

GAHC010124772020



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

Case No. :

I.A.(Civil)/1752/2024

THE NATIONAL INSURANCE COMPANY LIMITED
REGISTERED HEAD OFFICE AT 3
MIDDLETON STREET
CALCUTTA- 700071
REP. BY THE DEPUTY MANAGER
GAUHATI REGIONAL OFFICE
BHANGAGARH
GUWAHATI- 781005
KAMRUP(M)
ASSAM.

VERSUS

SMTI SULEKHA DAS AND 2 ORS
W/O- LATE RAMESH CHANDRA DAS
R/O- VILL.- NIZ KATIGORAH
PT.-III
P.O. AND P.S. KATIGORAH
DIST.- CACHAR
ASSAM
PIN- 788805.

Advocate for : MS. R D MOZUMDAR
Advocate for : MR. M TALUKDAR appearing for SMTI SULEKHA DAS AND 2
ORS

In

MFA Case No. 112/2023

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

ORDER

01.08.2024

- 1.** Heard Ms. R.D. Mozumdar, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned Senior Counsel, assisted by Mr. M. Talukdar, learned counsel for the respondents.
- 2.** This application under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 has been filed by the appellant/applicant praying for allowing the appellant to exhibit the Insurance Policy.
- 3.** The applicant has filed the connected MAC Appeal No. 112/2023, wherein, it has impugned the Judgment and Award dated 19.11.2019, passed in MAC Case No. 137/2017, by the learned Member, Motor Accident Claims Tribunal, Cachar at Silchar.
- 4.** The learned counsel for the applicant has submitted that as per the Insurance Policy of the vehicle, which was involved in the accident, the personal accident cover for 5 persons with liability of Rs. 1 lakh for each passenger has been mentioned in the policy. Hence, it is submitted by the learned counsel for the petitioner that the liability of the insurance company may not exceed Rs. 1 lakh in terms of the Insurance Policy. However, she submits that the Insurance Policy was not exhibited by either the claimants or the respondents before the learned Tribunal when the inquiry in MAC Case No. 137/2017 was going

on.

5. The learned counsel for the applicant has submitted that though the Insurance Policy in question has been annexed by the applicant/appellant, along with the Memo of Appeal. However, as same was not exhibited during the inquiry the applicant/appellant is desirous of exhibiting the same, more so, when there is no dispute regarding the existence or the terms of the policies.

6. On the other hand, learned Senior Counsel appearing for the Opposite Parties/claimants has vehemently opposed the prayer for exhibiting the Insurance Policy by the appellant at this stage.

7. The learned Senior Counsel for the Opposite Parties has submitted that a prayer for taking additional evidence at the appellate stage may be allowed only under exceptional circumstances, as provided in Order XLI, Rule 27 of the Code of Civil Procedure, 1908.

8. The learned Senior Counsel for the Opposite Parties/claimants has submitted that the general principle in respect of an application under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 is that the Appellate Court should not travel outside the records of the Trial Court and cannot take any evidence in Appeal. The exception to the general rule has been provided in Order XLI, Rule 27 (1) (a), (aa) and (b) of the Code of Civil Procedure, 1908.

9. The learned Senior Counsel for the respondents has also submitted that the Appellate Court should not allow new materials to be produced before the Appellate Court to enable a party to raise a new point in Appeal which it had not taken before the Tribunal when the inquiry was pending before it.

10. The learned Senior Counsel for the Opposite Parties has also cited a ruling of the Apex Court of India in the case of "***Union of India v. Ibrahim Uddin and another***" reported in "**(2012) 8 SCC 148,**" wherein the general principles of adducing additional evidence at appellate stage has been thoroughly discussed by the Supreme Court of India.

11. I have considered the submissions made by the learned counsel for both the sides as well as perused the materials available on record.

12. It is no longer *res integra* that the general principles in respect of adducing of additional evidence or production of a document at the appellate stage is that the parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court unless and until any of the circumstances as enumerated in Order XLI, Rule 27 (1) (a), (aa) and (b) are there. Any of the circumstances mentioned in the aforesaid provisions must exist before an application under Order XLI, Rule 27 may be allowed.

13. In the instant case, the appellant has annexed the policy in question as Annexure-2 to the memo of appeal filed by the appellant. However, no reason has been shown by the appellant as to why the said Insurance Policy was not exhibited by the appellant before the Motor Accident Claims Tribunal, when the inquiry in MAC Case No. 137/2017 was pending before it.

14. Certainly, the recourse to the provisions of Order XLI, Rule 27 cannot be taken for filling up of lacunae by either of the parties or for setting up a new point at the Appellate stage. Regarding the necessity of perusing the Insurance Policy by this Court is concerned, as the

policy in question has already been annexed in the memo of appeal, this Court may go through the same as and when required while considering the instant appeal.

15. However, this Court is constrained to hold that the applicant has failed to satisfy this Court that the condition required to be fulfilled for allowing an application under Order XLI, Rule 27 are present in this case. Hence, the application for exhibiting the policy in question by the appellant at this stage is hereby rejected.

16. This Interlocutory Application is accordingly disposed of.

JUDGE

Comparing Assistant