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**(2007) 12 GAU CK 0051**  
**In the Gauhati High Court**

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|------------------------------------------------------------|----|------------|
| Oriental Insurance Co. Ltd.                                | Vs | APPELLANT  |
| Divisional Manager, National Insurance Co. Ltd. and Others |    | RESPONDENT |

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**Date of Decision :** 17-12-2007

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 173  
Penal Code, 1860 (IPC) — Section 279, 304A, 338

**Citation :** (2008) 3 GLT 153

**Hon'ble Judges :** H. Baruah, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

H. Baruah, J.—Heard Mr. N. Nyorak, learned Counsel for and on behalf of the appellant, the Oriental Insurance Company Limited. None appears for the respondents.

2. This appeal is preferred u/s 173 of the Motor Vehicles Act, 1988, order against the judgment and order dated 31.3.2006, passed in MACT Case No. 02/2005 by the learned Member, Motor Accident Claims Tribunal, Ziro, District: Lower Subansiri, Arunachal Pradesh, challenging its legality and correctness thereof, in respect of apportionment of the award.

3. Respondent herein Smt. Toko Yeri, as claimant, filed a claim application before the learned Member, MACT, Ziro District: Lower Subansiri, u/s 166 of the M.V. Act. 1988 claiming compensation on account of death of her husband late Jotam Toko Nisha as a result of vehicular accident, which had taken place on 08.08.2005 at 73 km point Joram on Kimin-Ziro road to the tune of Rs. 25.57 lacs including expenses etc. The case of the claimant in a narrow campus as it appears from the record is that deceased Jotam Toko Nisha was her husband and on 08.08.2005 around 0500 hrs he was travelling from Yachuli to Ziro by driving his Maruti car bearing registration No. AR-01B-1774. While driving as such his vehicle collided head on with a Tata Sumo bearing registration No. AR-06-3114, which was coming down from Ziro towards Yachuli at 73 kms Joram Point on

Kimin Ziro road at around 0500 hrs and as a result of such collision her husband Jotam Toko Nisha received grievous injuries on his person. He was shifted to Hospital for treatment and after 12 hours of the accident succumbed to his injury. It is the claim of the claimant that the accident occurred due to rash and negligent driving of the driver of the Tata Sumo. A police case was also" registered under Sections 279/338/304A I.P.C. against the driver of the Tata Sumo.

4. The further case of the claimant was that the deceased at the time of accident was 35 years of age and was serving as an Inspector under the Department of Supply & Transport at Ziro and his monthly salary was Rs. 10,374.00. While he was undergoing treatment in hospital at Ziro, Itanagar and Dispur, an amount of Rs. 43,000/- was spent. It was further claimed by her that both the vehicles were insured at the time of accident with the respective Insurance Company and insurance policy was valid on the date of accident. Claimant, therefore, claimed Rs. 25.57 lacs as compensation from the Insurance Company, the opposite parties.

5. The claim was contested. Written statement was filed. Claimant examined herself as PW-1 and another as PW-2. She also proved some documents in support of her claim.

6. The learned Tribunal at the conclusion of the inquiry awarded an amount of Rs. 13,37,372.00 in all as compensation to be paid by the Insurance Company of both the vehicles at the ratio of 25:75.

7. Appellant, the Oriental Insurance Company being aggrieved by and dissatisfied with such apportionment of the award, filed this instant appeal.

8. It is submitted by the learned Counsel for the appellant that the deceased died at a result of head or collision of both the vehicles and the drivers of both the vehicles were negligent while driving their respective vehicles. It is also submitted by him that there was no eye-witness of the occurrence to assess rash and negligent driving on the part of the drivers of the both the vehicle. Findings of the learned Tribunal was that since a case was registered as against the driver of the Tata Sumo under Sections 279/338/304A I.P.C. by the police, it is argued, the same cannot be a ground to hold that the driver of the Tata Sumo was negligent in driving his, vehicle. According to the learned Counsel for the appellant, this finding is erroneous since there was no eye-witness to the actual occurrence.

9. That apart, it is found from the record that apposite party neither adduced evidence to substantiate their claim as averred in their written statement. According to the learned Counsel for the appellant that since evidence is wanting to prove rash and negligent driving of the driver of the Tata Sumo, apportionment as arrived at by the learned Tribunal is erroneous and illegal. The facts and circumstances of this case appearing and the manner in which the accident had taken place, according to the learned Counsel for the appellant,

makes it palpably clear that the drivers of both the vehicles were at fault and both were negligent in driving the respective car. While the deceased died as a result of head on collision of both the vehicles, the learned tribunal ought to have apportioned the award at the ratio of 50:50 and not 25:75. Admittedly the award is not under challenge.

10. This Court has carefully gone through the award passed by the learned Tribunal including the evidence on record both oral and documentary. In the face of the facts so appearing and the evidence so adduced, learned tribunal committed error in holding that the driver of Tata Sumo was in fault in view of registration of a case against the driver by police.

11. Having considered all the materials in its entirety, this appeal is allowed. The award so passed by the learned Tribunal shall be apportioned at the ratio 50:50.

12. This appeal is accordingly disposed of.