

GAHC010115352024



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

Case No. : CRP(IO)/194/2024

MD. IMDAD HUSSAIN AND ANR
S/O- MUBARAQUE HUSSAIN, R/O- VILL.- KABARKHANA ROAD, TEZPUR
TOWN, P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM, PIN- 784001.

2: MUSSTT. AAYESHA KHATUN
W/O- MUBARAQUE HUSSAIN
R/O- VILL.- KABARKHANA ROAD
TEZPUR TOWN
P.O. AND P.S. TEZPUR
DIST. SONITPUR
ASSAM
PIN- 784001

VERSUS

SUFIA BEGUM @ CHUFIA BEGUM AND ANR
W/O- NUR ISLAM @ NOOR ISLAM, R/O- VILL.- GOTLONG, P.O.
KALIABHOMORA, P.S. TEZPUR, DIST. SONITPUR, ASSAM, PIN- 784027.

2:HAFIJ UDDIN
S/O- NUR ISLAM @ NOOR ISLAM
R/O- VILL.- GOTLONG
P.O. KALIABHOMORA
P.S. TEZPUR
DIST. SONITPUR
ASSAM
PIN- 784027

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

14.06.2024

Heard Shri A. Ganguly, learned counsel for the petitioners who has filed this petition under Article 227 of the Constitution of India against orders dated 09.04.2024 and 16.05.2024 passed in MACT Case No. 72/2002 (D) before the learned MACT, Sonitpur at Tezpur.

2. The projected case in this petition is that the respondents had instituted the aforesaid claim before the Tribunal claiming compensation on the death of one Nur Islam @ Noor Islam @ Kadir Ali in a motor vehicle accident in which the petitioners are the opposite parties. The petitioners are the owner and driver of the vehicle in question. It is projected that the petitioners had filed a joint written statement and on 22.08.2023, the claimants had filed the evidence. Thereafter, the matter had come up for consideration before the Tribunal on 26.09.2023 and 31.10.2023 when adjournment was sought for by the claimants. When the matter had come up for consideration thereafter on 05.01.2024, a last opportunity was granted to the claimants fixing the next date as 26.02.2024. On the said date, i.e., 26.02.2024, the claimant witness was closed and the next date was fixed on 20.03.2024.

3. On 20.03.2024, the petitioners had filed an application seeking adjournment for filing of DWs and on the said date, the respondents - claimants had filed hazira. However, on 09.04.2024, an application was filed by the respondents-claimants which appears to be an application for re-call of the earlier order of the Tribunal and to allow the cross examination of the claimant

witness. Vide the impugned order dated 09.04.2024, the said petition was allowed with cost of Rs. 1000/- payable to the DSLA, Sonitpur. On the said date, it appears that the petition filed by the present petitioners for adjournment for DW was also allowed. The Tribunal had fixed the next date as 16.05.2024 for cross examination.

4. Shri Ganguly, the learned counsel for the petitioners has submitted that the impugned order suffers from jurisdictional error inasmuch as the same was passed without there being any inherent powers of the Tribunal to re-call any such order. It is submitted that the petition has to be construed to be a petition under Section 151 of the CPC and such powers cannot be exercised by taking recourse to the aforesaid provision of law. The learned counsel has also referred to Section 169 of the Motor Vehicles Act which lays down the procedure and powers of the Claims Tribunal. It is further submitted that the impugned order was passed without giving any opportunity to the petitioners to file any objection. It is submitted that vide the order dated 26.02.2024, a substantive right had accrued upon the petitioners who were contesting the claims and that right could not have been taken away without giving any opportunity.

5. The learned counsel, in support of his submissions has relied upon an order dated 03.12.2021 passed by this Court in CRP No. 157 / 2014 [***Dipu Das vs. Dr. Rubul Ch. Das and Anr.***]. This Court in the aforesaid order had also relied upon the judgment of the Hon'ble Supreme Court reported in 1999 2 SCR 1189 [***Sri Budhia Swain & Ors. Vs. Gopinath Deb & Ors.***]

6. Shri Ganguly, the learned counsel accordingly submits that the interference is to be made by this Court against the impugned order.

7. The order impugned in this proceeding filed under Article 227 of the

Constitution of India is passed by a Motor Accident Tribunal in a death case. The claim was instituted in the year 2022 and it appears that the claimants have already filed the evidence on affidavit. Though it appears that three numbers of adjournments were sought for production of the CWs for their cross examination whereafter the order dated 26.02.2024 was passed closing the CWs, the respondent-claimants had filed an application on 09.04.2024 which is effectively for re-call of the earlier order and for acceptance of the claimants evidence.

8. The learned Tribunal vide the impugned order dated 09.04.2024 had allowed the said petition on cost and there is a specific direction while fixing the next date that it would be only for cross examination. The aforesaid order had also allowed the petitions of the present petitioners for adjournment for filing of the DWs.

9. The Tribunal exercising powers under the Motor Vehicles Act 1988 and the Rules framed there under is not bound by the strict rules of the Code of Civil Procedure. A reference to Section 169 of the Act would itself make it clear that it is only for certain purposes that the Tribunal would be deemed to be a Civil Court and those purposes have been specifically mentioned in Section 169 (2) of the Act. The reliance upon the order of this Court in ***Dipu Das*** (supra) and also of the Hon'ble Supreme Court in ***Budhia Swain*** (supra) are orders which were passed *qua* the exercise of powers by a Civil Court under Section 151 of the CPC and would not have an application in this case.

10. Though the order dated 09.04.2024 appears to have been passed on the same date when the application was made by the respondent-claimants and apparently the present petitioners were not given an effective opportunity, this Court is of the considered opinion that the powers exercised by the Tribunal was

only to secure the ends of justice as the entire objective of the codification of the Motor Vehicles Act, 1988 and the Rules is a beneficial legislation whereby the tortious liability of that nature has been codified in a manner whereby such claims can be efficaciously disposed of by a specialised Tribunal.

11. The powers to be exercised by this Court under Article 227 of the Constitution of India is a power of superintendence wherein this Court is only to look out whether the orders passed by the Subordinate Courts / Tribunals are within the ambit of law. In the considered opinion of this Court, the impugned order does not appear to be one which calls for any interference by this Court.

12. Petition accordingly stands dismissed.

JUDGE

Comparing Assistant