

GAHC010141212017



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

Case No. : MACApp./467/2017

THE ORIENTAL INSURANCE COMPANY LTD
A CENTAL GOVT. UNDERTAKING, HAVING ITS REGIONAL OFFICE AT
GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI 781007 REPRESENTED BY
THE ASSTT. MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI,
GUWAHATI 781007

VERSUS

SMTI SONALI KALITA and 3 ORS
W/O LATE BIPUL CH. KALITA

2:MISS DIPSIKHA KALITA
D/O LATE BIPUL CH. KALITA

3:MISS RUPSIKHA KALITA
D/O LATE BIPUL CH.KALITA
ALL ARE R/O VILL. GOSAIGAON
P.S. LUMDING
DIST. NAGAON
ASSAM
PIN 782447

4:DIJENDRA DAS
S/O LATE JATINDRA DAS
VILL. 2 NO. PIPAL PUKHURI
P.S. LANKA
DIST. NAGAON
ASSAM
PIN-78244

Advocate for the Petitioner : MS.R D MOZUMDAR, MS.P DAS,MS.C MOZUMDAR

Advocate for the Respondent : MRS.S BARAT, MR.R DEV,MS.P MAZUMDAR,MR.I A
TALUKDAR,MS.P BARMAN

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

22.10.2024

Heard Ms. R.D. Mozumdar, learned counsel for the appellant and Mr. I.A. Talukdar, learned counsel for the respondents.

2. In this appeal, under Section 173 of the M.V. Act, the appellant has put to challenge the correctness or otherwise of the judgment and award dated 05.08.2015, passed by the learned Member, M.A.C.T., Nagaon, in M.A.C. Case No. 349/2012.

3. It is to be noted here that vide impugned judgment and award dated 05.08.2015, the learned Member, M.A.C.T., Nagaon has directed the appellant to pay a sum of Rs. 47,29,386/- to the claimants, as compensation, within a period of 3 months, from the date of the judgment and further directed that in the event of failing to make the payment, within the stipulated period, the amount shall carry interest @ 5% per annum, from the date of passing the judgment and also imposed cost of Rs. 1,000/- being the cost of the proceeding, upon the appellant.

4. Ms. Mozumdar, learned counsel for the appellant submits that the appellant is aggrieved by the aforesaid judgment and award dated 05.08.2015, passed by the learned Member, M.A.C.T., Nagaon, as the learned Tribunal had directed the appellant to pay the aforesaid amount in the manner as provided under Section 174 of the M.V. Act, without directing the owner of the vehicle to furnish any security. Ms. Mozumdar further submits that while filing the instant appeal before this court, one interlocutory application, being I.A. (Civil) No. 3149/2017, was filed to stay the execution of the impugned judgment and award, after depositing 50% of the awarded amount and to release the same only in the event of furnishing security by the owner of the vehicle. Thereafter, vide order dated 22.09.2017, this court was pleased to

dispose of the said I.A. by directing the learned Tribunal to release 50% of the awarded amount, after furnishing security to the satisfaction of the learned Tribunal, following the ratio laid down by Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Challa Bharathamma and Others**, reported in **(2004) 8 SCC 517**. Ms. Mozumdar also submits that though the appellant has challenged the judgment, yet, the appellant is ready to pay the balance amount also, however, subject to furnishing security by the owner of the vehicle, so that the pay and recovery process may be easier.

5. Therefore, Ms. Mozumdar submits that a direction may be issued to the learned Tribunal to initiate the recovery proceeding as provided under Section 174 of the M.V. Act and also to direct the Registry of this court to release the statutory deposit made by the appellant before it.

6. On the other hand, Mr. Talukdar, learned counsel for the respondents submits that the owner of the vehicle has already furnished the security while releasing the 50% of the awarded amount and he is also ready to furnish the security, in the event of releasing the remaining amount, before the learned Tribunal.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also perused the impugned judgment and award, dated 05.08.2015, passed by the learned Member, M.A.C.T., Nagaon, in M.A.C. Case No. 349/2012.

8. It appears that the learned Tribunal, vide impugned Judgment and Award dated 05.08.2015, has directed the appellant insurance company to pay a sum of Rs. 47,29,386/- within a period of 3 (three) months, from the date of passing the judgment and also directed that in the event of failing to make the payment of the amount within stipulated period, the amount shall carry interest @ 5% per annum, from the date of passing the judgment. The learned Tribunal has also directed that the appellant insurance company to pay a sum of Rs. 1,000/- being the cost of the

proceeding. It also appears that the insurance company has already deposited 50% of the awarded amount before the learned Tribunal and the same was released by the learned Tribunal as per direction of this court, passed in I.A.(Civil) No. 3149/2017, filed in the present appeal, on the condition of furnishing security by the owner.

9. Having considered the submissions of learned counsel for both the parties, this court is inclined to dispose of this appeal by directing the appellant Insurance Company to deposit remaining 50% before the learned Tribunal within a period of 6 (six) weeks from today. Thereafter, the learned Tribunal shall release the same in favour of the respondents, after obtaining security from the owner of the vehicle. It is further provided that the learned Tribunal shall initiate appropriate steps for recovering the amount so paid by the appellant from the owner of the vehicle. It is further provided that while releasing the compensation amount to the respondents, the learned Tribunal shall also ensure keeping the amount quantified by it as fixed deposit in the names of the two minor daughters of the deceased, in view of the observation made in the impugned judgment and award dated 05.08.2015.

10. It is also provided that the Registry of this court shall release the statutory deposit, made by the appellant Insurance Company before it at the time of filing the appeal.

11. The Registry shall return the record of the learned Tribunal forthwith with a copy of this order. The parties have to bear their own cost.

JUDGE

Comparing Assistant