GAHC020008442025 2026:GAU-NL:534

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

Case No. : MACApp./27/2025

ORIENTAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED ORIENTAL HOUSE A-25/27 ASAF ALI ROAD, NEW DELHI-110002 AND REGIONAL DIVISIONAL OFFICES IN SEVERAL PLACES INCLUDING A REGIONAL OFFICE AT GUWAHATI, ASSAM AND DIVISIONAL OFFICE AT DIMAPUR, IN THE STATE OF NAGALAND

VERSUS

SHRI K. TSANGMULI AND 2 ORS
S/O KEPSHUMONG, R/O SHAMATOR, NAGALAND

2:SHAMATOR TOWN BAPTIST CHURCH
SHAMATOR NAGALAND (OWNER OF MINI TRUCK B/R NO. NL-03/A-8049)

3:MR. KEOSHUMONG
SHAMATOR TOWN NAGALAND (DRIVER OF MINI TRUCH B/R/NO. NL-03 A-8049

Advocate for the Petitioner : KIM PIENYU, LAKNYEI PHOM,KETI IMCHEN

Advocate for the Respondent : TONGPANG IMCHEN, I IMCHEN,NUNGSANG AIER,IMTILA PONGEN

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

Date : 06.10.2026

1. Heard learned counsel for the Appellant, Ms. Kim Pienyu. Also heard learned counsel, Mr. Tongpang Imchen, for the Claimant/Respondent No. 1. The Respondent Nos. 3 and 4 have not appeared in spite of notice being completed through substituted summons and in respect of which a compliance affidavit has also been filed by the Appellant.

2. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the MV Act, for short) has been preferred by the Oriental Insurance Co. Ltd. against the judgment and award dated 08.09.2025 passed by the learned MACT, Dimapur, Nagaland, in MAC Case no. 51/2022.

3. The facts leading to the filing of the instant appeal are that the wife of the Claimant/Respondent No. 1 had met with an accident on 16.07.2020 involving a Mini Truck bearing registration No. NL-03/A-8049 on the way from Wapher to Shamator, Tuensang, Nagaland, along with 4 [four] other persons, including the driver. In the accident, the vehicle fell below the road and it was badly damaged causing death of the Claimant's wife on the spot and serious injuries to the other occupants, including the driver.

4. The Respondent No. 1 as Claimant filed the MAC Case No. 51/2022 before the MACT, Dimapur, under Section 166 of the MV Act claiming compensation for the death of his wife in the motor vehicle accident.

5. The Appellant herein contested the claim case by filing their written statement. Thereafter, after hearing the parties, the learned Tribunal by the impugned judgment dated 08.09.2025, awarded compensation to the Claimant/Respondent No. 1 and fastened the entire liability upon the Appellant/Company. Being aggrieved by the impugned judgment and award, the Appellant is before this Court praying for setting aside the impugned judgment on the following grounds:

(i) The learned Tribunal committed an error by entertaining the claim petition inasmuch as the insurance policy was issued only for GCCV-Private Carriers only and not for commercial purpose. Learned counsel for the Appellant submits that the Policy No. 322200/31/2020/2225 dated 21.08.2019 was specifically issued only for coverage of third party and in the instant case, the deceased had hired the private vehicle for carriage of goods against the policy condition and therefore, the right to file a claim by the owner of goods, who had hired the vehicle will not arise unless the vehicle was used in connection with Shamator Town Baptist Church, which was the owner of the vehicle. It is the contention of the Appellant that the claim petition of the Claimant under Section 166 of the MV Act claiming compensation for the death of the owner of the goods could not have been entertained as the deceased could not be considered as a third party.

(ii) Another ground which the Appellant has taken is that from the police certificate and from the motor vehicle inspection report it can be clearly seen that the accident occurred due to slippery road and, therefore, the conditions of Section 166 of the MV Act which provides for compensation

only in case of rash and negligent driving was not fulfilled. Therefore, no negligence has been proved by the Claimant. Accordingly, the Tribunal could not have awarded the compensation in favour of the Claimant.

(iii) Another contention of the learned counsel for the Appellant is that no police documents such as FIR, charge sheet, seizure list or final report were submitted before the Tribunal. Moreover, no post mortem report was also produced. And therefore the fact of the accident was not proved.

6. Learned counsel for the Appellant has relied on the case of ***National Insurance Co. Ltd. V. Ashalata Bhowmik*** reported in **2018 (9) SCC 801** to supplement her contention that it is only that a third party which can be entitled to compensation within the meaning of the MV Act.

7. In view of the above submissions, learned counsel submits that the learned Tribunal has passed the impugned judgment and award in violation of the provisions of the MV Act and deserves to be set aside.

8. Learned counsel, Mr. Tongpang Imchen, appearing for the Claimant/Respondent No. 1, at the outset, has contended that the Appellant/Insurer has raised new grounds in the present appeal by bringing to the notice of this Court the written statement filed on behalf of the Appellant/Oriental Insurance Co. Ltd. before the Tribunal. The learned counsel submits that the Insurance Company had never contended before the Tribunal that the policy conditions were violated. It was also not the case of the Insurer before the Tribunal that negligence had not been proved by the Claimant. As far as the police documents are concerned,

learned counsel submits that the Claimant has produced the certificate issued by the Officer-in-Charge of the Police Station, Shamator, which was proved as Exhibit P-2 wherein it was clearly certified that the vehicle bearing Registration No. NL-03/A-8049, Mini Truck had met with an accident on 16.07.2020 resulting in the death of Mrs. Tsupan, wife of the Claimant.

9. Learned counsel further submits that the Appellant herein has also not taken any permission from this Court to produce any additional documents and no application has been filed along with the instant appeal memo praying for production of the same. In such view of the matter, the Appellant cannot be allowed to agitate new grounds before this Court and on this ground alone the appeal deserves to be dismissed without going into the merits of the case.

10. Learned counsel for the Claimant/Respondent No. 1, in support of his submission, has relied on the case of ***M/s Oriental Insurance Co. Ltd. V. Smti. Taramai Borah & 4 Ors*** in **MACApp./252/2017** wherein a Coordinate Bench of this Court had dismissed the appeal filed by the Insurance Company on the ground that the plea taken by the appellants in appeal was never taken at the time of filing the written statement. It was also held by the Court that except a plea on maintainability, no new ground could be taken by the appellant in an appeal. The learned counsel has also relied on the case of ***Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.*** reported in **(2000) 2 SCC 734**. In the cited case, the Supreme Court held that it is a settled position of law that in an appeal, the parties cannot urge new facts.

Further, the Claimant/Respondent No. 1 has also relied on the case of ***Oriental Insurance Co. Ltd. v. Silina Dhan & Ors.*** reported in **2024 (4) GLT 574** where another Coordinate Bench of this Court held that it is not open for the appellant/insurer to raise a ground for which the foundation has not been laid in the proceedings before the learned tribunal. It was held that the issue of lack of permit had not been taken by the insurer before the tribunal and in view of such a position it was not open for the appellant/insurer to agitate the issue of lack of permit at the stage of appeal. Under such circumstances the appeal was dismissed.

11. Learned counsel for the Claimant/Respondent No. 1, in view of the above submissions and judgments relied upon, has submitted that the Appellant has failed to make out a case for the interference of this Court under Section 173 of the MV Act and prays that the appeal may be dismissed.

12. Another argument urged by the learned counsel for the Claimant/Respondent No. 1 is that this Court has ample power to reassess the compensation awarded by the Tribunal even in the absence of a cross-appeal filed by the Claimant/Respondent. It is submitted that the Claimant had produced a sworn affidavit before the Tribunal stating that the monthly income of his deceased wife was Rs. 20,000/- [Rupees Twenty Thousand only] per month and the said affidavit was proved as Exhibit P-5. Even in the cross-examination the deposition of the PW-1 was not rebutted and the said affidavit was duly proved. However, the learned Tribunal assessed the monthly income of the deceased as Rs. 13,000/- [Rupees Thirteen Thousand only] per month. In view of the said finding,

the learned counsel prays that this Court may be pleased to enhance the undisputed monthly income of the deceased to Rs. 20,000/- per month.

13. This Court has given due consideration to the submissions of the counsel for the parties and perused the authorities relied upon.

14. It is well settled that an appeal is a continuation of the original proceedings and that appellate jurisdiction is undoubtedly wide. At the same time, Order 41 Rule 2 of the Code of Civil Procedure, 1908 provides that an appellant shall not, except by leave of the appellate court, urge or be heard in respect of a ground of objection which was not set forth in the memorandum of appeal. The proviso further requires that the party likely to be affected by such ground must be afforded sufficient opportunity of contesting it. This provision is intended to ensure fairness to the opposite party and to prevent a party from setting up an entirely new case at the appellate stage; particularly where the mention of such ground would require investigation of facts and consideration of evidence which was never placed before the tribunal.

15. In the present case, the ground of appeal urged by the Appellant is not a mere additional legal submission arising from the facts before the Tribunal. The Insurer/Appellant had never pleaded violation of policy condition before the tribunal. The ground taken by the Appellant regarding violation of the policy would require examination of a factual foundation which was neither pleaded nor established before the Tribunal. The Claimant/Respondent No. 1 consequently, had no opportunity before the Tribunal to dispute the said contention by pleadings or evidence.

16. No explanation has been given by the Appellant as to why the said grounds were not raised before the learned Tribunal. More importantly, no application seeking leave to produce the additional documents has also been filed before this Court and no circumstances have been shown which would justify permitting the Appellant to introduce the new factual defence for the first time in the present appeal.

17. This Court is in agreement with the decision in the case of *Silina Dhan & Ors. (Supra)*. Even in the present case, the ground of violation of policy or the ground of not proving negligence has never been argued by the Insurer before the Tribunal and, therefore, at this stage, it is not open for the Appellant/Insurer to raise these new grounds for which the foundation has not been laid before the learned Tribunal. Further, in view of the settled position of law as expounded by the Supreme Court in ***Modern Insulators Ltd.(supra),*** it needs no reiteration that a new ground cannot be urged in appeal when it was not raised at all before the learned Tribunal. Hence, the argument pertaining to violation of policy conditions being a new ground in appeal is not sustainable in law and accordingly disregarded.

18. In the circumstances, the new grounds, urged by the Appellant cannot be permitted to be raised at this stage and once the said grounds are excluded from the consideration, no other grounds has been shown which would warrant interference of this Court in the impugned judgment and award.

19. In respect of the contention of the Claimant/Respondent No. 1

regarding the quantum of the award, this Court has observed that PW-1 who is the Claimant/Respondent No. 1 had deposed before the Tribunal that his deceased wife was dealing with petty business like selling of vegetables. It is not disputed that the PW-1 had exhibited a sworn affidavit stating that the monthly income of the deceased was Rs. 20,000/- per month. However, it is settled law that the Tribunal, while calculating the income of a self-employed person has to apply some guesswork in assessing the monthly income, keeping in view the nature of the business or nature of work which the deceased was involved in. In the present case, it is seen that the Tribunal had rightly held that the deceased was employed in petty business like selling vegetables and came to the conclusion that the deceased would have been earning around Rs. 500/- [Rupees Five Hundred only] per day and, therefore, her monthly income was calculated as Rs. 13,000/- [Rupees Thirteen Thousand only] per month. This Court finds no perversity in the said finding of the learned Tribunal and it is found to be reasonable and just.

20. Consequently, this Court finds no merit in the instant appeal and the same is dismissed.

21. Registry is directed to send back the Trial Court Records expeditiously. The Registry is also directed to release the statutory deposit of Rs. 25,000/- [Rupees Twenty Five Thousand only] to the Appellant.

JUDGE

Comparing Assistant