

GAHC010011022014



2026:GAU-AS:12041

THE GAUHATI HIGH COURT**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)****MAC APPEAL NO. 147/2014**

Union of India, represented by the Air Officer Commanding
Air Force Station, Chabua, C/O 99 APO

.....**Appellant**

-VERSUS-

1. Md. Ismail, Son of Haji Sarkar, R/O Village : Harsinghpur
Leaton, P.O. & P.S. Sakra, Dist. Muzaffarpur, Bihar
2. Md. Usman, Son of Haji Sarkar, R/O Village : Harsinghpur
Leaton, P.O. & P.S. Sakra, Dist. Muzaffarpur, Bihar

[Both respondent nos. 1 & 2 are the owners of Truck no.
WB-73/0715]
3. Md. Tayib, Son of Md. Ismail, R/O Village : Harsinghpur
Leaton, P.O. & P.S. Sakra, Dist. Muzaffarpur, Bihar.

[Diver of Truck no. WB-73/0715]
4. The Branch Manager, The New India Assurance Co. Ltd,
Siliguri Branch Office, Siliguri, P.O. & P.S. Siliguri, Dist.
Darjeeling, West Bengal.

[Policy no. 72743 dated 15.10.1998]

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Appellant-Claimant : Mr. K.K. Parashar, Central
Government Counsel

Advocate for the Respondent no. 4 : Mr. K.K. Bhatta, Advocate

Date of hearing : 18.08.2026

Date of pronouncement of judgment : 18.08.2026

Whether the pronouncement is of the
Operative part of the judgment ? : No

Whether the full judgment has been
Pronounced ? : Yes

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

This appeal under Section 173, Motor Vehicles Act, 1988 [‘the MV Act’, for short] is directed against a Judgment and Order dated 09.02.2011 passed by the Additional District and Sessions Judge [FTC], Dibrugarh, Assam [‘the Tribunal’, for short] in MACT Case no. 23/2000. By the Judgment and Order dated 09.02.2011, the Tribunal dismissed the claim application filed by the appellant as the claimant under Section 166, MV Act seeking a compensation of Rs. 62,100/- for damages caused to its motor vehicle bearing Registration no. 94D 107607-W [Swaraj Mazda] [‘the defence vehicle’, for short] allegedly in a road traffic

accident occurred on 12.06.1998 near Main Gate of Air Force Station at Chabua on the National Highway no. 37.

2. In the claim application, the appellant - claimant impleaded the owners and the driver of a oil tanker bearing registration no. WB-73/0715 [‘the oil tanker’, for short] as opposite party nos. 1 & 2 and opposite party no. 3 respectively. The insurer of the oil tanker was impleaded as opposite party no. 4. They are arrayed as respondents in the present appeal in the same order.

3. In the claim application, it was mentioned that the oil tanker was parked on the left side of the National Highway no. 37 near the Main Gate of the Air Force Station, Chabua without keeping back parking lights on and as a result, the driver of the defence vehicle had hit the oil tanker from behind while giving side to an oncoming heavy vehicle from the opposite direction. It was mentioned that the defence vehicle was badly damaged in the accident and the loss caused to the vehicle was estimated at Rs. 62,100/- in a Technical Inspection Report.

4. In the proceedings before the Tribunal, the appellant-claimant side examined three witnesses to support the claim. The driver of the defence vehicle was examined as P.W.1. Two other witnesses, who were serving personnel in the Indian Air Force and then posted at Air Force Station of Chabua, were examined as P.W.2 and P.W.3 respectively. The two witnesses, P.W.2, S.P. Jugran and P.W.3, Umesh Kumar Singh did not testify to the effect that they were witnesses to the accident. The claimant side exhibited six documents viz. Exhibit - 1 : Authorization Letter authorizing, S.P. Jugran [P.W.2] to attend the hearing of the claim application; Exhibit - 2 : Accident Information Report in Form 54, issued by the Officer In-Charge, Chabua Police Station; Exhibit - 3 : A Traffic Accident Report prepared by a Wing Commander, Indian Air Force; Exhibit - 4 : A Sketch Plan of the spot of accident; Exhibit - 5 : Series of photographs of the vehicles involved in the accident; and Exhibit - 6 : Technical Inspection Report.

5. The Tribunal upon analysis of the evidence on record, reached at the finding that the oil

tanker was parked on the left side of the road and the defence vehicle, which was being driven by P.W.1, had collided with the parked oil tanker. On the basis of the Accident Information Report [Exhibit - 2], the Tribunal noticed the Police had registered a case for rash and negligent driving of the defence vehicle, which was driven by P.W.1, and it was the driver of the defence vehicle who had caused the accident due to rash and negligent driving on his part for which two persons were injured and another one succumbed to his injuries. The Tribunal viewed that the factum of death of a person due to the accident was found to be suppressed by all three witnesses of the claimant's side. The Tribunal recorded a view that suppression of such material fact would lead to an adverse presumption that P.W.1 was allegedly involved in a rash and negligent driving on the date of the accident. Taking notice of the fact that the witnesses had admitted that the oil tanker was parked on the left side of the road and the fact that a person had died in the accident caused by the defence vehicle, driven by P.W.1, the Tribunal observed that the same would show negligence on the part of P.W.1. The Tribunal observed that such a view was also fortified from the photographs, exhibited as Exhibit - 5 series, which indicated that the oil tanker was parked on the left side of the road and the defence vehicle dashed the oil tanker on the back side, which gave rise to a presumption that it was the defence vehicle which was being driven in a rash and negligent manner resulting in the accident and the photographs belied the fact that the defence vehicle was not negligent. The Tribunal had further observed that the Accident Information Report [Exhibit - 2] showed that a case was registered against P.W.1 and he was charge-sheeted for commission of the offences under Sections 279, 304A, 338 and 427, Indian Penal Code [IPC]. Having analyzed the evidence on record, the Tribunal recorded that the negligence could very well be attributed to the driver of the defence vehicle and therefore, the appellant - claimant whose vehicle was driven by P.W.1, charge-sheeted for rash and negligent driving, could not maintain a claim application for compensation against the owners, the driver and the insurer of the oil tanker. Holding that the claim application had no merit, the claim application was dismissed by the Tribunal.

6. I have heard Mr. K.K. Parashar, learned Central Government Counsel [CGC] for the appellant-claimant and Mr. K.K. Bhatta, learned counsel for the respondent no. 4.

7. Mr. Parashar, learned CGC appearing for the appellant – claimant has submitted that the Tribunal had erred in reaching a finding that there was rash and negligent driving on the part of the driver of the defence vehicle and there was no negligence on the part of the oil tanker. He has submitted that there was exercise of due care and caution on the part of the driver to avert the accident and the collision had occurred when the driver of the defence vehicle collided on the back side of the parked oil tanker, which was parked without back parking lights on. The accident occurred when the defence vehicle tried to avoid a collision with a heavy vehicle coming from the opposite direction on National Highway with high beam lights. He has relied upon a decision of the Hon'ble Supreme Court of India in **Archit Saini and another vs. Oriental Insurance Company Limited and others, [2018] 3 SCC 3658**, to contend that negligence is attributable to the oil tanker only.

8. Mr. Bhatta, learned counsel appearing for the respondent no. 4 has submitted that the respondent no. 4 as the insurer of the oil tanker cannot be saddled with any liability in connection with the accident in question, as it is evident from the evidence on record that the accident was clearly due to rash and negligent act of driving on the part of the driver [P.W.1] of the defence vehicle. In support of his submissions, he has referred to the testimony given by the driver [P.W.1] of the defence vehicle.

9. The issue which has arisen in this appeal for consideration, due to dismissal of the claim application of the appellant-claimant, is whether there was any negligence or contributory negligence could be attributed to the oil tanker, which was hit by the defence vehicle from the backside.

10. As the driver of the defence vehicle had testified as P.W.1 before the Tribunal and he was the only eye-witness to the accident, it is apt to refer to his testimony at first. In his evidence-on-affidavit, P.W.1 stated to the effect that on 12.06.1998, he was on duty and at 20-00 hours. He booked the defence vehicle for Routine Run IX duty from Main Gate of the Air Force Station, Chabua to convey shift personnel to and from Transmitter, which was located approximately 5 km from the Air Force Station, Chabua enroute Dibrugarh. He was accompanied by one Sgt Balakrishnan as the armed escort and LAC Brajesh, who was to take

over the night shift duties. P.W.1 stated that after he dropped Brajesh, LAC Singh RS who was in the afternoon shift, boarded the defence vehicle for return journey to the base, Air Force Station. He stated that while he was reaching approximately 150 metre short of the Main Gate of the Air Force Station, he noticed that a vehicle was coming from the opposite direction at full speed and with high beam lights. Then, he dipped his head lights several times. But, the driver of the oncoming vehicle did not respond. As the vehicle from the opposite direction was coming close to his vehicle, he applied the brakes and slowed down the speed of the defence vehicle as he had to take a 90° right turn across the Railway tracks towards the Air Force Station through the Main Gate. In order to avoid a collision with the oncoming vehicle whose headlights were on full beam, he having been blinded, swerved the defence vehicle to the left. On swerving a little towards the left side of the road, he rammed into the oil tanker parked on the left side of the road causing extensive damage to the defence vehicle and injuries to all the three Air Force personnel inside the defence vehicle. He deposed that the oil tanker was parked occupying the left side of National Highway no. 37 near the Main Gate of the Air Force Station, Chabua without keeping back parking lights on or any visible sign / signal of its presence there. P.W.1 deposed that the defence vehicle had knocked down the oil tanker from behind while giving side to an oncoming heavy vehicle from the opposite direction.

11. When such testimony of the driver of the defence vehicle is considered together with the Sketch Plan, exhibited as Exhibit-4, the Sketch Plan is found to have projected a different scenario. As per the Sketch Plan, the oil tanker was parked at a distance of approximately 100 meters from the Air Force Station Main Gate and it was not parked across the Railway lines which had to be crossed to reach the Main Gate of the Air Force Station. As per the Sketch Plan, the oil tanker was on the left side of National Highway and in the opposite side of the Main Gate of the Air Force Station, Chabua and the Railway lines.

12. The photographs, exhibited as Exhibit - 5 series, showed that the oil tanker was parked on the extreme left side of the road and the defence vehicle had hit its right corner side from the back. As per the testimony of P.W.1, the driver of the defence vehicle, due to the speeding vehicle [bus] coming from the opposite direction with headlights on full beam, he

got alarmed and he dipped his headlights several times, when he was at a distance of about 150 meters from the Air Force Station Main Gate. According to him, when the vehicle from the opposite direction came very close to his vehicle, he applied brakes to slow down the speed of his vehicle and had to take a 90° right turn to cross the Railway lines to go to the Air Force Station through the Main Gate. When he swerved his vehicle towards the right, his vehicle rammed into the oil tanker. This piece of evidence is contrary to the evidence emerging from the documents exhibited as Exhibit - 4 and Exhibit - 5 series. Even if it is accepted that the defence vehicle was on the National Highway and its driver [P.W.1] swerved on the right side, it could not have rammed the oil tanker, which was parked on the left side of the National Highway.

13. In the Accident Information Report submitted in Form 54 [Exhibit - 2], it was mentioned that in the accident which occurred on 08-30 p.m. on 12.06.1998, Balakrishnan Dupatne had died and two persons, CPL Nayar BC and LAC Singh Robi Sankar sustained injuries on their persons and all those three persons were shifted to 162 Military Hospital Dinjan. The Tribunal had recorded that in connection with the accident, a case, Chabua Police Station Case no. 64/1998 was registered for the offences under Sections 279, 338, 304A and 427, IPC and the case was charge-sheeted on 13.12.1999 vide Charge-Sheet no. 13. The Tribunal had also recorded that in the Charge-Sheet, the driver of the defence vehicle [P.W.1] was charge-sheeted as accused. The said factum of charge-sheeting P.W.1 in the Charge-Sheet filed in connection with Chabua Police Station Case no. 64/1998, recorded in the impugned Judgment and Order, has not been traversed in any manner by the appellant-claimant in the present appeal.

14. The appellant - claimant is found to have maintained silence as regards the death of Balakrishnan and the injuries caused to CPL Nayar BC and LAC Singh Robi Sankar, who all were Air Force personnel. Admittedly, Balakrishnan was an occupant of the defence vehicle at the time of the accident. The Tribunal had drawn an adverse view due to non-disclosure of such facts from the appellant – claimant's side while pursuing the claim application seeking damage to the extent of Rs. 62,100/- for the defence vehicle, whose driver [P.W.1] was charge-sheeted in Charge-Sheet no. 13 laid after completing investigation into Chabua Police

Station Case no. 64/1998.

15. On analysis of the evidence on records in its entirety, this Court is of the considered view that the findings recorded by the Tribunal upon analysis of the evidence on record cannot be said to be without any basis, which needs any re-appreciation. On a close scrutiny of the evidence on record in its entirety, it is apparent that the version of the driver [P.W.1] is belied by the facts which had emerged from the other evidence on record.

16. In the decision in **Archit Saini** [supra], a gas tanker was found to be the offending vehicle after a detail analysis of the evidence on record including the evidence of one eye-witness [P.W.7] and a site plan [Ext. P-45]. In the said case, it had emerged that the accident occurred at about 10-30 p.m. on 15.12.2011 and the accident occurred due to collision of a Maruti car with the gas tanker, which was found parked in the middle of the road, which was a busy road, without any indicator or parking lights.

17. In the case in hand, the oil tanker was found parked on the left side of National Highway. As per the version of P.W.1, the oil tanker was parked after the Railway crossings to go towards the Main Gate of the Air Force Station, Chabua. As per the Sketch Plan [Exhibit-4], the oil tanker was parked at a distance of about 100 meters from the Main Gate and on the left and, conspicuously, on the opposite side, allegedly without its parking light on. The driver of the defence vehicle [P.W.1] is found to have got sufficient time to exercise due care and caution to avoid any kind of collision with the vehicle coming from the opposite direction on national highway with high beam lights on. It can be noticed from the testimony of the driver of the defence vehicle that even if testimony of the driver of the defence vehicle is accepted to be true then he could have exercised due care and caution while turning 90° towards his left, at a slow speed after applying brakes, to avoid any accident. Therefore, the decision in **Archit Saini** [supra] is not found to be of any assistance to the case of the appellant.

18. In view of the discussion made above and for the reasons assigned therein, this Court does not find any negligence on the part of the oil tanker, much less contributory negligence, which was hit from behind on the right side by the defence vehicle driven by P.W.1, whose

testimony does not inspire any confidence to accept it as a truthful one. Consequently, the appeal is bereft of any merits and it is liable to be dismissed. Therefore, the same is dismissed.

JUDGE**Comparing Assistant**