GAHC010067762022

2026:GAU-AS:8827

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

Case No. : MACApp./276/2022

NEW INDIA ASSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT M.G ROAD, FORT MUMBAI AND ONE OF THE REGIONAL OFFICES KNOWN AS NORTH EAST REGIONAL OFFICE AT LACHIT NAGAR, ULUBARI, GUWAHATI 7, ASSAM

VERSUS

RINA DAS AND 4 ORS.
W/O SRI GOPAL DAS
RESIDENT OF NAVARANG BYE LANE NO. 2, SASANPARA, EAST CHOWKIDINGEE, PO , PS AND DIST DIBRUGARH, ASSAM, 786003

2:SRI BASANT SINGH
S/O SRI BUTA SINGH

RESIDENT OF SANT NAGAR VILLAGE
JIWAN NAGAR
PO SANT NAGAR
DIST SIRSA
TEHSIL RANIA
HARYANA
125075

3:SRI RAM LAGAN JHA
S/O BHAJEBHAN JHA
RESIDENT OFCHANDANPATTI VILLAGE (SANGAPATTI VILLAGE) PO SAKRA
DIST MUZAFFARPUR
BIHAR
843105

4:SRI BITTU DAS

S/O SRI GOPAL DAS
RESIDENT OF NAVARANG BYE LANE NO. 2
SASANPARA
EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM
786003

5:THE BRANCH MANAGER
NATIONAL INSURANCE CO. LTD. KHEMKA MARKET
DIBRUGARH
ASSAM 78600

Advocate for the Petitioner : MS R GANGAWAT, MR. R K BHATRA,MR. A SAIKIA,MR. K K BHATRA

Advocate for the Respondent : MRS. S ROY (r-5), MS T J SAHEWALLA (R-1,4),MR M SAHEWALLA (R-1,4),MR. A CHETIA (R-1,4),MR. P DEKA (R-1,4)

BEFORE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the appellant	: Mr. R.K. Bhatra & Ms. A. Biyani
Advocate for the respondents Nos. 1&4	: Mr. H.K. Sarma
Advocate for the respondents No.5	: Mrs. S. Roy

Date on which judgment is reserved	:	**16.06.2026**
Date of pronouncement of judgment	:	**19.06.2026**
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)

The present appeal under Section 173 of the MV Act, 1988(As amended) has been preferred by the New India Assurance Company Limited challenging the judgment and award 28.10.2021 passed by the MACT No.1 Tinsukia, in MAC Case No. 36/2017 awarding a compensation of Rs.10,95,000/-(Rupees Ten Lakh Ninety-Five Thousand) along with interest at 12% per annum from the date of filing the claim petition till its realization.

2. Heard learned counsel for the appellant, Mr. R.K. Bhatra and learned counsel, Ms. A. Biyani. Also heard learned counsel, Mr. H.K. Sarma, for the respondent Nos. 1& 4 and learned counsel, Mrs. S. Roy, for the respondent No.5.

3. The facts leading to the filing of the present appeal is that a claim petition was filed by the mother of the deceased as claimant seeking compensation for the death of her son, Chintu Das who died in a Motor vehicle accident on 24.03.2017 on NH-37 when the deceased driving the vehicle No.AS-06-S-2017(Motor Cycle) was proceeding from Dibrugarh towards Tinsukia side with a pillion rider. Suddenly, the truck Bearing Registration No.HR-57-6589 coming from the opposite direction being driven in a rash and negligent manner lost control and knocked down the motor cycle with great force by coming on the wrong side of the road. As a result, both the driver and pillion rider of the motor cycle died on the spot.

4. in the claim petition the owner and driver as well as the appellant being the insurer of the truck bearing registration No.HR-57-6589 were impleaded as opposite party Nos. 1,2 and 3 and the owner and the insurer of the motor cycle bearing registration No. AS-06-S 2107 were impleaded as opposite party No. 4 & 5.

5. All the opposite parties contested the case except the opposite party No.2/Driver of the offending truck. The opposite parties filed their written statement. The appellant herein also filed their written statement taking statutory defenses and also filed an additional written statement taking the defense of contributory negligence.

6. The learned Tribunal after the conclusion of the evidence and after hearing arguments passed the impugned judgment and award dated 28.10.2021. Being aggrieved the appellant has preferred the instant appeal.

7. Learned counsel for the appellant has argued the appeal on five grounds. The first ground taken by the appellant is that the driving license of the driver of the truck was not valid and effective at the time of the accident. It is stated that when the appellant company was processing the file after delivery of the impugned judgment it was discovered that the driver of the truck was not holding a valid driving license at the time of the accident. It is stated that during the pendency of the claim petition, the appellants could not ascertain the concerned RTO from where the driving license was issued. It was only at the later stage that the appellant came to know that the DTO Muzaffarpur, was projected as the issuing authority. Thus, the appellant sought a verification report from the DTO Muzaffarpur, and thereafter, the report of the DTO was received on 03.03.2022 indicating that the driving license No.4164/08F held by the driver of the truck Bearing Registration No.HR-57-6589 was not issued from the office of the DTO Muzaffarpur. Therefore, the appellant states that there was a violation of the policy condition by the owner of the truck/Respondent No.2

and as such the owner ought to be made liable for compensating the claimant.

8. The appellant further states that the mother of the deceased/claimant was not fully dependent on the income of the deceased. It is submitted that the CW-1/claimant admitted during her cross examination that her husband was a painter and her two other sons were daily wagers. As such, she cannot be said to be completely dependent on the income of the deceased. Therefore, the loss of estate ought to have been taken as ¼ of the monthly income of the deceased.

9. The third ground taken by the appellant is that the learned tribunal made an error by assessing the income and occupation of the deceased in the absence of any cogent evidence supporting the same. The claimant in the instant case pleaded that the deceased was a driver by profession with a monthly income of Rs.10,000/- and exhibited the salary certificate as exhibit-7. The evidence of the CW-1/Claimant shows that, she had deposed that at the time of his death, the deceased was a driver under the employment of one Shri. Sankar Mazumdar. However, the employer was not examined to prove the salary certificate. As such, the learned Tribunal could not have taken the monthly income of the deceased as Rs.10,000/-. In the absence of any evidence regarding the actual income of the deceased, the income should have been assessed on the basis of the applicable minimum wages.

10. The fourth ground on which the appeal is filed is that the learned tribunal had erred by awarding interest @ 12% per annum from the date of fling of the claim petition till realization. Learned counsel for the appellant submits that the rate of interest awarded is excessive and contrary to the settled principles governing motor accident compensation cases. In view of the settled position of law, the interest awarded by the tribunal deserves to be reduced to a reasonable rate of 7% to 7.5% per annum or such other rate as this court deems fit and proper.

11. Learned counsel further submits that the learned tribunal could not have awarded interest on the amount awarded towards future prospects.

12. In view of the submissions made above the learned counsel prays that the compensation amount may be suitably modified and re-calculated by this Court and further prays that the appellant may be granted recovery rights against the owner of the offending vehicle.

13. In support of her contentions, learned counsel for the appellant Ms. A. Biyani has relied on the following cases:-

1) ***United India Insurance Company Limited. Vs. Kabita Deka and 2 others*** in ***MACApp 342/2021***

2) ***Pappu and Others Vs. Vinod Kumar Lamba and Another*** reported in ***(2018) 3 SCC 208***

3) ***United India Insurance Company Limited Versus Girish Keot and Others*** reported in ***(2019) 2 GLR 572***

4) ***Kirti and Another Vs. Oriental Insurance Company Limited*** reported in ***(2021) 2 SCC 166***

5) ***Dharampal and Ors Vs. U.P. State Road Transport Cooperation*** reported in ***(2008) 12 SCC 208***

6) ***Bajaj Allianz General Insurance Company Limited Vs. Dhanalata Mech and Others*** reported in ***(2026) SCC Online Gau 2084***

14. On the other hand, the learned counsel for the claimants/respondent 1 submits that the monthly income of the deceased was proved by exhibiting the salary certificate issued by the employer of the deceased. The salary certificate clearly stated that the deceased was being paid a monthly salary of Rs.10,000/- per month. The said salary certificate was not disputed by the appellant/insurer and therefore, the monthly income of Rs.10,000/- per month was proved by the claimants. As far as the compensation under the loss of estate is concerned the learned counsel submits that it was the appellant themselves who had stated in their written arguments before the tribunal that the loss of estate should be taken as Rs.50,000/-. On that basis the tribunal had awarded the said amount in respect of loss of estate. Leaned counsel also submits that the DW evidence was closed on 10.03.2021 and none of the opposite parties examined any witnesses before the tribunal.

15. Learned counsel therefore submits that the tribunal has rightly calculated the amount of compensation and as the factum of the accident and the death of the son of the claimant in the motor vehicle accident is not disputed by any of the parties, the claimant/Respondent No.1 is entitled to the compensation as awarded by the tribunal by judgment dated 28.10.2021 and therefore, prays that the said judgment and award may be upheld by this Court.

16. The Court has taken note of the submissions made by the learned counsel for the parties, perused the pleadings and the Trial Court Records.

17. It is settled law that if the offending vehicle was driven by a person who did not have a license or had a fake license or a bogus license, the insurance company cannot be saddled with the liability of indemnifying the insured person/owner. This Court has already allowed the application of the appellant under Order 41 Rule 27 R/W 151 of the CPC for producing additional evidence in the form of the report of the DTO Muzaffarpur dated 03.03.2022 regarding the driving license of the driver of vehicle number HR-57-6589. Resultantly, it is the view of this Court that the appellant would be at liberty to recover the compensation amount from the respondent No.2/Owner of the offending vehicle.

18. In as far as the income of the deceased is concerned, this Court is of the view that the claimant was able to prove that the deceased was getting an income of Rs.10,000/- pm as salary. The employer of the deceased had issued a salary certificate which was exhibited as exhibit-7. The claimant/respondent on being examined as CW-1 also deposed that the monthly income of the deceased was Rs.10.000/- per month. It is also seen from the records that the appellant/Insurer did not dispute the salary certificate before the tribunal and therefore, the undisputed documentary evidence in a motor accident claim can be accepted even without strict formal proof when the insurance does not dispute the same. In the case of ***RAJWATI @ RAJJO and ORS Vrs. United India Insurance Company Ltd. and Ors***, reported in ***2022 Supreme (SC) 1231/2022(17) SCR 845***; the Supreme Court held that the Salary Certificate was conclusive proof of the income of the deceased and was also corroborated by the statement of the deceased’s wife and stated that the view of the High Court rejecting the salary certificate of the deceased merely on the ground that the person issuing the document was not examined was wrong and not justified.

19. The age of the deceased is not in dispute and therefore, the tribunal has rightly taken the multiplier as 17 in view of the fact that the deceased was 27 years old. This court is also of the view that the claimant/respondent 1 is the mother of the deceased person and as the other family members were not dependent on the deceased person, the claimant/respondent 1/Mother of the deceased can be taken as the sole dependent of the deceased. Hence the tribunal has rightly deducted 50% of the income towards personal expenses. The Tribunal has not awarded any amount towards future prospects.

20. In view of the observations made hereinabove, this Court does not interfere with the compensation as awarded by the learned tribunal by the judgment dated 28.10.2021 except for the amount under 'loss of estate' which is slashed down to Rs. 15,000/- instead of Rs. 50,000/- as per ***National Insurance Company Limited Vs. Pranay Sethi***, reported in ***(2017) 16 SCC 680***. Additionally, the award under loss of love and affection is interfered with and set aside and instead Rs.40,000/- is awarded as loss of filial consortium as the law is settled that in the event of the death of a child, the parents are entitled to filial consortium. Accordingly, the compensation amount is re-calculated as given below:

i) Loss of income (Rs.5,000/-X12X17)	=Rs.10,20,000/-
ii)Loss of estate	=Rs.15,000/-
iii) Loss of filial consortium	=Rs.40,000/-
iv) Funeral Expenses	=Rs.15,000/-

Rs. 10,90,000/- (Rupees Ten Lakh Ninety Thousand)

21. The learned counsel for the claimant/respondent had argued that the interest at 12% per annum should be upheld by this Court as the Supreme

Court had also awarded 12% interest per annum in the case of ***United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others*** reported in ***(2021) 11 SCC 780***. However, upon going through the said judgment, it is noted by this court that the interest at 12% per annum was awarded due to the fact that the dependents of the deceased had been pursuing the legal proceedings for grant of compensation for 22 years. Under such exceptional circumstances the Supreme Court had granted 12% interest. The facts and circumstances are entirely different in the instant case as the accident pertains to the year 2017. This Court is of the view that the rate of interest awarded by the learned tribunal at 12 % per annum deserves to be reduced as the same is an excessive rate. The rate of interest is therefore interfered with and it is directed that the compensation amount of Rs.10,90,000/- shall carry an interest of 7.5% per annum from the date of filing of the claim petition till final realization.

22. According to the records, the appellants had deposited Rs.5,47,500/- before the Registry of this Court in pursuance of the Order dated 27.05.2022 passed by this Court in I.A(C)/ 1510/2022. The said amount has already been withdrawn by the respondent 1/claimant. The appellants are directed to deposit the balance amount of the modified compensation before the leaned Tribunal within a period of 60(sixty) days from today along with the interest accrued.

23. Further, the appellant insurance company shall be at liberty to recover the awarded amount from the owner/insured in due course. Before releasing the awarded amount, the learned tribunal shall issue a notice to the insured owner of the vehicle/truck Bearing Registration No.HR-57-6589, who shall be required to furnish security for the entire amount that the insurer will pay to the claimant, in accordance with the law laid down in ***Oriental Insurance Company Limited Vs. Shri Nanjappan and Others, (2004) 13 SCC 224***. The offending vehicle shall be attached as part of the security. If necessary, the executing court shall take assistance from the concerned Regional Transport Authority. The executing court shall also pass appropriate orders in accordance with law regarding the manner in which the insured owner of the vehicle shall made payment to the insurance company.

24. The Registry shall refund the statutory deposit of Rs.25,000/- to the appellant.

25. Consequently, the appeal is disposed of with the above modifications and directions.

26. Registry to return back the trial court records expeditiously.

JUDGE

Comparing Assistant