

GAHC010037472017



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

Case No. : MACApp./436/2017

MUSST FIRUZA KHATUN @ BEGUM and ANR
W/O MD. AMSER ALI

2: MD. AMSER ALI
S/O LT. AMIR ALI
BOTH ARE R/O KATHONI
P.S. LAHARIGHAT
DIST. MORIGAON ASSAM
PRESENT ADDRESS SIALMARI
P.S. NAGAON
DIST. NAGAON
ASSAM

VERSUS

REGIONAL MANAGER UNITED INDIA INSURANCE CO. LTD and 2 ORS
UNITED INDIA INS. CO. LTD., G.S. ROAD, GUWAHATI, PIN NO. 781005
HAVING A BRANCH AT JAGIROAD BRANCH INSURER OF AS-04B/7361, 407
MINI TRUCK VIDE P/NO. 130103/31/11/02/00004212 VALID UP TO 04-12-2001

2:MD. ZAKIR HUSSAIN
S/O MD. JAHED ALI
R/O CHENIMARYGAON
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM
PIN 782127 OWNER OF THE VEHICLE NO. AS-4B/7361 407 MINI TRUCK

3:MD. JOYNAL UDDIN
S/O ABDUL KUDUSH
VILL. BORBORI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM

PIN 782127
DRIVER OF THE VEHICLE NO. AS-4B/7361
407 MINI TRUC

Advocate for the Petitioner : MR. B HUSSAIN, MR. I A TALUKDAR, MS. P BARMAN

Advocate for the Respondent : MS. R D MOZUMDAR, MR. S P SHARMA

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

22.10.2024

Heard Mr. I.A. Talukdar, learned counsel for the appellants and Ms. R.D. Mozumdar, learned counsel for the respondents.

2. In this appeal, under Section 173 of the M.V. Act, the appellants have put to challenge the correctness or otherwise of the Judgment and Award dated 16.05.2017, passed by the learned Member, M.A.C.T., Nagaon, in M.A.C. Case No. 592/2015.

3. It is to be noted here that vide impugned Judgment and Award dated 16.05.2017, the learned Member, M.A.C.T., Nagaon has dismissed the claim petition filed by the appellants on merit, on the ground that the claimants/appellants did not appear before the Tribunal on the 6 consecutive dates and also failed to establish rash and negligent driving on the part of the driver of the offending vehicle.

4. Mr. Talukdar, learned counsel for the appellants submits that vide Judgment and Award dated 16.05.2017, the learned Member, M.A.C.T., Nagaon has disposed of the appeal on merit, without hearing the appellants and their counsel. As such, the impugned judgment and award is illegal and arbitrary and the same may be set aside and the matter may also be remanded to the learned Tribunal to decide the

matter afresh, after affording opportunities of being heard to both the parties.

5. On the other hand, Ms. Mozumdar, learned counsel for the respondents submits that though on the relevant date the appellants remained absent before the learned Tribunal, yet, an application was filed for adjournment. But, the learned Tribunal had not granted any adjournment and proceeded to hear and dispose of the matter on merit. Ms. Mozumdar further submits that there is laches on the part of the appellants, who had failed to appear before the learned Tribunal on 6 consecutive dates. However, Ms. Mozumdar submits that the respondent insurance company has no objection in the event of remanding the matter to the learned Tribunal, but a direction may be given to the learned Tribunal in the event of granting any compensation to the appellants, the rate of interest has to be determined, keeping in mind the delay so caused by the claimants in disposing of the petition.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also perused the impugned Judgment and Award dated 16.05.2017, passed by the learned Member, M.A.C.T., Nagaon, in M.A.C. Case No. 592/2015.

7. It is not in dispute that while the matter was taken up by the learned Tribunal on 16.05.2017, neither the appellants nor their counsel was present before it. But, an application was filed for granting adjournment and the same came to be dismissed.

8. As the impugned judgment was passed without hearing the appellants, which resulted in dismissal of the claim petition and the same caused prejudice to the appellants, inasmuch as they were not heard and the impugned judgment was passed behind their back without affording them an opportunity of being heard.

9. It is well settled that right to fair trial is a fundamental right of both the

parties and in the fair trial, fair opportunity has to be afforded to both the parties to establish their cases.

10. In that view of the matter and also taking into note the submission of learned counsel for both the parties, this court is inclined to set aside the impugned Judgment and Award dated 16.05.2017, passed by the learned Member, M.A.C.T., Nagaon, in M.A.C. Case No. 592/2015 and to remand the matter back to the learned Tribunal with a direction to afford fair opportunity to both the parties to present their cases and thereafter, to dispose of the claim petition, in accordance with law.

11. It is provided that the parties shall appear before the learned Member, M.A.C.T., Nagaon within a period of 3 (three) weeks from today. It is further provided that at the end of the trial, if the learned Tribunal finds that the claimants are entitled to compensation, then the learned Tribunal shall take into account the delay caused by the appellants in disposing of the claim petition while fixing the rate of interest.

12. Since, the claim petition was filed in the year 2015 and the appeal was preferred in the year 2017, this court is inclined to request the learned Tribunal to make an endeavor to dispose of the claim petition at an early date.

13. In terms of above, this appeal stands disposed of.

14. The Registry shall return the case record of the learned Tribunal forthwith, with a copy of this order. Parties have to bear their own costs.

JUDGE

Comparing Assistant