

GAHC010215752024



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

Case No. : CRP(IO)/420/2024

PRATIBHA BARUAH AND ANR
W/O- LATE BHAGADUTTA BARUAH, R/O- VILL.- BARPANARA, P.S.
BAIHATA CHARIALI, DIST. KAMRUP, ASSAM, PIN- 781381.

2: ANJAN JYOTI BARUAH
S/O- LATE BHAGADUTTA BARUAH
R/O- VILL.- BARPANARA
P.S. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN- 781381

VERSUS

RATUL KALITA AND 2 ORS
S/O- RANGA NATH KALITA, R/O- VILL.- PANARA, P.O. AND P.S. BAIHATA
CHARIALI, DIST. KAMRUP, ASSAM, PIN- 781354.

2:BIKASH PATOWARY
S/O- UMESH CH. PATOWARY
R/O- VILL.- BIHDIA
P.O. AND P.S. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN- 781354.

3:THE BAJAJ ALLIANZ GENS. INSURANCE LTD.
REPRESENTED BY BRANCH MANAGER
BRANCH SITUATED AT 3RD FLOOR
SHREEJI TOWER
GAUHATI TEA WARE HOUSING PVT. LTD.
ADJACENT TO MAHINDRA SHOWROOM
CHRISTINA BASTI
GUWAHATI

DIST. KAMRUP
ASSAM
PIN- 781005

Advocate for the Petitioner : MISS. A BARUAH,

Advocate for the Respondent : ,

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

25.10.2024

Heard Ms. A. Baruah, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 10.07.2024, passed by the learned Member, M.A.C.T No. 1, Kamrup (M) at Guwahati, in M.A.C. Case No. 925/2021.

3. It is to be noted here that vide order dated 10.07.2024, the learned Member, M.A.C.T No. 1, Kamrup (M) at Guwahati has dismissed the petition, being Petition No. 2410/2023, filed by the petitioners under Order 6 Rule 17 of the C.P.C. for amendment of the claim petition in M.A.C. Case No. 925/2021.

4. Ms. Baruah, learned counsel for the petitioners submits that earlier Bhagadatta Baruah and Smti. Pratibha Baruah have instituted a claim petition, under Section 166 of the M.V. Act, before the learned Member, M.A.C.T. No. 1, Kamrup (M) at Guwahati, claiming compensation on account of injuries sustained by Bhagadatta Baruah, in an accident that took place at Barpanara village, under Baihata Chariali Police Station. Ms. Baruah submits that Bhagadutta Baruah sustained injuries and he was undergoing treatment at home and during the course of his treatment, he suffered demise on 16.10.2022. Thereafter, the

petitioners have filed a petition, being Petition No. 2410/2023, under Order 6 Rule 17 of the C.P.C. for amendment of the claim petition. But, the learned Tribunal, vide impugned order dated 10.07.2024, has dismissed the prayer for amendment of the injury claim to death claim. However, the learned Tribunal has allowed the prayer in respect of substitution of the petitioners as the legal heirs of the deceased claimant. Ms. Baruah further submits that as the petition was not allowed and the claim has not been treated as death claim, the petitioner could not file evidence before the learned Tribunal. As such, it is contended that a direction may be issued to the learned Tribunal to allow the amendment and to treat the claim as death claim instead of injury claim. Ms. Baruah also submits that the petitioners have produced one document of Senior Medical Officer, Andherighat P.H.C., Darrang regarding death of the injured, Bhagadatta Baruah. But, the petitioners could not produce any post-mortem report of the deceased, since he died in his residence and as such, post-mortem was not conducted. Therefore, Ms. Baruah submits that this petition may be allowed by directing the learned Tribunal to treat the injury claim as death claim.

5. Having heard the submission of the learned counsel for the petitioners, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 10.07.2024, passed by the learned Member, M.A.C.T No. 1, Kamrup (M) at Guwahati, in M.A.C. Case No. 925/2021.

6. It appears that the learned Tribunal has refused to allow amendment petition, in respect of registering the case as death claim instead of injury case, as the petitioners could not be able to produce any post-mortem report or any certificate of cause of death of Bhagadatta Baruah.

7. I have gone through the certificate issued by the Senior Medical Officer, Andherighat P.H.C., Darrang regarding death of the injured, Bhagadatta Baruah,

which is enclosed with the petition, as Annexure – 2, at page No. 34. But, the same also appears to be not sufficient to establish the factum of death of Bhagadatta Baruah with that of the injuries sustained by him at the time of accident.

8. Thus, having examined the impugned order in the light of the facts and circumstances on the record and also in the light of the submission so advanced by Ms. Baruah, learned counsel for the petitioners, this court finds no illegality or arbitrariness in the same. Therefore, this court is inclined to dismiss this petition.

9. Accordingly, this petition stands **dismissed**.

JUDGE

Comparing Assistant