

GAHC010270022022



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

Case No. : CRP/6/2023

ORIENTAL INSURANCE COMPANY LIMITED
HAVING ITS REGIONAL OFFICE AT GUWAHATI, G S ROAD, ULUBARI,
GUWAHATI- 781007 REP. BY THE DEPUTY MANAGER, GAUHATI
REGIONAL OFFICE, ULUBARI, GUWAHATI- 781005

VERSUS

HAFIZA KHATUN AND 4 ORS
W/O- LATE JAMAL ALI, R/O- VILL- DUPAGURI, P.O AND P.S- DHING, DIST-
NAGAON, ASSAM, PIN- 782123

2:MD. HAMID ALI
S/O- LATE JAMAL ALI
R/O- VILL- DUPAGURI
P.O AND P.S- DHING
DIST- NAGAON
ASSAM
PIN- 782123

3:MD. MOSTUFA ALI
S/O- LATE JAMAL ALI
R/O- VILL- DUPAGURI
P.O AND P.S- DHING
DIST- NAGAON
ASSAM
PIN- 782123

4:MS. JAMENA KHATUN
D/O- LATE JAMAL ALI

R/O- VILL- DUPAGURI
P.O AND P.S- DHING
DIST- NAGAON
ASSAM
PIN- 782123

5:MD. HABIQUL ISLAM
S/O- SAMSUDDIN
R/O- VILL- BHERBHARI
P.O AND P.S- BATADRAVA
DIST- NAGAON
ASSAM
PIN- 78212

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent :

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

23. 01. 2023

Heard Mr. RD Mazumdar, learned counsel for the petitioner.

2. The present application under Article 227 of the Constitution of India is filed praying for setting aside the order dated 13.09.2022 passed in Misc Case No. 2/2022 arising out of MAC case No. 456/2016 by the learned Member, Motor Accident Claims Tribunal, Nagaon, Assam.
3. The brief facts leading to filing of the present application is that MAC case No. 456/2016 was filed by the respondent No. 1 to 4 before the learned Member, Motor Accident Claims Tribunal, Nagaon claiming compensation for death of their husband/ father in a motor vehicular accident. The present petitioner company being the insurer of the

offending vehicle was arrayed as respondent in the aforesaid motor accident claims case and the petitioner company after receipt of notice appeared before the learned Tribunal below and filed their written statement. The said MAC case was allowed by judgment dated 09.11.2018 in favour of the claimants. Thereafter the Insurance Company filed an application under Section 114 and Order 47, Rule 1 of CPC for review of the judgment dated 09.11.2018 passed in MAC case No. 456/2016. The said petition, which was registered as Misc. Case No. 02/2022 was filed on 28.09.2022.

4. The Insurance Company in the aforesaid application contended that after going through the judgment the Insurance Company could learn that the owner of the offending vehicle in MAC case No. 456/2016 owned multiple number of vehicle and all the policies which were issued to him for TP claims and made a prayer to review the judgment and allow the Insurance Company to examine the owner and driver of the offending vehicle. Such application was verified by the penal Advocates of the Insurance Company.
5. The said petition was dismissed by the learned Tribunal below under its order dated 13.09.2022. The learned court below after elaborate discussion and relying the judgment of the Hon'ble Apex Court in the case of State of ***West Bengal vs Kamal Singh Gupta reported in 2008 (8) SCC 612*** came to a conclusion that as the Insurance Company had a copy of the claim petition and the accident information report from the very beginning, it had the means to find out about the involvement of different vehicles of the owner from

very beginning. However, the Insurance Company did not do anything during the pendency of the proceeding. The learned Tribunal further came to a conclusion that the Insurance Company had not pleaded a word as to why the fact is now being placed before the Tribunal and was not brought to the notice during the summary proceeding that continued for three years.

6. The learned Tribunal further refused to incline the review application on the ground that the Insurance Company sat over the judgment for three years and then suddenly decided to file the review. The learned Tribunal further declined to revisit the facts pleaded on the ground that even if different view of the same court is plausible, is not emphasised within legally recognised tenets of review jurisdiction and no rehearing for correcting such a decision is permissible.
7. The learned Tribunal below went further ahead to impose a cost of Rs. 20,000/- on the Insurance Company for denying the lawful benefit to the claimants for a period more than three years.
8. This court is in total agreement with the views expressed by the learned Tribunal below. The Insurance Company has even not pleaded any fraud on the part of the claimants or on the part of the owner of the offending vehicle except making a statement that the Hon'ble Apex Court in case of false and fabricated cases issued direction to ascertain such doubtful cases which may require investigation to find out whether there are false and fabricated cases. Even if to investigate and to find out, the Insurance Company is to plead such fraud and prima-facie satisfy the Tribunal to go

deeper into such allegation. As discussed hereinabove, no fraud on the part of any party has been pleaded except the statement that the owner of the offending vehicle is owner of multiple vehicles and multiple claims are pending against such vehicles. Mere owning multiple vehicle and having pending claim against those vehicles, shall not automatically lead to a prima-facie case of fraud until and unless some cogent material and pleading are made available to the learned tribunal in the instant case.

9. Law is by now well settled that if a party alleges fraud, misrepresentation and undue influence, specific pleadings in this regard must be made. In the case in hand, as no specific pleadings regarding fraud were made. Therefore, in the considered opinion of this court, the learned Tribunal below has rightly not entertained the review application.
10. The Article 227 of the Constitution of India empowers the High Court to have superintendence over all Courts and Tribunals throughout the territory of the High Court. Such power is exercised to keep the Sub-ordinate Courts/ Tribunals within bounds of their authority and such power is exercised when such Sub-ordinate court acts in excess of the jurisdiction vested on them and/ or fails to exercise such jurisdiction vested on them which results in miscarriage of justice. In the present case in hand, the impugned order is not such an order passed in excess of jurisdiction and nor the Tribunal while passing the order had failed to exercise such jurisdiction or passed the order in total disregard of settled proposition of law. Therefore, this court is not inclined to exercise its

power of superintendence in the given facts of the present case.

11. Accordingly, the present petition stands dismissed.

JUDGE

Comparing Assistant