GAHC010240972018

2026:GAU-AS:15195

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

Case No. : MACApp./933/2018

NATIONAL INSURANCE COMPANY LIMITED
SUBSIDIARY OF GENERAL INSURANCE CORPORATION OF INDIA,
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA-700071, REPRESENTED BY THE DEPUTY MANAGER, GAUHATI REGIONAL OFFICE, BHANGAGARH, GUWAHATI 781005

VERSUS

SMTI. DALIMI KALITA AND 4 ORS
W/O LATE BIREN KALITA,
RESIDENT OF VILLAGE KHANAMUKH, PO GAUHATI UNIVERSITY, PS JALUKBARI, GUWAHATI, DIST KAMRUP M ASSAM , 781014

2:SRI KANKAN KALITA
S/O LATE BIREN KALITA

RESIDENT OF VILLAGE KHANAMUKH
PO GAUHATI UNIVERSITY
PS JALUKBARI
GUWAHATI
DIST KAMRUP M ASSAM
781014. TO BE REPRESENTED BY RESPONDENT NO. 1

3:SMTI. THANESWARI KALITA
W/O LATE THANESWAR KALITA

RESIDENT OF VILLAGE KHANAMUKH
PO GAUHATI UNIVERSITY
PS JALUKBARI
GUWAHATI
DIST KAMRUP M ASSAM
781014

4:SRI BHASKAR CHOUDHURY
S/O NARENDRA NATH CHOUDHURY
EAST GOSALA PO MALIGAON
PS JALUKBARI
DIST KAMRUP ASSAM
781011. OWNER

5:MD. HIKMAT KHAN
S/O LATE NOROSAN ALI
VILLAGE SATRA KANARA
PO SATRAKANARO BAZAR
PS BAGHBAR
DIST BARPETA
ASSAM
781308
DRIVE

Advocate for the Petitioner : MS. R D MOZUMDAR, MR. S P SHARMA,MS. C MOZUMDAR

Advocate for the Respondent : MR. S RAHMAN (R1-R3), MRS. M SAIKIA (R-1,2,3),MR. M U MAHMUD (R-1,2,3),MR. Z IQBAL (R1-R3),MR. S MUKTAR

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 08.10.2026

Whether the pronouncement is of the operative of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

Heard Ms. R. D. Mozumdar, learned counsel for the appellant. Also heard Mr. M. U. Mahmud, learned counsel for respondent Nos.1, 2 & 3. None appears for respondent Nos. 4 and 5, despite service of notice. It is also noticed that respondent Nos. 4 and 5 did not appear before the learned Tribunal to contest the claim.

2. This appeal has been preferred against the judgment and award dated 26.07.2018, passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup (M), Guwahati, in MAC Case No. 794/2016, whereby the learned Tribunal has awarded a sum of Rs. 14,80,000/- (Rupees fourteen lakh eighty thousand) only as compensation to the respondent Nos. 1, 2 & 3/claimants on account of the death of Biren Kalita in a motor vehicle accident, with a direction to the appellant-National Insurance Company Limited to pay 50% of the awarded amount along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization, and the remaining 50% to be paid by the owner of the offending vehicle, with liberty to the appellant-insurance company to recover the amount so paid from the owner of the vehicle.

3. The case of the claimants, in brief, is that on 06.03.2016 at about 10:30 a.m., Biren Kalita was travelling as a pillion rider on a motorcycle bearing registration No. AS-01-BV-2330 from Jalukbari towards Azara. When the motorcycle reached near Azara Fish Market on NH-37, a Tata Magic bearing registration No. AS-25-AC-0427, coming from the same direction, was being driven in a rash and negligent manner and dashed the motorcycle from behind.

As a result of the accident, Biren Kalita sustained grievous injuries and was immediately shifted to Narayana Hospital for treatment. However, he succumbed to his injuries on 09.03.2016 while undergoing treatment. Thereafter, his post-mortem examination was conducted at Gauhati Medical College and Hospital. In connection with the accident, Azara P.S. Case No. 107/2016 was registered and upon investigation, charge-sheet was laid against the driver of the offending vehicle.

4. The respondent Nos. 1, 2 and 3, being the wife, minor son and mother of the deceased, respectively, instituted the claim proceeding under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of the death of Biren Kalita. It was stated that at the time of the accident, the deceased was aged about 45 years and was earning approximately Rs. 12,000/- per month from his employment at STD Bricks Industry, Azara, and was the sole bread earner of the family. The offending Tata Magic was stated to be insured with the appellant-National Insurance Company Limited.

5. The owner and driver of the offending vehicle, arrayed as opposite party Nos. 1 and 2 before the learned Tribunal, did not contest the proceeding and the case proceeded *ex parte* against them. However, the appellant contested the claim by filing its written statement. The learned Tribunal, upon consideration of the evidence and materials on record, allowed the claim petition and awarded compensation of Rs. 14,80,000/- with interest at the rate of 7.5% per annum, directing the appellant-insurance company to pay 50% of the awarded amount and the owner of the offending vehicle to bear the remaining 50%, with liberty to the appellant-insurance company to recover the amount paid by it from the owner under the principle of pay and recovery. Aggrieved thereby, the present appeal has been preferred by the insurance

company.

6. Ms. R. D. Mozumdar, learned counsel for the appellant, submits that the learned Tribunal, having arrived at a categorical finding that there was a violation of the terms and conditions of the insurance policy on account of the offending vehicle being plied without a valid route permit, could not have directed the appellant-insurance company to pay 50% of the awarded compensation and thereafter recover the same from the owner of the vehicle. Once a breach of the policy condition stood established, the liability to satisfy the award could not have been fastened upon the appellant, even to the extent of 50%, and the direction for pay and recovery is therefore unsustainable in law.

7. Learned counsel further submits that the owner of the offending vehicle had violated the policy condition by allowing the vehicle to be operated without a valid route permit and therefore, the entire liability to pay the compensation ought to have been fastened upon the owner of the vehicle. The learned Tribunal has erred in directing the appellant to bear 50% of the compensation despite having found violation of the policy condition. However, she submits that in the event this Court is of the view that the appellant is required to satisfy 50% of the awarded amount, the appellant may be permitted to pay the said amount to the claimants and recover the same from the owner of the offending vehicle in accordance with the principle laid down by the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Shri Nanjappan & Ors.**, reported in **(2004) 13 SCC 224**. In the said decision, the Hon'ble Supreme Court, while directing the insurer to satisfy the awarded amount, permitted the insurer to recover the amount so paid from the insured through the executing court, without requiring the insurer to institute a separate suit.

8. Ms. Mozumdar, learned counsel for the appellant, further submits that a

similar course was adopted by this Court in **MACApp. No. 986/2018 (Oriental Insurance Co. Ltd. Vs. Smt Rekha Moni Phukan & Ors.)**, wherein, while permitting the insurer to satisfy the award, liberty was granted to recover the amount from the owner/insured in accordance with the law laid down by the Hon'ble Supreme Court in **Nanjappan** (supra). She submits that in the said case, this Court, having found a clear violation of the policy conditions, did not fasten the ultimate liability upon the insurer and while directing the appellant-insurance company to deposit the awarded amount, granted liberty to recover the same from the owner/insured, with a further direction to the learned Tribunal to issue notice to the insured owner and require him to furnish security for the amount to be paid by the insurer. Therefore, she submits that in the event this Court upholds the direction requiring the appellant to satisfy 50% of the awarded compensation, the appellant may likewise be granted liberty to recover the amount so paid from the owner of the offending vehicle in accordance with law.

9. Learned counsel for the appellant also challenges the quantum of compensation assessed by the learned Tribunal. She submits that in the absence of cogent proof regarding the income of the deceased, the learned Tribunal ought not to have assessed his monthly income at Rs. 8,000/- per month. The learned Tribunal erred in adding 25% towards future prospects, whereas, the appropriate addition ought to have been 10%. Learned counsel also submits that having regard to the number of dependants, the learned Tribunal ought to have deducted 1/3 of the income towards the personal and living expenses of the deceased instead of 1/4. Learned counsel further submits that the learned Tribunal has also erroneously awarded a sum of Rs. 1,50,000/- towards medical expenditure, although the bills on record establish expenditure

of only Rs. 84,000/-. Therefore, she submits that the impugned judgment and award, particularly to the extent of fastening 50% of the liability upon the appellant-insurance company in respect of the award of Rs. 14,80,000/- along with interest at the rate of 7.5% per annum, is contrary to law and the settled principles governing the liability of an insurer in cases of breach of policy conditions.

10. Mr. M. U. Mahmud, learned counsel for respondent Nos. 1, 2 & 3, submits that the direction issued by the learned Tribunal requiring the appellant-insurance company to satisfy 50% of the awarded compensation ought not to be interfered with, particularly having regard to the beneficial object of the Motor Vehicles Act and the settled principle that the interest of the claimants should not be prejudiced on account of a dispute between the insurer and the owner of the offending vehicle. He submits that even where a breach of the terms and conditions of the policy is alleged, the insurer may be directed to satisfy the award in the first instance and thereafter recover the amount from the owner in accordance with law.

11. Learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in **Sunita & Ors. v. United India Insurance Co. Ltd. & Ors.**, reported in **2025 0 Supreme(SC) 1085**, to contend that even in a case where the Insurance Company disputes its liability on the ground of violation of the policy conditions or non-coverage of the risk, the principle of "pay and recover" can be invoked so as to protect the interest of the third-party claimants. He submits that in the said case, in spite of the Insurance Company's plea that the offending vehicle was being used without a valid permit, registration and fitness certificate and that the driver was not holding a valid licence, the Hon'ble Supreme Court directed the Insurance Company to

indemnify the compensation amount awarded by the Tribunal and permitted it to recover the same from the owner of the offending vehicle.

12. Mr. Mahmud, learned counsel, has further placed reliance upon the judgment of the Hon'ble Supreme Court in **Reliance General Insurance Company Ltd. v. Om Parkash & Ors.,** reported in **2026 LiveLaw (SC) 742**, to submit that the owner of the vehicle has a duty to ensure that the driver possesses a valid driving licence and where there is a breach of the policy condition on account of the owner permitting an unlicensed driver to operate the vehicle, the ultimate burden of satisfying the award may be placed upon the owner and driver. Learned counsel submits that even in such circumstances, the principle of "pay and recover" has been recognized, thereby ensuring that the claimants receive the awarded compensation without being required to litigate the dispute between the insurer and the insured. Therefore, he submits that if the appellant-insurance company is required to satisfy 50% of the awarded compensation in terms of the impugned judgment and award, the same may appropriately be followed by recovery from the owner in accordance with law. Thus, he submits that the direction of the learned Tribunal requiring the appellant-insurance company to satisfy 50% of the awarded compensation, with liberty to recover the amount from the owner of the offending vehicle, does not call for interference and as such, the present appeal is liable to be dismissed.

13. Considered the submissions of learned counsel for the parties and also perused the materials available on record, including the impugned judgment and award dated 26.07.2018, passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup (M), Guwahati, in MAC Case No. 794/2016.

14. The respondent Nos. 1, 2 and 3, being the wife, minor son and mother of the deceased Biren Kalita, respectively, have filed a claim petition claiming

compensation on account of his death in the motor vehicle accident. The case of the claimants was that on 06.03.2016, while the deceased was travelling as a pillion rider on a motorcycle bearing registration No. AS-01-BV-2330, a Tata Magic bearing registration No. AS-25-AC-0427, coming from the same direction, dashed the motorcycle from behind due to rash and negligent driving of its driver. As a result, the deceased sustained grievous injuries and subsequently succumbed to the same on 09.03.2016 while undergoing treatment at Narayana Hospital.

15. In support of their claim, claimant No. 1, Dalimi Kalita, examined herself as PW-1. She had deposed that the deceased was her husband and at the time of the accident, he was aged about 45 years and was earning approximately Rs. 12,000/- per month from his employment at STD Bricks Industry, Azara. She further deposed regarding the manner of occurrence and the treatment undergone by the deceased following the accident. She produced the accident information report, medical documents, post-mortem report, certified copy of the FIR, charge-sheet and other documents, including the salary certificate, which were exhibited before the learned Tribunal. The claimants also examined PW-2, Md. Rashid Ahmed, who claimed to be an eye-witness to the occurrence. He deposed that the Tata Magic bearing registration No. AS-25-AC-0427 was being driven in a rash and negligent manner and dashed the motorcycle bearing registration No. AS-01-BV-2330 from behind, resulting in serious injuries to the deceased.

16. On the other hand, the appellant-insurance company examined DW-1, Debajit Barkakati, its investigator. He deposed regarding the verification of the driving licence of the driver of the offending vehicle and the route permit of the vehicle. According to his evidence, the driving licence of the driver, Hikmat

Khan, was valid only up to 10.01.2012 and the route permit of the offending vehicle had also expired prior to the date of the accident. He accordingly deposed that the offending vehicle was being driven without a valid driving licence and permit at the relevant time, resulting in violation of the terms and conditions of the insurance policy. However, in his cross-examination, he admitted that the insurance policy covered the offending vehicle at the relevant time and no document had been produced to show that the owner of the vehicle had been informed by the insurance company about the alleged invalidity of the driver's licence.

17. Upon consideration of the evidence and materials on record, the learned Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the offending Tata Magic and the vehicle was insured with the appellant-insurance company. However, the learned Tribunal found that the driver did not possess a valid driving licence at the relevant time and the offending vehicle did not have a valid route permit. While holding that there was violation of the policy conditions, the learned Tribunal nevertheless directed the appellant-insurance company to bear 50% of the awarded compensation and the owner of the vehicle to bear the remaining 50%, with liberty to the appellant to recover the amount paid by it from the owner under the principle of pay and recovery.

18. As regards the quantum of compensation, the learned Tribunal did not accept the claimed income of Rs. 12,000/- per month for want of satisfactory proof. However, considering the age of the deceased to be 45 years, the learned Tribunal assessed his monthly income at Rs. 8,000/- and added 25% towards future prospects. After deducting 1/4 towards his personal and living expenses, the loss of dependency was assessed at Rs. 12,60,000/-. The learned Tribunal

further awarded amounts under the heads of loss of consortium, loss of estate, funeral expenditure and medical expenditure, and arrived at a total compensation of Rs. 14,80,000/-, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

19. Upon consideration of the facts obtaining on record, this Court finds that there is no serious dispute with regard to the factum of the accident, the involvement of the offending vehicle bearing registration No. AS-25-AC-0427, the death of Biren Kalita as a consequence of the injuries sustained in the said accident, and the fact that the offending vehicle was insured with the appellant-insurance company at the relevant time. The learned Tribunal, on the basis of the evidence of PW-2, the eye-witness, as well as the materials relating to the criminal proceedings, has recorded a finding that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The said finding has not been seriously assailed before this Court and accordingly, the same calls for no interference.

20. The issue which arises for consideration is as to whether, in view of the finding recorded by the learned Tribunal regarding the absence of a valid route permit and driving licence, the appellant-insurance company could have been directed to satisfy 50% of the awarded compensation with liberty to recover the same from the owner. From the evidence of DW-1, Debajit Barkakati, the investigator of the appellant-insurance company, it appears that upon verification, the driving licence of the driver, Hikmat Khan, was found to have been valid only up to 10.01.2012, whereas the accident occurred on 06.03.2016. It has also come in evidence that the route permit of the offending vehicle had expired prior to the date of the accident. Thus, the finding of the learned Tribunal regarding breach of the policy conditions is supported by the

evidence on record.

21. However, the learned Tribunal has also noticed that the appellant-insurance company did not produce any material to establish that the owner of the offending vehicle had been informed about the alleged invalidity of the driving licence of the driver. The said aspect assumes significance while considering the liability of the insurer towards the third-party claimants. In any event, having regard to the beneficial object of the Motor Vehicles Act and the fact that the claimants are third parties to the contract of insurance, this Court is of the view that the interest of the claimants ought not to be prejudiced on account of the dispute between the insurer and the owner regarding the breach of the policy conditions.

22. In **Nanjappan** (supra), the Hon'ble Supreme Court, while considering the liability of the insurer vis-à-vis the insured, directed the insurer to satisfy the awarded compensation in favour of the claimants and permitted the insurer to recover the amount so paid from the insured. The Hon'ble Supreme Court further clarified that for the purpose of such recovery, the insurer would not be required to institute a separate suit and could initiate appropriate proceedings before the executing court.

23. The aforesaid principle has also been reiterated in the recent judgment of the Hon'ble Supreme Court in the case of **Sunita** (supra) wherein, despite the plea of the insurer regarding violation of the policy conditions, the Hon'ble Supreme Court held that the principle of "pay and recover" ought to be invoked and directed the insurer to indemnify the compensation awarded by the Tribunal and recover the same from the owner of the offending vehicle.

24. In the present case also, therefore, having regard to the circumstances

noticed hereinabove and the fact that the claimants are third parties, this Court is of the view that the direction of the learned Tribunal requiring the appellant-insurance company to satisfy 50% of the awarded compensation cannot be said to be wholly unjustified. However, the appellant-insurance company would be entitled to recover the amount so paid from the persons liable therefor, in accordance with law. Such direction for pay and recovery is also in consonance with the principle laid down by the Hon'ble Supreme Court in **Nanjappan** (supra). Accordingly, the appellant-insurance company shall be entitled to recover the amount paid by it from respondent Nos. 4, the owner, in accordance with law.

25. The next question which arises for consideration is with regard to the quantum of compensation. The learned Tribunal, though did not accept the claimed monthly income of Rs. 12,000/- for want of satisfactory proof, assessed the monthly income of the deceased at Rs.8,000/- and added 25% towards future prospects. Having regard to the age of the deceased, i.e. 45 years, the addition of 25% towards future prospects does not call for interference. Thus, the monthly income of the deceased, after addition of 25% towards future prospects, would be Rs. 10,000/-.

26. The learned Tribunal, however, deducted 1/4th of the income towards personal and living expenses of the deceased on the premise that there were three dependants. The said deduction requires modification. The deceased left behind his wife, minor son and mother, i.e. three dependants. Accordingly, having regard to the number of dependants, 1/3rd of the income ought to be deducted towards his personal and living expenses. Thus, from the monthly income of Rs. 10,000/-, 1/3rd, i.e. approximately Rs. 3,333/-, is liable to be

deducted, leaving a monthly contribution of Rs. 6,667/- towards the family.

27. Accordingly, the loss of dependency is calculated as follows:

Particulars	**Amount**
Monthly income after 25% future prospects	Rs.10,000/-
Deduction towards personal expenses (1/3rd)	Rs.3,333/-
Monthly contribution to the family	Rs.6,667/-
Annual contribution	Rs.6,667 × 12
Multiplier	14
Loss of dependency	**Rs.11,20,056/-**

28. The learned Tribunal had further awarded a sum of Rs. 1,50,000/- towards medical expenditure. However, from the record of the learned Tribunal, it appears that the medical expenditure bill produced before the learned Tribunal establishes an expenditure of Rs. 84,155/-. Accordingly, the amount awarded under the head of medical expenditure is liable to be reduced from Rs. 1,50,000/- to Rs. 84,155/-.

29. Consequently, the compensation payable to the claimants is calculated as under:

Sl. No.	**Heads of claim**	**Amount**
1	Loss of dependency	Rs.11,20,056/-
2	Loss of consortium	Rs.40,000/-

3	Loss of estate	Rs.15,000/-
4	Funeral expenditure	Rs.15,000/-
5	Medical expenditure	Rs.84,155/-
Total		**Rs.12,74,211/-**

30. Thus, the total compensation payable to the claimants/ respondent Nos. 1, 2 and 3 is determined at Rs. 12,74,211/- (Rupees twelve lakh seventy four thousand two hundred eleven) only, instead of Rs. 14,80,000/- awarded by the learned Tribunal. The said amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization, as directed by the learned Tribunal.

31. In view of the foregoing discussion, the appellant-insurance company shall be liable to satisfy 50% of the aforesaid compensation amount, i.e. Rs. 6,37,105.50/-, together with proportionate interest thereon. The remaining 50% shall be payable by the owner of the offending vehicle. However, the appellant-insurance company shall be at liberty to recover the amount paid by it from respondent Nos. 4, the owner, in accordance with law and the principle laid down by the Hon'ble Supreme Court in **Nanjappan** (supra).

32. Accordingly, the impugned judgment and award dated 26.07.2018, passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup (M), Guwahati, in MAC Case No. 794/2016, stands modified to the extent indicated hereinabove. The appellant-National Insurance Company Ltd. shall deposit its 50% share of the compensation, along with proportionate interest, before the

learned Tribunal within a period of 4 (four) weeks from the date of receipt of a certified copy of this judgment. Upon such deposit, the learned Tribunal shall disburse the amount to the claimants upon proper verification and identification.

33. The appellant-insurance company shall be entitled to recover the amount so deposited and paid to the claimants from respondent Nos. 4, the owner, in accordance with law. For the purpose of such recovery, the appellant shall not be required to institute a separate suit and may avail the remedy available before the executing court in terms of the principle laid down by the Hon'ble Supreme Court in **Nanjappan** (supra).

34. With the aforesaid modification in the quantum of compensation and the liability of the appellant-insurance company, the appeal stands partly allowed and disposed of.

35. The statutory deposit, if any, shall be returned.

36. The Registry to send back the records to the learned Tribunal forthwith.

JUDGE

Comparing Assistant