

(2005) 06 GAU CK 0020

Gauhati High Court

Case No: M.A.C. Appeal No. 155 of 2005

Hafizun Begum

APPELLANT

Vs

Member, Motor Accidents Claims
Tribunal and Others

RESPONDENT

Date of Decision: June 27, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 166(1)

Citation: (2006) ACJ 2448

Hon'ble Judges: B.K. Roy, C.J; P.G. Agarwal, J

Bench: Division Bench

Advocate: N. Saikia, A. Borah, S. Sharma and M. Borah, for the Appellant; N. Laskar, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Roy, C.J.

The appellant, widow of Md. Nurul Haque, assails validity of the order dated 30.5.2005 passed in Petition No. 382 of 2005 filed by the brothers of late Md. Nurul Haque in M.A.C. Case No. 139 of 2001.

2. Mrs. N. Saikia, learned Counsel for the appellant, has submitted as follows:

(i) The brothers of the appellant's husband not being dependent on him had no right to file Petition No. 382 of 2005, which has been illegally allowed.

(ii) To support this submission, she relied on a Division Bench judgment of our High Court in [Smt. Muhini Thakuria and Others Vs. Dhiraj Kalita and Others](#),

(iii) The aforementioned petition has been wrongly entertained after disposal of the M.A.C. Case No. 139 of 2001 on 13.6.2003, which should have been dismissed on the ground of its non-maintainability.

3. In the instant case, we find that the brothers of the deceased were made parties as claimant vide order dated 28.11.2003 passed by the Claims Tribunal. This order is binding on the appellant.

4. Section 166(1)(c) of the Motor Vehicles Act, 1988 reads as under:

Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

xxx

xxx

xxx

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(Emphasis supplied)

5. Apparently, the words expressed by the legislature are "legal representatives" of the deceased and not "dependant" of the deceased. Reliance placed on [Smt. Muhini Thakuria and Others Vs. Dhiraj Kalita and Others](#), appears to be misplaced for the simple reason that was a case of Hindu family and not Mohammedan family, where brothers are also legal representatives.

6. In terms of the proviso to section 166 of the Motor Vehicles Act, which appears to be a social piece of legislation in favour of legal representatives of the victim, the Tribunal is required to pass an order in favour of all the claimants once it is satisfied of the other relevant factors.

7. Mrs. Saikia could not dispute that proposition of the Mohammedan Law according to which widow who has no issue will get one-fourth share in the property of her deceased husband and the remaining part will go to the brothers.

8. It is well settled that a court or Tribunal can rectify its omission on the basis of findings recorded earlier. Thus, we do not see any merit also in the second submission of Mrs. Saikia.

9. In this view of the matter, we do not see any merit in the appeal. Consequently, we dismiss this appeal.