

GAHC010063512018



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

MACApp. 210/2018

1:SRI DUL SAIKIA
S/O LATE MOHAN SAIKIA
VILL. SOOTEA BORACHUK
P.O. AND P.S. SOOTEA
DIST. SONITPUR
ASSAM PIN-

VERSUS

1:THE NEW INDIA ASSURANCE CO. LTD and 2 ORS
HAVING ITS REGISTERED OFFICE AT 24 WHITS ROAD
CHENNAI-600014 AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD
GUWAHATI-5
REPRESENTED BY CHIEF REGIONAL MANAGER

2:THE NEW INDIA ASSURANCE CO. LTD.
TEZPUR BRANCH
P.O. AND P.S. TEZPUR
DIST. SONITPUR
ASSAM.

3:SRI BABU SAIKIA
S/O SRI TILAK SAIKIA
VILL. SOOTEA BORACHUK
P.O. AND P.S. SOOTEA
DIST. SONITPUR
ASSAM
PIN

4:SRI SACHIN BORAH

S/O SRI JOYRAM BORAH
VILL. SOOTEA BORACHUK
P.O. AND P.S. SOOTEA
DIST. SONITPUR
ASSAM
PIN (DRIVER OF VEHICLE NO. AS-12-B-9155)

Advocate for the Petitioner : MR. R K TALUKDAR
Advocate for the Respondent : MR. R S MISHRA (R3)

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 05-08-2019

Mr. H.J. Tamuli, learned counsel for the appellant, submits that the judgment dated 22.12.2016 passed by the learned Member, MACT, Sonitpur, Tezpur in M.A.C. Case No. 54/2013(I) should be interfered with, inasmuch as, the applicant/owner of the accident vehicle has been directed to pay compensation of Rs. 10,11,600/- to the claimant.

The counsel for the appellant submits that the claimant/respondent No. 3 had borrowed the Maruti Car belonged to the appellant. However, when the vehicle reached Baligaon Village, the Maruti Car lost control and veered into a low laying paddy and turned turtle. The brother of the appellant, i.e. the respondent No. 3 sustained various injuries to his body and accordingly, he claimed compensation before the Tribunal, Sonitpur under Section 166 of the M.V. Act, 1988 vide MAC Case No. 54/2013 (I).

In the case of *Ningamma & Anr vs United India Insurance Co. Ltd* (supra) the Apex Court has held that the owner of an accident vehicle cannot made a claim under Section 163-A of the M.V. Act. As a claim under Section 163-A can only be made against the owner of the vehicle. Thus, the owner of the vehicle cannot be said to be a 3rd party in respect of an insurance claim. In the above judgment, the Apex Court has relied upon another judgment of the Apex Court, i.e.. *Oriental Insurance Company Limited vs. Rajni Devi* reported in (2008) 5 SCC 736, wherein it was held that though the deceased was not the owner of the motor bike, he had borrowed the said bike from its real owner namely. Thus, the deceased could not be held to be an employee of the owner of the motor bike as the borrower accordingly into the stones of the owner of the vehicle. Thus the claimant/respondent No. 3 cannot be said to be a 3rd party as the owner of a vehicle cannot be said

to be a 3rd party in terms of Section 147 of the M.V. Act, 1988.

In the present case, the claim petition has not been made under Section 136-A, but under Section 166 of the M.V. Act.

In the case of *Reshma Kumari & Ors vs Madan Mohan & Anr* reported in (2013) 9 SCC, this Court the Apex Court has held that it is imperative that a case of rash and negligent act should be made out against the driver or owner of the vehicle, before a case for payment of compensation is made out in favour of the claimant. Thus, rash and negligent Act as a *sine-qua-non* for payment of compensation under Section 166 of the M.V. Act, 1988.

Admit the appeal.

Call for the LCR.

Issue notice, returnable in 4(four) week's.

Ms. M. Borchetia accepts notice on behalf of respondent Nos. 1 & 2, while Mr. R.S. Mishra accepts notice on behalf of respondent No. 3.

Since the notice has been accepted on behalf of all the respondents, there is no need for sending any formal notice to the said respondents.

List the matter after 4(four) weeks.

JUDGE

Comparing Assistant