GAHC010002902015

2026:GAU-AS:16324

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

Case No. : MACApp./976/2018

THE ORIENTAL INSURANCE COMPANY LTD
(A CENTRAL GOVT. UNDERTAKING) HAVING ITS REGIONAL OFFICE AT GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI 781007 REPRESENTED BY THE REGIONAL MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI 781005

VERSUS

MOFIDA AHMED @ MINU AHMED and 2 ORS
W/O LATE ZAHIDUL ISLAM, SANTINAGAR OF GOALPARA TOWN, WARD NO. 17, P.O. BALADMARI, P.S. and DIST. GOALPARA ASSAM

2:JADAV CH. ROY
S/O LATE KANAI RAY
VILL. CHAKAPARA
P.S. and DIST. BONGAIGAON ASSAM

3:SAYED ALI
S/O MAHAR ALI
VILL. CHOTOPARA
P.O. and P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM

Advocate for the Petitioner : MS. R D MOZUMDAR, MRS. B BORAH

Linked Case : MACApp./104/2015

THE ORIENTAL INSURANCE COMPANY LTD
A CENTRAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT GUWAHATI
G.S. ROAD
ULUBARI

GUWAHATI 781007 REPRESENTED BY THE REGIONAL MANAGER
GAUHATI REGIONAL OFFICE
ULUBARI
GUWAHATI 781005

VERSUS

KALYANI DAS and 2 ORS
W/O LATE JYOTISH DAS
BAPUJI NAGAR OF GOALPARA TOWN
WARD NO. 17
P.O. BALADMARI
P.S. and DIST. GOALPARA ASSAM

2:JADAV CH. ROY
S/O LATE KANAI RAY
VILL. CHAKAPARA
P.S. and DIST. BONGAIGAON ASSAM DRIVER

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

For the appellants : Ms. R.D. Mozumdar, Adv

For the Respondents : Mr. H Das, Adv

Date on which judgment was reserved : 29.09.2026

Date of pronouncement of judgment : 06.11.2026

Whether the pronouncement is of the operative part of the judgment? : N.A

Whether the judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

1. These two appeals are taken up together, as both challenge the common judgment and award dated

21.11.2014, passed in MAC Case No. 51/2011 and MAC Case No. 52/2011. Both the MAC cases are offshoots of a motor vehicular accident, wherein the husbands of both the claimants in the respective cases died.

2. The appellant's principal challenge is to the finding of negligence and liability. It is contended that the deceased themselves were negligent, that they violated traffic rules, that the accident occurred due to their own negligence, and, alternatively, that there was contributory negligence on the part of the deceased to the extent of 50 percent. The appellant has also questioned the quantum of compensation awarded by the learned trial court.

3. The facts giving rise to the claim are not in serious dispute.

4. On 12.04.2010, at about 6 p.m., Jahedul Islam, who was working as Forester-I in the Forest Department, and Jyotish Das, Forester-II, were on duty at Budhipara/Agiya Beat Office. At that time, they noticed the offending truck bearing registration number AS-25/6049 coming from Bolbola side, loaded with sand.

5. Suspecting the vehicle was carrying forest produce, they signaled the vehicle to stop. The driver did not stop the vehicle, and when both the deceased attempted to pursue and stop the truck, the truck knocked them down.

Both of them sustained injuries and died.

6. An FIR was lodged by Dalim Das, Range Forest Officer, Goalpara Range, which was registered as Goalpara PS case No.232/2010, under section 304/427 IPC, and upon investigation, a charge-sheet was submitted against the driver of the offending vehicle for rash and negligent driving, though subsequently, the driver was acquitted for want of evidence.

7. Sayed Ali owned the offending vehicle, which was insured with the Insurance Company under Policy No.322300/31/2010/4484, valid on the date of the accident. The deceased, Jeherul Islam, was stated to be aged about 47 years and was serving in the Forest Department. The claimants are the widow Mofida Ahmed @ Minu Ahmed, his son Md. Rohan Afridi, his daughter Rosleen Islam, and his mother Jahanara Begum.

8. The other claimants are Kalyani Das, wife of the deceased Jyotish Das, and the deceased's sons, Nilam Kr. Das and Bikram Das and mother Dhaneswari Das. The victim was serving in the Forest Department and his age was 55 years.

9. The Insurance Company, in its written statement, denied liability and, inter alia, pleaded that the deceased violated traffic rules and that the accident occurred due to their own negligence. It was further pleaded that there was suppression of material facts and that, in any event, the

deceased had contributed to the accident.

10. In the alternative, the appellant pleaded contributory negligence to the extent of 50%. These pleas were specifically taken as grounds to avoid or reduce the insurer's liability.

However, the Insurance Company led no evidence. Therefore, the difficulty in accepting the aforesaid defense is that the allegations made in the written statements were not supported by any evidence.

11. There is no evidence on record establishing that the deceased had violated any particular traffic rule, that they had acted negligently in a manner which contributed to the occurrence, or that their negligence was either the sole cause or a contributing cause of the accident. The plea of 50% contributory negligence in particular remains a bare assertion in the written statement.

12. It is true that the claimants were not eyewitnesses to the actual impact. PW-2 Binoy Kr. Nath, who claimed to have witnessed the occurrence, had admitted in his cross-examination that he was at a distance when he saw the Forest Officer signaling the vehicle. The learned Tribunal therefore did not place implicit reliance upon his evidence.

13. Though such evidence may not conclusively establish the manner of impact, it also does not establish the

affirmative defense of contributory negligence pleaded by the Insurance Company.

14. The burden to establish specific plea of contributory negligence lies upon the party asserting it. A plea in the written statement is not evidence.

In the present case, apart from making the allegation, the appellant has not brought on record any material from which it can be concluded that the deceased had acted negligently or that their conduct materially contributed to the accident.

15. A reference to the police case, violation of traffic rules, or the observation made in the criminal case against the driver, or his acquittal, cannot, without evidence proved before the Tribunal, be a sufficient ground to apportion liability or conclude that the deceased contributed to the accident.

16. The materials on record, therefore, do not justify interference with the finding of the learned Tribunal fastening liability upon the offending vehicle, consequently upon the appellant insurance Company.

17. Accordingly, the challenge to the finding of negligence and liability fails. The appeals are dismissed.

18. The appellant Insurance Company shall deposit the compensation, after adjusting the amount already deposited or paid pursuant to the impugned order, together with interest, before the learned Tribunal in terms of the

impugned judgment.

19. The direction of the learned Tribunal regarding disbursement and protection of compensation shall insofar remain operative subject to, however, the change in circumstance of attainment of majority by the minors in the meantime or death of any of the claimants.

20. Registry to return the statutory deposit to the appellants. The TCR be returned back forthwith.

JUDGE

Comparing Assistant