

GAHC010060342021



2026:GAU-AS:9907

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

**Case No. : MFA/86/2021**

NASIMA KHATUN  
W/O- LATE HARAJ ALI, R/O- VILL.- KHARBALLI, P.O. AND P.S.  
KALGACHIA, DIST.- BARPETA, ASSAM, PIN- 781319.

2: JAHURA KHATUN  
W/O- LATE HARAJ ALI  
R/O- VILL.- KHARBALLI  
P.O. AND P.S. KALGACHIA  
DIST.- BARPETA  
ASSAM  
PIN- 781319.

3: HAFIJA KHATUN  
REP. BY MOTHER  
APPLICANT NO. 1  
R/O- VILL.- KHARBALLI  
P.O. AND P.S. KALGACHIA  
DIST.- BARPETA  
ASSAM  
PIN- 781319.

4: RAKIBUL ISLAM  
REP. BY MOTHER  
APPLICANT NO. 1  
R/O- VILL.- KHARBALLI  
P.O. AND P.S. KALGACHIA  
DIST.- BARPETA  
ASSAM

5: HAMID ALI @ MD. ABDUL HANIF  
S/O- LATE KASER ALI  
(FATHER OF THE DECEASED)  
R/O- VILL.- KHARBALLI  
P.O. AND P.S. KALGACHIA

DIST.- BARPETA  
ASSAM  
PIN- 781319

VERSUS

THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. LTD.  
BONGAIGAON (ASSAM) BRANCH OFFICE BARPETA ROAD, PIN- 781315.

2:RAFIQUL MANDAL  
S/O- LATE MAKADDAS ALI MANDAL  
R/O- VILL. AND P.O. KALGACHIA  
DIST.- BARPETA  
ASSAM  
PIN- 781319

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the Appellants : Mr. M. H. Rajbarbhuiyan, Advocate

For the Respondents : Mr. S. Dutta, Advocate  
(for respondent No. 1)

Date of Hearing : **14.07.2026**

Date of Judgment : **20.07.2026**

**JUDGMENT & ORDER**

**1.** Heard Mr. M. H. Rajbarbhuiyan, the learned counsel for the appellants. Also heard Mr. S. Dutta, the learned counsel for the respondent No. 1.

**2.** This appeal, under Section 30 of the Employees' Compensation Act, 1923, has been filed by the appellants impugning the judgment and award dated 08.10.2020, passed by the learned Commissioner, Workmen's

Compensation, Barpeta, in W.C. Case No. 328/2015, whereby the present appellants were awarded compensation amount of Rs.5,81,280/-(Rupees Five Lakhs Eighty One Thousand Two Hundred Eighty) only on account of death of the husband of the appellant No. 1, namely, late Haraj Ali in a vehicular accident during the course of his employment under the respondent No. 2 (opposite party No. 1 before the Commissioner, Workmen's Compensation, Barpeta).

**3.** The facts relevant for consideration of this appeal, in brief, are that the husband of the present appellant No. 1, namely, deceased Haraj Ali, was employed as a driver by the present respondent No. 2, namely Rafiquel Mandal to drive his vehicle bearing Registration No. AS-15-C-3135 (Tata Cruiser) at a monthly salary of Rs.12,000/-.

**4.** On 23.06.2013, at about 9:00 AM when during the course of his employment, late Haraj Ali was driving the aforesaid vehicle and proceeding from Kalgachia towards Guwahati, the said vehicle met with an accident in front of Sarbhog Naboday School at Sarbhog under Sarbhog Police Station. As a result of the said accident, the husband of the appellant No. 1 sustained grievous injury and he was immediately shifted to Hayat Hospital at Guwahati for treatment. However, said Haraj Ali succumbed to his injuries on 26.03.2013.

**5.** Thereafter, the present appellants approached the Commissioner, Workmen's Compensation, Barpeta by filing an application under the provisions of Employees' Compensation Act 1923, seeking compensation for death of Haraj Ali in course of his employment as a driver of opposite party No. 1. The owner of the vehicle, namely, Rafiquel Mandal (opposite party No. 1) submitted written statement in the aforesaid proceeding and admitted the fact that the husband of the appellant No. 1, namely, Haraj Ali, was appointed as a driver by him to drive

his vehicle bearing Registration No. AS-15-C-3135 (Tata Cruiser) and also admitted that he used to pay a salary of Rs.8,000/- per month to the deceased Haraj Ali. It was also contended that the offending vehicle was insured with the present respondent No. 1 i.e., Oriental Insurance Company and the validity of insurance policy was up to the midnight of 12.05.2014.

**6.** In support of their contention, the present appellant No. 1 examined herself as PW-1 and also exhibited eleven documents as Exhibit- 1 to Exhibit-11. The Insurance Company and the owner of the offending vehicle did not adduce any evidence in their defence. Ultimately, the Commissioner, Workmen's Compensation, Barpeta, by the judgment, which has been impugned in this appeal, awarded the amount of compensation, in the manner, as already described in the foregoing paragraphs.

**7.** On filing of this appeal, at the time of admitting it, the Co-ordinate Bench of this Court by its order dated 05.04.2021 had formulated following substantial question of law: -

*“1) Whether the learned Commissioner acted lawfully and rightly in fixing the monthly salary of the deceased driver at Rs.5,500/-, whereas, as per the evidence on record/ salary certificate, the income of the deceased was Rs.12,000/-?”*

**8.** Mr. M. H. Rajbarbhuiyan, the learned counsel for the appellants submits that though the claimant while deposing as PW-1 exhibited the salary certificate issued by the owner of the offending vehicle as Exhibit-4, however, in the impugned judgment, at page No. 5 of the same, it was observed by the learned Commissioner, Workmen's Compensation, Barpeta that claimants/petitioners

have failed to furnish any salary certificate in support of their claim for monthly salary.

**9.** The learned counsel for the appellants submits that the aforesaid observations made by the learned Commissioner, Workmen's Compensation, Barpeta in the impugned judgment is a perverse observation as apparently the salary certificate was exhibited as Exhibit-4 by the claimant (PW-1). He further submits that in his written statement submitted by the owner of the offending vehicle, before the learned Commissioner, Workmen's Compensation, Barpeta, in W.C. Case No. 328/2015, it has been categorically stated by the owner that he used to pay a monthly wage of Rs.8,000/- to the deceased driver, Haraj Ali.

**10.** The learned counsel for the appellants further submits that mention of Rs.8,000/- instead of Rs.12,000/- in the written statement might be due to some typographical mistake as the Exhibit-4 i.e., salary certificate which was also issued by the owner of the offending vehicle categorically mentions that the salary of the deceased at the time of his death was Rs.12,000/- per month. He, therefore, submits that since perversity in the judgment of the Workmen's Compensation, Barpeta while assessing the monthly income of the deceased driver is apparent from the judgment itself, same is liable to be modified and the compensation to be awarded to appellants should be re-assessed after taking monthly income of the deceased Haraj Ali at Rs.12,000/-.

**11.** On the other hand, Mr. S. Dutta, learned counsel for the Insurance Company has submitted that though there appears to be an apparent erroneous observation made by the learned Commissioner, Workmen's Compensation, Barpeta in the impugned judgment that no salary certificate was produced by the claimant as same was exhibited as Exhibit-4 by the PW-1, however, he

submits that the present respondent No. 1, i.e., Oriental Insurance Company Limited was deprived of opportunity of cross-examining the owner as he was never examined by the claimant and as such the Exhibit-4 should not be taken into consideration. He further submits that Exhibit-4 was issued by the owner of the offending vehicle and as such to prove the said document, he ought to have been examined as a witness by the claimants.

**12.** He further submits that in the written statement, the owner of the offending vehicle had admitted the monthly salary of the deceased to be only Rs.8,000/- and not Rs.12,000/- and as such, the Exhibit-4 may not be taken into consideration.

**13.** I have considered the submissions made by learned counsel for both sides. I have also gone through the materials available on record including the original records of W.C. Case No. 328/2015, which was requisitioned from the Office of learned Commissioner, Workmen's Compensation, Barpeta, in connection with the instant appeal.

**14.** The only substantial question of law to be adjudicated in this appeal is whether the Commissioner, Workmen's Compensation, Barpeta committed perversity by holding, in the impugned judgment, that the claimants failed to furnish any salary certificate in support of their claim of monthly salary of the deceased Haraj Ali and whether it committed perversity by assessing the monthly income of the deceased at Rs.5,500/-.

**15.** A decision may be regarded as perverse if no reasonable person would have arrived at the same on the basis of evidence which is available on record. A decision would necessarily be perverse if it is based on no evidence at all. It is

also perverse when it is based on some irrelevant materials. It is also perverse when while arriving at the decision, vital evidence has been ignored.

**16.** The Apex Court, has observed in the case of "**Associate Builders -vs- DDA**" reported in **(2015) 3 SCC 49** as follows: -

*32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)*

*"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*

*In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)*

*"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

**17.** Thus, it is the settled legal proposition that if a finding of fact is arrived at by ignoring or excluding the relevant materials or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.

**18.** In the instant case, it is apparent that in the written statement filed by the owner of the offending vehicle before the Commissioner, Workmen's Compensation, Barpeta, in W.C. Case No. 328/2015, it was categorically stated by the owner of the offending vehicle that the deceased was engaged as driver of his vehicle bearing Registration No. AS-15-C-3135 (Tata Cruiser) at a monthly salary of Rs.8,000/-. It also appears that the claimant No. 1 while deposing as PW-1 has also exhibited the salary certificate issued by the owner of the offending vehicle as Exhibit-4. Though, there is a discrepancy in the amount of monthly salary of the deceased mentioned in the written statement of the owner of the offending vehicle as well as in the Exhibit-4, in as much as, in the former it was stated to be Rs.8,000/- per month, whereas, in the later same is stated to be Rs.12,000/- per month, however, it cannot be said that there was no material on record as regards the monthly salary of the deceased Haraj Ali. As such, the observation made by the Commissioner, Workmen's Compensation, Barpeta in the impugned judgment to the effect that "*the claimants/petitioners have failed to furnish any salary certificate in support of their claim of monthly salary*" is a clear case of arriving at a finding of fact by ignoring or excluding relevant materials, which amounts to an act of perversity.

**19.** Though, the owner of the offending vehicle was not examined as a witness and Exhibit-4 was not exhibited by him as a witness, which may be a good reason for discarding the Exhibit-4, however, there is no dispute that in his

written statement, the owner of the offending vehicle has categorically stated that the deceased was engaged as driver of his vehicle bearing Registration No. AS-15-C-3135 (Tata Cruiser) at a monthly salary of Rs.8,000/-.

**20.** It is a settled proposition of law that facts admitted need not be proved. As such, the Commissioner, Workmen's Compensation, Barpeta ought to have taken into consideration the clear admission by the owner of the offending vehicle as regards the fact of payment of Rs.8,000/- as salary to the deceased Haraj Ali. Moreso, when in their written statement, the Insurance Company though had denied the fact that the monthly salary of deceased was Rs.12,000/-, however, there is no such denial regarding the averment made by the owner of the offending vehicle, in his written statement, that the monthly salary of deceased Haraj Ali was Rs.8,000/-.

**21.** The Commissioner, Workmen's Compensation, Barpeta may not have been faulted with on relying on the minimum rate of wages fixed by the Government of Assam for the skilled motor transport workers, had there been no material on record regarding the monthly salary of the deceased Haraj Ali. However, in the event of clear admission by the owner of the offending vehicle in his written statement regarding monthly salary of the deceased Haraj Ali, same could not have been ignored by the Commissioner, Workmen's Compensation, Barpeta while assessing the monthly income of the deceased Haraj Ali.

**22.** In view of the above discussions, this Court is of considered opinion that the Commissioner, Workmen's Compensation, Barpeta committed perversity by ignoring relevant material on record while assessing the monthly income of the deceased Haraj Ali. The substantial question of law formulated in this appeal is

accordingly answered.

**23.** In view of the above discussions, the monthly salary of the deceased Haraj Ali, at the time of his death, is taken to be Rs.8,000/-, as averred by the owner of the offending vehicle, in his written statement. The compensation awarded to the claimants by the Commissioner, Workmen's Compensation, Barpeta is accordingly re-calculated as follows: -

(i)  $50\% \text{ of Rs.8,000/-} \times 209.92 = \text{Rs.8,39,680/-}$

(ii) Addition of Rs.5,000/- as funeral expenses to the above amount under Section 4(4) of the Employees' Compensation Act, 1923 (Rs.8,39,680/- + Rs.4,000/-) = Rs.8,43,680/-

(iii) Final compensation to be paid to the appellants by the respondent/Insurance Company= **Rs.8,43,680/-**.

**24.** In view of above discussions, the impugned judgment is modified to the extent that the appellants are entitled to get a compensation amount of Rs.8,43,680/- along with an interest @ 9% per annum after one month from the date of passing of the impugned judgment till realization, on account of death of late Haraj Ali, in the accident arising out of and in the course of his employment.

**25.** The respondent/Insurance Company, namely, Oriental Insurance Company Limited, Bongaigaon Branch is hereby directed to deposit the said amount before the office of the Commissioner, Workmen's Compensation, Barpeta within a period of four weeks from the date of this judgment. Upon such deposit, the Commissioner, Workmen's Compensation, Barpeta shall disburse the same to the appellants/claimants after apportioning the same in

the proportion (in percentage) as indicated in the last part of the impugned judgment.

**26.** This appeal is accordingly allowed.

**27.** Send back the records of W.C. Case No. 328/2015 along with a copy of this judgment to the Commissioner, Workmen's Compensation, Barpeta for doing the needful.

**Comparing Assistant**

**Abhishek  
Prem**

Digitally signed by  
Abhishek Prem  
Date: 2026.07.20  
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**JUDGE**