

GAHC010057752022



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

Case No. : CRP/33/2022

BAKHAL RAMCHİYARI
S/O- DEOBAR RAMCHİYARI, PERMANENT RESIDENT OF VILL.- PUB
ATHIYABARI, P.S. BORBARI, DIST.- BAKSA, ASSAM AND PRESENT
ADDRESS- BORAGAON, P.S. GORCHUK, DIST.- KAMRUP(M), ASSAM

VERSUS

THE ROYAL INSURANCE CORPORATION OF BHUTAN AND 2 ORS.
REPRESENTED BY THE MANAGER OF ROYAL INSURANCE CORPORATION
OF BHUTAN, MAIN BRANCH, POST BOX NO. 77, PHUENTSHOLING,
BHUTAN, PIN- 734001.

2:MR. TASHI
C/O- CHIMI WANGDI
R/O- THIMPHU
P.S. THIMPHU
DIST. THIMPHU
BHUTAN
PIN- 11001.

3:MR. CHHEMNI WANGDI
S/O- LATE KARMA CHOPHEL
R/O- VILLAGE DUNGER
P.S. LHUNDRE
DIST. LHUNDRE
BHUTAN
PIN-45001.

4:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY OF THE EXTERNAL MINISTRY TO
THE GOVT OF INDIA

SOUTH BLOCK
SECRETARIAT BUILDING
RAISINA HILL
NEW DELHI
PIN 780001

Advocate for the Petitioner : MR I HAQUE

Advocate for the Respondent : MR. R K D CHOUDHURY

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 23.07.2024

- 1.** Heard Mr. I. Haque, learned counsel for the petitioner.
- 2.** This application under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the petitioner, namely, Bakhal Ramchiyari impugning the order dated 03.03.2021, passed by the learned Additional District Judge No.2, Kamrup (M), whereby the prayer for restoration of MAC Case No. 2235/2013 was rejected by the Trial Court on the ground that the delay for approaching the Court for seeking restoration of the aforesaid case has not been properly explained.
- 3.** The facts relevant for consideration of the instant Revision Petition are that the petitioner's wife had filed a MAC Case under Motor Accident Claims Case under Section 166 of the MV Act, 1988, seeking compensation in death of the son of the petitioner who died in a vehicular accident.
- 4.** The said case was registered as MAC Case No. 2235/2013 and has been pending in the Court of learned Additional District Judge No. 2, Kamrup

(M).

5. It is submitted by the learned counsel for the petitioner that the respondent No.1 Insurance Company appeared in the said MAC case and contested the claim case by filing a written statement. However, the other respondent did not appear as notices were not duly served on them.

6. Learned counsel for the petitioner submits that on 23.06.2017, 07.08.2017, 15.09.2017, as well as on 14.11.2017 none of the parties appeared before the learned Motor Accident Claims Tribunal. Hence, by order dated 14.11.2017, the Tribunal was pleased to file the case till the appearance of the claimant.

7. It is submitted by learned counsel for the petitioner has submitted that there was a communication gap between the petitioner and the engaged counsel of the petitioner and therefore, the petitioner was not aware about the status of the case. More specifically, he was not aware that his case was filed by the Tribunal by order dated 14.11.2017 and therefore, on 09.09.2019, he filed an application.

8. In the meanwhile, the wife of the petitioner, who is the claimant in MAC Case No. 2235/2013, died and therefore, the petitioner approached the Court of learned Additional District Judge-cum-Member, Motor Accident Claims Tribunal for restoration of the MAC Case No. 2235/2013 by filing an application under Order 9 Rule 4 of the Code of Civil Procedure, 1908 along with an application for substitution of the claimant by the present petitioner.

9. However, by the impugned order dated 03.03.2022, the Court of

learned Additional District Judge No. 2, Kamrup (M) had rejected the prayer for restoration on the ground that the petitioner has approached the Court after a long delay and has not been able to explain the delay sufficiently.

10. I have considered the submissions made by learned counsel for the petitioner as well as perused the materials on record, including the documents annexed along with the Revision Petition.

11. It is very strange as to why an application under Order 9 Rule 4 of the Code of Civil Procedure, 1908 was filed in the first instance, when the MAC Case No. 2235/2013 was not dismissed at all, but it was only filed till the appearance of the claimant. Same is apparent on perusal of the order dated 14.11.2017.

12. The question of delay in filing the restoration petition in this case does not arise, as the case was never dismissed, and as it was only filed till the appearance of the claimant, it was incumbent on the Court, i.e., the Court of learned Additional District Judge No. 2, Kamrup (M) to restore the MAC Case No. 2235/2013 as soon as the petitioner appeared before it and should have allowed time to file a substitution petition on the death of the original claimant, who is the wife of the petitioner.

13. As there is no bar of limitation in case of a case being filed by the Court, the question of condonation of delay in restoration of the same does not arise.

14. Hence, for the reasons mentioned above, this Court is of considered opinion that the impugned order is not in accordance with law and liable to be set aside.

15. Accordingly, for the reasons mentioned hereinabove, the impugned order is hereby set aside.

16. The Court of learned Additional District Judge No. 2, Kamrup (M), is hereby directed to restore the MAC Case No. 2235/2013 and to allow the petitioner to file the application for substitution of the claimant and consider the same in accordance with law.

17. With above observation, this Revision Petition is disposed of

JUDGE

Comparing Assistant