

GAHC010006712014



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

Case No. : I.A.(Civil)/640/2023

NATIONAL INSURANCE CO LTD
HAVING ITS REGISTERED OFFICE AT MIDDLETON STREET
KOLKATA AND ONE OF THE REGIONAL OFFICES KNOWN AS GUWAHATI
REGIONAL OFFICE
G. S. ROAD
BHANGAGARH
GUWAHATI-5

VERSUS

SMT. MAWRACHI BASUMATARI AND ORS
W/O LT. SUBHADRA BASUMATARI
R/O KACHUTOLIGAON
P.S. GOGAMUKH
DIST. DHEMAJI
ASSAM.

2:ON THE DEATH OF LAMBUDHAR HAZARIKA
HIS LEGAL HEIR AND REPRESENTATIVE WITH HIS PLACE OF DWELLING

2.1:PANKAJ HAZARIKA
S/O LATE LAMBUDHAR HAZARIKA
R/O BISHNUNAGAR
BORAGADHOI
P.O. AND P.S.-DULIAJAN
DIST-DIBRUGARH (ASSAM)

3:NICHOLASH HEMRAN
S/O SRI PHILIPS HEMRAN
R/O BOGOLIJAN
HARMATI
P.S. LALUE

ASSAM.

Advocate for : MR. R K BHATRA

Advocate for : MR. K BHATTACHARJEE appearing for SMT. MAWRACHI
BASUMATARI AND ORS

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

ORDER

Date : 12.08.2024

Heard Mr. R. K. Bhatra, learned counsel for the applicant. Heard Ms. A Barman, learned counsel appearing for the respondent No. 1.

This application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure, 1998 has been filed by the applicant/appellant Insurance Company for setting aside abatement against Respondent No.2, namely, Sri Lambudhar Hazarika on his death.

Mr. R. K. Bhatra, learned counsel for the applicant has submitted that though, there was a delay in filing the instant application, however, by Order dated 17.03.2023, passed in I.A.(Civil) No. 638/2022, the delay in referring the instant abatement, setting aside of abatement application was condoned.

Mr. R. K. Bhatra, learned counsel for the applicant has also submitted that this Court, by Order dated 17.03.2023 passed in I.A.(Civil) No. 639/2023, has also allowed the application for substitution of the legal heirs of late Lambudhar Hazarika, i.e., Respondent No.2, in his place.

Learned counsel for the applicant has also submitted that due to inadvertence, no order was passed in the instant Interlocutory Application, whereas he submits that the abatement of appeal against respondent No. 2 ought to have been set aside prior to allowing the substitution application.

Learned counsel for the appellant raises no objection for setting aside the abatement against late Lambudhar Hazarika.

I have considered the submissions made by learned counsel for the applicant, as well as learned counsel for Respondent No. 1, as well as grounds mentioned in the petition under Order 22 Rule 4 of the Code of Civil Procedure, 1998 filed by the applicant.

Considering the grounds mentioned in the application, as well as considering the submissions made by learned counsel for the applicant, the abatement of the appeal against respondent No.2, namely, late Lambudhar Hazarika, on his death, is hereby set aside, and this Interlocutory Application is accordingly, allowed.

JUDGE

Comparing Assistant