GAHC020000102026 2026:GAU-NL:543

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

Case No. : MACApp./1/2026

THE NEW INDIA ASSURANCE CO. LTD,
REPRESENTED BY DIVISIONAL MANAGER ,DIVISIONAL OFFICE,DIMAPUR NAGALAND-797112

VERSUS

SMTI. SAINJALI DIPHUSA AND 4 ORS
WIFE OF LATE TOKUDA HANSU.
PERMANENT RESIDENT OF KHERANI GAON, PS- MANJA, SUB-DIVISION-DIPHU, DISTRICT- KARBI ANGLONG, ASSAM AND TEMPORARY RESIDENT OF PURNA BAZAR, DIMAPUR NAGALAND

2:MASTER RANJIT HANSU
SON OF LATE TOKUDA HANSU
PERMANENT RESIDENT OF KHERANI GAON
PS- MANJA
SUB-DIVISION-DIPHU
DISTRICT- KARBI ANGLONG
ASSAM AND TEMPORARY RESIDENT OF PURNA BAZAR
DIMAPUR NAGALAND

3:MISS MAISMI HANSU
DAUGHTER OF LATE TOKUDA HANSU
PERMANENT RESIDENT OF KHERANI GAON
PS- MANJA
SUB-DIVISION-DIPHU
DISTRICT- KARBI ANGLONG
ASSAM AND TEMPORARY RESIDENT OF PURNA BAZAR
DIMAPUR NAGALAND

4:SHRI SUNIL TAPPA

SON OD LATE BALU TAPPA
RESIDENT OF BENGENAKOWA RAILWAY CROSSING
GF ROAD GOLAGHAT-785702
TEMPORARY RESIDENT OF RIVER BELT COLONY
DIMAPUR NAGALAND

5:SHRI SAIDUL ISLAM
SON OF MOHAMMAD IBRAHIM
RESIDENT OF H/NO/ 78 A
PURANA BAZAR
DIMAPUR
NAGALAND

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

Advocate for the Respondent : Z. KULNU (R-1), N JANET PIENYU

BEFORE :

HON'BLE MR JUSTICE NCHUMBEMO MOZHUI

Advocates for the Appellant(s)	:	Mr. Pfosekho Pfotte
Advocate for the Respondent(s)	:	Mr. Z. Kulnu (R/1,2 & 3)
	:	Ms. Mika H. Aye (R/4&5)
Date on which judgment is reserved	:	**07.10.2026**
Date of pronouncement of judgment	:	**12.10.2026**
Whether the pronouncement is of the operative part of the judgment	:	Full judgment.
Whether the full judgment has been pronounced	:	Yes.

JUDGEMENT AND ORDER (CAV)

Heard learned counsel for the appellant, Mr. Pfosekho Pfotte, Mr. Z. Kulnu, learned counsel for the claimant/respondent Nos. 1, 2 & 3 and Ms. Mika H. Aye, learned counsel for the respondent Nos. 4 & 5.

2. The instant appellant under section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as MV Act of 1988) has been preferred by the appellant, New India Insurance Company Limited against the impugned Judgment and Award dated 02.09.2025 passed by the Learned Member, Motor Accident Claim, Dimapur, Nagaland in MACT Case No. 44/2024.

3. The brief facts leading to the filing of the instant appeal are that the husband of the claimant/respondent No. 1 met with an vehicular accident on 19.06.2024 at around 14:00 hours at New Dhansiri Bridge, Dimapur, Nagaland. On 19.06.2024, the husband of the claimant/respondent No.1, namely Tokuda Hansu, a pedestrian was hit and knocked down by a speeding vehicle (motorbike) bearing registration No. AS 05L 3204. As a result, the husband of the claimant/ respondent No. 1 was grievously injured and shifted to Faith Hospital, Dimapur for treatment. However, he succumbed to his injuries while undergoing medical treatment on 25.06.2024 at Faith Hospital, Dimapur.

4. The claimant/respondent No. 1 along with the 2 (two) minor children had filed the MACT Case No. 44/2024 before the MACT, Dimapur under Section 166 of the MV Act of 1988 claiming compensation for the death of

her husband in the motor vehicle accident.

5. The appellant herein contested the claim case by filing the written statement. After hearing the parties, the Learned Tribunal by impugned Judgment and Award dated 02.09.2025, awarded compensation to the claimant/respondent No. 1, putting in all liability upon the appellant/Insurance Company.

6. Being aggrieved by the impugned Judgment and Award, the appellant has preferred the instant appeal on the following grounds;

i) The Ld. Tribunal was pleased to frame three (4) issues and proceeded with the case. In the course of proceeding, the tribunal examined one PW-1 witness and one DW-1 witness, whereas no witnesses on behalf of the appellant were examined.

ii) The Learned Member, MACT, Dimapur, Nagaland after hearing the parties without taking into consideration of the evidence from proper perspective, has passed the Judgment & Award dated 02.09.2025.

iii) If a claim filed under section 166 of the MV Act of 1988, the burden lies upon the claimants to establish negligence of the offending vehicle at least on the touchstone of preponderance of probabilities.

iv) And further that there is no charge-sheet, no FIR under appropriate penal section and no investigative material. The matter remained confined only to a G.D entry, which merely

notes the reporting of the incident and the compromise between the parties, but does not record any finding or observation indicative of negligence.

7. Mr. Pfosekho Pfotte, learned counsel for the appellant/Insurance Company submits that that in a claim filed under section 166 of the MV Act of 1988, the burden lies upon the claimants to establish negligence of the offending vehicle at least on the touchstone of preponderance of probabilities. Even though strict proof beyond reasonable doubt is not required, there must be some cogent material to show how the accident occurred and that the rider acted rashly or negligently. In the present case, there is no charge-sheet, no FIR under appropriate penal section, and no investigative material. The matter remained confined only to a G.D entry, which merely notes the reporting of the incident and the compromise between the parties, but does not record any finding or observation indicative of negligence. The claimants also failed to produce any independent witness or contemporaneous material to establish the manner of the accident. The Tribunal's conclusion fixing negligence on the rider of the motor bike, without any supporting evidence on record, is therefore perverse and liable to be interfered with. The Learned Tribunal has failed to appreciate the facts of the case and marshaled evidence from proper perspectives thereby passed the impugned Judgment and Award dated 02.09.2025 without proper application of mind, as such, the same is not tenable in the eye of law and is liable to be set aside and quashed.

7.1. The Ld. Member, Motor Accident Claims Tribunal, Dimapur, Nagaland has failed to apply judicious mind and reasonableness while

passing the impugned Judgment and Award and have caused manifest injustice to the appellant and the same been result of miscarriage of justice, as such, the impugned Judgment and Award is not sustainable and liable to be quashed and set aside.

7.2. It is humbly submitted and prayed before this Hon'ble Court that the impugned Judgment and Award dated 02.09.2025, passed by the Learned Member, Motor Accident Claims Tribunal in MAC Case No. 44/2024 is mechanical, passed without application of judicious mind and reasonableness and without adducing evidence from proper prospective resulting in miscarriage of justice, therefore, the same is not tenable in the eye of law and is liable to be interfered with by this Hon'ble Court and is liable to be quashed and set aside.

8. Mr. Z. Kulnu, learned counsel appearing for the claimants/ respondent Nos. 1, 2 & 3 submits that the appellant are impugning the Judgment and Award on the sole ground that in a claim filed under section 166 of the MV Act of 1988, the burden lies upon the claimants to establish negligence of the offending vehicle at least on the touchstone of preponderance of probabilities. And further that there is no charge-sheet, no FIR under appropriate penal section and no investigative material. The matter remained confined only to a G.D entry, which merely notes the reporting of the incident and the compromise between the parties, but does not record any finding or observation indicative of negligence.

8.1. Learned counsel submitted that the Tribunal before passing the Judgment and Award dated 02.09.2024, has dealt with the above referred issue at the time of trial by framing the Issue No. 1. While

discussing the said issue, the tribunal observed that the Claimant No. 1 (wife of the deceased) in her deposition before the tribunal has deposed that her late husband was involved in an motor vehicle accident on 19.06.2024 around 14:00 hrs near new Dhansari bridge, Dimapur, Nagaland and as a result of which her husband sustained grievous injuries and succumbed to his injuries while undergoing medical treatment at the Faith Hospital Dimapur, Nagaland on 25.06.2024.

Further, the Opposite Party No.1/respondent No.4 (Owner of the vehicle) deposed before the Tribunal as D.W – 1, *that his vehicle was at fault for the cause of accident.*

As such the Ld. Tribunal in its findings has observed that, "*In so far as the question regarding on whose fault the said accident occurred, the OP-1 and OP-2 have categorically admitted the facts of accident, involvement of the deceased in the accident and DW-1 (OP-1) had also admitted that his vehicle which was ridden by his driver was at fault for the cause of accident.*

It is also observed that the insurer has not led any evidence to prove otherwise and has failed to contradict or demolish the evidence led by the claimants in regard to this issue. I also find no contrary proof to substantiate that, the deceased was not involved in the instant accident and had not died in an accident arising out of the use of motor vehicle. As such, this issue No. 1 is decided in favor of the claimants in affirmative."

8.2. Learned counsel submits that, there is no infirmity in the Judgment and Award dated 02.09.2024 passed by the Ld. Tribunal, since there a G.D

entry of occurrence of a motor accident wherein the claimant husband was the victim. It is also submitted that the owner of vehicle (OP-1/DW-1) has categorically stated in his deposition that his vehicle was at fault.

8.3. Learned counsel further submits that in cases where a claim petition is filed before the Tribunal only on the basis of a G.D entry, the Co-ordinate Bench of this Hon'ble High Court in ***W.P.C No. 5328 of 2017, ICIC LOMBARD GENERAL INSURANCE CO. LTD VRS. THE STATE OF ASSAM AND 3 ORS***. has observed at **para No. 19** that, "*In so far the claim cases already pending before the Tribunals, which have been registered on the basis of GD Entries, Court is of the view that having regard to the beneficial nature of the legislation, i.e., the Act, it would be wholly inequitable to direct remand of those claim petitions to the concerned police stations. As discussed above, under Sections 168 and 169 of the Act, the Tribunal has got ample powers to verify the genuineness of the claims. That apart, insurance companies, like the petitioner in the present case, have also enough opportunities in such proceedings to point out before the Tribunals, in case there is any collusion or in case any false claim is made. It is the duty which is vested in the insurance companies and it is expected that having regard to the beneficial objective of the statute, insurance companies will discharge their duties in the true spirit of the Act, so that genuine claim petitions are not frustrated and are disposed of at the earliest, giving at least some solace to the victims of road accidents and family members of deceased.*" He also had relied on by the High Court of Tripura, in its Judgment and Award dated 29.09.2021 reported in ***2021 SCC online Tri 499*****.**

8.4. Learned counsel also submitted that, in ***National Insurance Co.***

Ltd –vs- Swaran Singh & Ors reported in ***(2004) 3 SCC 297 at paragraphs 25, 30, 31, 32, 33 and 110(i)*****,** the Hon'ble Apex Court has held that accident includes negligence and the MV Act of 1988, provides compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend the relief by compensation to victims of accidents caused by use of motor vehicles.

8.5. Learned counsel also submitted that, in ***Bimla Devi & Ors –vs- Himachal Road Transport Cooperation & Ors*** reported in ***(2009) 13 SCC 530 at paragraphs 13, 14 & 15***, the Hon'ble Apex Court has held that, in a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident cause by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

8.6. In the light of the above observation of the Co-ordinate bench of this Hon'ble High Court and precedents set forth by the Hon'ble Apex Court, the present case is a covered case. Since the Ld. Tribunal before passing the Judgment and Award dated 02.09.2024 has observed that there is a G.D entry of the accident, the Claimant in her deposition has also stated that her husband was a victim of the said accident and later succumbed to his injuries. Further, the owner of the vehicle (OP-1/DW-1) has also stated in his deposition that his vehicle was at fault in the said accident, which was also not contradicted/demolished by the insurance company at the

time of trial.

As such, it is clear that due to the use of motor vehicle the husband of the claimant died and her claim for compensation under third-party risk cannot be denied by the insurance company as there is *preponderance of probability* in her case and there is no merit in the appeal filed by the appellant/insurance company under Section 173 of the MV Act of 1988 for quashing of the impugned Judgment and Award dated 02.09.2025 and the same be dismissed.

9. Ms. Mika H. Aye, learned counsel for the respondent Nos. 4 & 5 submits that the appellant impugning the Judgment and Award dated 02.09.2025 on the sole ground that in a claim filed under Section 166 of the MV Act of 1988, the burden lies upon the claimants to establish negligence of the offending vehicle at least on the touchstone of preponderance of probabilities. And further that there is no charge-sheet, no FIR under appropriate penal section and no investigative material. The matter remained confined only to a G.D entry, which merely notes the reporting of the incident and the compromise between the parties, but does not record any finding or observation indicative of negligence.

9.1. The learned counsel submits that the respondent No. 4 has deposed before the Ld. Tribunal that his vehicle was involved in the accident and his driver (respondent No. 5) was at fault. It is further submitted that at the time of the accident all vehicular documents and insurance policy was up to date, and if there is any liability to be fasten upon the owner/respondent No. 4 the insurance company has to indemnify the same. Further, in the present case, the Appellant/Insurance Company has

not assailed the vehicle documents and insurance policy and as such the impugned Judgment and Award dated 02.09.2025 does not deserve interference by this Hon'ble Court in the instant appeal.

10. After hearing the parties, this Court has given due consideration to the submissions of the counsel for the parties and perused the authorities relied upon.

11. It is well settled that an appeal is a continuation of the original proceedings and that appellate jurisdiction is undoubtedly wide. At the same time, the provisions of Order 41 Rule 2 of the Code of Civil Procedure, 1908 provides that an appellant shall not, except by leave of the appellate court, urge or be heard in respect of a ground of objection, which was not set forth in the memorandum of appeal. The proviso further requires that the party likely to be affected by such ground must be afforded sufficient opportunity of contesting it. This provision is intended to ensure fairness to the opposite party and to prevent a party from setting up an entirely new case at the appellate stage; particularly where the mention of such ground would require investigation of facts and consideration of evidence, which was never placed before the tribunal.

12. In the present case at hand, the ground of appeal urged by the appellant is not a mere additional legal submission arising from the facts before the Tribunal. The insurer/appellant had never pleaded violation of policy condition before the tribunal. Even if the ground taken by the appellant regarding violation of the policy would require examination of a factual foundation, which was neither pleaded nor established before the

Tribunal. The grounds taken by the appellant is with regard to the filing of the claim petition under Section 166 of the MV Act of 1988, that there was no charge-sheet no FIR under appropriate penal section and no investigative material. The matter remained confined only to a GD entry, which merely notes the reporting of the incident and the compromise between the parties, but does not record any finding or observation indicative of negligence.

13. This Court is in agreement with the decision in the case of ***ICIC LOMBARD GENERAL INSURANCE CO. LTD VRS. THE STATE OF ASSAM AND 3 ORS.*** In the present case it is not disputed by the appellant/ insurer that there was a registration of the case on the basis of the GD entries and keeping a view of that aspect of that matter that the MV Act of 1988, being beneficial in nature of the legislation it would not serve no purpose by directing the remand of those case to the concerned police station. The same entry in the GD is not refuted/disputed by the appellant/Insurer. Hence, the argument pertaining to no FIR under appropriate penal section, no charge-sheet and no investigative material is not sustainable and accordingly, not accepted.

14. This Court also had taken consideration of the submission of the appellant/insurer that the impugned Judgment and Award dated 02.09.2025 was passed merely on the touchstone of *preponderance of probabilities*. In this regard, this Court has also taken into consideration on the issue by relying on the case of ***Bimla Devi (Supra)***, and it is observed and found that the Tribunal has rightly taken a holistic view of the matter. It is not disputed by the appellant/insurer that the vehicle insured with them covered by a policy nor the policy has expired. With

regard to the motor vehicle accident on 19.06.2024, wherein the claimant/respondent No. 1, who was a predestined namely, Tokuda Hansu was grievously injured by the offending vehicle bearing registration No. AS 05L 3204 (motorbike) later succumbed to his injuries while undergoing treatment at Faith Hospital, Dimapur on 25.06.2025 is also not disputed by the appellant/insurer.

15. Under the circumstances, the grounds taken by the appellant/insurer on the ground that no FIR under appropriate penal section, no charge-sheet and no investigative material cannot be a ground as the same has been duly considered by the Ld. Tribunal below and in view of the settled position of law as such the same does not warrant interference of this Court in the Impugned Judgment and Award dated 02.09.2025.

16. Consequently, this Court finds no merit in the instant appeal and the same is dismissed.

17. It appears from the record that the appellant has deposited an amount of Rs.25,000/- as statutory deposit in the Registry of this Court at the time of filing of this appeal and has also deposited 50% of the awarded amount in the Registry of this Court as per Court's direction. The said amount may be withdrawn by the respondent No. 1 from the Registry after proper verification by the Registry, if not already withdrawn. The appellant is directed to pay the remaining amount of the award after adjusting the amount which has already been deposited in the Registry, to the Motor Accident Claims Tribunal, Dimapur within a period of 1(one) month from today. Same shall be disbursed by the Member, Motor Accident Claims Tribunal, Dimapur to the present

respondent Nos. 1 to 3 after proper verification.

18. Registry is directed to send back the Trial Court Records expeditiously.

JUDGE

Comparing Assistant