

GAHC010139162015



2026:GAU-AS:8695

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MACApp./970/2018

- 1.** The National Insurance Company Limited
(Subsidiary of General Insurance
Corporation of India),
Registered Head Office At 3, Middleton
Street, Calcutta 700071,
Represented By the Asstt. Manager,
Gauhati Regional Office, Bhangagarh,
Guwahati-781005

.....Appellant

-Versus-

- 1.** Mst. Monima Begum
W/O Lt. Mainul Ali,
Village - Bahbari,
P.S. Tamulpur, District-Baksa,
BTAD, Assam.
- 2.** Miss Reshmi Sultana
W/O Lt. Mainul Ali
Village - Bahbari, P.S. Tamulpur
District-Baksha BTAD Assam.
- 3.** Mst. Hadiya Begum
W/O Md. Islam Ali
Village - Bahbari P.S. Tamulpur
District-Baksha BTAD Assam.
- 4.** Md. Islam Ali

Village - Bahbari
P.S. Tamulpur, District-Baksha
BTAD Assam

5. Jagrota Shiv Mandir Lottery Committee
Darangamela Bazar
P.S. Tamulpur, District-Baksa
BTAD Assam

.....Respondents

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

Advocate for appellant	:	Ms. R. D. Mozumdar, Advocate
Advocate for respondents	:	Mr. K. Kalita, Advocate
Date on which judgment is re- served	:	26.03.2026
Date of pronouncement of judgment	:	15.06.2026
Whether the pronouncement is of the Operative part of the judgment	:	N/A
Whether the full judgment has been pronounced	:	Yes

JUDGMENT AND ORDER

1. Heard Ms. R. D. Mozumdar, the learned counsel for the appellant.
Also heard Mr. K. Kalita, the learned counsel for the respondent No. 1.
2. This appeal under Section 173 of the Motor Vehicle Act, 1988 has been preferred by the National Insurance Company Limited, impugning the judgment and award dated 19.12.2013, passed by

the Motor Accident Claims Tribunal No. 2, Kamrup, Guwahati in MAC Case No. 1126/2011, whereby the appellant was directed to pay a compensation amount of Rs. 6,67,000/- to the claimants.

3. The facts relevant for consideration of the instant appeal, in brief, are that the respondents Nos. 1, 2, 3 and 4 have filed an application under Section 163 A of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal No. 2, Kamrup, Guwahati, seeking compensation on account of death of Moinul Ali, who was the husband of the respondent No. 1 and father of other claimants.
4. The death of said Moinul Ali occurred in an accident, involving Motorcycle bearing Engine No. JA06EEBGA06885 and Chassis No. MBLJA06EVBA05866. It is contended in the claim petition by the claimants before the Motor Accident Claims Tribunal that on the fateful day, i.e., on 06.02.2011, the deceased Moinul Ali was proceeding from Tamulpur on the above-mentioned motorcycle towards Bahbari and on his way when he reached Kumarikata, he met with an accident due to mechanical defect of the motorcycle. As a result of said accident, the said Moinul Ali sustained grievous injuries on his person and he was thereafter, shifted to hospital, however, later on he succumbed to his injuries.
5. The application under Section 163 A of the Motor Vehicles Act, 1988 filed by the respondents/claimants was registered as MAC Case No. 1126/2011. The present appellant contested the claim of the respondents by filing written statement wherein it took various defences and pleaded that the Insurance Company is not liable to pay any compensation to the claimants.

6. On the basis of the pleadings of the parties, the Motor Accident Claims Tribunal has framed the following issues:

- i. *Whether the victim Mainul Ali died as a result of injuries sustained by him in the alleged road accident dated 06-02-2011 involving vehicle bearing No. ENGINE NO.JA06EEBGA06885, CHASSIS NO. MBLJA06EVBA05866 (Motorcycle), and whether the said accident took place due to use and involvement of the said vehicle?*
- ii. *Whether the claimants are entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?*

7. During the course of inquiry, the claimant side examined one witness and exhibited certain documents, though, the contesting opposite party Insurance Company cross-examined the claimant's witness, however, it did not adduce any evidence on its own.

8. Ultimately, after completion of the inquiry, the claimants were awarded the compensation amount of Rs.6,67,000/- by the judgment and award dated 19.12.2013, which has been impugned in this appeal.

9. Ms. R. D. Mozumdar, the learned counsel for the appellant has submitted that the Motor Accident Claims Tribunal had erred in awarding compensation to the claimants ignoring the fact that in the accident, which resulted into the death of said Moinul Ali, no other vehicle except the motorcycle, which he was riding at the

time of accident, is involved. She submits that the offending vehicle was owned by one Jagrota Shiv Mandir Lottery Committee. She further submits that in the policy against the offending vehicle in the place where address of the owner is to be shown the address of the deceased has been shown which indicates that the deceased was himself the owner of the offending vehicle.

- 10.** She further submits that otherwise also the Tribunal erred in failing to consider the evidence on record to the effect that the offending vehicle was borrowed by the deceased at the time of accident. She submits that in case of a borrower of the vehicle from the owner he steps into the shoes of the owner and he is not entitled to claim compensation under Section 163 A of the Motor Vehicle Act, 1988 apart from what has been contemplated in the insurance policy itself.
- 11.** She submits that in the instant case the risk cover of the owner was only to the extent of Rs.1,00,000/-, therefore, she submits that there are catena of judgments in which it has been held that when the deceased borrows a vehicle from its real owner he steps into the shoes of owner of the motor vehicle and thus, he cannot claim compensation from the owner himself. In support of her submission, she has cited following rulings:

- i. *Ningamma & Another Vs. United India Insurance Company Limited*, reported in *(2009) 13 SCC 710***
- ii. *National Insurance Company Limited Vs. Smt. Pushpa Kukrachua and 5 Others* (Judgment dated 17.07.2019 in MAC Appeal No.96/2015).**

iii. ***National Insurance Company Limited Vs. Smt. Uma Kanti Konwar*** (Judgment dated 08.08.2018 MAC Appeal No. 313/2014).

12. She further submits that even if the claim petition filed by the claimants before the Tribunal under Section 163 A of the Motor Vehicle Act, 1988 is treated as an application under Section 166 of the Motor Vehicle Act, 1988 still the claimants were under obligation to show that the accident occurred due to fault of some other vehicle and the deceased was himself not negligent in any manner, which they failed to show. In support of her submission, she has cited the following rulings of the Apex Court

i. ***Oriental Insurance Company Limited Vs. Rajni Devi*** reported in ***(2008) 5 SCC 736***

ii. ***Oriental Insurance Company Limited Vs. Jhuma Saha and Others*** reported in ***(2007) 9 SCC 263***

13. On the other hand, Mr. K. Kalita, the learned counsel for the respondents/claimants has submitted that there is no infirmity or illegality in the impugned judgment and the Motor Accident Claims Tribunal has correctly awarded the compensation amount to the claimants after considering the evidence on record.

14. He submits that the deceased was not a borrower of the offending vehicle from the owner of the vehicle rather he was an employee of the owner and there is categorical evidence to this effect in form of the evidence on affidavit submitted by the claimant No.1 before the Tribunal.

15. He submits that the accident occurred due to mechanical defect of the offending vehicle and the deceased was not at fault in any manner. He also submits that the *Ratio decidendi* in the case of "***Ningamma & Another Vs. United India Insurance Company Limited***" (*Supra*) is not applicable to the present case as rightly held by the Motor Accident Claims Tribunal. He further submits that the Insurance Company also failed to adduce any evidence during the enquiry before the Motor Accident Claims Tribunal, therefore, he submits that the appeal is liable to be dismissed.
16. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the ruling cited by the learned counsel for the appellant in support of her submission.
17. The point to be determined in this appeal is as to whether the Motor Accident Claims Tribunal was correct in awarding compensation to the claimant by holding that the ratio in the judgment of the Apex Court in the case of "***Ningamma & Another Vs. United India Insurance Company Limited***" (*Supra*) is not applicable to the present case.
18. In the instant case, it appears that though in Column No.5 of the application under Section 166 of the Motor Vehicle Act, 1988, the claimant has stated the occupation of the deceased to be business, however, in the evidence on affidavit of the sole witness for the claimant, it has been stated that the deceased was an employee of Jagrota Shiv Mandir Lottery Committee.

- 19.** It appears that in the impugned judgment, though, the Motor Accident Claims Tribunal No. 2, Kamrup, Guwahati has declined to believe that the deceased was an employee of Jagrota Shiv Mandir Lottery Committee as the claimant has not submitted any document to show that he was so employed. However, it held that the claimants are entitled to get compensation in the case without justifying as to why the *Ratio decidendi* of the judgment in the case of "**Ningamma & Another Vs. United India Insurance Company Limited**" (*Supra*) is not applicable to the instant case.
- 20.** The Apex Court has observed in the case of "**Ningamma & Another Vs. United India Insurance Company Limited**" (*Supra*) as follows:

"19. In Oriental Insurance Co. Ltd. v. Rajni Devi [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] wherein one of us, namely, Hon'ble S.B. Sinha, J. was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

20. It was held in Oriental Insurance Co. Ltd. case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra.

The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

21. *In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle."*

- 21.** In the instant case, it appears that the claimants have not been able to satisfy this Court or to show any document to prove the fact that the deceased was employed by Jagrota Shiv Mandir Lottery Committee. Though, the deceased was not the owner of the motorcycle involved in the accident, neither he was an employee of the Jagrota Shiv Mandir Lottery Committee, however, the facts indicate that he was using the motorcycle with permission

of its real owner, therefore, he would step into the shoes of the owner of the motor vehicle.

- 22.** As the liability under Section 163A of the Motor Vehicle Act, 1988 is on the owner of the vehicle as held by the Apex Court in the above referred judgment a person cannot be both a claimant and also a person liable to pay compensation in respect to a claim, therefore, the heirs of deceased could not have maintained a claim in terms of Section 163A of the Motor Vehicle Act, 1988. As, the Motor Accident Claims Tribunal has faulted in the impugned judgment in not considering this aspect, the impugned judgment and award is, therefore, liable to be set aside which this Court, accordingly, does.
- 23.** In view of the discussions made and reasons stated in the foregoing paragraph, this appeal is allowed and the impugned judgment and award is, hereby, set aside.
- 24.** Send back the records of the MAC Case No. 1126/2011 to the concerned Motor Accident Claims Tribunal along with a copy of this judgment.

JUDGE

Comparing Assistant

Amita Sharma

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