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

Case No. : MACApp./385/2016

HDFC ERGO GENERAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT RAMON HOUSE,
H.T. PAREKH MARG, 169, BACKBAY RECLAMATION, MUMBAI 400020 AND
ITS GUWAHATI BRANCH OFFICE AT MAYUR GARDENS, GROUND FLOOR,
OPP. RAJIV BHAVAN, ABC, G.S. ROAD, GUWAHATI, ASSAM-781005,
GUWAHATI.

VERSUS

MUSSTT ANOWARA BEGUM and 2 ORS
W/O ABDUL ALI

2:MUSSTT. ASMA KHATUN
W/O ABSER ALI
BOTH ARE R/O VILL. DOLAIGAON
P.O. NORTH BONGAIGAON
P.S. DIST. BONGAIGAON
ASSAM.

3:SMTI ANITA SARKAR

W/O SRI RAM CHANDRA SARKAR
R/O B.O.C. GATE PIPE LINE
P.O. and P.S. BONGAIGAON
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MS.P BORTHAKUR, MR.R GOSWAMI,MS.M SAIKIA,MR.S BHUYAN

Advocate for the Respondent : MR. S K SAHARIAH (R3), S K PODDAR (R-3),MS J AKTAR (r-1 to 2),MR A K DAS (r-1 to 2),MR. M KHAN (r-1 to 2),MR A ISLAM (R3),MR.M A

MONDAL(R3),MR D C NATH (R3),MR. C SHARMA (R3)

Linked Case : CO/6/2024

MUSSTT. ANOWAR BEGUM AND ANR.
W/O ABDUL ALI
RESIDENT OF VILLAGE DOLAIGAON
PO NORTH BONGAIGAON
PS BONGAIGAON
DIST BONGAIGAON
ASSAM
783380

2: MUSSTT. ASMA KHATUN
W/O ABSER ALI

RESIDENT OF VILLAGE DOLAIGAON
PO NORTH BONGAIGAON
PS BONGAIGAON
DIST BONGAIGAON
ASSAM
783380
VERSUS

HDFC ERGO GENERAL INSURANCE CO. LTD. AND ANR. H
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT RAMON HOUSE
H.T PAREKH MARG
169
BACKBAY RECLAMATION MUMBAI 400020 AND ITS GUWAHATI BRANCH
OFFICE AT MAYUR GARDENS
GROUND FLOOR
OPP. RAJIV BHAWAN
ABC
G.S ROAD
GUWAHATI
ASSAM 781005
GUWAHATI

2:SMTI ANITA SARKAR
W/O SRI RAM CHANDRA SARKAR

RESIDENT OF B.O.C GATE PIPE LINE
PO AND PS BONGAIGAON
DIST BONGAIGAON

ASSAM 783380

Advocate for : MR. M KHAN

Advocate for : appearing for HDFC ERGO GENERAL INSURANCE CO. LTD. AND
ANR. H

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the appellant: Mr. R. Goswami.

Advocate for the respondents : Mr. M. Khan and Mr. S. K. Poddar.

Date on which judgment is reserved : 24.09.2025.

Date of pronouncement of Judgment : 08.01.2026.

Whether the pronouncement is of
the operative part of the judgment? :

Whether the full judgment has been
pronounced? : Yes

JUDGMENT AND ORDER (CAV)

1. Heard learned counsel, Mr. R. Goswami for the appellant/Insurer. Also heard learned counsel Mr. M. Khan for respondent Nos.1 & 2/claimants, and learned counsel Mr. S. K. Poddar for respondent No. 3(owner).
2. The MAC appeal No.385/2016 and CO No. 6/2024 are decided through this common judgment as both the analogous cases arise out of the same cause of action. The claimants in this case are M. Anowara Begum and M. Asma Khatun, whereas the respondents in this case are HDFC ERGO General Insurance Company Ltd., insurer of vehicle No. AS19B/0245 of Tata Indica make and the owner of the vehicle is Smt. Anita Sarkar, arrayed as opposite party No. 2 in MAC case No.

48/2009.

3. In this case, the appellants and the respondents will be referred to as the claimants, the insurance company or the insurer and the owner of the vehicle respectively. The claimant's case in brief is that on 14.09.2008, while Kabed Ali, driver of Smt. Anita Sarkar, parked the vehicle bearing registration No. AS19B/0245 of Tata Indica make in the taxi stand at Bongaigaon and was waiting for passengers to hire the vehicle, at about 6 p.m., two unknown miscreants hired the vehicle from Kabed Ali to proceed towards their destination. The vehicle was proceeding from Bongaigaon towards Abhayapuri, but the vehicle disappeared. However, on 15.09.2008, at about 6 a.m., the body of Kabed Ali was found near a coconut plantation at village, Batabari under Abhayapuri P.S. An FIR was lodged by one, Ishwar Chandra, Assistant Director of the coconut farm on 15.09.2008 with the police at Abhayapuri P.S. and an Abhayapuri P.S. case No. 236/2008 under Section 302/201/379 of the IPC was registered. Kabed Ali, hereinafter, also referred to as the deceased was 20 years old at the time of the incident. The claimants prayed for a compensation of Rs. 5 lacs on account of the death of the deceased.
4. Notices were issued to OP No. 1, HDFC General Insurance company, who filed a written statement contending *inter alia* that there is no cause of action and the claim petition is not maintainable. It was further contended that in order to claim compensation under section 166 of the Motor Vehicles Act 1988, the claimants have to establish that the person died as a result of a motor vehicular accident, but in the present case, it appears from the claim petition that the driver was killed by the miscreants, who hired the vehicle, and as such the petition was not maintainable.
5. It was further contended by the insurer that in order to claim compensation

under section 166 of the Motor Vehicles Act, the claimants have to establish that the accident occurred owing to the negligence of the driver of the vehicle, but in the present case, the driver/deceased was killed by miscreants. So stating, the claimants have been put to strictest proof of their case. The insurer has also contended that the claim was excessive and has also prayed to dismiss the claim petition. Owner of the vehicle, however, did not contest the proceeding and the case proceeded *ex-parte* against the owner.

6. The Trial Court framed the following points for determination:-

"(i) whether claimants' brother, Kabed Ali died in the motor vehicle accident that occurred on 15.09.2008 at village Batabari due to rash and negligent driving of the vehicle No.AS19B/0245?"

"(ii) whether the claimants are entitled to get compensation, ifso, to what extent and by whom is it payable?"

7. After framing the issues and relying on the evidence of two witnesses adduced by the claimant and one witness adduced by the opposite party as well as on the pleadings, the Trial Court held that the claim petition is maintainable and the claimants are entitled to a compensation of Rs. 3,49,000/- to be paid by the insurance company to the claimants, and the insurance company was given a leeway to recover the same from the owner of the offending vehicle.

8. It was held by the Tribunal that, *"Considering the attending facts and circumstances and relying the law laid down by the Apex Court in the case of Rita Devi and our Hon'ble High Court in the case of Bipal Bashi Das, I hereby hold that the incident in which the deceased lost his life was an accident. Omission to take requisite care in the use of the vehicle by its driver amounted to rash and negligent driving of the said vehicle and the death of the deceased must be held to have been caused in the accident arising out of the rash and negligent driving of the said vehicle by its*

driver. Accordingly, this issue is decided in favour of the claimants."

9. The insurer was directed to pay the compensation and to recover the same from the owner of the vehicle. Aggrieved by this judgment and order, the insurer preferred this appeal contending *interalia* that both the claimants are married sisters of the deceased, living separately in different places and they cannot be said to have been dependent upon their brother, i.e. the deceased. It is contended that there was no loss of dependency, inasmuch as the deceased was at the time of the accident only 24 years old, and the claimants being married sisters, living separately in different households, were not dependent on their deceased brother. It is a settled position of law that in case of death of bachelors, the brothers and sisters are not considered as dependents unless evidence shows them to be minors and non-earning members.
10. It is averred that the learned Member ought not to have assessed the compensation mechanically, without considering the aspect of loss of dependency. The application of multiplier in this case is palpably wrong in law, as the deceased was a bachelor and the claimants were the married sisters of the deceased, and applying the multiplier method and selecting the multiplier as per the age of the deceased was assessing compensation in deviation from the settled position of law.
11. It is contended that the learned Member ignored the fact that the insurance policy was issued against the vehicle number AS19B/0245. which was a private car package policy, but the said vehicle was admittedly used by the deceased and the respondent No. 3 for commercial purpose. Instead of directing the insurer to pay the compensation and to recover the same from the owner, the learned Tribunal ought to have directed the owner to pay the compensation.

The insurance company has thus prayed to set aside the impugned judgment and order passed by the Tribunal.

12. Although learned counsel, Mr. S.K. Poddar has appeared for the respondent No. 3, it is submitted that the respondent No. 3 has no *locus standi* to place her submission in this case, as the respondent No. 3 did not contest the proceeding and no new facts can be introduced anew at the stage of appeal.
13. Per contra, learned counsel, Mr. S.K. Poddar laid stress in his argument that the respondent No. 3, Smt. Anita Sarkar has every right to defend herself. It is further contended that the deceased was murdered and this is not an accident case. It is further contended that this case was registered under Section 302 of the IPC. Criminal case was registered under Section 302 of the IPC and not under section 304(A) of the IPC which clearly reveals that it was a case of culpable homicide amounting to murder and not a case of accidental death. In fact, the owner had approached the Consumers forum and the owner was awarded a compensation of Rs. 2,63,672/- and cost of proceedings with interests accrued.
14. The insurance Company was directed to pay the compensation by the President, District Consumers Commission, Bongaigaon. This submission was however vehemently opposed by both the learned counsel for the insurance Company as well as the learned counsel for the claimants as this fact cannot be pressed without documentary evidence.
15. Learned counsel Mr. S. K. Poddar has further submitted on behalf of the owner of the vehicle that the owner did not get an opportunity to defend herself as the notices were not served upon the owner.
16. It is submitted that as per provisions of Order 41, Rule 33, the owner has every

right to defend herself. It is also further submitted on behalf of the owner of the vehicle that there is not a single whisper that the claimants were dependents of the deceased. It is further submitted by the learned counsel for the owner of the vehicle that the original record of the Tribunal reveals that the order dated 30.06.2009 was passed without application of mind that notices were served to respondent/O.P. No. 2, i.e., the owner, whereas in reality no notices were served upon the owner. It is further submitted that when parallelly a case was proceeding in the Consumer's forum, the owner could not appear before the Tribunal.

17. It is submitted that the owner's case can be considered by this Appellate Court under Order 41, Rule 33 of the Code of Civil Procedure. It is further submitted on behalf of the owner that summons was never served upon the owner. The owner is not liable to pay the compensation as the owner was unaware that the vehicle was hired as a taxi. The taxi driver was murdered and thus this is not an accident case but a case of culpable homicide amounting to murder.
18. Learned counsel for the owner has submitted that the arguments for the appellant that the owner cannot place his submission at this stage when she has not appeared before the Tribunal holds no water.
19. Through the cross-objection 6/2024, the claimants have raised the issue that the compensation was inadequate. The Tribunal while awarding the compensation has failed to award under the Head of loss of future prospects. The rate of interest was assessed as 6% only which is a negligible rate of interest and inadequate and hence, the rate of interest may be enhanced to 12% from the date of filing of the claim petition.
20. It is submitted that the deceased was a young and energetic youth of 25 years

of age and his monthly income could have been taken at Rs. 6000/- per month as the notional income but the Tribunal has considered the minimum of the notional income as the monthly income of the deceased.

21. After considering the arguments on behalf of the insurer, the claimants as well as the owner, the point for determination in this case is whether the Tribunal has erroneously held that this case is an accident case and whether the compensation awarded was inadequate. In this case at hand, the learned Tribunal has passed a reasoned order. The aspect that whether this case was an accident case or whether this was a case of culpable homicide amounting to murder was elaborately dealt with by the Tribunal.
22. Although, the learned counsel for the owner laid stress in his argument that this is a case of murder and not an accident, no evidence was brought forward. It is true that an appeal can be dealt with as per Order 41 Rule 33 of the CPC and evidence can also be brought in as per Order 41 Rule 27 of the CPC. Based solely on submission, without proper evidence and documents, it would be perilous to set aside the judgment and order of the Tribunal by holding that this was a case of murder and not a case of accident, moreso when the decision or the result of the criminal case is not before this Court. Nevertheless, the decision of any criminal case would not affect the merits of the instant case for compensation. After properly assessing the evidence and the pleadings, and relying on the decision of the Honb'ble Supreme Court in ***Rita Devi & Ors Vs. India Insurance Company Ltd.&Anr (Supra)*** and on the decision of this Court in ***Bipal Bashi Das (Supra)***, and after assigning sound reasonings, it has been held that this case was a case of accident and the insurance company was directed to pay the compensation which if so advised, the insurance company may recover the same from the owner of the offending vehicle.

23. The insurance company through the evidence of DW1, Shri Kalyan Sengupta has submitted that the Policy No. VP00376427000100, covering from 13.04.2008 to 12.04.2009 was issued against the vehicle bearing registration No. AS19B/0245, which was registered in the name of Smt. Anita Sarkar and the policy was issued for the purpose of private car and not for using the same as a taxi. This evidence was taken into consideration by the learned Tribunal and the learned Tribunal has correctly directed the insurance company to pay the compensation and recover the same from the owner, if so advised.
24. Relating to the dependency of the claimants, a new issue has been raised at the appellate stage. The claimants while filing the claim petition have clearly given their addresses and it is apparent that they were married when the claim petition was filed. However, the evidence is silent relating to the fact if the claimants were married at the time of the accident. The pleadings, evidence and the issues raised clearly depicts that the marital status of the sisters of the deceased were not disputed initially before the Tribunal. From the pleadings and the evidence, it is not clear whether the claimants/respondents were unmarried at the time of the accident and were dependent on their brother who passed away as a result of the unfortunate incident.
25. Now, both the claimants are settled and they have their respective households, but it has not been affirmed by the respondents that the claimants were married at the time of the incident. Thus, on the touchstone of preponderance of probabilities, it was held by the Tribunal that the claimants are entitled to compensation despite being married sisters of the deceased. The onus was on the respondents to affirm that the claimants were married at the time of the accident. On the touchstone of preponderance of probabilities, it is thereby held that the claimants are entitled to compensation. It has been correctly observed

by the Tribunal that the death was not affirmed as a case of culpable homicide, but it is a case of death due to negligence.

26. I therefore concur with the findings of the learned Tribunal who has spelt out sound reasonings while deciding the case.
27. As for the argument relating to compensation of future prospects, there is no justification to enhance the compensation of future prospects of the deceased as it is apparent that the incident occurred on 15.09.2008, whereas, the claim petition was filed on 16.03.2009. Within this period, both the claimants have given their addresses of their respective marital households. They cannot be considered to be dependent on the deceased at the time of filing the claim petition, despite the fact that their marital status at the time of the accident is not known.
28. In view of my foregoing discussions, this Court deems it appropriate to dismiss the appeal as well as the cross-objection. Both the MAC Appeal No. 385/2016 and the CO No. 06/2024 are hereby dismissed owing to the fact that both cases are devoid of merits.
29. The decision of the learned Tribunal dated 26.08.2016 in MAC Case No. 48/2009 is hereby upheld.
30. Send back the original records of the Tribunal.

JUDGE

Comparing Assistant