

GAHC010203412022



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

Case No. : MACApp./46/2023

JANAKI BHUMIJ .
W/O LATE RANJAN BHUMIJ, RESIDENT OF TINIKHURIA, T.E , PS TEZPUR,
DIST SONITPUR, ASSAM

VERSUS

UNITED INDIA INSURANCE COM. LTD AND 4 ORS . B
REPRESENTED BY REGIONAL MANAGER, GS ROAD, GUWAHATI, KAMRUP ,
ASSAM

2:THE SRIRAM GEN. INSURANCE. CO. LTD.
GUWAHATI ULUBARI OPP. PRIYA PALACE HOTEL
ULUBARI

3:THE GENERAL MANAGER OF TINIKHURIA T.E
PO DHEKIAJULI
PS TEZPUR
DIST SONITPUR
ASSAM

4:MD. NIJAMUDDIN
C/O KASIM ALI

RESIDENT OF VILLAGE GHOGRA
PO DHEKIAJULI
DIST SONITPUR
ASSAM

5:MD. ABU KALAM
S/O RANJAN ALI

VILLAGE BHATPARA

PO DHEKIAJULI
DIST SONITPUR
ASSA

Advocate for the Petitioner : B R DAS

Advocate for the Respondent : MR. R GOSWAMI

Linked Case : I.A.(Civil)/3097/2022

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Advocate for : B R DAS
Advocate for : MR. R GOSWAMI (r-2) appearing for UNITED INDIA INSURANCE
COM. LTD AND 4 ORS .

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 28-02-2023

Heard Mr. B. R. Das, learned counsel for the appellant and Mr. R. Goswami, learned counsel appearing for Insurance Company.

This appeal is taken up for disposal at the admission stage itself.

The appellant as claimant preferred a claim before MACT-1(Motor Accident Claims Tribunal), Kamrup Guwahati. The appellant's husband died in a road traffic accident on 30.9.2015 about 6-15 PM on the National Highway-15 near Depota Bridge under Tezpur P.S. Accordingly a claim petition was preferred before the MACT No.1, Kamrup, Guwahati which was registered as MACT No. 03/2018 u/s 166 Motor Vehicle Act. The learned Tribunal issued notice and posted the matter for service report and written statement. Thereafter, the claimant filed an application on 10.2.2022 praying that the claim may be allowed to be withdrawn with liberty to file it afresh before the MACT, where the claimant resided inasmuch as the claimant is having difficulty to attend courts at Guwahati from Depota, Tezpur, as it is long distance from her residence. The petition was registered as Petition No. 411. The learned appellate court thereafter passed the following order which is impugned in the present petition.

“10.02.2022

Case record put up today on the strength of the petition vide No. 411/22 filed by claimant side.

Claimant is present alongwith her learned counsel.

Seen the petition filed by the claimant vide No. 411 dated 10.2.2022 praying for withdraw the case due to some technical defect and long distance from her residence. Claimant has filed an affidavit alongwith the petition tag with the case record.

Perused the petition and heard and prayer is allowed.

Accordingly the case is dismissed on withdrawal."

This Court is of the considered view that the aforesaid order reflects that after perusal of the petition and considering the affidavit filed therein , the learned Tribunal has allowed the prayer meaning thereby the prayer to withdraw and to file afresh made in Petition no.411 were allowed.

However it is contended by the learned counsel for the appellant that when they went to file the petition afresh before the MAC Tribunal, Tezpur, the same was declined on the ground that as the last line of the order reflects that the MAC Appeal was dismissed on withdrawal and there is no specific order allowing the appellant to file afresh.

However in the considered opinion of this Court as the learned Tribunal under its impugned order dated 10.2.2022 had specifically directed that prayer made in the petition is allowed; therefore for all meaning and purport the prayer made in Petn. No. 411 dtd 10.2.2022 were allowed, which includes and the prayer to file afresh.

Therefore, this court is of the considered opinion that the learned Tribunal, Tezpur shall be bound to register a fresh case on withdrawal.

With the aforesaid observation, this appeal stands disposed of without interfering the order dated 10.2.2022 passed in MAC Case No. 3/2018.

JUDGE

Comparing Assistant