GAHC010139442016

2026:GAU-AS:17057

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

Case No. : MACApp./353/2019

THE ORIENTAL INSURANCE CO. LTD.
A CO. REGISTERED UNDER THE COMPANIES ACT 1956 REPRESENTED BY ITS REGIONAL MANAGER, ULUBARI, GUWAHATI-7, DIST. KAMRUP, ASSAM.

VERSUS

SHABANU BIBI and 7 ORS
W/O LATE IDRIS ALI, R/O HOUSE NO. 47, SIJUBARI, PAKHIJA PATH, HATIGAON, P.O. and P.S. HATIGAON, GUWAHATI-38

2:HAMID ALI

S/O LATE IDRIS ALI
R/O HOUSE NO. 47
SIJUBARI
PAKHIJA PATH
HATIGAON
P.O. and P.S. HATIGAON
GUWAHATI-38

3:RANJU BEGUM

W/O SIDDIK ALIM
MUKALMUS
KAMRUP

4:NILIMA BEGUM

W/O KHIRUL ALI
R/O BHETAPARA
P.O. and P.S. HATIGAON

GUWAHATI
ASSAM.

5:ABDUL ALI

S/O LATE IDRIS ALI
R/O HOUSE NO. 47
SIJUBARI
PAKHIJA PATH
HATIGAON
P.O. and P.S. HATIGAON
GUWAHATI-38

6:AMAR SINGH

S/O GURUCHARAN SINGH
R/O HOUSE NO. 717/1
G.S. ROAD
DIMAPUR
NAGALAND

7:FULCHAND ALI AHMED

S/O MD. NUR HUSSAIN BEPARI
VILL. 3 NO. SOUTH RANGAPANI
P.O. BADLABAZAR
P.S. BOKO
DIST. KAMRUP
ASSAM.

8:UNITED INDIA INSURANCE CO. LTD.

REGIONAL OFFICE G.S. ROAD
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. S K GOSWAMI, MR. B K GOSWAMI,MR. A ACHARYA

Advocate for the Respondent : MS. P DAS, MR. A PAUL (R-2),MR. J GIRI (R2-R5),MR. K K DEY,MR. S BAISHYA,MR. V K BAROOAH,MS. M RABHA (R-2),MS. S KUMARI (R-2)

:::BEFORE:::
HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : N/A
Date of pronouncement of judgment : 19.11.2026
Whether the pronouncement is of
the operative of the judgment? : No

Whether the full judgment has been
pronounced? : Yes

JUDGMENT & ORDER (ORAL)

Heard Mr. S. K. Goswami, learned counsel for the appellant. Also heard Mr. R. Konwar, learned counsel for respondent Nos. 1 to 5/claimants.

2. This appeal has been preferred against the judgment and award dated 20.08.2016, passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, Guwahati, in MAC Case No. 1456/2011, whereby the learned Tribunal awarded a sum of Rs. 10,52,000/- (Rupees ten lakhs fifty-two thousand) only as compensation to the claimants on account of the death of Rahul Ali in a motor vehicle accident, along with interest at the rate of 6% per annum from the date of filing of the claim petition, i.e. 26.08.2011, till realization, with a direction to the appellant-Oriental Insurance Co. Ltd. to satisfy the award within a period of one month.

3. The case of the claimants, in brief, is that on 09.06.2011 at about 4:00

a.m., while the deceased, Rahul Ali, was proceeding towards Samaguri from Nagaon by driving a Tata DI vehicle bearing registration No. AS-01/DC-0052 and had stopped for a while at Boraligaon, a truck bearing registration No. NL-05-D-3869, coming from the opposite direction, dashed against his vehicle due to rash and negligent driving of its driver. As a result of the accident, Rahul Ali died on the spot. In connection with the said accident, Samaguri Police Station Case No. 184/2011 was registered under Sections 279/304-A of the Indian Penal Code.

4. The respondent Nos. 1 to 5, being the claimants, instituted a claim proceeding under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of the death of Rahul Ali. It was stated that at the time of the accident, the deceased was aged about 22 years and was working as a driver, earning Rs. 9,500/- per month, including salary and daily allowance. The offending truck bearing registration No. NL-05-D-3869 was owned by respondent No. 6 and was insured with the appellant-Oriental Insurance Co. Ltd. The owner and driver of the vehicles involved in the accident did not contest the claim proceeding and the case proceeded *ex parte* against them. The appellant-insurance company contested the claim by filing its written statement, denying its liability on the ground of alleged violation of the terms and conditions of the insurance policy, contending, inter alia, that the offending vehicle was being used for carrying contraband goods, namely, Ganja, at the time of the accident. Upon consideration of the evidence and materials on record, the learned Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending truck and that the claimants were entitled to compensation. The learned Tribunal accordingly awarded compensation of Rs. 10,52,000/- with interest at the rate of 6% per annum from the date of filing of

the claim petition till realization, directing the appellant-insurance company to satisfy the award.

5. Mr. S. K. Goswami, learned counsel for the appellant, submits that the learned Tribunal has failed to properly appreciate the evidence and materials available on record, particularly the General Diary Entry Nos. 198 and 209 dated 09.06.2011 of Samaguri Police Station. Referring to the said entries, learned counsel submits that the offending truck bearing registration No. NL-05-D-3869 was carrying contraband goods, namely, Ganja, at the time of the accident, in violation of the terms and conditions of the insurance policy. He further submits that the appellant-insurance company had examined DW-1 to establish the aforesaid fact, but the learned Tribunal failed to properly consider the said evidence and erroneously fastened the entire liability upon the appellant-insurance company. Therefore, he submits that the appellant-insurance company cannot be held liable to indemnify the owner of the offending vehicle.

6. Learned counsel for the appellant further submits that the learned Tribunal has also erroneously assessed the compensation payable to the claimants without following the principles laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi & Ors.**, reported in **(2017) 16 SCC 680**. He submits that the computation of compensation, particularly the addition towards future prospects and the amounts awarded under the conventional heads, requires reconsideration in accordance with the law laid down in the aforesaid decision. Learned counsel further submits that the learned Tribunal has also failed to consider the aspect of contributory negligence, having regard to the fact that the accident involved a head-on collision between two vehicles, as reflected in General Diary Entry No. 198 dated 09.06.2011 of Samaguri Police Station. However, learned counsel submits that in

the event this Court holds the appellant-insurance company liable to satisfy the award, the appellant may be permitted to pay the compensation to the claimants in the first instance and thereafter recover the amount so paid from the owner of the offending vehicle. Accordingly, he submits that the impugned judgment and award is liable to be suitably modified by reconsidering the liability of the appellant-insurance company as well as the quantum of compensation awarded by the learned Tribunal.

7. Mr. R. Konwar, learned counsel for respondent Nos. 1 to 5/claimants, submits that the direction of the learned Tribunal requiring the appellant-insurance company to satisfy the award does not call for interference, particularly having regard to the fact that the offending vehicle was duly insured with the appellant-insurance company at the time of the accident. Learned counsel submits that even if any breach of the terms and conditions of the insurance policy is established, the same would not absolve the appellant-insurance company from its obligation to satisfy the award vis-à-vis the third-party claimants. In support of his submission, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in **Akula Narayana Vs. The Oriental Insurance Company Limited & Anr.**, decided on 10.11.2025, wherein the Hon'ble Supreme Court reiterated the principle of "pay and recover" and held that even in a case involving breach of the conditions of the insurance policy, where the contract of insurance is not disputed, the insurer may be directed to satisfy the award in the first instance, with liberty to recover the amount so paid from the owner of the offending vehicle. Accordingly, learned counsel submits that the interest of the claimants, being third parties, ought to be protected and the appellant-insurance company may be directed to satisfy the compensation awarded by the learned Tribunal, with liberty, if so

permissible in law, to recover the amount from the owner of the offending vehicle.

8. Considered the submissions of learned counsel for the parties and also perused the materials available on record, including the impugned judgment and award dated 20.08.2016, passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, Guwahati, in MAC Case No. 1456/2011, as well as the decisions relied upon by learned counsel for the parties.

9. The respondent Nos. 1 to 5/claimants instituted the claim proceeding under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of the death of Rahul Ali. Their case was that on 09.06.2011, while the deceased was proceeding towards Samaguri from Nagaon by driving a Tata DI vehicle bearing registration No. AS-01/DC-0052 and had stopped for a while at Boraligaon, a truck bearing registration No. NL-05-D-3869, coming from the opposite direction, dashed against his vehicle due to rash and negligent driving of its driver, resulting in his death on the spot.

10. In support of their claim, the claimants examined two witnesses and also exhibited several documents, including the Accident Information Report, FIR, income certificate, office identity card and post-mortem report. The appellant-insurance company, on the other hand, examined DW-1, Sri Kailash Chandra Baishya, Senior Assistant, Legal Department of the Oriental Insurance Co. Ltd. DW-1 deposed that the offending truck bearing registration No. NL-05-D-3869 was insured with the appellant-insurance company vide Policy No. A() 322200/31/2011/2364, covering the period from 10.01.2011 to 09.01.2012. He further deposed that the said vehicle was carrying contraband goods, namely, Ganja, at the time of the accident and the owner had thereby violated the terms and conditions of the insurance policy. However, during his cross-examination,

he admitted that the offending vehicle was duly covered by a valid insurance policy at the time of the accident, including the risk of the driver.

11. Upon consideration of the evidence and materials on record, the learned Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the truck bearing registration No. NL-05-D-3869. The learned Tribunal also recorded that the offending vehicle was insured with the appellant-insurance company at the relevant time. Accordingly, the learned Tribunal held that the claimants were entitled to compensation and directed the appellant-insurance company to satisfy the award of Rs. 10,52,000/- along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

12. Admittedly, there is no dispute with regard to the factum of the accident, the involvement of the truck bearing registration No. NL-05-D-3869, the death of Rahul Ali as a consequence of the accident and the fact that the offending vehicle was insured with the appellant-insurance company at the relevant time. The finding of the learned Tribunal regarding the rash and negligent driving of the driver of the offending vehicle is supported by the oral evidence of the claimants as well as the Accident Information Report and the FIR. The said finding does not call for interference.

13. As regards the contention of the appellant-insurance company regarding contributory negligence on the part of the deceased, it is noticed that the appellant has placed reliance upon General Diary Entry No. 198 dated 09.06.2011 of Samaguri Police Station, contending that the accident occurred due to a head-on collision between the two vehicles. However, the mere fact that the accident involved a collision between two vehicles would not establish contributory negligence on the part of the deceased. The appellant-insurance

company has not brought on record any cogent evidence to establish that the deceased was also driving his vehicle in a rash or negligent manner or that his conduct had contributed to the occurrence of the accident. In the absence of any such evidence, the contention raised by the appellant-insurance company regarding contributory negligence cannot be accepted. Accordingly, the finding of the learned Tribunal on the issue of negligence calls for no interference.

14. The next issue which arises for consideration is with regard to the liability of the appellant-insurance company in view of its contention that the offending vehicle was carrying contraband goods, namely, Ganja, at the time of the accident, in violation of the terms and conditions of the insurance policy. In this regard, it is noticed that the appellant-insurance company has relied upon General Diary Entry Nos. 198 and 209 dated 09.06.2011 of Samaguri Police Station and the evidence of DW-1 to contend that the owner of the offending vehicle had permitted the vehicle to be used for carrying illegal goods. The appellant-insurance company has also exhibited the insurance policy as Exhibit-A to establish the contract of insurance.

15. From the materials available on record, particularly the evidence of DW-1 and the police records relied upon by the appellant-insurance company, the contention regarding the use of the offending vehicle for carrying contraband goods cannot be brushed aside. The same indicates a violation attributable to the owner of the offending vehicle. However, the fact remains that the insurance coverage of the offending vehicle at the relevant time is not disputed. The dispute essentially relates to the breach of the terms and conditions of the insurance policy and the consequential liability of the insurer vis-à-vis the owner of the offending vehicle. In such circumstances, the interest of the third-party claimants ought not to be prejudiced on account of the dispute between the

insurer and the insured.

16. In this regard, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Shri Nanjappan & Ors.**, reported in **(2004) 13 SCC 224**, wherein the Hon'ble Supreme Court, while considering the liability of the insurer in the event of breach of the terms and conditions of the insurance policy, held that the insurer may be directed to satisfy the award in favour of the claimants in the first instance, with liberty to recover the amount so paid from the owner of the offending vehicle. The Hon'ble Supreme Court further clarified that for the purpose of such recovery, the insurer would not be required to institute a separate suit and may initiate appropriate proceedings before the executing court as if the dispute between the insurer and the insured had been decided in favour of the insurer.

17. The aforesaid principle has also been reiterated by the Hon'ble Supreme Court in **Akula Narayana** (supra), wherein it has been held that where the contract of insurance is not disputed, even in the event of breach of the conditions of the insurance policy, the insurer may be directed to satisfy the award and thereafter recover the amount so paid from the owner of the offending vehicle.

18. In the present case also, having regard to the fact that the offending vehicle was duly insured with the appellant-insurance company at the relevant time and the claimants are third parties to the contract of insurance, this Court is of the view that the appellant-insurance company cannot be absolved of its obligation to satisfy the award vis-à-vis the claimants. However, having regard to the materials indicating violation of the terms and conditions of the insurance policy on the part of the owner of the offending vehicle, the appellant-insurance company shall be entitled to recover the amount paid by it towards satisfaction

of the award from respondent No. 6, the owner of the offending vehicle, in accordance with law. Accordingly, the appellant-insurance company shall first satisfy the entire compensation payable to the claimants and shall thereafter be at liberty to recover the amount so paid from respondent No. 6 in terms of the principle laid down by the Hon'ble Supreme Court in **Nanjappan** (supra).

19. The next question which arises for consideration is with regard to the quantum of compensation awarded by the learned Tribunal. It is noticed that the learned Tribunal assessed the monthly income of the deceased at Rs. 6,000/- in the absence of satisfactory documentary evidence to establish the claimed monthly income of Rs. 9,500/-. The learned Tribunal, however, while computing the compensation, added 50% towards future prospects by relying upon the judgment of the Hon'ble Supreme Court in **Rajesh & Ors. v. Rajbir Singh & Ors.**, reported in **(2013) ACJ 1403**. The learned Tribunal thereafter deducted 50% of the income towards the personal and living expenses of the deceased, the deceased being a bachelor, and applied the multiplier of 18, having regard to his age. However, the computation of compensation requires reconsideration in the light of the subsequent judgment of the Hon'ble Supreme Court in **Pranay Sethi** *(supra)*.

20. In **Pranay Sethi** (supra), the Hon'ble Supreme Court has laid down the principles governing the addition towards future prospects and the determination of compensation under the conventional heads. It has been held that in the case of a deceased who was below the age of 40 years and was self-employed or was receiving a fixed salary, an addition of 40% of the established income is required to be made towards future prospects. The Hon'ble Supreme Court has also held that the deduction towards personal and living expenses and the selection of multiplier shall be guided by the principles laid down in

Sarla Verma v. Delhi Transport Corporation, reported in **(2009) 6 SCC 121**. Further, the amounts under the conventional heads of loss of estate, consortium and funeral expenses have been fixed at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively, subject to enhancement at the rate of 10% in every three years.

21. The relevant conclusions recorded by the Hon'ble Supreme Court in **Pranay Sethi** (supra) are reproduced hereinbelow:

> *"59. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1. The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*
>
> *59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.*
>
> *59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read*

with paragraph 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

22. In the present case, it is not in dispute that the deceased was aged about 22 years at the time of the accident. The learned Tribunal, upon consideration of the evidence of PW-2, who was the owner of the Tata DI vehicle and the employer of the deceased, assessed the monthly income of the deceased at Rs. 6,000/-, as the claimed income of Rs. 9,500/- could not be satisfactorily established by documentary evidence. The said assessment of monthly income does not call for interference. However, since the deceased was below the age of 40 years, an addition of 40% towards future prospects is required to be made in terms of the law laid down in **Pranay Sethi** (supra). Accordingly, the monthly income of the deceased, after adding 40% towards future prospects, would come to Rs. 8,400/- (Rupees eight thousand four hundred) only.

23. It is further noticed that the deceased was a bachelor at the time of the accident. Therefore, in terms of the principles laid down in **Sarla Verma** (supra), 50% of his income is required to be deducted towards his personal and living expenses. Accordingly, after deducting 50% from the monthly income of Rs. 8,400/-, the monthly contribution towards the family would come to Rs. 4,200/- (Rupees four thousand two hundred) only. The annual contribution would, therefore, be Rs. 50,400/- (Rupees fifty thousand four hundred) only. Having regard to the age of the deceased, the appropriate multiplier would be 18.

24. Accordingly, the loss of dependency is calculated as follows:

Particulars	**Amount**
Monthly income of the deceased	Rs. 6,000/-
Addition towards future prospects @ 40%	Rs. 2,400/-
Total monthly income	Rs. 8,400/-
Deduction towards personal and living expenses (50%)	Rs. 4,200/-
Monthly contribution to the family	Rs. 4,200/-
Annual contribution	Rs. 4,200 × 12 = Rs. 50,400/-
Multiplier	18
Loss of dependency	**Rs. 9,07,200/-**

25. Apart from the loss of dependency, the claimants are also entitled to compensation under the conventional heads. Accordingly, a sum of Rs. 15,000/- is awarded towards funeral expenses, Rs. 15,000/- towards loss of estate and Rs. 40,000/- towards loss of consortium. Thus, the total compensation payable to the claimants is calculated as follows:

Sl. No.	**Heads of compensation**	**Amount**
1.	Loss of dependency	Rs. 9,07,200/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-

4.	Loss of consortium	Rs. 40,000/-
Total		**Rs. 9,77,200/-**

26. Thus, the total compensation payable to the claimants/respondent Nos. 1 to 5 is determined at Rs. 9,77,200/- (Rupees nine lakhs seventy-seven thousand two hundred) only, instead of Rs. 10,52,000/- (Rupees ten lakhs fifty-two thousand) only, as awarded by the learned Tribunal. The aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of the claim petition, i.e. 26.08.2011, till realization, as directed by the learned Tribunal.

27. In view of the foregoing discussion, the appellant-insurance company shall be liable to satisfy the aforesaid compensation amount of Rs. 9,77,200/- (Rupees nine lakhs seventy-seven thousand two hundred) only, along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization. However, in view of the breach of the terms and conditions of the insurance policy attributable to the owner of the offending vehicle, the appellant-insurance company shall be at liberty to recover the entire amount so paid from respondent No. 6, the owner of the offending vehicle, in accordance with law and the principle laid down by the Hon'ble Supreme Court in **Nanjappan** (supra).

28. It is further noticed that, pursuant to the order dated 15.07.2019, passed in I.A.(Civil) No. 2281/2019, 50% of the awarded amount has already been deposited by the appellant-insurance company before the Registry of this Court. The said amount, together with the interest accrued thereon, shall be released in favour of the claimants/respondent Nos. 1 to 5 forthwith, upon proper verification and identification by the learned counsel representing them.

29. The appellant-insurance company shall deposit the remaining 50% of the re-determined compensation amount, together with proportionate interest, before the Registry of this Court within a period of 4 (four) weeks from today. The statutory deposit of Rs. 25,000/- (Rupees twenty-five thousand) made by the appellant-insurance company before the Registry of this Court shall be adjusted against the amount payable by it. Upon such deposit, the Registry shall release the amount in favour of the claimants/respondent Nos. 1 to 5, upon proper verification and identification by their engaged counsel.

30. For the purpose of recovery of the amount paid by the appellant-insurance company from respondent No. 6, the owner of the offending vehicle, the appellant shall not be required to institute a separate suit and shall be at liberty to avail the remedy available before the executing court in accordance with the principles laid down by the Hon'ble Supreme Court in **Nanjappan** (supra).

31. Accordingly, the impugned judgment and award dated 20.08.2016, passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, Guwahati, in MAC Case No. 1456/2011, stands modified to the extent indicated hereinabove. The appeal stands partly allowed and disposed of.

32. The Registry shall send back the records to the learned Tribunal forthwith.

JUDGE

Comparing Assistant