, the learned Tribunal shall bear in mind the observations of the Supreme Court in the case of ***Nanjappan (supra)***, more particularly at Paragraph No.8, which is reproduced herein under.

> "***8.*** *Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. 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 which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."*

29. The instant Appeal is dismissed with a cost quantified at Rs.15,000/- upon the Appellant Insurance Company which shall be also deposited before the learned Tribunal along with the compensation so directed here hereinabove.

30. Return the TCR.

**JUDGE**

Bijoy Saha
Digitally signed by Bijoy Saha
Date: 2026.11.05 19:38:00 +05'30'

**Comparing Assistant**