GAHC020000492025 2026:GAU-NL:608

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

Case No. : MACApp./1/2025

ORIENTAL INSURANCE COMPANY LTD.
DIMAPUR DIVISIONAL OFFICE
CHURCH ROAD ,DIMAPUR-797112

VERSUS

SMTI PRABHANJALI KALITA AND ANR
W/O MAHIDRA KALITA
R/O C/O IMSEN JAMIR
MOKOKCHUNG TOWN
PO AND PS MOKOKCHUNG, NAGALAND

2:SHRI DEBABRATA DAS
S/O TILESWAR DAS
VILLAGE GHARMARA
PO GHARMARA
PS NORTH- LAKHIMPUR
DIST. LAKHIMPUR
ASSAM-787001
(OWNER CUM DRIVER OF VEHICLE NO AS-07-L/0798

Advocate for the Petitioner : ANJANA MODI, Z. KULNU

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

Advocate for the appellant : Mr. Z. Kulnu

Advocate for the respondents : Mr. B.N. Sarmah

:::BEFORE:::

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : 02.11.2026

Date of pronouncement of judgment : 06.11.2026

Whether the pronouncement is of the Operative part of the judgment : NA

Whether the full judgment has been Pronounced : Yes

Judgment & Order(CAV)

Heard the learned counsels.

2. The instant appeal is filed under Section 173 of the Motor Vehicles Act, 1988 read with Article 226 & 227 of the Constitution of India against the Judgment & Order dated 25.09.2024 passed by the Ld. Member, MACT, Mokokchung awarding a sum of Rs. 59,62,638/- (rupees fifty nine lakhs sixty two thousand six hundred and thirty eight) with interest @ 9%

p.a. from the date of fling the claim petition, to the claimant.

3. FACTS OF THE CASE

3.1. On 28.11.2021 at about 4:30 PM, the deceased, who owned a paddy field, after doing some agricultural work, was waiting on the roadside for his friends. At that time, the Maruti Omni bearing registration No. AS 07/L 0798, which was driven by respondent No. 1 (who is also the owner of the said vehicle) and coming from the Charaimaria bypass side, upon reaching Hutilung, knocked down the deceased who was standing on the roadside. The deceased sustained grievous injuries and succumbed to his injuries on the way to Assam Medical College and Hospital, Dibrugarh. The claimant No. 1 is the wife of the deceased, claimant Nos. 2 & 3 are children of deceased and claimant No. 4 is the mother of the deceased. Apart from owning agricultural land, the deceased was also employed as a Laboratory Bearer in Lakhimpur Girls' College, drawing a monthly salary of Rs. 39,836/- (Rupees thirty-nine thousand eight hundred and thirty-six) at the time of his death on 28.11.2021 as a result of the vehicular accident. The vehicle was insured with the North Lakhimpur Branch of the appellant/Insurance Company.

4. CASE OF THE CLAIMANT BEFORE THE LEARNED MACT,

MOKOKCHUNG

4.1. Due to the death of her husband in a vehicular accident, a claim petition was filed by the respondent under Section 150(2) of the Motor Vehicles Act, 1988. The claim was filed by the wife of the deceased, his two children, as well as the mother of the deceased, all of whom were dependent on him. It is the case of the claimant that after the death of her husband, she was residing in Mokokchung, and as such, she submitted the claim petition before the learned Judge, MACT, Mokokchung. By the said claim, the claimants claimed compensation amounting to Rs. 62,79,055/- (Rupees twenty-six lakhs seventy-nine thousand and fifty-five).

4.2. Opposite Party No. 1, who is the owner-cum-driver of the accident vehicle bearing registration No. AS 07 L/0798, submitted a written statement wherein he denied the allegation of rash and negligent driving, submitting that the deceased was solely responsible for his own negligence by carelessly trying to cross the road without keeping a proper lookout for vehicles on the road. The aforesaid respondent did not have any knowledge about the nature of injuries and the resulting death of the deceased. It was submitted that he possessed a valid driving license and

that the vehicle was validly insured at the time of the accident, and as such, any liability for the payment of compensation had to be borne by the Insurance Company. Notice was also duly issued to the appellant/Insurance Company, and the appellant/Insurance Company took part in the proceedings before the learned Tribunal.

5. The learned MACT, vide its Judgment & Order dated 25.09.2024, passed the impugned award wherein an amount of Rs. 59,62,638/- (Rupees fifty-nine lakhs sixty-two thousand six hundred and thirty-eight) was directed to be paid by the appellant/Insurance Company along with interest @ 9% per annum from the date of filing of the claim petition, i.e., 31.03.2022, until payment, within a period of 30 days from the date of the order.

6. SUBMISSIONS OF THE LEARNED COUNSELS

6.1. Mr. Z. Kulnu, learned counsel for the appellant/Insurance Company, assailing the Judgment & Order dated 18.11.2024 passed in MAC Case No. 15/2022, submitted that the learned Tribunal erred in appreciating the fact that there is no loss of dependency inasmuch as the Govt. of Assam pays a full salary to the dependent of a deceased employee who dies in harness. The learned counsel placed on record the notification dated

14.09.2017 titled: *"Scheme for compassionate family pension in lieu of compassionate appointment."* The learned counsel submitted that as there is no actual loss of income in terms of the said notification, since the deceased was admittedly a Laboratory Bearer under the Govt. of Assam at the time of his death, the provisions of the notification would automatically apply to the deceased, and as such, the learned Tribunal committed error in computing the loss of income. It is next argued that the learned Tribunal failed to conduct the minimal inquiry contemplated under the Act, and also proceeded to adjudicate the case without a proper inquiry into the residence of the claimant. According to the learned counsel, the learned Tribunal also erred in awarding interest higher than the bank rate of interest.

7. The learned counsel placed reliance in the case of ***National Insurance Co. Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***, as well as the decision of the co-ordinate Bench of this Court in ***National Insurance Co. Ltd v. Ranu Kalita & Anr*** reported in ***GAHC010160472022***

8. Mr. B.N. Sarmah, learned counsel for the respondent/claimant, submitted that notice of the claim petition under Section 150(2) of the

Motor Vehicles Act, 1988 was duly served on the appellant, and the appellant entered appearance through its counsel and took part in the day-to-day proceedings. However, they did not file any written statement, though they cross-examined the claimant witnesses. The learned counsel submitted that since the petition was filed under Section 150(2) of the MV Act, 1988, a bounden duty was cast upon the insurer/appellant to file an application as required by Section 170 of the MV Act by satisfying the two conditions therein. However, no steps were taken by the appellant before the learned Tribunal. Accordingly, the appeal is not maintainable in the eyes of the law as the appellant has not obtained any permission under Section 170 of the MV Act to raise grounds other than the defenses available to the insurer under Section 150(2) of the MV Act. In this regard, the learned counsel placed reliance in the case of ***National Insurance Co. Ltd. v. Nicolletta Rohtagi & Ors*** reported in ***(2002) 7 SCC 456***. The learned counsel submitted that in a claim petition filed under Section 150(2) of the Motor Vehicles Act, the appellant/insurer is only as a notice recipient, and as such, unless permission is granted under Section 170 of the MV Act, no insurer can contest or raise grounds other than the defense within the meaning of Section 149(2). However, in the instant case, no such prayer was made by the insurer before the Tribunal. The Act

does not require impleading the insurer as a party respondent, and on this point, he placed reliance on the case of ***United India Insurance Co. Ltd. v. Shila Dutta & Ors*** reported in ***(2011) 10 SCC 509***. The learned counsel submitted that in terms of Section 166(2) of the MV Act, the claimant has the right to file a claim petition before the Tribunal within whose jurisdiction she resides.

8.1. In this regard, the learned counsel placed reliance on the case of ***Mantu Sarkar v. Oriental Insurance Co. Ltd.*** reported in ***(2009) 2 SCC 244***, to emphasize that the provision for territorial jurisdiction has to be interpreted with the object of facilitating remedies for victims of accidents, and that a hypertechnical approach in such matters can hardly be appreciated. It is also submitted by the learned counsel that since the appellant did not have any pleadings before the learned Tribunal, they have invoked Section 173 of the MV Act as well as the provisions of Articles 226 and 227 of the Constitution, which is not permissible inasmuch as the MV Act is a self-contained code and provides an alternative remedy of filing an appeal under Section 173 of the MV Act.

8.2. On this ground, he placed reliance in the case of ***Sadhana Lodh v. National Insurance Company Ltd. & Anr*** reported in ***(2003) 3 SCC***

524 wherein, the Hon'ble Apex Court held that petition under Article 226/227 of the Constitution challenging the award of Motor Accident Claims Tribunal is not maintainable as the remedy is under Section 173 of the MV Act, 1988. Reliance was also placed on a similar decision of the Hon'ble Apex Court in the case of ***Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors*** reported in ***AIR (2006) SC 1255***. In the instant case, as the appellant has not taken permission under Section 170 of the MV Act, they are precluded from raising the grounds mentioned in the appeal, and the lapse on the part of the appellant cannot be a reason for allowing them to invoke Articles 226 and 227 of the Constitution.

9. ANALYSIS AND DECISION WITH REASONS

9.1. Admittedly the instant claim petition was filed u/s 150(2) MV Act without invoking the substantive provision of either Sections 166 or 164 of the Motor Vehicle Act, 1988. It is also an admitted position that the appellant/insurer was a noticee.

9.2. The record of the MACT revealed that notice/summon was issued to the Owner and the Insurer of the accident vehicle. The owner, who was impleaded as Opposite Party No. 1 submitted written statement wherein it was asserted that the vehicle was validly insured with the

appellant/insurance Company at the time of the accident and that the driver possessed a valid and effective driving license.

9.3. The record further shows that even though the insurer was only a noticee, they entered appearance before the Ld. MACT, Mokokchung through a Counsel and time was granted on the prayer of the Ld. counsel to afford an opportunity for investigation as the accident took place in Assam and three months time was given on 11.7.2022. On 25.1.2023 the appointment of an investigator for the insurer was submitted to the Ld. MACT. On 22.3.2023, a prayer was made by the Ld. counsel for the claimant/respondent No. 1 to proceed ex-parte against the insurer who is only a noticee, as per record, the prayer was opposed by the Ld. counsel for the insurer with a request to be given more time for submission of the investigation report, yet the Court ordered for an ex-parte proceeding on the said date. Nonetheless, the order reflects that parties filed 3 common suggested issues and accordingly issues were framed. The issues so framed were :-

> *1. Whether the accident dated 28.11.21 was the result of sole rash and negligent driving of the driver of the offending vehichleNo.As-07/L-0798 and whether the deceased died out of the said accident?*

2. Whether at the material time of accident the offending vehicle was possessing all valid and effective documents including driving license as per law?

3. Whether the claimants are entitled to any compensation? If yes, what amount and payable by whom?

9.4. The claimant was examined as a witness along with another eye witness. The witnesses were duly cross examined by the Ld. counsel for the appellant/insurer. From the issues framed by the Ld. MACT, it can be deciphered that even though claim was filed under section 150(2) MV Act without invoking any substantive provision, yet, the tribunal has proceeded to adjudicate the claim on fault basis by framing the aforesaid issue which as per the proposal of the parties. Therefore, from the manner, the Tribunal proceeded to adjudicate the case, the omission to invoke any substantive provision under the MVT Act does not appear to be fatal and all the parties, including the appellant/insurer were given an opportunity to contest the claim and they were given opportunity to cross examine the claimant and her witness(s).

9.5. Further, from a perusal of the claim petition, it is noticed that only the owner was impleaded as a respondent. Admittedly, the appellant/insurer is a noticee, i.e., not impleaded by the claimant as party

respondent. It is also an admitted position that the appellant/insurer did not obtain permission u/s 170 MV Act, 1988.

9.6. With the aforesaid background, the issue that is required to be considered by this Court would be:- *Whether the appellant/ insurer without obtaining an order u/s 170 of the MV Act can raise challenge to the MACT Award beyond the grounds prescribed u/s 149(2) of the MV* Act*?*

9.7. At this stage, it may be apposite to reproduce the provision of section 170 of the MV Act as below:-

> "***170. Impleading insurer in certain cases.- Where in the course of any inquiry, the Claims Tribunal is satisfied that***
>
> *(a) there is collusion between the person making the claim and the person against whom the claim is made, or*
>
> *(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of [section 150], the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."*

9.8. In this regard, the Hon'ble Apex Court in the case of ***Nicoletta***

Rohtagi (supra) has held :-

"***25****. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.*

26. *For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions*

precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

10. Subsequently, on the same subject the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. Shila Datta & Ors*** reported in ***(2011)10 SCC 509*** has further made a distinction between the right of the insurer to challenge the award of motor accident claims tribunal when they are impleaded as respondent and when they are only a noticee. The Hon'ble supreme Court has held:-

"***Re : Point (i) : The position in cases where the claimants implead the insurer as a respondent in the claim petition***

13. *The scheme of the Motor Vehicles Act, 1988 as contained in Chapters XI (Insurance of Motor Vehicles against Third-party Risks) and XII (Claims Tribunals) proceeds on the basis that an insurer need not be impleaded as a party to the claim proceedings and it should only be issued a statutory notice under Section 149(2) of the Act so that it can be made liable to pay the compensation awarded by the Tribunal and also resist the claim on any one of the grounds mentioned in clauses (a) and (b) of sub-section (2) of Section 149. Sub-sections (1), (2) and (7) of Section*

149 clearly refer to the insurer being merely a noticee and not a party. Similarly, Sections 158(6), 166(4), 168(1) and 170 clearly provide for and contemplate the insurer being merely a noticee for the purposes mentioned in the Act and not being a party-respondent. Section 170 specifically refers to impleading of insurer as a party to the claim proceedings.

14. *When an insurer is impleaded as a party-respondent to the claim petition, as contrasted from merely being a noticee under Section 149(2) of the Act, its rights are significantly different. If the insurer is only a noticee, it can only raise such of those grounds as are permissible in law under Section 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under Section 149(2), but also all other grounds that are available to a person against whom a claim is made. It, therefore, follows that if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it.*

15. *The Act does not require the claimants to implead the insurer as a party-respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under Section 149(2), the insurer can urge all grounds and not necessarily the limited grounds mentioned in Section 149(2) of the Act. If the insurer is already a respondent (having been impleaded as a party-respondent), it need not seek the permission of the Tribunal under Section 170 of the Act to raise grounds other than those mentioned in Section 149(2) of the Act."*

11. Upon examining the instant case in the backdrop of the decisions

rendered by the Hon'ble Supreme Court on the subject, as mentioned before, it is an admitted position that the insurer was a noticee to the claim and not impleaded by the claimant as respondent. In view of the position of law laid down by the Hon'ble Apex Court in the case cited above, unless an Order under Section 170 MV Act is obtained, the insurer cannot avoid its liability on any grounds other than the grounds mentioned in sub-section 2 of Section 149 of the MV Act.

12. In view of the settled position of law and the admitted position that the appellant have not obtained Order u/s 170 of the MV Act, the appellant cannot be heard on grounds other than those specified u/s 149(2) of the MV Act and since the grounds raised in the instant appeal does not fall within the ambit of Section 149(2) of the MV Act, the appeal cannot be considered on merit.

13. CONCLUSION

13.1. For the foregoing discussions and observations, the appeal is not found to be maintainable for want of order under Section 170 of the MV Act.

14. Deposits made by the appellant/insurer, if any, during the pendency of this appeal shall be transmitted to the Ld. Member, MACT, Mokokchung,

who shall disburse the same to the claimant on proper identification. The balance amount of the award shall be deposited by the appellant to the MACT, Mokokchung within 2 months from the date of Order.

15. Return the case record of the Ld. MACT, Mokokchung.

16. With the above order, the appeal stands disposed of.

Gaithuiliu Gonmei

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Date: 2026.11.06 10:55:32 +05'30'

JUDGE

Comparing Assistant