GAHC010015502017

2026:GAU-AS:15595

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

Case No. : MACApp./96/2017

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

VERSUS

SMTI ELI GOGOI and 2 ORS
W/O LATE KHAGEN GOGOI, KHUMTAI GAON, MOUZA DAKHINHENGERA, P.O. DIST. GOLAGHAT, ASSAM, PIN 785622

2:MUKUL GOGOI

S/O SRI KESHAB GOGOI
MOIDAMONI GAON
MOUZA DAKHINHENGERA
P.O. GOLAGHAT
DIST. GOLAGHAT
ASSAM
PIN 785625

3:PABAN KUMAR GOGOI
S/O SRI BHABESH GOGOI
MAIDAMONI GAON
P.O. and P.S. GOLAGHAT
DIST. GOLAGHAT
ASSAM
PIN 785462

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

Advocate for the Respondent : MR.M DUTTAR-1, MR.A BARUA(R-1)

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the appellant: Ms. RD Mozumdar

Advocates for the respondents : Shri M. Dutta, R.-1.

Date on which judgment is reserved : **22.09.2026**

Date of pronouncement of judgment: **14.10.2026**

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The instant appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter the Act) against the Judgment and Award dated 30.09.2016 passed by the learned MACT, Golaghat in MAC Case No.66/2015. By the aforesaid Judgment, compensation of Rs.29,42,000/- (Rupees Twenty Nine Lakh and Forty Two Thousand) only with simple interest @ 9 % per annum from the date of filing of the claim petition till realization has been awarded.

2. I have heard Ms. RD Mazumdar, learned counsel for the appellant as well as Shri M. Dutta, learned counsel for the respondent no. 1 – claimant.

3. Before going to the grounds of challenge and the rival submissions, it would be convenient to briefly state the background of the case.

4. The claim was made by the present respondent no. 1 for compensation due to the death of her husband late Khagen Gogoi in a motor vehicle accident on 04.03.2015 under the Golaghat Police Station. It was stated in the claim

petition that on the said date, while the deceased was coming to his residence by his motorcycle, one Bolero Camper bearing registration No. AS-03-AC-6137 came from the opposite direction in a rash and negligent manner and in high speed and dashed against the motorcycle causing grievous injuries on the head of the husband of the claimant. Though he was tried to be taken to the KK Civil Hospital, Golaghat, he succumbed to the injuries on the way. Accordingly, Golaghat PS Case No. 212/2015 under Sections 279/304(A)/427 IPC was registered and the post-mortem of the deceased was done in the KK Civil Hospital.

5. It was contended on behalf of the claimant that the deceased was an agriculturist and had paddy cultivation and mini tea garden and his monthly income was Rs.12,500/- and was the only earning member of the family. It was contended that at the time of the death, the deceased was 32 years of age and had left behind the claimant, two minor children and his parents.

6. On receipt of notice, the contesting opposite parties had filed the written statements denying the claim. The appellant, as opposite party had raised the issue of contributory negligence as it was a head-on collision. Upon consideration of the rival pleadings, the following issues were formulated:

(I) Whether there was any rash and negligent driving on the part of the driver of vehicle No.As-03-AC/6137 (Bolero Camper) that caused the accident on 04.032015, at about 5:30 P.M., at Kabaru Gaon under Golaghat Police Station, in the district of Golaghat, Assam?

(II) Whether late Khagen Gogoi died as a result of the said accident?

(III) Whether the claimant is entitled to any compensation? If so, what would be the proper quantum and payable by whom?

(IV) Any other reliefs?

7. The claimant had adduced evidence through herself as CW1 and by two other witnesses, namely, Shri Arun Das as CW2 and Shri Indreswar Hati Baruah as CW3. The following documents were also proved by the claimant:

(i) Accident information report as Ext-1;

(ii) Certified copy of FIR in G.R. Case No.395/2015 as Ext-2;

(iii) Copy of Death Certificate of Khagen Gogoi as Ext-3;

(iv) Certificate issued by Govt. Gaonbura of Khumtai Gaon regarding income of the deceased Khagen Gogoi as Ext-4.

8. The learned Tribunal, after consideration of the materials on record, vide the impugned judgment dated 30.09.2016 had decided the issues in favour of the claimant and had awarded an amount of Rs.29,42,000/- with interest @ 9% from the date of filing. It is this judgment which is the subject matter of challenge in the present appeal.

9. Ms. Mozumdar, learned counsel for the appellant has submitted that the impugned Award is unsustainable in law on mainly three grounds. Firstly, the income of the deceased was not properly proved. Secondly, the accident being a head-on collision, the aspect of contributory negligence on the part of the deceased was not taken into consideration by the learned Tribunal. Thirdly, it is submitted that the source of income of the deceased was from agriculture and a mini tea garden and such source of income will not stop because of the expiry of the deceased and consequently, there would be no loss of income.

10. The learned counsel for the appellant has submitted that though the CW3 – Gaon Burah had proved the certificate issued by him to establish that the

deceased was having a yearly income of Rs.1,50,000/-, he did not have the competence to issue such a certificate and therefore, the same could not have been relied upon. It is also submitted that as per the materials on record including the evidence of CW2, who was an eye witness to the accident, the same was a head-on collision and therefore, there would be contributory negligence on the part of the deceased and this aspect was wholly overlooked by the learned Tribunal. She submits that when there is contributory negligence, the compensation, even if payable will reduce to 50%. Thirdly, it is urged that the deceased being an agriculturist, there would be no complete stoppage of the earning as the land would still be available. It is also submitted that so far as the post-mortem report is concerned, only photocopy of the same was presented which would not amount to a proof. She has also submitted that the impugned judgment has awarded cost of litigation which is not provided by the MV Act and therefore, is unsustainable. She has also informed this Court that 50% of the awarded amount was deposited by the appellant in this Court whereafter, IA(C)/2302/2017 was filed by the claimant in which, 75% of the deposited amount was directed to be released and accordingly, Rs.11,03,250/- was released to the claimant.

11. In support of her submissions, she has relied upon the following case laws:

i. ***Judgement dated 05.08.2003 of the Hon'ble Supreme Court in Appeal Case No.5523/2003 [State of Haryana Vs. Jasbir Kaur];***

ii. ***(2006) 3 SCC 242 [Bijoy Kumar Dugar Vs. Didyadhar Dutta];***

iii. (2018) 8 SCC 492 [Rani Vs. National Insurance Company Ltd.];

iv. 2018(1) GauLT 161 [Partha Pratim Roy Vs. Amal Kantiraha];

v. 2026:GAU-AS:5708 [Premith Momin Vs. Oriental Insurance Co. Ltd.]

vi. 2026 INSC 420 [Parmila Vs. Rajender].

12. The case of ***Jasbir Kaur***(supra)has been cited on the aspect that the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source.

13. The cases of ***Bijoy Kumar Dugar*** (supra) and ***Parmila*** (supra) have been cited to bring home the contention of contributory negligence in an accident involving head-on collision. The case of ***Rani*** (supra) has been cited to contend that when income is not proved, Rs.5,000/- per month income may be presumed. The case of ***Partha Pratim Roy*** (supra) is on the aspect that photocopy of the document cannot be treated as evidence as per Sections 62 and 63 of the Evidence Act. In the case of ***Premith Momin*** (supra), this Court had accepted the income of the deceased as Rs.5,000/- per month.

14. *Per contra,* Shri Dutta, learned counsel for the respondent no. 1 – claimant has strenuously opposed the appeal and has submitted that no grounds for interference have been able to be made out by the appellant. He has denied that there was any contributory negligence on the part of the deceased leading to the accident. He has submitted that head-on collision itself does not establish contributory negligence. In this regard, he has referred to the evidence of CW2 who is an eye witness to the accident and had deposed that

the offending bolero vehicle was coming from the opposite side in high speed and the deceased was driving the motorcycle in slow speed. Further, such deposition of CW2 got affirmed in the cross-examination. He has submitted that the ratio in the case of ***Parmila*** (supra) lays down about the requirement of an objective assessment to come to a conclusion of contributory negligence. On the other hand, he has relied upon the case of ***Jiju Kuruvila & Ors. v. Kunjujamma Mohan & Ors.***, reported in ***(2013) 9 SCC 166*** in which the Hon'ble Supreme Court, while dealing with a case of head-on collision had held that mere position of the vehicles would not constitute contributory negligence which cannot be based merely on presumption and in absence of substantive evidence.

15. As regards the ground that photocopy of PM Report was produced, the learned counsel for the opposite party has submitted that the accident, as such was not disputed and when the death of the deceased which had resulted immediately was duly proved, the aforesaid ground would be hyper technical. He has submitted that the degree of proof in a MACT is preponderance of probabilities and in the instant case, such burden was discharged by way of the Accident Information Report, First Information Report and the depositions by the claimant as CW1 and the eye witness as CW2.

16. With regard to the income, the learned counsel for the claimant has submitted that while a claim of Rs.12,500/- per month was made, the learned Tribunal had accepted Rs.12,000/- per month after due application of mind. He has emphasized that taking into account that the deceased was the sole bread winner of the family, the aforesaid finding was absolutely reasonable. He has also relied on the case of ***Rajani Vs. Oriental Insurance Company Ltd. [Civil Appeal No.6194/2022 D/O 05.09.2022]*** in which the income of a

pineapple cultivator was accepted by the Hon'ble Supreme Court as Rs.12,000/-. He submits that the facts of the case of ***Rajani*** (supra) so far as the source of income is concerned (agriculture) is almost identical. He refutes the ground that there would be no loss of income only because of the fact that the agriculture land would still be there.

17. Shri Dutta, learned counsel for the respondent no. 1 has also made certain submission towards the age, multiplier and the deduction. Firstly, he concedes that the future income should be 40% and not 50%. However, so far as the multiplier of 16 and deduction of 1/4th towards personal expense are concerned, the findings of the Tribunal are in order and consistent to the principles laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***.

18. By referring to the cases of ***National Insurance Company Ltd. Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Churur Ram*** reported in ***(2018) 18 SCC 130***, he has submitted that the deceased left behind 5 legal heirs and dependents and each of them would be entitled to Rs.48,400/- as consortium. He has clarified that though consortium per head would be Rs.40,000/-, the same would enhance by 10% by every 3 years. Therefore, the total amount towards consortium would be Rs.2,42,000/-.

19. Shri Dutta, learned counsel has also submitted that following the same principles, loss of estate could be Rs.18,150/- which is Rs.15,000/- plus 10% increase after every 3 years. He has also submitted that funeral expense would similarly be Rs.18,150/-. He also defends the grant of litigation expenses and interest as awarded.

20. The rival submissions advanced in the Bar have been duly considered and the materials, including the TCRs placed before this Court have been carefully examined.

21. The grounds of challenge primarily can be summarized as follows:

i. The accident was head-on collision and therefore, there was contributory negligence which should consequently lead to reduction of the compensation to 50%.

ii. The deceased was an agriculturist and therefore, there will not be total loss of income.

iii. The income of the deceased was not proved and the learned Tribunal had erroneously held the monthly income to be Rs.12,000/-.

iv. The PM Report was a xerox copy and therefore, could not have been taken into consideration as a valid piece of evidence.

22. Let the 4th ground be taken up first. Though on the perusal of the TCRs, it is found, as a matter of fact that so far as the PM Report is concerned, only xerox copy of the same was produced, the other materials on record would not raise even an iota of doubt that the death of the deceased was a result of motor accident. The conclusion of this Court is fortified by the evidence on record including the deposition of the eye witness and most importantly the fact that the death of the deceased by way of motor vehicle accident has not been disputed or questioned by the appellant in the learned Tribunal. So far as reliance upon the case of ***Partha Pratim Roy*** (supra) is concerned, the ratio would not be applicable as reference to Sections 62 and 63 of the Indian Evidence Act was made in that case which was in the context of a civil dispute

arising out of a money suit. It is trite that strict rules of the Evidence Act do not apply to proceedings before a MACT. Such proceedings are summary in nature and are designed to be a welfare measure to provide "just compensation" to road accident victims without getting bogged down by procedural technicalities.

23. Coming to the 1st ground of challenge regarding head-on collision and contributory negligence, this Court is of the opinion that head-on collision *per se* would not establish contributory negligence and the same has to be proved by the party resisting the claim. The Hon'ble Supreme Court in the case of ***Parmila*** (supra) has laid down that there is a requirement for an objective assessment to bring in the defence of contributory negligence in an accident involving head-on collision. In the instant case, there are no materials which were placed or fact established by the appellant to show that there was contributory negligence and such presumption cannot be made by mere fact that the accident was a head-on collision. Rather, there are materials *contra* to such presumption in the form of the unshaken evidence of the eye witness CW2, who in clear terms had stated that the deceased was driving the motor cycle in slow speed and the offending bolero which was driven in a rash and negligent manner had dashed the deceased. This Court has also verified that such deposition was rather confirmed in the cross-examination of CW2.

24. The 2nd and 3rd ground being connected, those are dealt together. While the appellant has contended that there would be no total loss of income as the deceased was agriculturist and has relied upon the case of ***Jasbir Kaur*** (supra), the same has been countered by the respondent – claimant, who has relied upon the case of ***Rajani*** (supra).

25. So far as the case of ***Jasbir Kaur*** (supra) is concerned, there is a clear

finding in that case that no materials at all were adduced to show the type of land which the deceased had possessed and no materials was placed to prove the income. However, in the present case, the land has been described as paddy land and mini tea garden and the income has also been proved including by a Certificate by the Gaon Burah. This Court is of the opinion that for a self-employed agriculturist, there may not be any employer to give an Income Certificate and in such case, Certificate by the Gaon Burah (village headman) cannot be held to be totally irrelevant. It is also not in dispute that the deceased was the only earning member of the family consisting of his wife, two children and his parents. On the other hand, the facts of the present case are almost identical to the case of ***Rajani*** (supra) wherein the deceased was a pineapple cultivator and Rs.12,000/- per month income was held to be reasonable. For ready reference, the relevant observations of the Hon'ble Supreme Court are extracted hereinbelow:

> "*3. In the present case, the deceased was a pineapple cultivator. The accident took place on 1 October 2015. In such matters, a robust view has to be taken of the quantum of earnings since documentary evidence may not be available to specifically prove the quantum of earnings of a self-cultivating agriculturist. In our view, the income which was adopted by the MACT of Rs 12,000 per month cannot be regarded as disproportionate or arbitrary. Hence, there was no justification for the High Court to interfere with the award by reducing the quantum of income of the deceased from Rs 12,000 1"MACT" 2(2011) 13 SCC 236 3(2014) 2 SCC 735 to Rs 10,000 per month."*

26. This Court is of the opinion that the 2nd and 3rd grounds of challenge are not tenable.

27. The learned counsel for the respondent has conceded that future income should be calculated as 40% and not 50%. At the same time, he had argued that the 5 dependents would be entitled to consortium @ Rs.48,400/- each whereas in the impugned judgment a lump sum consortium of Rs.1,00,000/- has been granted. At the same time, grant of Rs.1,00,000/- for loss of love and affection would not be maintainable. While cost of litigation of Rs.25,000/- in the strict sense may not be applicable, no amount has been given regarding loss of estate.

28. Considering the above, this Court is of the opinion that while the grounds urged by the appellant would not be tenable to interfere with the judgment, incurring with the same on certain heads mentioned in the preceding paragraph will not make substantial difference to the amount awarded and would only be mere academic in nature.

29. In view of the aforesaid discussion, the appeal is dismissed and the Award is kept intact. The balance amount is required to be deposited by the appellant – Insurance Company including the interest component in the Registry of this Court within a period of 45 days from today. The amount deposited and the balance part of the amount earlier deposited be released to the claimant on being properly duly identified by her learned counsel.

30. The amount of statutory deposit of Rs.25,000/- be refunded back to the Insurance Company within a period of 45 days from today.

31. Records be sent back.

JUDGE

Comparing Assistant