

## Hafizun Begum Vs Motor Accident Claims Tribunal and Others

**Court:** Gauhati High Court

**Date of Decision:** June 27, 2005

**Acts Referred:** Motor Vehicles Act, 1988 " Section 166

**Citation:** (2007) 1 ACC 817

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

**Bench:** Division Bench

### 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 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 "dependent" 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 it 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.