

GAHC010203522022



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

Case No. : MACApp./430/2024

SUREN BHUYAN
S/O LT. SUKRAM BHUYAN, R/O TINIKHURIA T.E, P.S.- TEZPUR, DIST.-
SUNITPUR, ASSAM.

VERSUS

UNITED INDIA INSURANCE COM.LTD AND 4 ORS .
REP. BY REGIONAL MANAGER, GS ROAD, GUAHATI, KAMRUP, ASSAM.

2:THE SRIRAM GEN. INSURANCE COM LTD.
GUAHATI
ULUBARI OPP. PRIYA PALACE HOTEL
ULUBARI
GHY- 05.

3:GENERAL MANAGER OF TINIKHURIA T.E
P.O.- DHEKIAJULI

P.S.- TEZPUR

DIST.- SUNITPUR ASSAM.

4:MD. NIJAMUDDIN
C/O KASIM ALI

VILL.- GHOGRA

P.O.- DHEKIAJULI

DIST.- SUNITPUR
ASSAM.

5:MD. ABU KALAM
S/O RANJAN ALI

VILL.- BHATPARA

P.O.- DHEKIAJULI

DIST.- SUNITPUR
ASSAM

Advocate for the Petitioner : B R DAS, MS M BHARATI

Advocate for the Respondent : MR. R GOSWAMI, MS. P BORTHAKUR (r-2),MS. M SAIKIA (r-2),MR. M DUTTA (R-1),MS S DEV (R-1),MR J MAHANTA (R-1),MR S CHOUDHURY (r-3)

Linked Case : I.A.(Civil)/3091/2022

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Advocate for : B R DAS
Advocate for : MR. R GOSWAMI (r-2) appearing for UNITED INDIA INSURANCE
COM.LTD AND 4 ORS .

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 06-09-2024

Heard Mr. B.R. Das, learned counsel for the appellant. Also heard Mr. P. Borthakur, learned counsel for the respondent No.2.

This is an appeal filed under Section 173 (1) Proviso M.V. Act 1988, challenging the legality of the impugned Order dated 10/12/2022 passed by the learned Member of Motor Accident Claim Tribunal – 1 at Kamrup in MAC Case No.04/2018, whereby the

learned Tribunal did not grant the liberty to file afresh inspite of the petition wherein a prayer to grant liberty to file afresh was allowed.

The appeal is taken up for disposal at the admission stage itself.

Brief facts of the case giving to the instant appeal is that the appellant husband died in a road traffic accident on 30.09.2015 at ab out 6:15 p.m. on the National Highway-15 near Depota bridge under Tazpur P.S.. Accordingly, the appellant filed a claimed petition which was registered as MACT No.03/2018 under Section 166 MV Act.

Thereafter, the claimant filed an application on 10/02/2022 praying that the claimant may be allowed to withdraw with a liberty to file afresh. Thereafter, the learned Tribunal passed the impugned order as under :

“Case record put up today on the strength of the petition vide No.411/22 filed by claimant side.

Claimant is present alongwith her learned counsel

Seen the petition filed by the claimant vide No.411 dated 10.2.2022 praying for withdraw the case due to some technical defect and long distance from her residence . Claimant has filed an affidavit along with the petition tag with the case record.

Perused the petition and heard and prayer is allowed.

Accordingly the case is dismissed on withdrawal.”

The learned counsel for the appellant submits that when they went to file a fresh petition before the Motor Accident Claim Tribunal, Tezpur the same was declined on the ground that the last line of the order did not reflect that the appellant was allowed to file afresh. The learned counsel further submits that in a connected case, the Co-ordinate Bench of this court in MAC. Appl./46/23 dated 28.02.2023 had allowed the appeal by observing that, *“However, in the considered opinion of this Court as the learned Tribunal under its impugned order dated 10/2/2022 had specifically directed that prayer made in the petition is allowed; therefore for all meaning and purport the prayer made in Petn.No.411 dated 10.02.2022 were allowed, which includes and the*

prayer to file afresh.

Therefore, this court is of the considered opinion that the learned Tribunal, Tezpur shall be bound to register a fresh case on withdrawal."

The learned counsel for the appellant thus submits that a similar order may be passed since both the cases are connected and involving the same accident.

The learned counsel for the respondent in all fairness submits that they have no objection since the impugned order reflected that the prayer made by the petitioner is allowed, wherein the petitioner had prayed that they may be allowed to file afresh on withdrawal.

Having heard the submissions made by the learned counsels for both the parties, this court finds it fit to allow the instant appeal considering the fact that a Co-ordinate Bench of this Court in MAC.Appl./46/23 had allowed the same. The instant MAC. App. is disposed of with a similar order that the learned Tribunal, Tezpur shall be bound to register a fresh case on withdrawal, if the appellant is so advised.

This appeal stands disposed of as above without need to interfere with the Order dated 10.02.2022 passed in MAC. Case No. 4 of 2018.

Accordingly, MAC. Appl. No.430/2024 stands allowed and disposed of.

JUDGE

Comparing Assistant