

GAHC010210192014



2025:GAU-AS:11495

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

Case No. : MACApp./9/2014

NATIONAL INSURANCE CO LTD
HAVING ITS REGD. OFFICE AT KOLKATA AND ONE OF THE REGIONAL
OFFICE AT G.S. ROAD, GUWAHATI.

VERSUS

JOHMON THANGA KIPA and 7 ORS

2:MISS RAVEENA KIPA

3:MASTER SHAN KIPA
MINOR REPRESENTED THROUGH HIS MOTHER SMTI JOHMAN THANGA
KIPA
NO. 1 IS THE WIDOW
NO. 2 IS DAUGHTER AND NO. 3 IS MINOR SON OF DR. ROBBIN KIPA @
ROBI KIPA
ALL ARE RESIDENTS OF NEAR GAIT MIDDLE SCHOOL.
P.O. CHANGLANG
ARUNACHAL PRADESH.

4:TALAR KIPA @ KIPA TALAR

S/O LATE TAZIT KIPA.

5:SMTI HONGSENG KIPA
W/O SRI TALAR KIPA @ KIPA TALAR
BOTH ARE RESIDENT OF UPPER MIAO
P.O.CHANGLANG
ARUNACHAL PRADESH.

6:SARDAR PARGOT SINGH

R/O BELTOLA

GUWAHATI29 OWNER DRIVER OF TRUCK BEARING NO. AS-01-S-0760

7:SMTI KALPANA DAS

W/O SRI RATNESWAR DAS

R/O DAHOTIA

CHOWK

TINSUKIA

8:SANJIB DAS

S/O SRI RATNESWAR DAS

R/O DAHOTIA CHOWK

TINSUKIA

Advocate for the appellant : Ms. S. Roy, Id. Adv.

Advocate for the respondents : Mr. R. P. Sarmah, Sr. Adv. assisted by Ms. M. Bora, Id Adv.,
Resp.- 1 to 5.

Mr. A.K. Gupta, Id. Adv., Resp.- 6 & 7.

:::BEFORE:::

HON'BLE MR. JUSTICE BUDI HABUNG

Date of hearing : 21.08.2025

Date of Judgment : 27.08.2025

JUDGMENT & ORDER (CAV)

Heard Ms. S. Roy, learned counsel for the appellant. Also heard Mr. R. P. Sarmah, learned Senior Counsel assisted by Ms. M. Bora, learned counsel for the respondent Nos. 1 to 5; and Mr. A. K. Gupta, learned counsel for the respondent Nos. 6 and 7.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant challenging the judgment and award dated 22.03.2012, passed by the learned Member, Motor Accidents Claims Tribunal, Tinsukia, Assam, in MAC Case No. 81/2010. By the said judgment, the present respondents/claimants were awarded an amount of Rs. 69,38,560/- (Rupees sixty-nine lakhs thirty-eight thousand five hundred sixty only), along with interest at the rate of 6% per annum from the date of the order till full and final realization, on account of the death of the deceased, namely Dr. Rabhi Kipa @ Robi Kipa, in a road traffic accident on 14.03.2010.

3. The facts leading to the filing of this appeal are as follows:

3.1. On the fateful day, the deceased was travelling in a 407 bus bearing Registration No. AS-23-5549 from Tinsukia town to Margherita along with other co-passengers. The bus, being driven at high speed and in a rash and negligent manner, despite repeated requests made by the passengers, lost control and collided with a Tata truck bearing Registration No. AS-01-S-0760 coming from the opposite direction. The deceased, who was a doctor serving under the Government of Arunachal Pradesh, died on the spot.

3.2. In connection with the aforesaid accident, Digboi P.S. Case No. 108/2010 was registered under Sections 279/338/304(A)/427 of the Indian Penal Code. At the time of the accident, the deceased was aged about 37 years, 9 months, and 9 days, and was drawing a monthly salary of Rs. 50,144/- (Rupees fifty thousand one hundred forty-four only). The claimants, being dependents of the deceased, filed a claim petition before the learned Tribunal under Section 166 of the Act, claiming compensation of Rs. 98,30,000/- (Rupees ninety-eight lakhs thirty thousand only).

3.3. The insurance company/insurer of the offending bus contested the claim, whereas the truck owner and driver did not contest the case. Based on the pleadings, the learned Tribunal framed the following two issues:

1. Whether the deceased died in a motor accident that occurred on 14.03.2010 as a result of rash and negligent driving of the vehicles bearing Registration Nos. AS-01-S-0760 (Tata truck) and AS-23-5549 (407 bus)?
2. Whether the claimants are entitled to get any compensation, and if so, to what extent and from whom?

3.4. The claimants examined three witnesses. After considering the evidences, the learned Tribunal held that the accident occurred solely due to the rash and negligent driving of the bus. Accordingly, the insurer of the bus/present appellant/National Insurance Co. Ltd. was directed to pay compensation amount of Rs. 69,38,560/- (Rupees sixty-nine lakhs thirty-eight thousand five hundred sixty only), to the claimants along with interest @ of 6% per annum from the date of the order till full and final realization on account of death of the deceased.

4. Being aggrieved, the appellant/ National Insurance Co. Ltd. has filed the present appeal assailing the award on the following grounds:

- i. That, as per the FIR and the statement of certain witnesses, the truck driver was driving the vehicle rashly and negligently, resulting in a head-on collision. Therefore, the liability should be fastened on the truck owner/insurer, or at least 50% of the compensation should be apportioned accordingly.
- ii. That, as per the post-mortem report, the age of the deceased was

recorded as 45 years. Therefore, the learned Tribunal erred in applying a multiplier of 16 instead of 15.

iii. That Claimant No. 4, the father of the deceased, was not a dependent and hence could not have been treated as such by the learned Tribunal.

iv. That the Salary Certificate (Exhibit-3) was not proved by the authority who issued the same and, therefore, the same should not have been relied upon.

v. That the overall compensation awarded by the learned Tribunal is excessive and without proper legal basis.

5. In support of her submissions, Ms. Roy, learned counsel for the appellant, placed reliance on the following decisions;

i. ***Bijoy Kumar Dugar vs. Bidyadhar Dutta & Ors.***, reported in 2006 (3) SCC 242;

ii. ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.***, reported in (2009) 6 SCC 121;

iii. ***Sayed Basheer Ahamad & Ors. vs. Mohd. Jameel & Anr.***, reported in 2009 (2) SCC 225;

iv. ***Bajaj Allianz General Insurance Company Ltd. vs. Kamini Devi & Ors.***, reported in 2022 Supreme (Gau) 157;

v. ***Union of India vs. Ibrahim Uddin & Anr.***, reported in (2012) 8 SCC 148; and

vi. ***Ranjana Prakash vs. Divisional Manager & Anr.***, reported in (2011) 14 SCC 639.

6. *Per contra*, Mr. R. P. Sarmah, the learned Senior Counsel for the claimants/respondent Nos. 1 to 5 has submitted that the finding of negligence on the part of the bus driver is borne out by the evidence adduced by the witnesses. The 407-bus bearing Registration No. AS-23-5549 was the offending vehicle, and no material was produced against the driver of the truck bearing Registration No. AS-01-S-0760. He further contended that the Salary Certificate of the deceased (Exhibit-3), issued by the District Medical Officer, Changlang, was exhibited without objection, and therefore, it holds evidentiary value which was rightly appreciated by the learned Tribunal.

7. The learned Senior Counsel further argued that, as held in ***National Insurance Company Limited vs. Pranay Sethi & Ors.***, reported in (2017) 16 SCC 680, the claimants are entitled to an addition amount towards future prospects. However, in the instant case, the learned Tribunal has awarded only a partial amount by granting Rs. 5 lakhs in lump sum. He also pointed out that the colleagues of the deceased have since been promoted to higher posts in the department and are now drawing a higher salary, thereby justifying the consideration of the promotional avenues the deceased would have had, had he been alive.

8. He further submitted that the Motor Vehicles Act is a beneficial legislation, and therefore hyper-technical rules of evidence under the CPC are not to be applied strictly.

9. I have heard the submissions advanced by the learned counsels for both sides. I have also perused and considered the record.

10. To discuss on negligence and liability, it appears that the learned Tribunal on appreciation of the evidence, held that the accident occurred due to rash and

negligent driving of the offending vehicle 407-bus bearing Registration No. AS-23-5549. The record does not reveal that any evidence was adduced by the appellant to rebut this finding. A head-on collision by itself does not establish contributory negligence unless supported by cogent proof. The FIR alone, as relied upon by the appellant, cannot override the positive oral evidence of the witnesses.

11. In view of the above, this Court finds no reason to interfere with the findings of the learned Tribunal fixing liability upon the offending bus and its insurer.

12. On age and multiplier, it appears that the date of birth of the deceased, as per the Salary Certificate marked as Exhibit-3 is 05.06.1972. On the date of the accident, i.e., 14.03.2010, the deceased was 37 years and 9 months old. Therefore, the learned Tribunal rightly applied the multiplier of 16, as per the judgment in **Sarla Verma** (*supra*). The mention of the age as 45 years in the post-mortem report, as contended by the appellant, is approximate and the same cannot override the authentic service record.

13. Regarding the dependency of father, as contended by the appellant, even assuming the father was not a dependent, the deduction towards personal expenses would still remain at one-third, as there were other four dependents of the deceased. Hence, exclusion of the father does not substantially alter the outcome of the compensation awarded by the learned Tribunal.

14. With regard to the Salary Certificate proof, it is observed that the Salary Certificate (Exhibit-3) was produced from the official records and marked as evidence without any objection from the appellant. Once a document is exhibited without objection, the insurer/insurance company cannot dispute its

admissibility at a later stage.

15. Regarding the quantum of compensation, the learned Tribunal has awarded Rs. 69,38,560/- with interest @ 6% per annum and added Rs. 5,00,000/- towards future prospects. As per ***Pranay Sethi (supra)***, 50% of the actual income is to be added towards future prospects since the deceased was below 40 years of age, and he was a permanent employee of the State Government, Arunachal Pradesh.

16. In this regard, strictly speaking, the claimants would be entitled to enhancement towards future prospect. However, as no cross-appeal or cross-objection has been filed as pointed out by the appellant, this Court refrains from increasing the award towards future prospects of the deceased.

17. The authorities cited by the appellant has been considered and found that it do not alter the above conclusions, as the settled principles laid down in ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)*** govern the field.

18. For the foregoing reasons, this Court finds no merit in the appeal. The award dated 22.03.2012 passed by the learned Motor Accidents Claims Tribunal, Tinsukia, Assam, in MAC Case No. 81/2010 is hereby affirmed.

19. The appeal stands dismissed.

20. The appellant/insurance company shall deposit the balance awarded amount, along with interest @ 6% per annum from the date of the order till full and final realization, within 60 days before the Registry of this Court, after adjusting the amount, if any, already paid. The Registry shall release the same to the claimants/respondents in terms of the award dated 22.03.2012.

21. The Registry is further directed to return the statutory deposit in question to the appellant/Insurance Company forthwith.

22. In terms of above, this appeal stands disposed of.

JUDGE

Comparing Assistant