

GAHC010002382016



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

Case No. : MACApp./336/2021

THE ORIENTAL INSURANCE COMPANY LTD
- A CENTAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT
GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI 781007 REPRESENTED BY
THE MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI
781007

VERSUS

SRI RAM ABATAR CHAUDHURY and 6 ORS
S/O LATE BASUDEV CHOUDHURY

Advocate for the Petitioner : MS.R D MOZUMDAR

Advocate for the Respondent : MR. B K JAIN

Linked Case : I.A.(Civil)/280/2022

SRI RAM ABATAR CHAUDHURY and ANR.
S/O LATE BASUDEV CHOUDHURY

2: SMTI. BASANTI CHOUDHURY

W/O-RAM ABATAR CHOUDHURY
BOTH ARE R/O-VILL-UJAN PETLA PART-I
P.O. AND P.S. TAMARHAT
DT-DHUBRI

PIN-783332
VERSUS

THE ORIENTAL INSURANCE COMPANY LTD AND 5 ORS.
A CENTAL GOVT. UNDERTAKING HAVING ITS REGIONAL OFFICE AT
GUWAHATI
G.S. ROAD
ULUBARI
GUWAHATI 781007 REPRESENTED BY THE MANAGER
GAUHATI REGIONAL OFFICE
ULUBARI
GUWAHATI 781007

3:MD. SAFIUR RAHMAN

S/O-MD. SAHID RAHMAN
P.O AND P.S.-TAMARHAT
DT-DHUBRI
PIN-783332
4:SRI HARENDRA SATYA NARAYAN SINGH

GALA NO 4
SAIRAJ RESIDENCY
N.R.J.K. PETROL PUMP
REHMAI VILLAGE
TAL BHIWANDI
DT- THANE (MAHARASTRA)
PIN-421308
6:BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD
A-404 B 54
TILAK NAGAR
CHEMBUR
DIST-THANE (MAHARASTRA)
PIN-400071.

Advocate for : MR. B K JAIN
Advocate for : MRS. R. D. MAZUMDAR appearing for THE ORIENTAL
INSURANCE COMPANY LTD AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

04.01.2024

Heard Mr. BK Jain, learned counsel for the applicants as well as Ms. RD Mozumdar, learned counsel for the opposite party no.1/appellant.

2. This Interlocutory application has been filed for allowing the applicants to withdraw a sum of Rs. 6,00,600/- (Rupees six lakh six hundred only) that has been deposited by the opposite party no.1 on 18.01.2022 before the Registry of this Court in terms of the order dated 13.12.2021 passed in IA(C) 2160/2021 in MAC App. No.336/2021. It is submitted that the total award in favour of the applicant was for a sum of Rs. 8,58,000/- (Rupees eight lakh fifty eight thousand only).

3. The learned counsel for the opposite party no.1 has objected to the release of the deposited amount in favour of the applicants on the ground that after amendment of the Motor Vehicles Act, 1988 (MV Act in short) by the Motor Vehicles (Amendment) Act, 2019, the provisions for pay and recover has been withdrawn/ deleted and therefore, under the MVA Act, as it stands today, the opposite party no.1 would not be able to pay and recover that portion of the award which is satisfied by them. The second ground of objecting to the prayer for withdrawal is that the owner of the vehicle appeared before the learned Tribunal as DW-1 and had executed the driving licence of the driver. It is submitted that it has subsequently come to the notice of the opposite party no.1 that the driving licence was not valid for driving a good's vehicle and the said licence only authorized the driver of the offending vehicle to drive a motorcycle and LMV only. The third ground for objecting the prayer for withdrawal is that the vehicle involved in the accident was a goods carrying vehicle and was carrying vegetable products (watermelons), but the deceased as well as his father were accompanying the goods and accordingly it is submitted that only

one person would be entitled to be treated as a owner of the goods and the deceased was merely a gratuitous passenger for whom the insurance coverage cannot be extended.

4. Having regard to the fact that when the owner of the vehicle was examined as DW-1, he was not questioned on the nature/ status and/ or validity of the driving licence of the driver and the investigators report on the which the opposite party no.1 is now relying in the connected appeal is a document which is dated subsequent to the award passed in the MAC case, and therefore, a document not examined by the learned MACT.

5. Therefore, taking note of the status of the deceased who was stated to be a vegetable vendor, the Court is inclined to partly allow the prayer made in this application by permitting the applicant no.2 (Basanti Choudhury) to withdraw a sum of Rs. 3,00,000/- (Rupees three lakh only) out of the deposited amount of Rs.6,00,600/- on the condition that the applicant no.2 i.e. will submit a money bond before the Registry of the Court undertaking to refund the money as and when ordered to make refund, and on the identification being made by the learned counsel for the applicants.

6. In so far as the balance amount deposited in the Registry is concerned, in view of the nature of objections raised, the same shall be retained by the Registry in a interest bearing fixed deposit account for 3(three) years.

7. This application stands disposed of on being partly allowed.

JUDGE

Comparing Assistant