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

Case No. : MACApp./573/2025

Oriental Insurance Company 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.

…APPELLANT

-VERSUS-

1. Putuli Barman

W/o Lt. Atul Chandra Barman@ Atul Barman.

2. Pitambar Barman,
S/o Lt. Atul Chandra Barman @ Atul Barman.

3. Nayanmoni Barman
S/o Lt. Atul Chandra Barman @ Atul Barman
All are resident of village-
Dankinamari, PO-Hapachara,
PS& Dist-Bongaigaon, Assam,
Caste-OBC, Mobile NO. 6003510181.

4. Shaheb Ali,
C/o Sohrab Ali,
Village-Bogulamari, PO-Langla,
PS-Kalgachia, District-Barpeta, Assam.

5. Ajbahar Hussain,
S/o Tahar Ali,
Village –Damugaon, PO-Panbari,
District-Chirang, BTAD, Assam,
Pin-783391.
Temporary address Dolaigaon,
Near lakhi Mandir, Bongaigaon,
Assam, Pin- 783 380.

…RESPONDENTS

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocate for the appellant : Mr. S. Dutta, Sr.Adv.
Advocate for the respondents : Mr. Mollah Khan.

Date on which judgment is reserved : **12.03.2026.**
Date of pronouncement of judgment : **24.03.2026**
Whether the pronouncement is of the operative part of the judgment ? : No.
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. S.Dutta, learned Senior Counsel for the appellant. Also heard Mr. Mollah Khan, learned counsel for the respondents.

2. This appeal is directed against the Judgment and Award dated 04.12.2024 passed by the learned Member, Motor Accident Claims Tribunal, Bongaigaon in MAC Case No. 144/2022 under Section 173 of the Motor Vehicle Act, 1988.

3. The facts of the case may be briefly recounted.

On the fateful day of 13.04.2022 at about 9.00 P.M. while her husband (deceased) namely, Atul Chandra Barman was going from home towards his office, Boitamari Out Post (under Abhayapuri Police Station) by riding the vehicle bearing No. AS-19D-8095 (Motor Cycle) on his own side and when he reached at Hapachara, on 31 No. N.H. Way, at that moment, the driver of a vehicle bearing No. AS-15AC-0966 (TATA ACE) coming from same direction and driving rush and negligent manner, knocked down the said motor cycle of her husband from back side. As a result of which her husband fell down on the road and sustained grievous injuries on various parts of his body. Immediately, he was taken to Lower Assam Hospital & Research Centre, Bongaigaon, for treatment.

But her husband unfortunately succumbed his injuries on 15.04.2022 at the said hospital, during treatment. At the time of his death the deceased was aged about 50 years and he was a serviceman as he had been serving as a Assam Police, UBC 132, Bongaigaon D.E.F. Govt. of Assam, from where he received monthly salary of Rs. 50,116/-(Rupees Fifty Thousand One Hundred Sixteen) per month.

4. Notices were issued upon which all the opposite parties appeared by filing their written statement and denying their liabilities.

5. The claimant side examined three witnesses and exhibited some documents, where as the opposite parties examined one.

6. That the learned Member, Motor Accident Claims Tribunal, Bongaigaon without considering the case of the appellant/opposite party No. 1 Insurance Company, vide Judgment and Order dated 04.12.2024 disposed of the MAC Case No. 144 of 2022, by awarding a total sum of Rs. 52,10,076/- (Rupees Fifty Two Lakh Ten Thousand Seventy Six) only to be paid by the O.P. No.1 to the claimants within 3 months along with interest @ 6% per annum from the date of filing of the evidence by the claimants till its realization.

7. Being aggrieved, the present appeal has been preferred by the Insurance Company. The principal ground cited in the memo of the appeal and urged by learned Senior Counsel for the appellant is as follows:

> *"For that, the Government of Assam vide Notification dated 14 September 2017, introduced a scheme for compassionate family pension in lieu of compassionate appointment (CFP) scheme by virtue of which where the employee dies before superannuation the family pension equal to 100% of the last pay drawn by the deceased employee to be paid for a period upto the date or deemed superannuation of the deceased employee, i.e., the date on which the employee would be superannuated had he been alive. After the superannuation, the family will receive pension which will be revised time to time. In view of this position, there is no question of loss of dependency."*

8. No other ground was urged on behalf of the appellant at the time of hearing. The law on the issue, involved in the instant appeal, is well settled.

9. In the case of ***Sebastiani Lakra & Others Vs. National Insurance Company Limited & Another*** reported in ***(2019) 17 SCC 465***, the Apex Court, referring to its earlier three-Judge Bench decisions in ***Reliance General***

Insurance Company Ltd. Vs. Shashi Sharma & Others reported in ***(2016) 9 SCC 627*** held as follows:-

> *"10. In this case, the three-Judge Bench adverted to the principles laid down in Helen C. Rebello case, followed in Patricia Jean Mahajan case, and came to the conclusion that the decision in Vimal Kanwar cases did not take a view contrary to Helen C. Rebello or Patricia Jean Mahajan case. The following observations are relevant:*
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>> *"15. The principle expounded in this decision in Helen G. Rebello case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the "pecuniary advantage" from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act, 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan case, to reject the argument*

of the Insurance Company to deduct the amount receivable by the dependants of the deceased by way of "social security compensation" and "life insurance policy".

However, while dealing with the scheme the Court held that applying harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the Head of "Pay and Other Allowances" last drawn by the employee. We may note that on principle this Court has not disagreed with the proposition laid down in Helen C. Rebello or in Patricia Jean Mahajan case, but while arriving at a just compensation, it had ordered the deduction of the salary, received under the statutory rules.

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants *or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to "just compensation" under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death."*

10. The two key aspects that are discernible from the aforesaid decision is that, firstly, pensionary benefits cannot be allowed to be deducted from the compensation amount and secondly, the amount received against the head of "Pay and Other Allowances" is to be excluded and deducted from the compensation amount.

11. A perusal of the calculation table at page 20 of the impugned judgment would show that the learned Tribunal has otherwise correctly computed the total compensation payable to the claimants, except on two counts:

1) The learned Tribunal has awarded an amount of Rs. 40,000/- as consortium, but since three years have elapsed since the filing of the claim petition, the amount is to be enhanced by 10%, which would increase the aforesaid amount to Rs. 44,000/-.

2) Further, in a recent judgment of the Supreme Court in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others,*** reported in ***(2018) 18 SCC 130***, and more particularly to paragraph No. 21 and its sub-paragraphs, the Supreme Court had made it clear that the loss of consortium cannot be only limited to spousal consortium but has also to be extended towards parental consortium and filial consortium.

12. Since the deceased had left behind his wife and two sons, the aforesaid amount is to be multiplied by three, which would take it to Rs.44000x3= Rs. 132,000/-

13. The compensation amount on account of loss of income at Sl. No. 4 of the calculation table, i.e. Rs. 43,35,848/- is to be deducted from the total compensation amount of Rs. 52,10,076/-.

14. In a decision rendered by a Co-ordinate Bench of this Court in ***National Insurance Company Limited Vs. Ranu Kalita & Another***, reported in ***2022:GAU-AS:1298 (GAHC010160472022)*** which also involved application of the aforesaid notification of the Government of Assam, it was held while remanding the case to the learned Tribunal that the claimant would also be entitled to adduce evidence to show that the amount so granted in terms of the Notification dated 14.09.2017 is not the just compensation and also to the effect that the claim towards loss of future income and other benefits is concerned, the deceased would have earned a higher income had he survived the accident.

15. In the instant case, the learned Tribunal has already awarded an amount of Rs. 6,50,408/- against the head of Future Prospect and, therefore, that aspect of the matter having been taken care of, I find no justifiable reason to remand the matter to the Tribunal for determination of the aforesaid Loss of Future Income.

16. In view of the above, the impugned Judgment and Order stands modified and the amount to be paid to the claimant is re-calculated as follows:-

A) Total Compensation =Rs. 52,10,076/-

B) Compensation on loss of income from Salary

=Rs.43,35,848/-

C) Total A-B (Rs. 5210076-4335848) =Rs.8,74,228/-

D) Loss of Consortium =Rs.44,000x3

=Rs.1,32,000/-

(-) =Rs.40,000/-

(already awarded)
=Rs.92,000/-

Hence, total compensation comes to C+D=**Rs. 9,66,228**/-

However, rest of the findings remained unchanged.

17. The Insurance Company is directed to deposit the aforesaid amount at the same rate of interest awarded by the learned MACT within a period of 45 days from the date of receipt of a certified copy of this order, if not paid earlier.

18. The Insurance Company is also permitted to withdraw the statutory deposit.

19. The appeal stands allowed and disposed of to the aforesaid extent.

JUDGE

Kuntal Datta

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Date: 2026.03.24 13:58:53 +05'30'

Comparing Assistant