

GAHC010002622015



2026:GAU-AS:2552

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

Case No. : MACApp./786/2018

ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A 25/27, ASAF ALI
ROAD, NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI -7,
REPRESENTED BY THE REGIONAL MANAGER

VERSUS

SMTI. AMBIKA MILI and 5 ORS
W/O LATE DIGANTA MILI

2:SMTI GUNAMOTI MILI
W/O LATE BAPUKAN MILI @ NIREN

3:SRI RAJANEE KANTA MILI
BROTHER OF LATE DIGANTA MILI

4:MISS NIRUPA MILI
SISTER OF LATE DIGANTA MILI
R/O NO. 2
MIRIPATHAR
P.S. RANGAPARA
DIST. SONITPUR
ASSAM
PIN 784103

5:SRI BAPPA BHATTACHARJEE
C/O NET WORK TRAVELS
GUWAHATI
PALTAN BAZAR
DIST. KAMRUP M
ASSAM
PIN 781008

(OWNER OF SUPER BUS No. NL-05/B-0971)

6:SRI DEBEN KOCH
S/O LATE LALIT KOCH
R/O VILL. BAMUNGAON BARIKACHUBURI
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN 784001

(DRIVER OF SUPER BUS No. NL-05/B-0971

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the petitioner : Ms. M. Choudhury, Advocate
For the respondent : Mr. K. Bhattacharjee, Advocate
(for respondent Nos. 1, 2, 3 & 4)

Date of Hearing : **14.10.2025**

Date of Judgment : **18.02.2026**

JUDGMENT & ORDER

- 1.** Heard Ms. M. Choudhury, learned counsel for the appellant. Also heard Mr. K. Bhattacharjee, learned counsel appearing for respondent Nos. 1, 2, 3 and 4.
- 2.** This appeal under Section 173 of the Motor Vehicles Act, 1988, has been filed by the appellant, *Oriental Insurance Company Limited*, impugning the judgment and award dated 17.01.2015, passed by the Motor Accident Claims Tribunal, Sonitpur, Tezpur, in MAC Case No. 175/2012.
- 3.** The facts relevant for consideration of the instant appeal, in brief, are that, on 19.03.2012, at about 11:30 PM, the deceased, Diganta Mili, was proceeding along with one Rajesh Narah, in a motorcycle bearing Registration No. AS-12-G-3098 from Lakhimpur side towards Guwahati. When the motorcycle

reached near Jiabhoroli Forest Gate at National Highway No. 52, a night super bus, bearing Registration No. NL-05-B-0971, which was proceeding from Lakimpur towards Guwahati, hit the motorcycle and as a result of the accident, the said Diganta Mili died on the spot and the other rider of the motorcycle, namely, Rajesh Narah sustained grievous injuries.

4. The present respondents, who are the wife and sibling of the deceased, respectively approached the Motor Accident Claims Tribunal, Sonitpur, by filing an application under Section 166 of the MV Act, 1988 seeking compensation on account of death of their husband/brother in the aforesaid motor vehicular accident. The said claim case was registered as MAC Case No. 175/2012.

5. The present appellant along with the driver and owner of the offending bus had contested the claim filed by the present respondents by filing separate written statements. The basis of the pleadings of the parties, the Motor Accident Claims Tribunal, Sonitpur had framed following issues:

(i) Whether victim, late Diganta Mili, died as a result of injuries sustained by him in the alleged road accident dated 19.03.2012, involving Vehicle No. NL-05-B-0971, (super bus) and whether the said accident took place due to rash and negligent driving by the driver of the offending vehicle?

(ii) Whether the claimant is entitled to get any compensation, and if yes, to what extent and by whom amongst the opposite parties the said compensation amount is payable?

6. During the inquiry, the claimant examined the wife of the deceased (claimant No. 1) and the present appellant adduced the evidence of the investigator in support of their case as PW-1. Ultimately, by the impugned judgment, the present appellant was directed to pay an amount of Rs.7,37,000/-

along with an interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization to the claimant No. 1 as well as claimant No. 2, who is the mother of the deceased.

7. The learned counsel for the appellant has submitted that the Motor Accident Claims Tribunal, Sonitpur has erred in awarding the compensation amount to the respondents as it failed to consider that there was no evidence of any negligence on the part of the driver of the night super bus, which was involved in the accident. She submits that the Motor Accident Claims Tribunal failed to appreciate the fact that as per the final report submitted in connection with Jamuguri P.S. Case No. 29/2012 (corresponding to GR Case No. 639/2012), there was no negligence on the part of the driver of the bus and the accident occurred as the deceased, Diganta Mili, who was drunk at the time of accident was trying to overtake another vehicle, during such overtaking, he lost control of the motorcycle and hit the bus, which was coming from the opposite direction.

8. He submits that apart from the testimony of the claimant, who was not an eyewitness to the incident, the claimant side failed to adduce any reliable evidence to prove the rash and negligent driving of the driver of the offending bus. However, the Motor Accident Claims Tribunal had not considered this aspect and had erred in directing the Insurance Company to pay the compensation.

9. The learned counsel for the appellant submits that the deceased who was driving the motorcycle, which collided with the offending bus, was equally responsible for the accident. However, the owner and the insurer of the motorcycle was not made a party. She submits that the Motor Accident Claims Tribunal mainly relied on accident information report, which was filed by the

police at a very initial stage before completion of any investigation of case registered on the basis of accident. She submits that when ultimately, the criminal case, which was registered against the driver of the offending vehicle, has culminated in submission of final report, the Motor Accident Claims case ought to have followed suit which was not done and the claim petition filed by the respondent was allowed without there being any evidence on record to prove the negligence of the driver of the offending vehicle. She, therefore, submits that the impugned judgment and award of the Motor Accident Claims Tribunal is liable to be set aside and this appeal may be allowed.

10. On the other hand, Mr. K. Bhattacharjee, learned counsel for the respondents/claimants has submitted that the Motor Accident Claims Tribunal, Sonitpur took into consideration all the relevant evidence and has rightly awarded compensation to the respondents. He submits that in the same accident where the husband of the claimant No. 1 had died, the pillion rider, Rajesh Narah @ Sanju Narah also sustained grievous injuries. The said pillion rider had also preferred an application before the Motor Accident Claims Tribunal seeking compensation which was registered as MAC Case No. 176/2012. The said claim case was allowed and the pillion rider was awarded compensation of Rs.18,970/-.The Insurance Company had also preferred an appeal against the said judgment of the Motor Accident Claims Tribunal. The said appeal was registered as MAC Appeal No. 18/2020.

11. The learned counsel for the respondent submits that the said MAC Appeal No. 18/2020 filed by the present appellant against the judgment of the Motor Accident Claims Tribunal, granting compensation to the pillion rider, Rajesh Narah has been dismissed by a Co-ordinate Bench of this Court, by its judgment dated 07.03.2022, passed in MAC Appeal No. 18/2020. He submits that the said

judgment has not been agitated again by the appellant in any higher forum. Hence, he submits that the appellant cannot take a different plea in the instant appeal, and this Court also cannot pass a contradictory order against the judgment of the Co-ordinate Bench passed in MAC Appeal No. 18/2020.

12. The learned counsel for the respondents submits that the pillion rider was the eye-witness to the accident in which the husband of the claimant No. 1 had died and the Court in the MAC Case No. 176/2012 relied upon the testimony of the pillion rider who attributed the negligence on the driver of the offending night super bus. He submits that when in a case arising out of same accident, the negligence has been attributed to the driver of the offending vehicle and when the appeal by the present appellant in that case has been dismissed, the Court cannot take a contrary view in this appeal, otherwise it would result in conflicting judgment of Co-ordinate Benches under same facts and circumstances. In support of his submission, he has cited the judgment of the Co-ordinate Bench in the case of "***Oriental Insurance Company Limited Vs. Rajesh Narah @ Sanju Narah***" (Judgment dated 07.03.2022, passed in MAC Appeal No. 18/2020)

13. The learned counsel for the respondents has also submitted that the appellant, before the Motor Accident Claims Tribunal, in the claims proceedings, had failed to prove that the deceased was under any intoxication. He submits that the post-mortem examination report of the deceased is silent about the intoxication by the deceased. He also submits that mere mentioning in the final report submitted by the Investigating Officer in the criminal case, which was registered against the driver of the offending vehicle that the deceased, who was driving a motorcycle was under intoxication is not enough to come to the conclusion that there was a negligence on the part of the deceased.

14. He submits that even assuming but not admitting that the deceased was in a drunken condition, mere drunkenness is not sufficient to come to the conclusion of negligence on his part. He submits that as per Section 185 of the Motor Vehicles Act, 1988, the content of alcohol in his blood must be found exceeding 30mg per 100 ml of blood to come to the conclusion that he was incapable of exercising proper control over the vehicle he was driving. However, no such breath analysis report or blood tests report could be produced by the appellant side before the Motor Accident Claims Tribunal in the inquiry conducted by it. Hence, he submits that mere drunkenness by the deceased would not disentitle the claimants from the compensation awarded to them by the Motor Accident Claims Tribunal.

15. The learned counsel for the respondents has also submitted that the plea of the learned counsel for the appellant that as the criminal case has ended in submission of final report, therefore, the claims case must also follow the suit has been rejected in a catena of judgments by the Apex Court. He submits that liability in a criminal matter is based on a different standard of proof i.e., proof beyond reasonable doubt. Whereas, the liability in a claim case is based on the standard of preponderance of probability. He submits that the standard of proof beyond reasonable doubt cannot be applied while considering an application seeking compensation on account of death in a road traffic accident and same standard has been rightly applied by the Motor Accident Claims Tribunal in attributing the liability to the driver of the offending vehicle. In support of his submission, he has cited the following rulings:-

(i) "***N. K. V. Bros (P) Ltd Vs. M. Karumai Ammal and Ors.***", reported in "***AIR 1980 SC 1354***".

(ii) "***Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors.***",

reported in “**(2009) 13 SCC 530**”.

(iii) “**Mathew Alexander Vs. Mohammed Shafi and another**” reported in “**2023 INSC 621**”.

(iv) “**National Insurance Company Limited Vs. State of Kerala**” reported in “**2022 6 KLT 834**”.

(v) **Janabai WD/O Dinkarrao Ghorpade and Ors. Vs. M/s ICICI Lombard Insurance Company Limited** reported in “**2022 LiveLaw(SC) 666**”.

16. I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record. I have also perused the judgment cited by learned counsel for both sides in support of their respective submissions.

17. It appears from record that the motorcycle which the deceased was driving at the time of accident was also having a pillion rider and in the said accident, both the driver of the motorcycle as well as pillion rider sustained injuries. Though, the driver of the motorcycle died in the accident, the pillion rider sustained grievous injuries.

18. It also appears that both the parties, namely, the dependents of the deceased driver of the motorcycle as well as the pillion rider filed separate claims cases before the same Tribunal. It also appears that in both the claims case, namely, MAC Case No.175/2012, filed by the present respondents as well as MAC Case No. 176/2012 i.e., filed by the pillion rider, namely, Rajesh Narah @ Sanju Narah, the Motor Accident Claims Tribunal allowed the claim petitions and awarded the compensations to the claimants. It also appears that the Insurance Company had filed appeal against both the judgment and award of the claims tribunal. The appeal preferred by the pillion rider was registered as MAC Appeal No. 18/2020, whereas the present appeal, which was filed prior to the aforesaid appeal has been registered as MAC Appeal No. 786/2018.

19. In the MAC Appeal No. 18/2020, a Co-ordinate Bench of this Court had dismissed the appeal by its judgment dated 07.03.2022 and the said dismissal of the appeal filed by the present appellants in respect of the compensation awarded to the pillion rider has not been agitated by the Insurance Company, which implies that they are agreed to the decision made by the Co-ordinate Bench of this Court.

20. Under such circumstances, a valid question arises as to whether it will be proper for this Court to come to a contrary finding arrived by a co-ordinate bench on the same set of facts. However, this Court intends to consider plea raised by the appellant in this instant appeal.

21. The main contention of the learned counsel for the appellant is that the Motor Accident Claims Tribunal had erred in considering the testimony of the PW-1 relying on the documents exhibited by her when she herself was not the eye-witness. The second contention of the learned counsel for the appellant is that the Motor Accident Claims Tribunal had also erred in not considering the Exhibit-6 i.e., the final report submitted by police in G.R. Case No. 639/2012 i.e., the case which was registered against the driver of the offending night super bus in connection with the accident in which the husband of the claimant No. 1 expired.

22. The proposition of law regarding different standard of proof adopted in civil and criminal proceedings is a settled proposition. In the criminal proceedings, the standard of proof is beyond reasonable doubt, whereas in a civil proceeding it is preponderance of probability. The Apex Court in the case of "**N. K. V. Bros (P) Ltd Vs. M. Karumai Ammal and Ors.**"(supra), had held that the criminal case had ended in acquittal and, therefore, civil suit must follow suit cannot be accepted. It is observed that culpable rashness under Section 304A of

the Indian Penal Code is more drastic than the negligence under law of torts to create liability.

23. Moreover, in the instant case, the Exhibit-6 is the final report submitted by the Investigating Officer of Jamuguri P.S. Case No. 29/2012, who was not examined by the present appellant in the inquiry before the Motor Accident Claims Tribunal. Hence, same cannot be taken into consideration to arrive at an adverse finding against the case set up by the claimants. The standard of proof beyond reasonable doubt cannot be applied while considering an application seeking compensation on account of death or injury in a road traffic accident. Hence, this Court is of considered opinion that the Motor Accident Claims Tribunal was correct in discarding the Exhibit-6 (final report).

24. As regards the plea that in the final report, it was mentioned that the since the deceased Diganta Mili was driving the motorcycle after consuming alcohol, he was liable for the accident which occurred in this case also cannot be accepted as the final report is rightly discarded by the Motor Accident Claims Tribunal. Moreover, mere evidence of consumption of liquor is not enough to arrive at a finding that the person who consumed alcohol was responsible for the accident. The quantity of alcohol consumed must be such so as to make the person who consumed the alcohol incapable of exercising proper control over the vehicle. An indication of such quantity is given in Section 185(a) of the Motor Vehicle Act, 1988, which provides that, while driving the motor vehicle involved in the accident, there must be proof to show that in the blood of the driver, the quantity of alcohol was found exceeding 30milligrams per 100 milliliters of blood detected by a breath analyzer or any other test, including the laboratory test.

25. However, in the instant case, no indication of any test by breath analyzers

or any other laboratory tests to show the quantity of alcohol in the blood is there on record or could be produced by the appellant before the Tribunal, therefore, the Tribunal was correct in rejecting the plea of negligence on the part of deceased driver of the motorcycle due to drunkenness.

26. As regards absence of eye-witness in the MAC case No. 175/2012 is concerned, though the claimant No. 1, who is the wife of the deceased was not an eyewitness, she has exhibited the accident information report and other documents which clearly indicates that it was the bus driver who was negligent. The evidence of DW-1, who has also exhibited his investigation report as Exhibit-1 and accident information report as Exhibit-2 also shows that as per police report, the accident occurred due to rash and negligent driving of the bus driver, which could not be countered by adducing reliable counter-evidence by the Insurance Company. Hence, this Court is of considered opinion that there is no infirmity or illegality in the impugned judgment and award passed by the Motor Accident Claims Tribunal, Sonitpur.

27. In view of the discussions made and reasons stated in the foregoing paragraph, this Court is of considered opinion that this is not a fit case to interfere in the impugned judgment and award.

28. This appeal is accordingly dismissed.

29. Send back the records of the MAC Case No. 175/2012 along with a copy of this judgment to the concerned Motor Accident Claims Tribunal.

Abhishek
Prem

Digitally signed
by Abhishek Prem
Date: 2026.02.20
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JUDGE

Comparing Assistant