
(2025) 08 GAU CK 0330
In the Gauhati High Court
Case No : MAC App Of 437 Of 2018

Chuto Gaur And 3 Ors

APPELLANT

Vs

National Insurance Company Ltd

RESPONDENT

Date of Decision : 12-08-2025

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304(A)
Code of Civil Procedure, 1908 — Section 151, 152, 153
Motor Vehicle Act, 1988 — Section 166

Citation : (2025) 08 GAU CK 0330

Hon'ble Judges : Yarenjungla Longkumer, J

Bench : Single Bench

Advocate : Y S Mannan, K R Bora, M Bhattacharyya, R D Mozumdar, Debabrat Chutia, C Mozumdar, S P Sharma

Final Decision : Disposed Of

Judgement

Yarenjungla Longkumer, J

1. The present appeal under 173 of the Motor Vehicle Act, 1988 has been preferred by the appellants against the Judgment dated 11.10.2017 passed in MISC Case No. 1/2016 arising out of MAC Case No. 1639/2013 passed by the Motor Accidents Claims Tribunal No. 3 (MACT No.3 for short), reviewing the Judgment and Order dated 11.02.2015 passed in MAC Case No. 1639/2013.

2. I have learned counsel, Mr. Y.S Mannan for the appellant as well as learned counsel for the Insurance Company/respondent No.1, Ms. R.D Mozumdar.

3. The case of the appellant is that on 01.06.2013 at about 7:00 PM when the deceased late Parasuram Gaur was proceeding from Bokul towards his home on foot, and on reaching National Highway No. 37, near Railway Gate Tiniali, the offending vehicle Indigo with R/No. AS-06-H/0237 coming from the same direction and being driven in rash and negligent manner knocked him down from the back side causing grievous injuries on his body which ultimately resulted in

his death. In this regard, a case was registered being Lahuwal P.S. Case No. 90/2013 under Sections 279/304(A) I.P.C. The claimants/appellants filed claim petition claiming an amount of Rs 40,00,000/- for causing the death of late Parasuram Gaur against the owner, driver of the offending vehicle and the National Insurance Company Limited.

4. It is further stated that the owner and driver of the vehicle did not contest the case and therefore, the tribunal proceeded ex-parte against them. The insurer/ National Insurance Company Limited contested the case and the learned MACT No. 3 Kamrup (M), Guwahati vide Judgment and Order dated 11.02.2015 awarded compensation amounting to Rs. 22,45,739/- only with interest @ 6% p.a from the date of filing from the Claim Petition till realization of the amount to be paid by the National Insurance Company Limited.

5. Thereafter, the National Insurance Company/respondent No. 1 filed an application under Section 151, 152 and 153 of the Code of Civil Procedure on 18.01.2016 praying for recalling the Judgment and Order dated 11.02.2015 passed in MAC Case No. 1639/2013 on the ground that the Insurance Company came to know that the deceased was hit by an unknown Maruti car from behind which was mentioned in the medical certificate issued by the Assam Medical College Hospital, Dibrugarh and not an Indigo car. The Insurance Company took the plea that the claimants had procured the award by plying fraud upon the tribunal and therefore, the award is required to be recalled.

6. The said review petition was registered as Misc Case No. 1/2016. The review petition was disposed of by the learned MACT No. 3 Kamrup(M), Guwahati vide Judgment and order dated 31.08.2017 setting aside the judgment and Award dated 11.10.2015 passed in MAC Case No. 1639/2013. By the impugned judgment dated 31.08.2017, the learned MACT No. 3 Kamrup(M), Guwahati held that the claimants/ appellants are not entitled to any relief as fraud had vitiated the award.

7. Being aggrieved the claimants/appellants have come before this Court assailing the impugned Judgment dated 31.08.2017 passed by the learned MACT No. 3, Kamrup(M), Guwahati in Misc Case No. 1 /2016.

8. The learned counsel for the appellant submits that the learned MACT No. 3 had considered only the Medical certificate issued by the Assam Medical Collage Hospital, and the evidence of the Medical Records Officer whereby it was stated that an unknown Maruti vehicle hit the deceased from behind. It is submitted that the Vehicle owner and the driver did not appear before the tribunal and therefore, no objections were raised when the claim petition was filed. Learned counsel submits that if the said indigo vehicle owner and driver were wrongly implicated in the case, they would have inevitably appeared before the tribunal with strong objections.

9. Learned counsel submits that the medical certificate alone cannot prove whether the offending vehicle was an Indigo and Maruti vehicle. It is stated that

the accident occurred at 7:00 pm at night and as it was already dark by then it is possible that a mistake had been made regarding the brand of the vehicle.

10. Learned counsel also submits that the fact that the deceased received grievous injuries and died, as a result of the motor vehicle accident is not disputed and therefore the claimants/appellants are entitled for compensation. It is submitted that the claimants/appellants are not responsible for any overwriting in the G.D Entry or using eraser in the G.D Entry as the same is not a public document and the claimants/ appellants did not have any access to the same and therefore, the appellants cannot be held responsible for the over writing in the G.D Entry as alleged by the respondent No. 1.

11. Learned counsel further submits that there was no suppression of material facts by the appellants in as much as they have only made the claim on the basis of the police report, FIR and Accident Information Report and therefore the judgment of the learned MACT No. 3 by putting the blame upon the claimants/appellants is not sustainable. Learned counsel for the appellant has also submitted that in the evidence of PW-2/ Muhi Kanta Gogoi, who was the second Officer of Lahowal P.S., he had deposed that as per G.D Entry No. 28 one S.I R. Rautia had visited the place of occurrence and confirmed that the accident was caused by an indigo car which fled away towards Tinsukia. The PW 2 also stated that it was mentioned in the G.D Entry that one Parasuram Gaur, aged about 53 years was the injured in the accident, who was brought to Assam Medical College Hospital by neighbors and relatives. PW-2 also deposed that in the G.D Entry there was also mention that the vehicle No. AS-06-H-0237 was written after being collected from the local people. In fact learned counsel has submitted that the forwarding letter by the Superintendent of Police, Dibrugarh dated 29.11.2016 while forwarding the enquiry report as directed by the MACT No. 3 clearly mentioned that further enquiry will be required whether the alteration made in the original in the G.D Entry was done bonafide and to ascertain the genuineness of the same. Therefore, learned counsel submits that the learned MACT without considering this statement made by the Superintendent of Police, Dibrugarh rendered the impugned Judgment dated 11.10.2017. It is further contended by the learned counsel for the appellant that the learned MACT No. 3 did not consider the FIR, the evidence of the police officer/ PW-2, the charge sheet, and the Accident Information Report but rather relied on the medical certificate of the Assam Medical College hospital, Dibrugarh alone. Learned counsel prays that the impugned judgment may be set aside and the judgment & award dated 11.02.2015 may be restored.

12. Learned counsel has relied on the following judgments in support of his submissions:-

- 1) Sunita and Ors Vs. Rajasthan State Road Transportation Corporation and Ors reported in (2020) 13 SCC 486
- 2) Putu Hazarika Vs. National Insurance Co. Ltd. and Ors. reported in 2013(2)

3) Vimla Devi and Ors Vs. National Insurance Company Limited and Ors. reported in (2019) 2 SCC 186

4) Ravi Vs. Badrinarayan and Ors. reported in (2011) 4 SCC 693

5) Bimla Devi and Ors Vs. Himachal Road Transport Corporation and Ors. Reported in (2009) 13 SCC 530

13. Learned counsel for the respondent No. 1/Insurance Company has submitted that the present case is not a case where a claim petition under Section 166 of the Motor Vehicle Act could have been filed before the MACT. It is stated that at best the instant case is a hit and run case where the appellant can approach the concerned government for compensation. Learned counsel submits that the over writing and deletion in the G.D Entry has been proved by the evidence of PW-1 and PW-2 in MISC Case No. 1/2016. Learned counsel submits that when the insurer had filed the MAC Case No. 1/2016 praying for recalling the Judgment and award dated 11.02.2015 in MAC Case No. 1639/2013, the learned MACT had directed the Superintendent of Police, Dibrugarh to conduct an enquiry into the allegations of corrections made in the G.D Entry by replacing the word Maruti car with indigo car and the statement in his claim petition that it was the tata indigo car bearing registration No. AS-06-H-0237 which was the offending vehicle and not the maruti car. Whereas as per the medical certificate issued by Assam Medical College Hospital, the offending vehicle was an unknown Maruti vehicle. Learned counsel further submits that the PW-1/Kulen Ch. Neog, who was the Medical Record Officer at Assam Medical College Hospital, deposed that the deceased was accompanied by one Sailesh Kumar Agarwal, neighbor and Ram Ch. Gaur, brother of deceased. He deposed that in the medical register of Assam Medical College hospital, the case was entered as history of RTA following hit by an unknown Maruti vehicle from behind. On being cross examined PW-1 stated that normally the history of patient is recorded on the basis of the statement either given by the injured or by the attendants. Learned counsel therefore, submits that it was the neighbor and brother of the deceased who stated that the deceased was hit by unknown Maruti vehicle from behind. Learned counsel submits that the aforementioned neighbor and brother were not examined by the claimants to prove otherwise.

14. Learned counsel further submits that the learned MACT had directed for an inquiry to be conducted by the Superintendent of Police Dibrugarh. And in the inquiry report it was categorically stated that in respect of G.D Entry No. 23 dated 01.06.2013, whitener was used and the word "indigo" was written in the original G.D Entry book of the police station. But in the records available in the C.I Office the word was found as "maruti". Thus, it was found that the word "maruti" was replaced by the word 'indigo' in the original G.D Entry book by using whitener. The report further stated that in respect of G.D Entry No. 28 dated 01.06.2013, one sentence has been altered by using whitener. After using

whitener, the vehicle number was inserted in the original G.D Entry book as AS-06/H-0237 whereas the same was not there in the G.D Entry records of C.I Office in respect of G.D entry No. 28.

15. Learned Counsel submits that the claimants have suppressed material facts and with common intention along with the police made the tata indigo vehicle as the offending vehicle subsequently by correcting the G.D Entry. And therefore, the fraud committed by the claimants/appellants has been proved and the learned MACT No. 3 has passed a valid and reasoned order and prays that the said impugned judgment and order dated 11.10.2017 may not be interfered with. Learned counsel for the respondent/insurance company has relied on the following cases:-

1) UNITED INDIA INSURANCE CO. LTD VERSUS RAJENDRA SINGH AND OTHERS reported in AIR 2000 SC 1165

2) S. P. CHENGALVARAYA NAIDU (DEAD) BY L.RS VERSUS JAGANNATH (DEAD) BY L. RS AND OTHERS reported in 1993 (Supp3) SCR 422

3) A. V. PAPAYYA SASTRY & ORS VERSUS GOVERNMENT OF A.P. &ORS reported in (2007) 4 SCC 221

4) Judgement dated 19 January, 2018 ANIL & ORS VERSUS NEW INDIA ASSURANCE CO. LTD. & ORS reported in CIVIL APPEAL NOS 3291- 3292 OF 2011

16. This Court has given due consideration to the rival submissions made by the learned counsels for the parties. The court has also perused the pleadings and the authorities relied upon by the parties, as well as the Trial Court Records.

17. It is settled law that a judgment or decree obtained by playing fraud on the court is null and void and non est in the eye of law. However, this principle has to be examined in the light of the facts and circumstances of each case. A mere correction in a G.D Entry will not automatically amount to fraud so as to vitiate a Motor Accident Claims Tribunal award. The other relevant circumstances and evidence also needs to be examined.

18. G.D entries by themselves are generally not substantive evidence to prove an accident but they are corroborative evidence. MACT awards are based not only on G.D entry but primarily on oral and documentary evidence such as FIR, eye witness testimony, medical report, accident information report, medical reports and chargesheet etc.

19. Fraud must be pleaded and proved by the party alleging the same. Mere discrepancy is not enough; a G.D correction cannot be fraud by itself. It has to be proved that the correction was made dishonestly with the intent to deceive the tribunal.

20. In the present case, the factum of the accident and the fact of death of the deceased due to a motor vehicle accident are not disputed by the insurer/respondent No. 1. The initial G.D Entry may contain inaccuracies due to urgency,

confusion or poor visibility at the time of the accident. It is seen that the accident occurred at 7:00 pm when it was already dark. And a wrong vehicle description could have been entered due to poor visibility at that time, specially when it is stated that the vehicle fled away toward Tinsukia. It is pertinent that even in the forwarding letter dated 29.11.2016 enclosing the enquiry report written by the Superintendent, Police Dibrugarh it is stated that "In this regard, further enquiry will be required whether the alteration made in the original G.D Entry was done in a bonafide and to ascertain the genuinity of the same"

21. This Court has also seen from the Trial Court Records that the FIR, the accident information report and the charge sheet shows that the offending vehicle was an indigo vehicle with registration No. AS-06-H-0237.

22. This Court has also perused the depositions of PW-1 and PW-2 in MISC Case No. 1 of 2016. The PW-2 clearly stated that one S.I R. Rautia visited the place of occurrence and confirmed the accident caused by an indigo car which fled away towards Tinsukia. He also deposed that the G.D Entry mentioned that the vehicle No. was collected from the local people.

23. This Court is therefore of the view that it has not been proved by the insurer/respondent No. 1 that the correction made in the G.D Entry was made with dishonest intention inasmuch as mere suspicion, discrepancy or correction without proof of dishonest intention is insufficient to vitiate the award of the learned MACT. Moreover, the observations by the Superintendent of Police Dibrugarh in the letter dated 29.11.2016 to the effect that further inquiry will be required to ascertain whether the alteration made in the original G.D Entry was made bonafide or not, would persuade this Court to give the benefit of doubt to the claimant/appellant.

24. In view of the above discussions and observations, the impugned Judgment dated 11.10.2017 passed in MAC Case No. 1/2016 is quashed and set aside and the judgment and order dated 11.02.2015 passed in MAC Case No. 1639/2013 is restored.

25. The insurer/respondent No. 1 is directed to pay the awarded amount to the claimants/appellants within a period of 90 days from the date of this order.

26. The Registry is directed to transmit the trial court records to the MACT No. 3 Kamrup (M), Guwahati, forthwith.

Petition stands disposed of.