GAHC010194272017

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

Case No. : MACApp./128/2017

NATIONAL INSURANCE COMPANY LIMITED
A PUBLIC SECTOR UNDERTAKING HAVING ITS REGIONAL OFFICE AT 3, MIDDLETON STREET, KOLKATA 700071 AND REGIONAL OFFICE AT G.S. ROAD, BHANGAGARH, GUWAHATI 781005, REPRESENTED BY ITS REGIONAL MANAGER, GUWAHATI.

VERSUS

BIVA PAUL AND ANR.
W/O SRI BIJOY PAUL, R/O VILL. SANTIPUR, WARD NO. 6, P.O. and P.S. BISWANATH CHARIALI, DIST. SONITPUR, ASSAM.

2:AJOY DUTTA

S/O LATE GOPESH DUTTA
P.O. and P.S. BISWANATH CHARIALI
DIST. SONITPUR
ASSAM

Advocate for the Petitioner : MS.S ROY, MR.B C DAS

Advocate for the Respondent : MS.G SARMAH, MRB KAUSHIK,MR.S P CHOUDHURY

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the appellant: Ms. S. Roy

Advocates for the respondents: Shri S. Sarkar

Date on which judgment is reserved :NA

Date of pronouncement of judgment: 29.09.2026

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against a judgment dated 09.02.2011 passed in MAC Case No. 364/2007 whereby the learned M.A.C.T., Biswanath Chariali, Sonitpur has awarded an amount of Rs.4,47,000/- (Rupees Four Lakh and Forty Seven Thousand) only with interest @ 6% from the date of filing of the claim petition. The claim petition was instituted by the claimant, who is the mother of the deceased who passed away in a motor accident.

2. Before going to the grounds of appeal, it would be convenient to briefly put on record the facts of the case.

3. The claimant, before the learned Tribunal, is the mother of the deceased Bimal Paul, who had died in a motor accident on 19.09.2007 at about 04:30 PM near Garehagi center in the district of Sonitpur. The deceased was travelling in a Maruti van bearing registration No. AS-12-D/5396 from Biswanath Chariali Town to Biswanath Ghat for immersion of the idol of Viswakarma. While the vehicle had reached near Garehagi, the deceased fell down from the vehicle due to faulty lock system of the door and also because of the rash and negligent

driving of the vehicle as a result of which, he had sustained grievous head injuries and was shifted to the Borah Nursing Home in Biswanath Chariali and was thereafter referred and shifted to the GNRC Guwahati. However, on the way, the deceased passed away near Mangaldoi. In this regard, Biswanath Chariali PS Case No.150/2007 under Sections 279/ 304(A) of the IPC was registered. The vehicle was insured with the National Insurance Company Limited (appellant) and there was a valid insurance policy and accordingly a claim of Rs.6,25,000/- was made.

4. The claim was contested by the Insurance Company by filing written statement. The owner of the vehicle had also contested. However, the same proceeded *ex parte* against the driver.

5. The claimant, as the CW had adduced evidence in which the accident was narrated. It was also deposed that the deceased was 27 years old and was working as a Mechanic and getting a monthly salary of Rs.3,000/-. There was however no cross-examination of the CW and the contesting respondents had also chosen not to adduce any defence evidence.

6. The learned Tribunal, after consideration of the materials on record and after hearing the parties, had passed the aforesaid judgment awarding the amount, as narrated above which is the subject matter of challenge.

7. I have heard Ms. S. Roy, learned counsel for the appellant. I have also heard Shri S. Sarkar, learned counsel appearing on instructions of Shri SP Choudhury, learned counsel for the respondent no. 1 – claimant. The owner, who has been arrayed as the respondent no. 2, has not appeared.

8. Ms. Roy, the learned counsel for the appellant, by referring to the grounds

of challenge, has submitted that in the cross-examination, the CW had deposed that the idol of the Biswakarma was put in the dicky of the Maruti van and the same was open and the deceased was travelling in the dicky and fell down which had caused the death and the same was in violation of the policy. It is also contended that the income of the deceased was not adequately proved and therefore the Award is liable to be interfered with.

9. *Per contra*, Shri Sarkar, the learned counsel for the respondent no. 1 - claimant has submitted that the aspect of the death of the deceased in a motor accident involving the offending vehicle is not disputed and the aspect that the vehicle in question was covered by a valid insurance policy of the appellant has also been proved. He has also highlighted that the claimant, as CW had proved the death of her son in the motor accident and also regarding his age and income. She has also proved an income certificate issued by the employer of the deceased. She has deposed that the deceased was working as a Mechanic and the income certificate was given by the owner of the workshop. He accordingly submits that there are no grounds for challenging the impugned Award and accordingly the appeal is liable to be dismissed.

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

11. The learned Tribunal, after considering the pleadings, had framed the following issues:

(i) Whether the alleged accident occurred due to use of the vehicle?

(ii) Whether the claimant is entitled to get any compensation, If so, to what extent and from whom?

(iii) To what other relief/reliefs, the claimant is entitled to in law and

equity?

12. The findings arrived at by the learned Tribunal with regard to the use of the vehicle causing the accident is not in dispute. The ground taken in this appeal is with regard to violation of the policy condition. Such ground has been urged by contending that the CW, in her cross-examination had deposed that the deceased was travelling in the dicky which was open causing the accident and the consequently the death. A perusal of the deposition including the cross-examination would however not lead this Court to the conclusion that there was an admission that it was indeed her son who was in the dicky. On the other hand, there is a clear statement in the claim petition that the deceased son was travelling in the offending Maruti van and due to faulty lock system of the door, he fell down from the vehicle and had sustained grievous head injuries leading to his death.

13. As regards the finding of the learned Tribunal regarding the monthly income which has been assessed as Rs.3,000/-, the same appears to be based on a certificate issued by the employer. Though the employer, as such did not appear before the Tribunal to prove the certificate, in matters pertaining to a claim for a motor accident, the strict requirement of proof is to be dispensed with which is in consonance of the objectivity of the Act which is a beneficial piece of legislation. The standard of proof is preponderance of probability and not beyond all reasonable doubt. The matter would be different if the authenticity of the certificate, as such is put to challenge which, however, is not done in the instant case. This Court has noticed that the appellant, as opposite party in the claim did not even cross-examine the claimant witness and did not adduce any evidence on its part. The aspect of multiplier which has been taken

as 18 also appears to be in order, as the deceased was admittedly 27 years of age at the time of his death. This Court is of the opinion that the amount arrived at by the learned Tribunal is not at all unreasonable or exorbitant.

14. In view of the above, this Court does not find any grounds to interfere with the impugned Judgment and Award dated 09.02.2011 passed in MAC Case No. 364/2007 and accordingly the appeal is dismissed.

15. The awarded amount is accordingly directed to be deposited in the Registry within a period of 45 days from today along with interest, as directed by the impugned Judgment dated 09.02.2011. If any deposit has been made pursuant to the order dated 26.07.2017 passed in IA(C)/902/2017, the appellant is to deposit the balance amount. The amount deposited be released to the claimant by the Registry on being properly identified by her learned counsel.

16. The statutory deposit of Rs.25,000/- made by the appellant be refunded within a period of 45 days from today.

17. TCRs be sent back.

JUDGE

Comparing Assistant