

GAHC010002152016



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

Case No. : MACApp./147/2023

SRI BALENDRA ROY
S/O LATE ANUKUL ROY, VILL. BARKUAL, P.O. AMLIGHAT, P.S. JAGIROAD,
DIST. MORIGAON, ASSAM.

VERSUS

SRI KARTICK CH. BORA and ANR
S/O SRI BUDHESWAR BORA, VILL. CPK, P.S. RAHA, PIN CODE 782103, DIST.
NAGAON, ASSAM.

2:DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD.
GUWAHATI DIVISIONAL OFFICE-II
G.S. ROAD
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR. M TALUKDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date : Date of hearing &
Pronouncement of order : 03.05.2023

JUDGMENT AND ORDER(ORAL)

Heard Mr. M. Talukdar, learned counsel for the appellant. Also heard Mr. A. J. Saikia, learned counsel for the respondent No.2.

2. The present appeal u/s 173 of the Motor Vehicles Act, 1988 is filed assailing an order dated 20.03.2014 passed by the learned Member, Motor Accident Claims Tribunal, Morigaon, Assam in MAC Case No. 162/2009.

3. The appellant as a claimant had filed a claim petition before the learned Member, Motor Accident Claims Tribunal, Morigaon, Assam claiming a compensation of Rs. 3,50,000/- for injuries sustained by him due to a motor vehicular accident that allegedly occurred on 30.10.2007. The said case was registered and numbered as MAC Case No. 162/2009.

4. The impugned order dated 20.03.2014 discloses that the learned Tribunal dismissed the claim on the following counts:

(i) Though an adjournment was sought on 20.03.2014 on the ground of illness of the learned counsel for the appellant, however no medical certificate has been enclosed.

(ii) The case is pending since 2009 and was fixed for evidence on 3.6.2013 but no evidence has been filed by the claimant on affidavit.

(iii) On the previous date of hearing, the claimants were directed to submit their evidence on affidavit. However, the same was also not filed.

(iv) The aforesaid facts show that the claimant has no interest to proceed with the case .Accordingly the case was dismissed.

5. Mr. Talukdar, learned counsel for the claimants submits that for the

bonafide mistake of the lawyer, the client / litigant shall not be allowed to suffer. He further contends that if the matter is remanded back by setting aside the impugned order, the claimant shall file his evidence within a period of 15 days.

6. Mr. Saikia learned counsel for the Insurance Company submitted that the learned Tribunal was compelled to dismiss the appeal in view of the conduct of the appellant. Therefore, no wrong has been committed by the learned Tribunal. He further contends that the present appeal was also preferred beyond the period of limitation and the same was condoned. The said conduct of the appellant also shows that the appellant is negligent. Therefore, in view of such delay the Insurance Company, in the event the claim is allowed should not be fastened with interest for this period.

7. Considered the arguments advanced by the learned counsel for the parties. Though the impugned order reflects that the claimant has been very negligent in pursuing the case before the learned Tribunal, however on 20.03.2014 an adjournment was sought on the health ground of the learned counsel which was rejected taking note of the previous conduct of the claimant. This court is of the view that the learned Tribunal ought to have considered the prayer of adjournment on its own merit, not taking recourse to the earlier adjournments granted. This court is also of the view that a chance should be given to the litigant to file his evidence on affidavit for ends of justice, the claim being under a beneficial legislation.

8. Accordingly, the present appeal stands allowed by setting aside the order dated 20.03.2014 subject to the condition that the claimant shall file his evidence on affidavit on or before 18.5.2023. If such evidence is filed on or before the said date, the learned Tribunal shall proceed in accordance with law. However if no such evidence is filed as directed and within the stipulated time,

the order dated 20.03.2014 shall revive without any further reference of this Court.

9. This court is in agreement with the submission advanced by the learned counsel for the Insurance Company that the Insurance Company should not be fastened with liability of interest for no fault of them and for delay that has been caused by the claimant. Accordingly, it is also provided that in the event, the claim is proceeded and awarded in favour of the claimant, there shall be no award of interest w.e.f. 20.03.2014 till today i.e. 03.05.2023.

10. With the aforesaid observations and directions, this MAC appeal stands disposed of at the admission stage itself.

JUDGE

Comparing Assistant