

GAHC010169012020



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

Case No. : MACApp./357/2021

MD. PASHAN ALI
S/O- LATE ABED ALI, R/O- VILL.- KHOPANIKUCHI, P.S. HAJO, P.O.
KHOPANIKUCHI, PIN- 781102, DIST.- KAMRUP, ASSAM

VERSUS

NATIONAL INSURANCE COMPANY LTD. AND 2 ORS.
REP. BY THE REGIONAL MANAGER, HAVING ITS OFFICE AT REGIONAL
OFFICE BHANGAGARH, G.S. ROAD, P.S. BHANGAGARH, GUWAHATI, PIN-
781005, DIST.- KAMRUP METRO, ASSAM

2:TARALI GOSWAMI
D/O- PRAMOD CHANDRA GOSWAMI
R/O- HOUSE NO. 7
LAXMI NAGAR
NEAR PUNJAB NATIONAL BANK
GANESHGURI
GUWAHATI-781006
P.S. DISPUR
DIST.- KAMRUP(M)
ASSAM

3:PRANJIT CHOUDHURY
S/O- LATE SATYA CHOUDHURY
R/O- VILL.- BARBANG (CHOUDHURY PARA)
P.S. PATACHARKUCHI
PIN- 781326
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. K K DEKA

Advocate for the Respondent : MRS. S ROY

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT

Date : 19.03.2024

[Budi Habung, J]

Heard Ms. S. Islam learned counsel for the appellant and Ms. S. Roy, learned counsel for the respondent No. 1.

2. This appeal under section 173 of the M.V. Act, 1988, has been preferred against the judgment and order dated 11.03.2023, passed by the learned Member MACT, No. 2. Kamrup (M) in MACT Case No. 2498/2017, whereby the claim petition of the claimant/appellant has been dismissed on the ground that the claimant/appellant has failed to adduce any evidence to substantiate his claim.

3. Being aggrieved by the dismissal order passed by the learned Tribunal, the present appeal has been basically filed for restoration of the claim petition assailing that the learned Tribunal has wrongly dismissed when the claimant could have been given one more opportunity to adduce evidence to establish his claim.

4. The brief fact of the case leading to the filing of this appeal is that on 11.11.2017, at about 03.30 P.M. Jahana Begum was walking towards Khopanickuchi Mullah Chupa from her residence, and on the way she was dashed by the Tata Nano bearing registration No.AS-01-DH-4714 from behind as a result of which she sustained grievous injuries to her person and succumbed to her injuries later on. The accident allegedly occurred due to rash and

negligent driving of the driver of the offending vehicle Tata nano.

5. The claim petition being MAC Case No.2498 of 2017 was then filed before the MACT No.2 Kamrup (M), Guwahati, claiming. The case was proceeding on contest. After framing issues, the case was fixed on 14.02.2020 for evidence of the claimant witnesses. On that day and on the subsequent day the claimant could not attend the trial due to illness and applied for leave of absence. However, on the second day of absence, the learned Tribunal has dismissed the claim petition of the claimant on the ground that the appellant/claimant has failed to adduce any evidence.

6. Being aggrieved, the appellant has filed this appeal stating the ground that the appellant/claimant could not appear before the learned Tribunal on the last two occasions due to illness after filing the application for leave of absence; the appellant has a good case for claim of compensation due to death of her wife in the motor vehicle accident; and that, the appellant/claimant is ready and willing to produce evidence to establish his case. On the above grounds, the appellant/claimant prays for giving him an opportunity to adduce evidence to substantiate his claim.

7. Ms. S. Roy, learned counsel for the respondent has not any serious objection to the prayer made by the learned counsel for the appellant. However, she submits that the appellant/claimant shall not be entitled for any interest for the gap period i.e., from the date of the judgment passed by the learned Tribunal on 11.03.2022 to till the date of passing this order on 19.03.2024. The said condition asked for by the learned counsel for the respondent has been agreed and accepted by the learned counsel for the appellant/claimant that the claimant shall forgo and will not claim any interest for the gap period w.e.f 11.03.2024 to 19.03.2024.

8. In the light of the above submissions and considering the entirety of the case, this appeal is allowed subject to the conditions that the claimant shall not claim any interest for the period w.e.f. 11.03.2024 to 19.03.2024.
9. In view of the above, the judgment and order dated 11.03.2024 is hereby set aside.
10. The matter is remanded back to the learned Tribunal, MACT No. 2 Kamrup (M) Guwahati, for completion of the trial proceeding from the stage where it stopped by giving an opportunity to the claimant to produce evidence and exhibit document as per the provisions of law.
11. The parties are directed to appear before the learned Tribunal on 07.05.2024 for further necessary order.
12. With the observations made above, this appeal is allowed and disposed of.
Send back the LCR immediately.

JUDGE

Comparing Assistant