
(2025) 08 GAU CK 0354
In the Gauhati High Court
Case No : MACApp Of 86 Of 2021

Liberty General Insurance Company Ltd	APPELLANT
Vs	
Urmila Joshi And 2 Ors	RESPONDENT

Date of Decision : 29-08-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 4, 5
Indian Penal Code, 1860 — Section 279, 304(A), 427
Central Motor Vehicle Rules, 1989 — Rule 3

Citation : (2025) 08 GAU CK 0354

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : T Kalita, A Kakati, S Chetia, N. Debnath, J P More

Final Decision : Dismissed

Judgement

Susmita Phukan Khaund, J

1. The appellant in this case is Liberty General Insurance Company Ltd (herein after referred to as the insurer). The respondents in this case are the claimants, Smt. Urmila Joshi, mother of late Pankaj Joshi @Sashidhar Joshi and Ms. Pooja Joshi, sister of late Pankaj Joshi, @ Sashidhar arrayed as respondent Nos. 1 & 2, whereas M/S Damyanti Tea industries is arraigned as respondent No. 3.

2. The appellant is aggrieved by the judgment and order dated 10.01.2020, passed by the learned Member, MACT No. 2, Kamrup (M) in MAC Case No. 1592/2016. It is contended that the learned Tribunal discarded the evidence of the appellants merely on the ground that there is no record to show that the driver was not accompanied by a person having a proper driving license. This finding is sheer result of non-application of mind. The learned Member MACT, No. 2 completely overlooked the provisions of Section 5 of the Motor Vehicles Act, which casts a responsibility upon the owner of the vehicle as per provisions of Section 3 & 4, while permitting a person to drive a vehicle. It was the responsibility cast on the owner of the vehicle to fulfill the statutory requirements

of Rule 3 of Central Motor Vehicle Rules, 1989, before permitting a person to drive the vehicle who was admittedly holding a learner's license. This liability vis-a-vis, the responsibility has to be undertaken and proved. The learned Tribunal erroneously failed to appreciate that the insurance policy marked as Exhibit-B clearly transpired that the person driving the vehicle was supposed to hold a valid and effective driving license and the person holding a learner's license had to satisfy the requirements of Rule 3 of Central Motor Vehicle Rules, 1989. This fact was overlooked by the learned Tribunal.

3. It is further contended that the Tribunal erred while adding 40% of the monthly income assessed as future prospects, which is against the principles of law. The deceased was admittedly not attached to any organized sector where there could be scope for annual increment and his income was not proved. It is further submitted that in the light of the decision of the Hon'ble Supreme Court in Reshma Kumari vs. Madan Mohan reported in 2013 (9) SCC 65, the learned Tribunal ought not to have made an addition of income on the basis of erroneous assessment. The insurer has therefore prayed to set aside the impugned judgment and order.

4. Per contra, learned counsel for the claimants laid stress in his argument that the learner's license is a valid driving license with a caveat that the person holding the driver's license has to be accompanied by a person holding a valid driving license. Learned counsel for the claimants has submitted that the judgment was correctly passed and requires no interference.

5. Learned counsel for the owner of the vehicle has submitted that it was correctly held in paragraph-26 of the impugned judgment that, "after scrutinizing the evidence of DW1 and the documents available on record and found at the time of the accident, the driver of the offending vehicle possessed a learner's driving license but there is no record to show as to whether he was driving without a proper driving license holder sitting beside him. Therefore, it was held that there was no breach of policy condition and as such the insurance company is liable to indemnify the owner of the offending vehicle."

6. Heard Mr. T. Kalita, learned counsel for the appellant; learned counsel Mr. N. Debnath and learned counsel Mr. J. P. More for the respondents.

7. The Genesis of the case is that two MAC cases were filed by the claimants on account of death of Pankaj Joshi @ Shashidhar and Anirban Deka and the cases were registered as MAC Case No. 1591/2016 and MAC Case No.1592/2016 and both the cases were decided by the learned Member, MACT by a common judgment dated 10.01.2020.

8. The appellant in this case is the insurer who is aggrieved by the judgment and award dated 10.01.2020 passed in connection with MAC Case No. 1592/2016. The deceased Pankaj Joshi @Shashidhar met with an accident on 21.10.2015 at about 10.30am at Lalmati under the Basistha Police station.

9. The claimant's case in a nutshell is that on the fateful day, at about 3 a.m., the victim Pankaj Joshi @Shashidhar was proceeding as an occupant in a vehicle of Skoda make, bearing registration No. AS-064042 driven by the other victim Anirban Deka. As the vehicle reached Lalmati, the driver Anirban lost control over the vehicle and hit against a roadside rock and skidded off and thereafter hit against a tree which resulted in the accident and both the victims sustained grievous injuries on their person. The victims were immediately admitted at GMCH but the doctor declared them as brought dead. It is alleged that the accident occurred due to the rash and negligent driving of the driver of the vehicle. At the time of the incident, the victim Anirban Deka was a driver with a monthly income of Rs. 12,000/- and the present victim Pankaj Joshi @Shashidhar was a service holder, in a private sector with a monthly salary of Rs. 12,000/-. The owner of the vehicle, who was arrayed as O.P. No. 2, did not contest the proceeding whereas the claimant and the insurer contested the proceeding.

10. In connection with this case, the following issues were framed by the learned Tribunal:-

"1. Whether on 21-10-2015, at about 03:00 A.M., at Lalmati, near Highway Palace Hotel, under Basistha Police Station, an accident has arisen due to the rash and negligent driving of the Skoda bearing registration No. AS-06-H-4042 on the part of its driver and whether the said accident has caused the death of Pankaj Joshi @ Sashidhar Joshi?

2. If so, whether the claimants are entitled to receive any compensation, and If yes, what should be the quantum and who amongst the opposite parties, is liable to pay the compensation amount?

11. It has been held by the learned Tribunal that:- the claimants during the evidence have corroborated the statements of the claim petition supported by Exhibit-1. The Accident Information report reveals that the accident occurred owing to the rash and negligent driving by the driver of the vehicle bearing registration No. AS-06H442 (offending vehicle for short).

11.1. During cross-examination, the claimant Smt. Urmila Joshi denied the suggestion that she has falsely stated that her son had a monthly income of Rs. 12,000/- at the time of the accident and that the FIR was falsely lodged in connection with the case. Thus, the defence through cross-examination of the witness failed to rebut the evidence that the offending vehicle was driven in a rash and negligent manner resulting in the death of the victim Pankaj Joshi @Shashidhar. Although, the insurer claimed that the accident did not occur due to the rash and negligent act of the driver of the Skoda vehicle, yet the insurer failed to establish its stance.

11.2. It was held by the Tribunal that the Exhibit-1, Accident Information Report-(AIR) reveals that a case being Basistha P.S. Case No. 1218/2015, was registered under Sections 279/304(a)/427 of the IPC regarding the accident

caused by the driver of the vehicle who acted in a rash and negligent manner. The other case registered as MAC Case No. 1591/2016 was dismissed by the learned Tribunal as the accident occurred due to the rash and negligent act of the driver of the vehicle. However, the instant case was decided in favor of the claimants on the strength of the postmortem report.

11.3. The learned Tribunal assessed the age of the victim as 26 years as the age was reflected in the postmortem report as 26 years. The learned Tribunal held that the monthly income of Rs. 12,000/- could not be proved and substantiated by reliable evidence and thus the monthly income of the deceased was assessed @ Rs. 6,500/-, after considering the inflation and the present state of economy of the country. After assessing the age of the deceased to be 26 years and the monthly income to be Rs. 6,500/-, 40% was added to the income of the deceased towards future prospects as per the decision of the Hon'ble Supreme Court in National Insurance Company vs. Pranay Sethi and Ors, reported in (2017) 16 SCC 680.

11.4. The learned Tribunal did not pass any order for compensation to be awarded to the sister of the deceased and awarded compensation to his mother after a deduction of 50% towards personal expenses, relying on the decision of the Hon'ble Supreme Court in Sarla Verma & Ors vs. DTC & Anr, (2009) 6 SCC 121.

11.5. The learned Tribunal assessed the compensation to the tune of Rs. 9,28,200/- plus funeral expenses of Rs. 15,000/-. The Tribunal dismissed the evidence adduced by the insurer. It was held that Sri Binod Kumar Prasad, the legal manager of the insurance company deposed as DW1 that the claimant admitted in her cross-examination that at the time of the accident, the driver's learner license was not valid and as such there was a violation of the condition of the insurance policy. He exhibited the identity card vide Exhibit-A and a copy of the insurance policy vide Exhibit-B. It was held that from the evidence of DW1 and documents available on record, it could be deduced that the driver of the offending vehicle was holder of the learner's license, but there was no record to show if he was driving without a proper driving license holder sitting beside him.

12. Therefore, it was held that there was no breach of insurance policy.

13. The point for determination in this case is whether the learned Tribunal has erred by dismissing the evidence of the insurer and by accepting the evidence of the claimants

14. On scrutinizing the Trial Court Records and the decision of the learned Tribunal, I record my concurrence to the decision of the learned Tribunal. There appears to be no ground to interfere with the decision of the learned Tribunal. It has been correctly held by the learned Tribunal that the insurance company failed to establish that the driver of the offending vehicle who was carrying the learner's license was indeed not accompanied by a person who was holding a valid driver's license, despite the fact that the insurer had proved the I-card as

Exhibit-A and a copy of the policy as Exhibit-B.

15. On the contrary, the claimants have proved that the vehicle was driven in a rash and negligent manner through the AIR marked as Exhibit-1. A criminal case was registered after the accident under Section 279/304(a)/427 of the IPC. The impact of the accident also clearly reveals the rash and negligent manner in which the vehicle was driven.

16. The learned Tribunal has correctly dismissed the MAC Case No. 1591/2016. Anirban Deka was the driver, who in a rash and negligent manner caused the accident resulting in the death of two occupants of the vehicle. The age of the deceased was correctly assessed on the basis of the postmortem report. The income was correctly assessed.

17. On the touchstone of preponderance of probabilities, the evidence of the claimant was correctly held to be credible evidence and no error in calculation of the loss of dependency is discernable.

18. In the wake of the foregoing discussions, it is thereby held that this appeal is devoid of merits and is hereby dismissed.

19. Send back the Trial Court Records.