

GAHC010207972022



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

Case No. : MACApp./758/2022

SHRIRAM GENERAL INSURANCE CO.LTD.
1000 E/8, RIICO INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN-
302022 AND HAVING A BRANCH OFFICE AT B.R. ARCADE, 3RD FLOOR, 21
JANAPATH, ULUBARI, GUWAHATI- 781007.

VERSUS

PORINITA GOGOI AND 5 ORS .
W/O LATE SANJIB GOGOI,
R/O VILL. NO.1 EKARANI GAON,
P.O.- DIGHALIA,
P.S.- TENGAKHAT,
DIST.- DIBRUGARH, ASSAM, PIN- 786103.

2:DRISTIMONI GOGOI
(MINOR) REP. BY LEGAL GUARDIAN MOTHER THAT IS RESPONDENT NO.
1

D/O LATE SANJIB GOGOI

R/O VILL. NO.1 EKARANI GAON

P.O.- DIGHALIA

P.S.- TENGAKHAT

DIST.- DIBRUGARH
ASSAM
PIN- 786103.

3:CHAENIKA GOGOI
(MINOR) REP. BY LEGAL GUARDIAN MOTHER THAT IS RESPONDENT NO.

1

D/O LATE SANJIB GOGOI

R/O VILL. NO.1 EKARANI GAON

P.O.- DIGHALIA

P.S.- TENGA KHAT

DIST.- DIBRUGARH

ASSAM

PIN- 786103.

4:JAYA GOGOI

W/O LATE NITYANANDA GOGOI

R/O VILL. NO.1 EKARANI GAON

P.O.- DIGHALIA

P.S.- TENGA KHAT

DIST.- DIBRUGARH

ASSAM

PIN- 786103.

5:LAKHESWAR GOGOI

S/O N GOGOI

VILL.- EKARANI

P.O.- DIGHALIA

P.S.- TENGA KHAT

PIN- 786103

DIST.- DIBRUGARH

ASSAM.

6:BIJU GOGOI

S/O CHANDRA GOGOI

VILL.- KATHALANI GAON

P.O. AND P.S.- TENGA KHAT

DIST.- DIBRUGARH
ASSAM
PIN- 786101

Advocate for the Petitioner : MS. M SAIKIA

Advocate for the Respondent :

Linked Case : I.A.(Civil)/3197/2022

SHRIRAM GENERAL INSURANCE CO.LTD.
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RIICO INDUSTRIAL AREA
SITAPURA
JAIPUR
RAJASTHAN- 302022 AND HAVING A BRANCH OFFICE AT B.R. ARCADE
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D/O LATE SANJIB GOGOI

R/O VILL. NO.1 EKARANI GAON

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3:CHAENIKA GOGOI

(MINOR) REP. BY LEGAL GUARDIAN MOTHER THAT IS RESPONDENT NO. 1

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VILL.- KATHALANI GAON

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ASSAM

PIN- 786101.

Advocate for : MR. R GOSWAMI

Advocate for : appearing for PORINITA GOGOI AND 5 ORS .

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

18.01.2023

Heard Mr. R. Goswami, the learned counsel for the appellant.

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award dated 18.07.2022 passed by the learned Member, MACT No.3, Kamrup in MAC Case No.1316/2017 filed under Section 166 of the Motor Vehicles Act, 1988,

It appears from the perusal of the judgment impugned in the instant proceedings that the Tribunal below had allowed the claim petition on contest and an amount of Rs.16,20,347/- was awarded as the just and fair compensation to the claimants. By the said award, the appellant herein who was the insurer of the offending vehicle was directed to pay the compensation amount to the claimants within 30 (thirty) days along with interest at the rate of 7.5% per annum from the date of filing of the evidence on affidavit of claimant No.1, i.e. from 07.11.2019 till its realization.

The instant appeal has been filed primarily on the ground that the learned court below did not appreciate the evidence in proper perspective

in as much as Exhibit-B, pen drive was not taken into consideration.

Mr. R. Goswami, the learned counsel for the appellant submits that if the Exhibit-B would have been taken into consideration, the decision rendered in the impugned award would have been different.

I have heard the learned counsel for the appellant. On a specific query made to the learned counsel for the appellant as to whether the Exhibit-B, pen drive which was put under objection before the Tribunal below was supported by a certificate as was required under Section 65B (4) of the Indian Evidence Act, 1872, Mr. R. Goswami, the learned counsel for the appellant with all fairness submitted that no certificate as required under Section 65B (4) of the Indian Evidence Act, 1872 was given in support of Exhibit-B. On a further specific query as to whether the Exhibit-B was a secondary evidence or the primary evidence, the learned counsel for the appellant has submitted that the Exhibit-B was a secondary evidence and not the primary evidence.

Taking into account that the only case made out in the instant appeal by the appellant is on the ground of perversity for not taking into consideration the Exhibit-B and in view of the law laid down by the Supreme Court in the case of **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and Others**, reported in **(2020) 7 SCC 1**, this Court is of the opinion that the learned Tribunal below had rightly rejected the Exhibit-B on its admissibility sans the certificate under Section 65B (4) of the Indian Evidence Act, 1872.

Under such circumstances as there is no other grounds in the instant appeal, the instant appeal stands dismissed.

Mr. R. Goswami, the learned counsel for the appellant submits that as the appeal has been dismissed in limine, the appellant Insurance Company may be refunded the statutory deposit.

In view of the said submission, this Court is also inclined to direct the Registry to refund the statutory deposit of Rs.25,000/- subject to the Insurance Company depositing the awarded amount before the Tribunal, (if not already deposited) within a period of 45 (forty five) days from today.

JUDGE

Comparing Assistant