GAHC010004992013

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

Case No. : MACApp./84/2013

NEW INDIA ASSURANCE CO LTD
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT NEW INDIA ASSURANCE BUILDING 87, MAHATMA GANDHI ROAD, FORT, MUMBAI 400001 AND REGIONAL OFFICE AT GUWAHATI.

VERSUS

KARUNA BARMAN and 2 ORS
S/O SHRI NIHIL BARMAN, BHOYAR GAON, DPI, KAHILIPARA, P.S. DISPUR, KAMRUP, ASSAM.

2:RATI KANTA DEKA

S/O LATE BANGSHI DEKA
R/O NATBOMA GAON
NEAR HATIGAON
P.S. DISPUR
KAMRUP
ASSAM
OWNER OF TRUCK NO. AMK 6328

3:MD. KHATARAT ALI

S/O RAJAK ALI
R/O CHARIA
PUB KALAKUCHI
P.S. MUKALMUWA

Advocate for the Petitioner : MR.S DUTTA

Advocate for the Respondent : MR.C CHOWDHURY

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT
JUDGMENT AND ORDER

06.02.2023

Heard Ms. M. Choudhury, learned counsel representing the appellant as well as Mr. C. Choudhury, learned senior counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (as amended) against the Judgment and Award dated 02.02.2006 passed by the MACT, Kamrup, Guwahati in MAC Case No. 765/2004.

3. On 06.03.2004, while the claimant/injured was travelling in a truck bearing registration number AMK-6328, the driver of the vehicle lost control and knocked one stationary vehicle and one electric pole. The claimant sustained serious injuries on his left upper limb. Ultimately, the left upper limb of the injured had to be amputated. The injured filed a claim case for seeking compensation.

4. The appellant/Insurance Company contested the claim case before the Tribunal by filing written statement.

5. The claimant examined three witnesses. The appellant/insurance company examined two witnesses. Finally, on conclusion of hearing, the Tribunal awarded a sum of Rs.3,31,000/- as compensation.

6. The only ground of appeal is that the claimant was a gratuitous passenger and therefore he is not entitled to get any compensation.

7. I have considered the submissions made by the learned counsels for both the sides.

8. The Motor Vehicles Act, 1988 does not define the expression 'gratuitous passenger'. However, Section 147(1)(b)(ii) of the Act expressly exempts the case of a 'gratuitous passenger' in a goods vehicle in a public place. But gratuitous passenger

would mean one who has taken lift.

9. The claimant pleaded that he was the second driver of the vehicle and was sitting inside the driver's cabin while the other driver Khatarat Ali was driving the vehicle. There is no evidence in this case that the claimant was a gratuitous passenger.

10. The appellant/insurance company realized premium for five employees. The insurance policy i.e. Exhibit-B does not stipulate the nature of employment of the employees covered by the policy. Therefore, the claimant is not a gratuitous passenger.

11. For the aforesaid reasons, I find that the appeal is devoid of merit and stands dismissed accordingly.

12. Send back the LCR.

JUDGE

Comparing Assistant