

GAHC010131622017



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

Case No. : MACApp./55/2018

ORIENTAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE ,A-25/27, ASAF ALI
ROAD,NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI -7
REPRESENTED BY THE REGIONAL MANAGER

VERSUS

SMT. NIZARA TUMUNG AND 2 ORS.
LEGAL REPRESENTATIVE OF DECEASED RESPONDENT No. 1, D/O LATE
DUTTA RAM TUMUNG
RESIDENT OF VILL. PATARKUCHI, P.O TEPESIA P.S SONAPUR, DISTRICT -
KAMRUP, ASSAM (THE ORIGINAL NAME OF RESPONDENT No. 1 HAS
BEEN STRIKED OUT AS PER HONBLE COURT ORDER Dtd. 26.07.2018)

3:BIMON CHON SINGH
R/O VILL UTLORE MAYAL LEIKAL
BISHNUPUR MANIPUR
OWNER OF TRUCK NO. AS. 25 -B-7362

4:YEMBEM DOREN SINGH
R/O VILL-LOUREMBEM DISTRICT -THOUBAL MANIPUR DRIVER OF
TRUCK NO .AS -25-B-736

Advocate for the Petitioner : MR. S DUTTA, MR. M CHOUDHURY,MS. M CHOUDHURY,MD.
A HUSSAIN

Advocate for the Respondent : MR. C K NATH, MR D MONDAL (r-1),MR. S MUNIR,MR. S K
CHOUDHURY

Linked Case : I.A.(Civil)/3694/2023

MISS NIZARA TUMUNG @ MONALISHA TUMUNG

D/O LATE DUTTA RAM TUMUNG

RESIDENT OF VILL. PATARKUCHI
P.O TEPESIA P.S SONAPUR
DISTRICT - KAMRUP(M)
ASSAM.

VERSUS

ORIENTAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE
A-25/27
ASAF ALI ROAD
NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI -7
REPRESENTED BY THE REGIONAL MANAGER

Advocate for : MR D MONDAL
Advocate for : MS M CHOUDHURY appearing for ORIENTAL INSURANCE CO.
LTD

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

O R D E R

30.08.2024

Heard Mr. D. Mondal, learned counsel for the applicant/claimant. Also heard Mr. M. Choudhury, learned counsel for the opposite party/Insurance company.

By filing this application, the applicant has prayed for allowing him to withdraw 50% of the awarded amount deposited by the appellant/Insurance Company. As per the order dated

01.06.2018 in the connected MACApp. 55/2018.

The applicant was a minor at the time of the accident, wherein, his elder brother had died due to vehicular accident involving a truck. In terms of the order of this Court dated 01.06.2018, the appellant has deposited an amount of Rs. 3,56,500/- which is 50% of the awarded amount of total Rs. 7,13,000/-.

It is submitted that since the applicant has not received a single penny even after passing of the award in the year, 2017, and considering the hardship faced by the applicant, this Court may allow the applicant to withdraw the 50% amount deposited by the appellant/Insurance Company.

Ms. M. Choudhury, learned counsel for the appellant/Insurance company has vehemently opposed the prayer for withdrawal, on the ground that the motorcycle driven by the driver in a negligent manner hit the truck, which was parked on the roadside. Therefore, there is no negligence on the part of truck and therefore, the opposite party/Insurance company is not liable to pay any compensation to the applicant/claimant and there is every chance of being succeed in the appeal. Therefore, she submits that at this stage, it would not be appropriate to allow the applicant to withdraw the 50% amount deposited by the appellant.

I have considered the submissions of the learned counsel for the parties.

Having considered that the applicant has lost his elder brother in a vehicular accident and out of total compensation of Rs. 7,13,000/- awarded to the claimant, no amount has been received by the applicant as on date, this Court deem it appropriate to allow the claimant to withdraw the 50% of the awarded amount pending consideration of the appeal. Accordingly, this interlocutory application is allowed.

The applicant/claimant is allowed to withdraw the 50% amount of Rs. 3,56,500/- deposited by the appellant by furnishing a personal bond and on proper identification.

Accordingly, this I.A. is allowed and disposed of.

JUDGE

Comparing Assistant