

GAHC010044422021



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

Case No. : I.A.(Civil)/606/2021

NEW INDIA ASSURANCE COMPANY LTD.
HAVING ITS REGD. AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING
87
MAHATMA GANDHI ROAD
FORT
MUMBAI- 400001 AND REGIONAL OFFICE AT G.S. ROAD
GHY- 5
REP. BY THE CHIEF REGIONAL MANAGER

VERSUS

SARASWATI CHALIHA ALIAS SAIKIA AND 6 ORS.
W/O. LATE KULENDRA NATH SAIKIA

2:PLABITA SAIKIA
D/O- LT. KULENDRA NATH SAIKIA.

3:MADHUSMITA SAIKIA
D/O- LT. KULENDRA NATH SAIKIA.

4:ARKITA SAIKIA
D/O- LT. KULENDRA NATH SAIKIA. NO. 3 and 4 ARE MINOR AND THEIR REP.
BY THEIR MOTHER- CLAIMANT NO. 1. ALL ARE RESIDENT OF VILL.-
BEZPARA
P.S.- MANGALDAI
DIST.- DARRANG
ASSAM
PIN- 784145.

5:SAHAJUL HAQUE

S/O- MD. BANIZUDDIN AHMED
VILL.- WARD NO. 7
MANGALDAI
P.O. and P.S.- MANGALDAI
DIST.- DARRANG
ASSAM
PIN- 784145
OWNER OF THE OFFENDING VEHICLE.

6:MAHIBUL HAQUE
S/O- LT. S. ALI
R/O- GOPALPUR
KAIKARA
DARRANG
ASSAM
DRIVER OF THE OFFENDING VEHICLE
PIN- 784145.

7:ADDL. DIST. JUDGE
DARRANG
MANGALDAI
PIN- 784145.

Advocate for : MR. S DUTTA
Advocate for : appearing for SARASWATI CHALIHA ALIAS SAIKIA AND 6 ORS.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 02.09.2024

Heard Mr. S Dutta learned senior counsel for the petitioner and Mr. Z Hussain, learned counsel for the respondents.

This is an application for restoration of WP(C) No.5016/2011, which was dismissed for non prosecution on 26.05.2017 by this court.

Mr. Dutta learned senior counsel submits that the counsel who initially filed the petition was subsequently appointed as a Member of the Foreigner's Tribunal on 10.08.2015, and the said counsel also did not return

the brief to the Insurance Company and as a result, no steps were taken on 26.05.2017. Therefore, there is no fault on the part of the Insurance Company in such a default and accordingly, the matter may be restored.

On the other hand, the learned counsel for the opposite party has vehemently opposed such restoration and submits that the matter pertains to the year 2011 and the order dated 26.05.2017 itself discloses negligence on the part of the Insurance Company, inasmuch as, even if it is assumed that the Insurance Company was not intimated, as a litigant it was the responsibility of the Insurance Company to have a follow up on the matter. The learned counsel further submits that otherwise also the writ petition is not maintainable in view of the fact that by way of filing the writ petition, the Insurance Company has challenged an award dated 09.06.2009 passed by the learned Additional District Judge (FTC), Darrang, Mangaldai in MAC Case No.131/2008 and order dated 26.11.2010 passed in Misc Case No.8/2010, which are otherwise appealable awards under section 173 of the MV Act.

I have heard the learned counsel for the parties.

It is seen from the record that the petitioner Insurance Company was granted 7 (seven) days time to make good the deficit postal stamp for service of notice on the respondent Nos.1 to 7 by an order dated 12.12.2011. Subsequently, notice dated 10.02.2012 were issued and respondent Nos.3, 5 & 7 had also entered appearance, however, there is no indication whether notices had been served or not on other respondents, neither the petitioner has made any endeavor to take up the matter with the registry for listing of the writ petition.

In the aforesaid backdrop, this court has dismissed the writ petition in the year 2017, when none appeared for the petitioner.

This court is of the considered opinion that Insurance Company being a prudent litigant ought to have persuaded the matter from 2011, though their counsel was appointed as member of Foreigner's Tribunal in the year 2015.

This court finds no infirmity in dismissing the writ petition for non prosecution. This court also cannot be unmindful of the fact that there is a doubt itself as regards the maintainability of the writ petition in challenging an award of the MACT by way of writ petition when there is alternative efficacious remedy of appeal is there.

Be that as it may, this court do not find any merit in the present writ petition and accordingly same stands dismissed.

However, this order shall not debar the appellant Insurance Company to seek remedy available under law.

JUDGE

Comparing Assistant