

GAHC010240932018



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

Case No. : MACApp./146/2021

ORIENTAL INSURANCE COMPANY LIMITED
HAVING ITS GAUHATI REGIONAL OFFICE AT GUWAHATI, ULUBARI,
KAMRUP (M) REP. BY THE ASST. MANAGER, GAUHATI, GAUHATI
REGIONAL OFFICE, ULUBARI, GUWAHATI-781007, KAMRUP (M), ASSAM.

VERSUS

JAYNAB NESSA AND 8 ORS
W/O. LT. ASHAN ALI, R/O. VILL. CHAWRACHARAGAON, P.S. KALGACHIA,
P.O. KALGACHIA, DIST. BARPETA, ASSAM, PIN-781319.

2:AMINA KHATUN
D/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON
P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319.

3:AZMINA KHATUN
D/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON
P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319.

4:AMIRUL ISLAM
S/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON

P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319.

5:RUBUL AMINN
S/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON
P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319. BEING MINOR REP. BY HIS MOTHER OPP. NO.1

6:FARIDA KHATUN
D/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON
P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319. BEING MINOR REP. BY HER MOTHER OPP. NO.1

7:MAMIRON BEWA
M/O. LT. ASHAN ALI
R/O. VILL. CHAWRACHARAGAON
P.S. KALGACHIA
P.O. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319.

8:RAMANI NATH (DRIVER)
S/O. LT. BAPURAM NATH
VILL. DAULASHAL
P.S. MUKALMOWA
P.O. DAULASAL
DIST. NALBARI
ASSAM
PIN-781312.

9:PRABHAT NATH

S/O. JAGESH NATH
R/O. WARD NO.2
HOWLY TOWN
P.S. HOWLY

P.O. HOWLY
DIST. BARPETA
ASSAM
PIN-781316

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

26.08.2021

The court proceedings have been conducted through online court proceeding services.

Heard Ms. R.D. Mozumdar, learned counsel for the appellant. Also heard Mr. S. Ahmed, learned counsel who has appeared for the respondent nos. 1 – 7.

The appeal has been preferred under Section 173(1), Motor Vehicles Act, 1988 against the judgment and award dated 05.06.2018 passed by the learned Member, Motor Accident Claims Tribunal, Barpeta ("Tribunal" for short) in MAC Case No. 132/2017. By the said judgment and award, the learned Tribunal has awarded an amount of Rs. 11,44,000/- as compensation along with interest @9% p.a. from the date of filing of the claim petition till its realization.

Ms. Mozumdar has submitted that the learned Tribunal erred in taking the age of the decease as below 50 years and as a result, the learned Tribunal erred in adopting the multiplier as well as in assessing the income for future prospect. She has further submitted that the learned Tribunal has not properly assessed the damages against non-pecuniary heads.

Per contra, Mr. Ahmed by supporting the judgment an award of the learned Tribunal, has submitted that there is no wrong committed in assessment of the compensation against the different heads.

Appeal is admitted for Hearing.

Let the LCR be called for.

Issue Notice returnable in 4 (four) weeks.

As Mr. Ahmed has appeared and accepted notice on behalf of respondent nos. 1 – 7 no formal notice needs to be issued in respect of the said respondents. The appellant shall take steps for service of notice on the respondent no. 8 and the respondent no. 9 by usual process as well as by registered post with AD within 5 (five) days.

Ms. Mozumdar has submitted that since the appeal has been preferred on the point of quantum only, the owner and the driver of the offending vehicle are not necessary parties and as such, the names of the respondent no. 8 and the respondent no. 9 may be strike out from the array of respondents.

In view of such submission of Ms. Mozumdar, the names of the respondent no. 8 and the respondent no. 9 are struck off at the cost and peril of the appellant.

The office to cause necessary correction in the cause title of the memo of appeal.

In view of such striking out, the service of notice of all the respondents is complete in view of the appearance of Mr. Ahmed on behalf of the respondent nos. 1 – 7.

List the case after four weeks after receipt of the LCR.

JUDGE

Comparing Assistant