

GAHC010240942018



2025:GAU-AS:11600

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

Case No. : MACApp./6/2019

ORIENTAL INSURANCE COMPANY LIMITED
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT
GUWAHATI , G.S. ROAD, ULUBARI, GUWAHATI 781007 REPRESENTED BY
THE DEPUTY MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI,
GUWAHATI 781005

VERSUS

SMTI. PUTALI DAS AND ANR
W/O LATE BOIKUNTHA DAS, R/O KAKOJAN TINIKUNIA, KAPAH TOLI
GAON, P.S. TEOK, P.O.KAKOJAN, DIST. JORHAT, ASSAM, PIN 785107

2:MD. MUJAKIR HUSSAIN S/O MD. MOHAMMAD HUSSAIN
R/O KAKOJAN DA GAON P.S. TEOK P.O. KAKOJAN
DIST. JORHAT ASSAM PIN 785107 (OWNER CUM DRIVER

Advocate for the Petitioner : MS. R D MOZUMDAR, MS. C MOZUMDAR, MR. S P SHARMA
Advocate for the Respondent : MR. R CHETRI, MR. N BARMAN

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

Date of hearing: 26.08.2025

Date of Judgment: 29.08.2025

JUDGMENT & ORDER(CAV)

Heard Ms. R. D. Mozumdar, learned counsel for the appellant Insurance Company. Also heard Mr. R. Chetri, learned counsel, appearing on behalf of respondent No. 1/claimant.

2. This appeal under Section 173 of the Motor Vehicle Act, 1988, has been preferred by the appellant Insurance Company against the judgment & award, dated 31.07.2018, passed by the learned Member, Motor Accident Claim Tribunal, Jorhat, in MAC. Case No. 30/2015, whereby, the learned Tribunal awarded an amount of Rs. 28,02,400/- along with an interest at the rate of 5% per annum to be paid within 90 days in favour of the claimant/wife of the deceased, thereby, fastening the liability upon the appellant Insurance Company.

3. The case of the claimant before the learned Tribunal was that on 30-03-2015 at about 5 p.m., while the deceased was returning home on his bicycle from the State Transport Office, he was knocked down from behind by a motorcycle bearing Registration No. AS-02Q-8794, driven in a rash and negligent manner by the respondent No. 2 viz. Mujakir Hussain, owner-cum-driver. The deceased sustained grievous injuries to his person and was admitted to Jorhat Medical College and Hospital and ultimately, succumbed to his injuries after about 9 days of the incident.

4. The claimant, who is the wife of the deceased, filed a petition under Section 166 of the Motor Vehicle Act, claiming Rs. 20,00,000/- as compensation on account of the death of her husband. The claimant impleaded the owner-cum-driver and the insurer (Oriental Insurance Company Ltd.), as party respondents. The owner-cum-driver, impleaded as respondents No. 1 & 3 in the petition, did not contest the proceeding. The appellant Insurance Company alone filed the written statement, contending, inter alia, that the driver did not possess a valid and effective driving licence at the time of the incident; the claim was excessive and also disputed regarding the fact of the age, income and cause of death of the deceased.

5. Upon the pleadings brought on record, the learned Tribunal, Jorhat, framed the following 5(five) issues:

- (1). Whether the accident occurred due to rash and negligent driving by the driver of the offending vehicle?
- (2). Whether the claimant's husband died due to the said accident?
- (3). Whether the offending vehicle was insured with the Oriental Insurance Company Ltd. at the time of the accident?
- (4). Whether the driver of the offending vehicle had valid and effective driving licence at the time of the accident?
- (5). Whether the claimant are entitled to get any compensation? And if so, to what extent and by whom it shall be paid?

6. On conclusion of the trial, the learned Tribunal, Jorhat, decided the issue Nos. 1, 2, 3 & 5, in affirmative and in favour of the claimant. With regard to issue No. 4(i.e. the validity of the driving licence); the Tribunal found no cogent evidence adduced by the insurer to disprove the existence of a valid licence and therefore, held that the insurer had failed to discharge its burden. Accordingly, the learned Tribunal directed the appellant Insurance Company to pay the awarded amount to the claimant with interest within 90 days.

7. The appellant Insurance Company, being highly aggrieved, has challenged the award impugned in this appeal, primarily, on the ground that the owner-cum-driver of the offending vehicle did not possess a valid and effective driving licence at the time of the incident and hence, the learned Tribunal erred in fastening the liability upon the insurer/appellant Insurance Company.

8. It is submitted by Ms. Mozumdar, learned counsel for the appellant that under such circumstances, the insurer/Insurance Company may be directed to pay and recover the awarded amount from the owner-cum-driver of the offending vehicle.

9. In support of her submissions, Ms. Mozumdar, learned counsel for the appellant, has placed reliance on the following decisions of the Hon'ble Supreme Court:

(i). The Oriental Insurance Company Ltd. v. Shri Nanjappan & ors., reported in **(2004) 13 SCC 224;**

(ii). Pappuu & ors. v. Vinod Kumar Lamba & anr., reported in **(2018) 3 SCC 208;** and

(iii). Shamanna & anr. v. Divisional Manager, The Oriental Insurance Company Ltd. & ors.[Civil Appeal No. 8144 of 2018].

10. Ms. Mozumdar, learned counsel for the appellant, in addition to the above decisions relied upon by her, has also placed reliance upon the following decisions of the coordinate Bench of this Court:

(i). The Oriental Insurance Company Ltd v. Smti. Sonali Kalita & 3 ors., [MAC.A. No. 467/2017]; and

(ii). The Oriental Insurance Company Ltd v. Smti. Purnima Kumari & 5 ors., [MAC.A. No. 132/2020].

11. Per contra, Mr. Chetri, learned counsel for the respondent No. 1/claimant, has submitted that the learned Tribunal has already recorded a finding that the driver had a valid and effective driving licence at the time of the incident. The learned counsel has also submitted that even assuming the

insurer's contention to be correct, the settled law is that the claimant cannot be denied a just compensation and the principle of pay and recover should be applied.

12. Mr. Chetri, learned counsel for the respondent No. 1/claimant, has submitted that the insurer/Insurance Company should first pay and later, recover from the owner-cum-driver of the offending vehicle. It is the further contention of Mr. Chetri, learned counsel, that since the owner-cum-driver did not participate in the proceeding before the learned trial Court, it is not known as to how long, it would take time to obtain his attendance before the learned Tribunal and the claimant should not be caused prejudice. He has further submitted that the respondent No. 1/claimant has filed an interlocutory application, seeking release of 80% of the awarded amount deposited by the appellant Insurance Company to the respondent No. 1/claimant.

13. Mr. Chetri, learned counsel for the respondent No. 1/claimant, has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Ram Chandra Singh v. Rajaram & ors.**, reported in **(2018) 8 SCC 799**.

14. I have considered the rival submissions advanced by the learned counsels appearing for the parties and also perused the documents brought on record.

15. It appears that the appellant Insurance Company has not adduced any evidence from the concerned District Transport Office to establish that the driver was not holding a valid and effective driving licence at the time of the incident. The only witness examined was the Administrative Office of the

Insurance Company who admitted that the verification report did not contain the date of investigation and no official from the licensing authority was examined. Thus, the learned Tribunal has rightly held that the insurer, Insurance Company, failed to discharge its burden. Even otherwise also, as held in the case of **Nanjappan**(supra), **Shamanna**(supra) and **Pappuu**(supra), where breach of policy condition is illegal, the liability towards the third party claimant, cannot be avoided by the insurer Insurance Company and the doctrine of pay and recover, must be invoked.

16. In the case on hand, the claimant is the widow of the deceased and has been awarded compensation of Rs. 28,02,400/- along with an interest at the rate of 5% to be paid within 90 days and failing to pay, the interest at the rate of 6% per annum till realization of the total awarded amount; the insurer Insurance Company has already deposited 80% before the Registry of this Court. In this connection, the respondent No. 1/claimant has also filed an application for release of the same.

17. Considering the settled law, this Court is of the considered opinion that the learned Tribunal, Jorhat, has rightly fastened the liability upon the appellant Insurance Company. However, in the interest of justice, the insurer/Insurance Company is granted liberty to recover the amount from the owner-cum-driver of the offending vehicle, in accordance with law.

18. In view of the above discussions, this appeal is disposed of with the following directions:

(i). The judgment & award, dated 31.07.2018, passed by the learned Member, Motor Accident Claim Tribunal, Jorhat, in MAC. Case No. 30/2015, is upheld.

(ii). The appellant Insurance Company shall satisfy the award, if not yet satisfied and the appellant Insurance Company is also granted liberty to recover from the owner-cum-driver of the offending vehicle in accordance with law as laid down in the case of **Nanjappan**(supra).

(iii). The Registry is hereby directed to transmit the 80% of the compensation already deposited by the appellant Insurance Company before this Court to the learned Member, Motor Accident Claim Tribunal, Jorhat, forthwith, for onward disbursement to the respondent No. 1/claimant.

(iv). The statutory deposit of Rs. 25,000/- made by the appellant Insurance Company at the time of filing of this appeal, be refunded to the appellant after due verification.

19. With the above directions and observations; the instant appeal, accordingly, stands disposed of.

20. Remit the connected Trial Court records to the Office of the learned Member, Motor Accident Claim Tribunal, Jorhat, forthwith.

JUDGE

Comparing Assistant