

GAHC010026802017



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

**Case No. : MACApp./300/2017**

NURUL AMIN  
S/O MD. HALIM UDDIN, VILL. SAHARIAAON, P.S.MOIRABARI, DIST.  
MORIGAON, ASSAM.

VERSUS

PRASANA DEKA and ANR.  
S/O SRI PARAMA DEKA, VILL BOHA BARJARI, P.S. JAGIROAD, DIST.  
MORIGAON, ASSAM OWNER OF VEHICLE NO. AS-25A-9317

**Advocate for the Petitioner : MS.M TALUKDAR**

**Advocate for the Respondent : MR.A TALUKDAR**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**

**ORDER**

**Date :**

**30.05.2024**

**1)** Heard Mr. M. Talukdar, learned counsel for the appellant along with Mr. K. K. Bhatt, learned counsel for the respondent No.2/Insurance Company, however, none appeared for the respondent No.1, who is the owner of the vehicle.

**2)** This Court find it fit to proceed with hearing of the matter considering the nature of the appeal, which has been filed against the impugned judgment and order dated 29.11.2012 passed by the Motor Accident Claim Tribunal, Morigaon in a MAC Case No.111/2007.

**3)** Learned counsel for the appellant submits that the instant appeal filed against the impugned Judgment and Order dated 29.11.2012 is mainly due to the fact that the learned tribunal had dismissed the claim application on merits on the grounds that the claimant failed to be present for adducing evidence and, therefore, had failed to establish his case.

**4)** The learned counsel for the appellant submits that on perusal of the order sheet of the trial court dated 19.10.2012, it is seen that the applicant was absent on the first date fixed for his cross-examination and the learned trial court had erred in not considering the prayer of the claimant for adjournment and for fixing another date for cross-examination on the ground of ailment of the claimant. That the learned Tribunal without giving a opportunity to the claimant fixed the case for DW and argument.

**5)** He submits that learned tribunal should have given the claimant the opportunity to be cross-examined, since his prayer for adjournment was genuine and submits that even though a medical a certificate was not produced as observed by the learned trial court, however, the claimant was duly represented and the reason for his absence had been mentioned by his learned counsel.

**6)** The learned counsel submits that the learned tribunal should

have given the appellant/claimant the chance of being cross-examined to prove his case since the application is filed under 166 of the Motor Vehicle Act, which being a beneficial legislation, the strict principals of Evidence Act is not applicable.

In support of his submissions he has cited the decision of this court Agartala Bench in **Namita Goswami Vs. Hiralal Debnath** reported in **2013 (2) GLT 297** and **Sundari Tripura Vs. Ulapi Debbarma & Anr.** reported in **2012 (5) GLT 449.**

**7)** He further submits that the claimant had suffered 40% of disability due to the accident that took place on 10.06.2017, while the claimant along with other persons were proceeding from Boha towards Morigaon by the TATA Sumo Taxi, bearing Registration No.AS-25 A-9317. Due to the rash and negligent manner of driving on the part of the driver, the vehicle had turned turtle on the roadside as a result of which the claimant has sustained grievous injuries. Medical documents were duly annexed in the claim application.

**8)** The learned counsel for the appellant submits that the case may be referred back to the learned tribunal so that the appellant/claimant and other witnesses are given the opportunity to adduce evidence and prove the case before the tribunal.

**9)** Mr. K. K. Bhatt, learned counsel for the respondent No.2/insurance company, on the other hand submits that the matter had been kept pending since 2007 and was finally dismissed and disposed of by the learned tribunal on 29.11.2012. He submits that the case had been adjourned many a times, which could be due to the absence of the

claimants, showing that the claimant was not interested in the case.

**10)** I have heard the submissions made by the learned counsels for both the parties and perused the LCR and documents on record.

**11)** The facts of the case in brief is that on 10.06.2007, the instant appellant along with other persons were proceeding from Boha to Morigaon by TATA Sumo Taxi, wherein due to the negligent driving on the part of the driver of the vehicle, the vehicle had turned turtle on the road and the claimant/appellant has sustained injuries, which is claimed to cause the appellant 40% disability.

**12)** It is seen that certain medical documents were also annexed and made a part of claim memo. However, since the claimant was not examined, the learned trial court was of the view that the claimant had failed to establish his case and had subsequently dismissed the instant claim application filed under Section 166 MV Act, on merits by relying on **Jyotsna Debnath & others in 2008 (Suppl) G.L.T. 161.**

**13)** This Court finds that in the order sheet dated 19.10.2012, the grounds for rejecting the application for another date for cross-examination of the claimant by the learned tribunal was due to the fact that the matter had been pending since 2007 and the claimant had not produced the medical certificate to support that he could not appear before the Court on the first date fixed for cross-examination. Next date was then fixed for examination of DWs if any and arguments.

**14)** On perusal of the order sheets in of the LCR, it is seen that there have been many adjournments in the case, however, it is seen that the adjournments were made due to the absence of the claimant as well as in absence of the opposite parties, opposite party No.1 and 2 on the

different dates fixed by the learned tribunal.

**15)** It may be noted that this court in **Namita Goswami Vs. Hiralal Debnath (supra)** held that :

*“There is a difference between accident and claim. Facts relating to an accident can be proved from the accident information received from the police but a claim petition cannot be decided in absence of the claimant and the witnesses as the claim has to be proved by way of evidence by the claimant. A Court is established to render justice in accordance with the law, not to frustrate the same. Thus, it would not be proper on the part of a Court or Tribunal to dismiss a claim petition on merit in absence of the claimant. Rather, it would be proper for the tribunal to make an attempt for securing the attendance of the claimants as well as their witnesses in view of the provisions of Section 169 (2) of the Act, 1988. As in the instant case, the said attempt was not made by the Tribunal and the claim petition of the claimant appellants was also dismissed for nonappearance of claimants, according to this Court, the impugned order requires to be set aside and accordingly the same is set aside.”*

**16)** Thus, in view of the findings mentioned in aforesaid paragraph and the observations in the case cited above, this Court finds that the instant case being a social beneficial legislation, finds that the ends of equity and justice would be met if the claimant/appellant is given the opportunity to be cross-examined and adduce further evidence to prove his case

**17)** Accordingly, the instant MAC Appeal No.300/2017 stands allowed and the matter is remanded back to the learned tribunal for giving the opportunity to the claimant to be cross-examined to prove his case and also to give both the parties the opportunity to adduce any further

evidence.

**18)** Both the parties are to appear before the learned tribunal on **17<sup>th</sup> July, 2024**. Accordingly, impugned Judgment and Order dated 29.11.2012 passed by the Motor Accident Claim Tribunal, Morigaon in a MAC Case No.111/2007 stands set aside.

**19)** The MAC.App. No.300/2017 stands allowed and disposed of.

**JUDGE**

**Comparing Assistant**