

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

MAC APPL. No. 03 (AP) 2017

The Oriental Insurance Co. Ltd.

represented by its Senior Divisional Manager,

Takar Complex, Naharlagun. District Papumpare

PIN 791110 State of Arunachal Pradesh, Phone – 986432647.

----- *Appellant*

- Versus -

1. Smti Tumbin Nada,
D/o- late Nitum Nada,
R/O- Near MLA cottage, Itanagar PO/PS-Itanagar,
District-Papumpare Pin-791111,
State-Arunachal Pradesh.

2. Smti Bimpu Nada
Wife of late Nitum Nada,
Resident of Ringi village, PO/PS- Gensi,
District-West Siang, Pin-791001, State- Arunachal Pradesh.

3. Shri Habing Nobing,
C/O ShriHabingPayang,
Resident of C-Sector Itanagar, District- Papumpare, A.P
(Owner of the offending Vehicle).

----- *Respondent*

BEFORE
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

Advocates for the Appellant:

Mr. U. Deka, Mr. T. Char, Ms. D. Modi.

Advocates for the respondent:

Mr. M. Batt, Mr. T. Chungma, Mr. G. Hai, Mr. J. Lego, Mr. M. Ranka, Mr. M. Bagra,
Mr. T. Magria, Mr. K. Beti, Mr. S. Rieng.

Date of hearing and Judgment & order : 06.12.2018.

JUDGMENT AND ORDER

[ORAL]

This appeal has been preferred by the Oriental Insurance Company Limited, Naharlagun, against the judgment and order, dated 28.02.2017, passed by the learned Member, Motor Accident Claims Tribunal, Yupia, in MACT Case No.55/2013(YPA), awarding compensation of Rs. 7,47,000/-(Rupee Seven Lacs Forty Seven Hundred only) to the claimants, who are sister and mother of the deceased.

2. I have heard Mr. U Deka, learned counsel for the appellant, and Mr. M Bhatt, learned counsel, appearing on behalf of the Insurance Company/respondents.

3. An application, praying for compensation for the death of the deceased, Tumku Nada, was filed before the learned Member, Motor Accident Claims Tribunal, Yupia, by the claimants.

4. The facts leading to the claim is that, on 22.05.2004, the deceased, Tumku Nada, boarded in a passenger bus, bearing registration No. AR-01-7190, at Nyokum, Itanagar and was proceeding towards Naharlagun. The said bus, while proceeding through the Shiv Mandir, NH-52A, fell into a deep gorge, resulting in the death of the deceased, Tumku Nada, along with some other co-passengers. The deceased was claimed, in the petition, to be 30 years of age and he was working as a Personal Assistant/Stenographer in the Office of the Director, Arunachal Pradesh Energy Development Agency, Itanagar and his salary was Rs.4000/- per month. It has further been claimed, in the petition, that the accident occurred due to rash and negligent driving of the offending vehicle. The claimants claimed Rs. 15,40,000/-, as compensation under different heads.

5. The appellant/Insurance Company, as respondent No. 1, in the claim petition, filed written statements against the claim of the claimants and denied that the claimants are entitled to compensation, as claimed. It has been averred, in the written statements, that the owner of the offending vehicle (opposite party No. 2) violated the terms and conditions of the insurance policy, as the vehicle was driven by a driver not holding a valid driving licence, issued by the competent authority, and also carried passengers beyond the capacity of 36 passengers. As stated, in the written statements, the offending vehicle carried 67 persons at the time of the

accident and that the deceased was a gratuitous passenger. Therefore, according to the appellant/Insurance Company, they are not liable to pay any compensation.

6. The claimants examined as many as two witnesses in support of their claim and the appellant/Insurance Company did not examine them by way of cross-examination. The appellant/Insurance Company, however, did not examine any witness from its side.

7. After conclusion of the trial, the learned Member, Motor Accident Claims Tribunal, Yupia, vide the impugned judgment, awarded an amount of Rs. 7,47,000/-, as compensation, inclusive of the no fault liability amount, with interest @ Rs. 6% per annum, from the date of filing of the claim petition, till realization. The appellant/Insurance Company was ordered to pay the compensation.

8. I have perused the impugned judgment as well as the evidence on record. The first plea taken by the appellant/Insurance Company before this Court is that the deceased was a gratuitous passenger and as such, the appellant/Insurance Company is not liable to pay the compensation. According to the appellant, the vehicle could have carried 36 passengers only as per the terms and conditions of the policy.

9. It is a fact, appears from the materials on record, that there were more than 36 passengers in the offending vehicle. However, the learned trial Court, on appreciation of the evidence on record, held the deceased to be a *bonafide* passenger and also observed that in similar cases, some other claimants have been awarded compensation. There is no challenge to this specific finding of the learned Motor Accident Claims Tribunal. That being so, the plea taken by the appellant/Insurance Company has no leg to stand, particularly, in view of the fact that the learned Motor Accident Claims Tribunal held the deceased to be a *bonafide* passenger.

10. On the other hand, as regards the protections envisaged under Sections 147 and 149 of the MACT Act, since the appellant/Insurance Company did not examine any witness from its side and even did not cross-examine the witnesses for the claimants to show that the driver of the offending vehicle was not possessing a valid driving licence at the relevant time of accident, a mere statement, in the written statements, without there being any evidence, cannot be acted upon to hold that the driver of the offending vehicle did not possess a valid driving licence.

11. In view of the above, on consideration of the materials on record, including the evidence and the impugned judgment, this Court is of the view that the impugned judgment requires no interference by this Court, on appeal.

12. Accordingly, the appeal is dismissed, on merit.

13. Send back the original records with a copy of this judgment and order, to the learned Motor Accident Claims Tribunal, Yupia.

JUDGE

Yabiti/Paus