

GAHC010124662020



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

Case No. :

I.A.(Civil)/1661/2020

THE UNITED INDIA INSURANCE COMPANY LIMITED
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD
CHENNAI- 600014 AND REGIONAL OFFICE AT CHIBBER HOUSE
G.S. ROAD
GUWAHATI-5
REP. BY ITS REGIONAL MANAGER
REGIONAL OFFICE
GUWAHATI. (INSURER OF THE VEHICLE NO. AS-01-BF-5374 (MOTOR
CYCLE).

VERSUS

SARWAR KHAN @ ABDUL SARWAR KHAN AND 3 ORS
S/O- JALIL KHAN
R/O- VILL.- BATORHAT
P.S. PALASHBARI
DIST.- KAMRUP
ASSAM.

2:NAZMA BEGUM
W/O- SARWAR KHAN @ ABDUL SARWAR KHAN
R/O- VILL.- BATORHAT
P.S. PALASHBARI
DIST.- KAMRUP
ASSAM.

3:MD. JAKIR HUSSAIN
S/O- MD. MAHIM ALI
VILL.- BIBEKANANDA SARMA
LACHIT NAGAR

P.S. BHANGAGARH
GUWAHATI
DIST.- KAMRUP(M)
ASSAM. (OWNER OF VEHICLE NO. AS-01-BF-5374 (MOTOR CYCLE).

4:MD. ISLAM ALI
S/O- LATE HAFIJ ALI
VILL.- DEHAR KALA KUCHI
P.S. MUKALMUA
DIST.- NALBARI
ASSAM
PIN- 781335. (DRIVER OF VEHICLE NO. AS-01-BF-5374 (MOTOR CYCLE).

Advocate for : MR. A DUTTA
Advocate for : appearing for SARWAR KHAN @ ABDUL SARWAR KHAN AND 3
ORS

In

MACApp. Case No. 233/2020

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

24.09.2024

- 1.** Heard Mr. M. Dutta, learned counsel for the applicant. Also heard Mr. K.K. Dutta, learned counsel for the opposite party.
- 2.** This interlocutory application has been filed by the applicant, namely, the United India Insurance Company Limited under Order 41 Rule 27 of the Code of Civil Procedure praying for allowing the applicant to adduce evidence in Appellate Court.
- 3.** The learned counsel for the applicant has submitted that the applicant/Insurance Company Limited was the opposite party No. 1 in MAC Case No. 939/2018 pending before the learned Motor Accident Claims Tribunal No. 3, Kamrup (M).
- 4.** It is submitted by the learned counsel for the applicant that in the

aforesaid MAC Case one, Rabin Kr. Das, who was the Assistant Manager of the Applicant Company at relevant point of time had filed his evidence on affidavit as DW-1 on 28.11.2019.

5. The learned counsel for the applicant has submitted that the DW-1, Rabin Kr. Das had retired and the nationwide lockdown was imposed w.e.f. 25.03.2021 due to Covid-19 outbreak.

6. It is submitted by the learned counsel for the applicant on 08.06.2020 when the case was fixed for evidence of cross-examination of DW-1 as last chance, the engaged counsel for the applicant committed a lapse inasmuch as she was knowing that the DW-1 had in the meanwhile retired and cannot appeared for cross-examination. She failed to file an application before the Tribunal apprising the said fact to it, as a result of which the Tribunal expunged the evidence of DW-1 as she did not faced the cross-examination.

7. The learned counsel for the applicant has submitted that it was due to the fault of the engaged counsel of the applicant that the applicant could not defence evidence of DW-1 which has caused them prejudice in this case and therefore, they may be allowed to adduce evidence in defence at this appellate stage to bring on record the evidence to the effect that the claim of the claimant is false and fabricated and they are not entitled to get the compensation awarded in MAC Case No. 939/2018.

8. On the other hand, learned counsel for the opposite party/claimant has submitted that the petition filed by the applicant under Order 41 Rule 27 is not maintainable inasmuch as there is no averment in the application to the effect that the applicant could not adduce the defence evidence in MAC Case No. 939/2018 in spite of exercise of due diligence or that such evidence was not within the knowledge of the applicant.

9. Learned counsel for the opposite party/claimant has also submitted that none of the criteria mentioned in Order 41 Rule 27 has been fulfilled by the applicant in this case so as to justify allowing production of additional evidence by the respondent No. 1 at this appellate stage. He has therefore vehemently opposed the allowing of the application filed by the applicant.

10. I have considered the submissions made by learned counsel for both the sides and have gone through the application filed by the applicant as well as other materials available on record.

11. An application for production of additional evidence in the Appellate Court may be allowed only under following circumstances:-

a. the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

b. the party is seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him at the time when the decree appeal against was passed; or

c. the Appellate Court requires any document to be produced or any witnesses to be examined to enable it to pronounce judgment, or for other substantial cause.

12. In the instant case, the only ground taken by the applicant in the application is that there was a lapse on the part of the counsel for the applicant in not informing the Court that the DW-1, Rabin Kr. Das had already retired.

13. It appears from record that DW-1 Rabin Kr. Das had already filed his evidence on affidavit in MAC Case No. 939/2018.

14. Mere fact of retirement of Sri Rabin Kr. Das, in itself, may not be a valid

reason for not appearing for cross-examination before the Tribunal.

15. It appears that no steps were taken by the applicant for summoning the DW-1 after his retirement for the purpose of cross-examination.

16. Hence, this Court is of the considered opinion that this is not a case where the said evidence could not be produced by the applicant in spite of exercise of due diligence by it. Moreover, there is no averment in the application filed by the applicant under Order 41 Rule 27 of the Code of Civil Procedure, 1908 to show as to which additional evidence the applicant intends to produce which it could not be produced before the Motor Accident Claims Tribunal before passing of the impugned order.

17. This Court is therefore of the considered opinion that the application filed by the applicant is devoid of any merit, hence the same is rejected.

18. This Interlocutory Application is accordingly dismissed.

JUDGE

Comparing Assistant