

GAHC010022232022



2026:GAU-AS:13867

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

Case No. : MACApp./75/2022

RELIANCE GENERAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT 19, RELIANCE CENTRE, WALCHAND
HIRACHAND MARG, BALLARD ESTATE, MUMBAI 400001 AND ONE OF ITS
BRANCH OFFICE AT PRAG PLAZA, 5TH FLOOR, BHANGAGARH,
GUWAHATI 781005

VERSUS

BEGUM JYOTSHNA HOQUE AND 5 ORS. B
W/O MD.SHAH ALAM HAQUE (MOTHER OF THE DECEASED)
RESIDENT OF DERGAON TOWN, WARD NO. IV. PO DERGAON, PS
DERGAON, DIST GOLAGHAT, ASSAM, 785703

2:MD. SHAH ALAM HOQUE
(FATHER OF THE DECEASED)
RESIDENT OF DERGAON TOWN
WARD NO. IV. PO DERGAON
PS DERGAON
DIST GOLAGHAT
ASSAM
785703

3:MD. TAUFIC ALAM HOQUE
(BROTHER OF THE DECEASED)
RESIDENT OF DERGAON TOWN
WARD NO. IV. PO DERGAON
PS DERGAON
DIST GOLAGHAT
ASSAM
785703

4:MD. FARZOL ALAM HOQUE

(BROTHER OF THE DECEASED)
RESIDENT OF DERGAON TOWN
WARD NO. IV. PO DERGAON
PS DERGAON
DIST GOLAGHAT
ASSAM
78570

Advocate for the Petitioner : MR T KALITA, MR. A KAKATI

Advocate for the Respondent : MR. M DUTTA, MR K M BORA,MR. A BHATTACHARYYA

BEFORE :

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the Appellant(s) : Mr. T. Kalita

Advocate for the Respondent(s)/ : Mr. K. Dutta for R/1-4

Cross Objectors

Date on which judgment is reserved : **15.09.2026**

Date of pronouncement of judgment : **18.09.2026**

Whether the pronouncement is of
the operative part of the judgment? : Full judgment.

Whether the full judgment has been
Pronounced? : Yes.

JUDGEMENT AND ORDER (CAV)

The present appeal under Section 173 of the Motor Vehicles Act' 1988 has been preferred by the Reliance General Insurance Company Limited challenging

the Judgment and Order dated 01.11.2021 passed by the learned MACT, Golaghat in MAC Case No. 25/2014.

2. Heard learned counsel, Mr. T. Kalita, for the appellant. Also heard Mr. M. Dutta, learned counsel for the claimant/respondents/cross objectors.

3. The facts leading to the filing of the instant appeal in brief is that the claimant/respondents Nos. 1, 2 & 3 had filed the MAC Case No. 25/2014 claiming compensation for the death of their son/brother in a motor vehicle accident on 30.09.2013 near the Universal Oil Depot on National Highway 37 under Dergaon Police Station in which the vehicle bearing registration No. NL-01/D-7377/Oil Tanker was involved.

4. It was the case of the claimant/respondents that the deceased Samadul Alam Hoque was proceeding from Dergaon Chariali towards Jorhat riding his friend's motor cycle bearing registration No. AS03/F-9108 with proper care and caution on his own side when the driver of the vehicle/Oil Tanker came from the opposite direction and knocked down the motor cycle being driven by the deceased.

5. Upon hearing the parties, the MAC Case No. 25/2014 was disposed of by the Judgment and Order dated 01.11.2021 and total compensation of Rs. 21,27,792/- was awarded to the claimant/respondents along with interest @ 6% p.a from the date of filing the claim petition till realization.

6. Being aggrieved by the impugned judgment dated 01.11.2021, the insurer/appellant has preferred the instant appeal on the ground that the learned tribunal failed to appreciate that the accident took place between two

moving vehicles coming from opposite directions and that the evidence of one Sharif Uddin Ahmed/CW-2 was recorded as an eye witness. CW-2 claimed to have seen the oil tanker vehicle coming in a rash and negligent manner and at very high speed, therefore, it was natural as a prudent man for the deceased to have taken due care and precaution to avoid collision when he had already seen the vehicle coming from a distance from the opposite direction at high speed. Learned counsel submits that from the said evidence of CW-2 it is understood that the accident was a case of head on collision between two vehicles and as such, the learned tribunal could not have settled the entire liability upon the appellant being the insurer of the oil tanker bearing No. NL-01/D-7377, but ought to have apportioned the liability between both the vehicles in the ratio of 50:50.

7. Learned counsel further submits that the learned tribunal ought to have appreciated the fact that during the cross examination of CW-2 it has come to light that there were several vehicles plying through the National Highway at the time of the accident and as such there could hardly be any room for the vehicle oil tanker to proceed on the wrong side. However, the learned tribunal did not appreciate these vital aspects. It is stated that the alleged offending vehicle being an oil tanker could not have been driven in a rash and negligent manner as it is a heavy vehicle and rather the motor cycle being a two-wheeler had the maximum probability of losing control and thereby causing the accident, but such aspect was not considered by the learned tribunal.

8. Learned counsel for the appellant submits that the deceased was also responsible for the accident as he would have seen the oil tanker coming at high speed and should have taken proper precaution and therefore, the learned

tribunal should have held that there was contributory negligence on the part of the deceased.

9. Learned counsel for the appellant has relied on the case of ***Kamlesh and Ors, Vs Attar Singh and Ors.*** reported in ***(2015) 15 SCC 364*** wherein two vehicles were involved; a Maruti car and a three-wheeler tempo. The Supreme Court held that the method and manner in which the accident took place leaves no room for doubt that both the drivers were negligent. From the evidence, it appeared that the driver of the tempo also could not remove his vehicle from the way of the Maruti car when the Maruti car was coming at excessive speed. Thus, it was held that both the drivers were clearly negligent and that it was a case of composite negligence. Learned counsel also relies on the case of ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta***, reported in ***(2006) 3 SCC 242***, wherein a passenger bus and a Maruti car were involved in an accident. The evidence of one of the passengers of the Maruti car showed that the passenger bus was coming from the opposite direction in a zig zag manner at abnormal speed. In his evidence he deposed that as a prudent man the deceased ought to have taken due care and precaution to avoid head on collision when he had already seen the bus from a long distance coming from the opposite direction. The Supreme Court held that the tribunal had rightly observed that when the vehicles had head on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. In the light of the aforementioned judgment, the learned counsel for the appellant prays that that instant appeal maybe allowed and the judgment and award dated 01.11.2021 in MAC Case No. 25/2014 may be modified as deem fit and proper.

10. After the instant appeal was filed the claimant/respondents have also filed

a cross objection being C.O. No. 30/2022. By filing the cross objection, the claimants/cross objectors have categorically stated the accident took place due to the rash and negligent driving on the part of the driver of the oil tanker bearing registration No. NL-01/D-7377 and in connection with the said accident the police have registered Dergaon PS Case No. 314/2013 and after completion of investigation, the police have submitted charge sheet against the driver of the oil tanker. By taking this Court to the evidence of Sharif Uddin Ahmed/CW-2, learned counsel submits that the CW-2 in his examination-in-chief stated, "*I had seen that one oil tanker bearing registration No. NL-01D/7377, stainless steel colored body coming from Jorhat side very rashly and negligently and in a very high speed knocked one motor cycle which was coming from Dergaon Chariali on his own side.*" In his cross examination by the insurer, the CW-1 Sharif Uddin Ahmed deposed that "*though generally oil tankers ply at a moderate speed, however, the oil tanker in question, which caused the accident was in great speed and was coming through the wrong side.*" Learned counsel submits that the evidence of CW-2 therefore has conclusively proved that it was the oil tanker which was being driven rashly and negligently and which was being driven on the wrong side and the deceased was riding on his own side. However, the insurer has not adduced any evidence to prove the negligence of the deceased.

11. Learned counsel submits that when a plea of contributory negligence is taken, evidence has to be adduced to prove the same. However, the insurer has failed to lead any evidence with regard to the said plea. It is only at the appellate stage that the insurer has raised the issue of contributory negligence for the first time.

12. The Claimants/Cross objectors have also prayed for enhancement of the compensation. One of the grounds being that the claimants had exhibited the Income Tax Return (ITR) for the year 2011-12 showing the annual income as Rs. 1,51,300/- p.a (exhibit 14) and also the ITR for the year 2012-13 showing the annual income as Rs. 1,81,700/- p.a (exhibit 15). However, the tribunal committed an error by assessing the average income of the deceased as Rs. 1,66,500/- i.e., the average of the income of two assessment years. Whereas the learned tribunal ought to have assessed the income of the deceased as per the latest ITR for the year 2012-13 which shows the annual income of the deceased as Rs. 1,81,700/-.

13. The learned MACT awarded a sum of Rs.15,000/- each under the heads of loss of estate and funeral expenses and omitted the award under filial consortium. It is the submission of the learned counsel that in terms of the principle of periodic enhancement recognized in the case of ***National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680***, the awarded amount under loss of estate and funeral expenses deserved appropriate enhancement and should have been Rs. 16,500/- under each head.

14. The learned counsel for the cross Objector/Claimant also submits that the tribunal committed an error by awarding an interest only @ 6% pa from the date of filing of the claim petition. By relying on the case of ***Supe Dei and Ors. Vs. National Insurance Co. Ltd.*** reported in ***2002(3) TAC 378*** and ***Kaushnuma Begum Vs. New India Assurance Co. Ltd.*** reported in ***(2001) 2 SCC 9*** submits that the Supreme Court in the aforementioned judgments had held that 9% interest p.a is an appropriate rate of interest in motor accident compensation cases. He therefore prays that the rate of interest may also be

enhanced from 6% to 9% p.a on the enhanced compensation, from the date of filing of the claim petition till realization. With regard to the interest on future prospects, the learned counsel for the Claimants/Cross objectors, relies on the case of ***Oriental Insurance Co. Ltd. Vs. Niru and Ors***, reported in **(2025) INSC 822** and the Judgment and Order dated 29.07.2026 passed by a coordinate bench of this Court in MAC Appeal 172/2021 wherein the judgment in the case of *Niru and Ors. (supra)* was relied upon. In these judgments it was held that interest on future prospects has to be granted.

15. In view of the submission made hereinabove and the Judgments relied upon, the learned counsel for the claimant/cross objectors prays that the instant MAC Appeal may be dismissed and the cross objection No. 30/2022 may be allowed by enhancing the compensation awarded in MAC Case No. 25/2014 thereby reassessing the income and awarding filial consortium and appropriate amount under the conventional heads and further enhance the rate of interest to 9% p.a from the date of filing of the claim petition till realization.

16. Learned counsel for the claimant Cross Objector has relied on the case of, i) ***Jiju Kuruvila and Ors. Vs. Kunjujamma Mohan and Ors.*** reported in **(2013) 9 SCC 166** and ii) ***Rashmirekha Tripathy and Ors. Vs. Branch Manager (Legal Claims), Sriram General Insurance Company limited and Ors.*** reported in **(2026) INSC 661.**

17. I have duly considered the submission made by the learned counsel for the parties and have gone through the Trial Court Records. I have also examined the judgment cited by the parties in support of their respective submissions.

18. The two issues to be determined in this appeal are:-

i) whether the Motor Accident Claims Tribunal Golaghat was correct in holding that it was only the oil tanker which was negligent and was responsible for causing the accident and that there was no contributory negligence on the part of the deceased.

ii) whether the Motor Accident Claims Tribunal, Golaghat was correct in computing the quantum of compensation which has been awarded to the claimants.

19. With regard to the first issue for consideration, this Court has examined the accident information report, the FIR and the charge sheet, and also the deposition of the witnesses. This court is in agreement with the submission of the learned counsel for the claimants that when a plea of contributory negligence is taken, evidence has to be led to prove the same. The burden lies upon the party alleging contributory negligence to establish the same by way of cogent evidence. In the case of *Jiju Kuruvila (supra)*, the Supreme Court has held that a finding of contributory negligence cannot be based on presumption or surmises in the absence of direct or corroborative evidence. The evidence of the CW-1 and the CW-2 has proved that the deceased was driving on his own side, however, the oil tanker was being driven with excessive speed and was coming on the wrong side. Such evidence has not been rebutted by the insurer. The submission of the appellant/insurer that the deceased would have seen from a distance that the oil tanker was coming with great speed from the opposite direction is merely a presumption and there is no evidence with regard to any negligent act of the deceased. Each case has to be decided in the light of

its own facts and circumstances and the evidence will differ from case to case. In such view of the matter the cases relied upon by the appellant with regard to contributory negligence cannot be made applicable in the instant case. In the absence of any concrete evident regarding the negligence on the part of the deceased, the tribunal has rightly come to a finding that it was only the oil tanker bearing registration No. NL-01-D-7377 which was negligent and has therefore rightly directed the appellant/insurer to satisfy the award.

20. As regards the second issue of assessment of the income of the deceased by the tribunal, it is seen that the tribunal had taken the average of the income of the two assessment years i.e., Rs.1,51,300/- and Rs.1,81,700 and arrived at the amount of Rs.1,66,500/- p.a. The Claimant/Cross Objector has contended that the latest ITR should have been a relevant consideration as the deceased was a self employed person and his income could have become even higher in future. This court is, however, of the view that the tribunal has not committed any error by arriving at the average income of Rs. 1,66,500/- p.a as the income of the deceased could have increased or could have also decreased in the coming years. In the case of ***ICIC Lombard General Insurance Vs. Ajay Kumar Monhanty and Ors.*** reported in ***(2018) 3 SCC 686***, the Supreme Court did not find any fault in the calculation made by the Tribunal in arriving at an average income by considering the income tax returns for the past three years. Hence this court deems it proper not to interfere in the assessment of monthly income of Rs. 13,875/- i.e., Rs. 1,66,500/- p.a.

21. With respect to the grant of compensation on account of loss of filial consortium to the mother of the deceased, the observation of the Supreme Court in the Case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***

reported in **(2018) 18 SCC 130** and also in the case of **United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur**, reported in **(2021) 11 SCC 780**, is relevant in the instant case. In the aforementioned judgments, the Supreme Court has recognized filial consortium as a distinct head of compensation and in view of such principle laid down by the Supreme Court as regard compensation against loss of consortium to the mother of the deceased in a motor vehicle accident, this court is of the considered view that the mother of the deceased is entitled to compensation an account of loss of filial consortium.

22. We now come to the question as to whether interest may be awarded on future prospects, which is added to the income of the deceased. On this point the learned counsel for the appellant has submitted that this Court as well as many of the coordinate benches of this court has held in various judgments that interest on future prospect should not be granted. However, the learned counsel for the claimants/cross objector has brought to the notice of this court the recent judgment of the Supreme Court in the case of *Niru and Ors. (supra)* where the Supreme Court held as under:

“11. In fact, it is due to the repudiation of or refusal to consider the claim that the claimants are driven to the Tribunal. When the matter is pending before the Tribunal or in appeal before the higher forums, the claimants are deprived of the compensation for future prospects. If they are paid in time, it could be utilized by the claimants and on failure, the loss of dependency would force the claimants to source their livelihood from elsewhere. This is sought to be compensated at least minimally by award of interest, which oftener than ever is nominal also since only simple interest is awarded. If the amounts were disbursed to the claimants on a rough calculation, on intimation of the accident to the Insurance

Company, subject to the award of the Tribunal, necessarily there would not have been any interest liability at least to the extent of the disbursement made. Hence, we reject the contention and direct that the entire awarded amounts would be paid with interest at the rate of 9% from the date of filing of the claim till the date of disbursement, deducting only Rs. 50,000/- granted as interim compensation, in SLP(C) No. 11340 of 2020 and 6% in SLP(C) No. 22136 of 2024 as awarded by the High Court; deduction to be made for the amounts already paid.”

As already quoted above, in the aforementioned recent judgment, the Apex Court has directed that interest on future prospects should be given.

23. The Claimants/Cross objector has also prayed for enhancement of the rate of interest from 6% pa to 9% p.a. With regard to the interest this court is of the opinion that an interest of Rs. 7.5% p.a would be fair and justified.

24. Having considered the appeal as well as the cross objection in its entirety and in view of the discussion and observations made hereinabove, this Court does not find any merit in the present appeal and the same is dismissed. Consequently, the cross objection of the claimant/cross objector is partially allowed and the compensation to which the claimants are found entitled is calculated as below:-

Sl. No.	Description	Amount
1	Monthly income of the deceased	Rs. 13,875/-
2	Future prospect at 40%	Rs. 13,875+

		Rs.5550/-
3	Monthly income with future prospects	Rs. 19,425/-
4	Less: 50% for personal expenses	Rs. 19,425-Rs.9713/-
5	After deduction of 50%	Rs.9712/-
6	Loss of dependency	Rs.9712x12x18 = Rs.20,97,792/-
7	Loss of estate	Rs. 15,000/-with 10% increase= Rs.16,500/-
8	Funeral expenses	Rs. Rs. 15,000/-with 10%= Rs.16,500/-
9	Filial consortium	Rs, 40,000/-with 10% increase= Rs.44,000/-
10	Total compensation	Rs.21,74,782/-

25. In view of the above, the claimants are entitled to get compensation of **Rs.21,74,782/-(twenty one lakhs seventy four thousand seven hundred and eighty two)** with simple interest at the rate of 7.5% p.a. from the date of filing the claim petition till realization The insurance company is directed to deposit the above awarded amount after deducting the amount of **Rs. 10,63,896/- (Rupees Ten Lakh Sixty Three Thousand Eight Hundred Ninety Six)** which is already withdrawn by the claimants, before the Registry of this court within a period of 6 (six) weeks from the date of this

judgment and upon depositing the same shall be disbursed to the claimants after proper verification and identification.

26. This appeal as well as the cross objection is accordingly disposed of. The Registry shall send back the Trial Court Records expeditiously.

JUDGE

Comparing Assistant