

GAHC010019222014



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

Case No. : MACApp./301/2014

NEW INDIA ASSURANCE CO. LTD.

VERSUS

MARAMI DAS and 3 ORS.
W/O LATE DHIREN DAS

2:MAHENDRA DAS @ KALITA

ASSAM.

3:MD.IMTAZ HUSSAIN

4:MADAN CH. SARKAR

Advocate for the Petitioner : MR.C SHARMA

Advocate for the Respondent : MRS. S KHATANIAR (R-1,2)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant: Mr. S. Dutta,
Senior Advocate.
For the Respondents: Mrs. C. Das,
Advocate.

Date of Hearing: 14.03.2023.

Date of Judgment: 16.03.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Dutta, learned senior counsel representing the appellant as well as Mrs. C. Das, learned counsel appearing for the respondents.

- 2.** This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 16.07.2013 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup in MAC Case No.341/2006.
- 3.** On 20.11.2005, Lt. Nitai Das was travelling in a Pick-Up Truck bearing Registration No.AS-01-T-0179. The vehicle met with an accident and Nitai Das sustained injuries. He succumbed to his injuries on 14.01.2006.
- 4.** The Tribunal held that the deceased was a gratuitous passenger and

the concerned insurance policy did not cover such passenger. In spite of that, the Tribunal directed the Insurance Company to pay the compensation with liberty to recover the same from the owner of the vehicle.

5. The learned senior counsel Mr. S. Dutta has relied upon a decision of the Supreme Court that was delivered in *National Insurance Co. Ltd. v. Bommithi Subbhayamma*, (2005) 12 SCC 243. Paragraphs 7 and 11 of the said judgment are quoted as under:

“7. In *Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493 : (2002) 9 Scale 172] this Court while overruling *Satpal Singh* [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] has clearly held that the Insurance Company is not liable for payment of any compensation for death of a gratuitous passenger travelling in a goods vehicle.

11. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside, accordingly. This appeal is allowed. We, however, make it clear that the claimant respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicles Accidents Claims Tribunal from the owner of the vehicle. No costs.”

6. Mr. Dutta submits that the impugned judgment deserves to be modified to the extent that the direction given by the Tribunal to go for pay recovery of the compensation should be set aside.

7. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

8. In view of the law laid down in *National Insurance Co. Ltd. v. Bommithi Subbhayamma* (supra), it can be said that since the Insurance Company is not liable to pay compensation for the death of gratuitous

passengers travelling in goods vehicles, the Tribunal committed error by directing the Insurance Company to pay the compensation and to go for recovery of the same from the owner of the vehicle.

9. Therefore, the appeal is allowed. The impugned judgment stands modified accordingly. The Insurance Company is not liable to pay compensation to the claimant. The claimant is at liberty to recover the compensation granted in their favour by the Tribunal from the owner of the vehicle.

10. The appeal stands disposed of.

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JUDGE

Comparing Assistant