

GAHC010053842021



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

Case No. : MACApp./94/2021

ASSAM POWER DISTRIBUTION COMPANY LTD.
REP. BY C.G.M. (HRA), BIJULEE BHAWAN, GUWAHATI-1, ASSAM.

VERSUS

PRAFULLA BRAHMA AND 3 ORS.
S/O- LATE MODARAM BRAHMA, R/O- VILL.- PUB KACHUKATA,
(SINGIMARI) BARALIAPAR, P.S. TAMULPUR, DIST.- NALBARI, ASSAM, PIN-
781367.

2:GAJEN DAS

3:MAHESH KALILTA

PIN- 781367. (DRIVER OF THE VEHICLE NO. AS-25/A-5454).

4:NEW INDIA ASSURANCE CO. LTD.

REP. BY DIVISIONAL MANAGER
DIVISIONAL OFFICE

ULUBARI
G.S. ROAD
GUWAHATI-07
ASSAM. (INSURER OF THE VEHICLE NO. AS-25/A-5454)

Advocate for the Petitioner : MR. A C BAISHYA
Advocate for the Respondent : MR D DEKA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. N. Deka,
Advocate.
For the Respondents : Mr. H. Das &
Mr. R. Goswami,
Advocates.
Date of Hearing : 15.06.2023.
Date of Judgment : 27.07.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. N. Deka, learned counsel representing the appellant as well as Mr. H. Das and Mr. R. Goswami learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 19.11.2020 passed by the learned Member, Motor Accident Claims Tribunal No.1, Kamrup(M) at Guwahati in MAC Case No.523/2007 (968/99).

3. On 08.08.1999, a bus bearing Registration No.AS- 25/A-5454 was coming from Latibari side towards Guwahati carrying huge quantity of banana on its roof. The said load of the bus hit overhead live electric wires. Many passengers of the bus got electrocuted and some of them

died. The claimant Prafulla Brahma was severely injured.

4. In this case, Assam Power Distribution Company Limited was not a party. Therefore, on 30.09.2020, Assam Power Distribution Company Limited was made a party respondent in the case. The order dated 30.09.2020, reads as under:

“30-09-2020

Present Mahmud Ahmed

The claimant and O.P. No.3 is present. Seen Petition No.1682 filed by O.P. No.3. Heard the learned counsels. Petition is allowed.

Claimant has filed another petition vide No.1855 for amendment of the claim petition. Heard and allowed to make APDCL as O.P. No.4.

Perused the case record and found that the claimant has already taken steps against O.P. No.4. Non appearance till date. And Hence to proceed ex parte against O.P. No.4.

Fixing 27.10.2020 for DW/ Argument.

Member,
MACT No.1,
Guwahati”

5. The judgment was delivered on 19.11.2020.

6. Mr. Deka submits that no notice was given to Assam Power Distribution Company Limited and without hearing it, the Tribunal directed them to pay compensation. According to Mr. Deka, this act on the part of the Tribunal is against the values of natural justice.

7. Mr. Goswami submits that in the said accident, several persons died and injured and all of them filed claim cases wherein Assam Power Distribution Company Limited was made party. According to Mr. Goswami, since the Assam Power Distribution Company Limited has the knowledge about other cases, it should have the knowledge of the present case also.

8. I have considered the submissions made by the learned counsels of both sides.

9. I am in agreement with Mr. Deka that no notice was actually issued to Assam Power Distribution Company Limited and without hearing it, the Tribunal directed them to pay compensation. This Court is of the opinion that this act on the part of the Tribunal is against the values of the natural justice.

10. Therefore, the impugned judgment which directed Assam Power Distribution Company Limited to pay compensation without hearing it, is bad in law and is not sustainable.

11. Therefore, the appeal is allowed. The impugned judgment is set aside. The case is remanded to the Motor Accident Claims Tribunal No.1, Kamrup(M), Guwahati for passing a judgment afresh after hearing Assam Power Distribution Company Limited.

The appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant