

GAHC010081442024



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

Case No. : I.A.(Civil)/1958/2024

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT SHAW WALLACE
BUILDING NEW NO. 319
OLD NO. 154
2ND FLOOR
THAMBU CHETTY
CHENNAI
PIN- 600001
INDIA
ITS ZONAL OFFICE AT OFFICE NO. 201 AND 202 L AND T CHAMBERS
2ND FLOOR
16 CAMAC STREET
KOLKATA- 700017 AND ITS GUWAHATI REGIONAL OFFICE AT 4TH FLOOR
AASTHA PLAZA
BORA SERVICE
G.S. ROAD
GUWAHATI
KAMRUP (M)
ASSAM- 781007 REPRESENTED BY THE DEPUTY MANAGER LEGAL
CLAIMS OF GUWAHATI REGIONAL OFFICE.

VERSUS

SABITA MANDAL AND 2 ORS H
W/O LATE RATAN MANDAL
VILL.- 2 NO. MURKATA
P.S.- MAYANG
DIST.- MORIGAON
ASSAM
PIN- 782411.

2:RAJBIR MANDAL
S/O LATE RATAN MANDAL

VILL.- 2 NO. MURKATA
P.S.- MAYANG
DIST.- MORIGAON
ASSAM
PIN- 782411.
(BEING MINOR
REP. BY RESPONDENT NO. 1).

3:MANOJ SARMA
S/O SATYA NATH SARMA

VILL.- BARNIBARIM P.O.- NALBARI
P.S.-NALBARI
DIST.- NALBARI
ASSAM
PIN- 781335.
PRESENT RESIDENT OF- SWAHID NAGAR
NOONMATI
NEAR SHIV MANDIR
NOONMATI
GUWAHATI
KAMRUP (M)
ASSAM PIN- 781020.

Advocate for : MR T KALITA
Advocate for : appearing for SABITA MANDAL AND 2 ORS H

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 21.08.2024

Heard Mr. T. Kalita, learned counsel for the appellant. Also heard Mr. S. Rahman, learned counsel for the respondent nos. 1 and 2.

This is an appeal Order XLI, Rule 5 of the CPC seeking stay of operation of the impugned Judgment and Order dated 18.12.2023 passed by the learned Member, MACT No. 3, Kamrup (M) at Guwahati in MAC Case No. 119/2019.

Mr. T. Kalita, learned counsel for the appellant submits that there are good grounds for appeal against the impugned judgment.

He further submits that the impugned judgment is not in accordance with the principles of compensation as under Section 168 of the Motor Vehicle Act, 1988 as amended.

Mr. S. Rahman, learned counsel for the respondent nos. 1 and 2 submits that he has instruction not to object to the stay subject to deposit of 50% of the awarded amount.

Considered the aforesaid argument and perused the grounds made in the appeal memo as well as the averments made in the Interlocutory Application for stay.

Paragraph 3, 4, 5 and 6 are reproduced hereunder for ready reference:-

“3. That the applicant states that that the Learned Member erroneously

had added 25% upon the income assessed towards future prospect in respect of the deceased who was undisputedly aged about 52 years and was a self-employed person. It is stated that the Hon'ble Apex Court in the Judgment of Pranay Sethi had streamlined that the future prospect for a person being self- employed or on a fixed salary between the age of 50 to 60 years would be 10%.

4. That the applicant humbly begs to state that out of Rs. 6,64,196.00 which was claimed to have been the total expenditure of the treatment, an amount of Rs. 291447/- purported to be medical bills were in fact either Challan Bills, Credit Memos or Advance payments and those could not have been considered to be medical vouchers. The Learned Member despite being pointed out in the written argument of the applicant had accepted those to be medical vouchers and calculated as total expenditure incurred for the treatment of the deceased husband. As such, the Judgment is liable to modified to that extent.

5. That the applicant begs to state that the Learned Member had not only levied interest @9% on the awarded amount but also levied interest on the amount quantified towards future prospect.

6. That the petitioner/appellant begs to submit the balance of convenience is in favour of the petitioner and if the impugned Judgment and Award dated 18.12.2023 passed in MAC Case No. 119 OF 2019 is not stayed the petitioner shall suffer irreparable loss and injury and consequently the very purpose of preferring the said appeal before this Hon'ble Court would be frustrated. The fund of the Insurance Company is a public fund created out of the premium paid by the policyholders and if the said impugned Judgment and Award is not stayed, there would be a loss to the public fund as the money, if disbursed, would be difficult to recover from the claimants in the event of the Hon'ble Court deciding the appeal against the said Judgment and Award dated 18.12.2023 in favour of the petitioner/appellant.”

Reading of the aforesaid averments appears that there is good and sufficient ground for stay. Accordingly in the interim it is provided that the operation of the impugned Judgment and Order dated 18.12.2023 passed by the learned Member, MACT No. 3, Kamrup (M) at Guwahati in MAC Case No. 119/2019 shall remain stay subject to 50% deposit of the awarded compensation before the Registry of this Court.

Disposed of.

JUDGE

Comparing Assistant