

GAHC010044652024



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

Case No. : I.A.(Civil)/861/2024

MAZEDA KHATUN AND ANR
D/O LATE DHAZIR UDDIN AHMED
RESIDENT OF VILLAGE JALIKURA
PO BAHALPUR, PS CHAPAR
DIST DHUBRI, 783371, ASSAM

2: SAZEDA KHATUN
D/O LATE DHAZIR UDDIN AHMED
RESIDENT OF VILLAGE JALIKURA
PO BAHALPUR
PS CHAPAR
DIST DHUBRI
783371
ASSA

VERSUS

THE ORIENTAL INSURANCE CO. LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956.
REPRESENTED BY ITS REGIONAL MANAGER, ULUBARI, GUWAHATI 07

Advocate for the Petitioner : MR. S ALIM

Advocate for the Respondent : MR. S K GOSWAMI

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29-07-2024

- 1.** Heard Mr. S. Alim, learned counsel for the applicants. Also heard Mr. S.K. Goswami, learned counsel appearing for opposite-party.
- 2.** This application under Section 151 of the Code of Civil Procedure, 1908 has been filed by the applicants/claimants, namely, [1] Mazeda Khatun and [2] Sazeda Khatun for release of an amount of Rs. 2,50,000/- deposited by the opposite-party before the Registry of this Court in pursuant to the direction of this Court by Order dated 24.08.2018 passed in I.A.(C) No. 3017/2018. Said deposit was made by the opposite-party as it was the condition preceding for suspension of the impugned judgment and award during the pendency of the connected appeal.
- 3.** Learned counsel for the applicants has submitted that though the Motor Accident Claims Tribunal No. 2, Kamrup (M), Guwahati by the judgment and award dated 02.06.2018 was pleased to direct payment of compensation of an amount of Rs. 11,03,752/- to the applicants, however till now they are unable to enjoy the fruits of the same order due to pendency of the connected MAC Appeal i.e. MAC Appeal No. 747/2018. Learned counsel for the appellant has submitted that this connected appeal has been pending since last 6 years and there is unlikelihood that the appeal filed by the appellant would be successful. Hence, he has prayed for releasing the amount deposited by the insurance company in favour of the applicants.
- 4.** On the other hand, learned counsel for the insurance company/opposite-party has submitted that the insurance company/appellant has preferred the appeal on any grounds, inter alia that the driver of the offending vehicle did not had a valid licence at the time of accident. There is every likelihood that the

appeal filed by the appellant, favourable orders would be filed and liabilities likelihood to be shifted to the owner of the vehicle involved in the accident. Hence, he has opposed the prayer for releasing the money which has been deposited by the insurance company to the applicants during the pendency of the connected appeal.

5. Heard learned counsel for both sides. I have considered the submissions made by learned counsel for both sides as well as perused the materials available on record. It appears that though the operation of the impugned judgment and award is stayed, the interlocutory application stayed on 28.08.2018, however, even after lapse of 6 years the appeal could not have heard and finally disposed of.

6. Moreover, it also appears that the Order dated 24.08.2018 passed in IA(C) No. 3017/2018 was passed without issuing notice to the above named applicants and therefore they did not have any opportunity to oppose the prayer for stay of the exhibition of the impugned award and judgment. The apprehension raised by the counsel for the insurance company may be taken care of by directing the applicants to furnish an indemnity bond and the deposited amount is directed to be released in their favour.

7. In view of above, the prayer for release of the deposited amount of Rs. 2,50,000/- in favour of the applicants/claimants, namely, [1] Mazeda Khatun and [2] Sazeda Khatun is hereby allowed.

8. Registry is directed to release the amount of Rs. 2,50,000/- deposited by the insurance company (opposite-party) subject to furnishing of an indemnity bond by the applicants to the Registry of this Court to the tune of Rs. 2,50,000/-.

9. With above observation, this interlocutory application is disposed of.

JUDGE

Comparing Assistant