

GAHC010233702013



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

Case No. : CRP/139/2013

MD. ABID HUSSAIN
C/O LATE H. HUSSAIN, R/O NEW SARANIA, OPP. TO SILPUKHURI MASJID,
P.O. SILPUKHURI, P.S. CHANDMARI, DIST- KAMRUPM, PIN-781003

VERSUS

M/S NATONAL INSURANCE CO. LTD.
REPRESENTED BY ITS REGIONAL OFFICE, 3, MIDDLETON STREET,
KOLKATA-700071, HAVING ITS REGIONAL OFFICE AT BHANGAGARH,
GHY-5, AND BRANCH OFFICE AT VARIOUS PLACES INCLUDING
MALIGAON, GUWAHATI

Advocate for the Petitioner : MR.A K PURKAYASTHA

Advocate for the Respondent : MS.R D MOZUMDAR

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. A.K. Purkayastha,
Advocate.

For the Respondent : Ms. R.D. Mazumdar,
Advocate.

Date of Hearing : 19.09.2023.

Date of Judgment : 05.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Purkayastha, learned counsel representing the petitioner as well as Ms. R.D. Mozumdar, learned counsel appearing for the sole respondent.

2. This is an application under Article 227 of the Constitution of India r/w Section 151 of the Code of Civil Procedure challenging the orders dated 16.08.2012 and 11.09.2012 passed by the learned court Civil Judge No.3, Kamrup, Guwahati in M. Ex-Case No.16/2007 issuing warrant of attachment against the judgment debtor/petitioner.

3. The factual matrix lies within a very short campus.

4. On 02.04.1995, a motor accident took place involving the Vehicle No.MLS-2867. In the said accident, Birahu Nath expired. The said vehicle belonged to the present petitioner.

5. The wife of the deceased filed acclaim case being MACT Case No.412/1995 seeking compensation. After receiving notice from the Tribunal, the petitioner appeared and contested the case by filing a written statement. During the hearing before the Tribunal, a controversy arose that the driver of the said vehicle did not have a valid driving licence. Finally, the Tribunal directed the respondent Insurance Company to pay a compensation of ₹2,12,000/- and also directed to pay an interest at the rate of 12% per annum. The reason for awarding compensation by the Insurance Company was that the Insurance Company failed to prove that the driver of the vehicle did not have valid driving licence.

6. The respondent Insurance Company filed an appeal being MAC Appeal No.27/2000 before this Court. After hearing both sides, this Court dismissed the appeal and directed that the Insurance Company shall be at liberty to proceed further for recovery of the compensation amount from the owner of the vehicle.

7. Therefore, the Insurance Company filed the money suit being M.S. No.161/2004 in the court of the Civil Judge (Sr.Divn.), Kamrup, Guwahati for recovery of the aforesaid compensation amount.

8. The present petitioner being the defendant no.1, contested the case by filing written statement. But at the time of hearing of evidence, the defendant no.1 did not cross-examine the witnesses of the Insurance Company.

9. Finally, the Trial Court decreed the suit *ex parte* and directed that the Insurance Company was liable to recover ₹2,12,000/- (the aforesaid compensation amount) from the defendant no.1 i.e. the present petitioner.

10. The said decree is put on execution.

11. I have considered the submissions made by the learned counsels of both sides.

12. The main grounds on which the High Court interferes under Article 227 of the Constitution of India are –

1. When the inferior Courts act arbitrarily.
2. When the inferior Courts act in excess of the Jurisdiction vested in them.

3. When the inferior Courts fail to exercise jurisdiction vested in them.

13. It is pertinent to note that the High Court does not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

14. Reverting to the case in hand, I find that there is nothing wrong in the order of the learned executing court for interference by this Court under Article 227 of the Constitution of India. The learned trial Court has rightly passed the impugned order.

15. I, therefore, find that the present revision petition to be devoid merit. Accordingly, same stands dismissed and disposed of.

JUDGE

Comparing Assistant