

GAHC010008712017



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

Case No. : MACApp./72/2018

NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 87 M.G. ROAD,
FORT MUMBAI AND ITS REGIONAL OFFICE AT G.S. ROAD, BHANGAGARH,
GUWAHATI

VERSUS

SMTI MAMTA DAS and 4 ORS,
R/O LACHIT NAGAR, BYE LANE NO. 7, HOUSE NO. 10, P.O. LACHIT
NAGAR, P.S. PALTAN BAZAR, GUWAHATI 781007, DIST. KAMRUP (M),
ASSAM

2:AKSHITA DAS
R/O LACHIT NAGAR
BYE LANE NO. 7
HOUSE NO. 10
P.O. LACHIT NAGAR
P.S. PALTAN BAZAR
GUWAHATI 781007
DIST. KAMRUP (M)
ASSAM

3:SMTI DOLI DAS
R/O LACHIT NAGAR
BYE LANE NO. 7
HOUSE NO. 10
P.O. LACHIT NAGAR
P.S. PALTAN BAZAR
GUWAHATI 781007
DIST. KAMRUP (M)
ASSAM
RESPONDENT NO. 2 BEING MINOR IS REPRESENTED BY HER LEGAL

GUARDIAN MOTHER I.E. RESPONDENT NO. 1

4:MD. AKAN ALI
R/O N.T. ROAD
NALBARI
P.O. AND P.S. NALBARI
PIN 781335
DIST. NALBARI
ASSAM (OWNER OF SANTRO VEHICLE NO. AS-01AP-4138)

5:MD. KUTUB ALI
R/O VILL. PANGAMARI
P.O. AND P.S. PALASHBARI
DIST. KAMRUP
ASSAM
PIN 781128 (DRIVER OF THE VEHICLE NO. AS-01AP-4138)

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : MR. S K JAIN (R1-R3)

Linked Case : I.A.(Civil)/417/2018

NEW INDIA ASSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 87 M.G. ROAD
FORT MUMBAI AND ITS REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI

VERSUS

SMTI MAMTA DAS and 4 ORS

R/O LACHIT NAGAR
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HOUSE NO. 10
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GUWAHATI 781007
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ASSAM

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BYE LANE NO. 7
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P.S. PALTAN BAZAR
GUWAHATI 781007
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ASSAM
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BYE LANE NO. 7
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P.S. PALTAN BAZAR
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RESPONDENT NO. 2 BEING MINOR IS REPRESENTED BY HER LEGAL
GUARDIAN MOTHER I.E. RESPONDENT NO. 1

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R/O N.T. ROAD
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R/O VILL. PANGAMARI
P.O. AND P.S. PALASHBARI
DIST. KAMRUP
ASSAM
PIN 781128 (DRIVER OF THE VEHICLE NO. AS-01AP-4138)

Advocate for : MR. R GOSWAMI

Advocate for : MR. S K JAIN appearing for SMTI MAMTA DAS and 4 ORS

Linked Case : CO/27/2019

SMTI. MAMTA DAS AND 2 ORS.
W/O- LATE ABHIJIT DAS

2: MISS AKSHITA DAS
D/O- LATE ABHIJIT DAS

3: SMTI. DOLI DAS
W/O- SRI TAPAN KUMAR DAS
ALL ARE R/O- LACHIT NAGAR
H/NO. 10
BYE LANE NO. 7
GUWAHATI
P.O. ULUBARI
P.S. PALTANBAZAR
GUWAHATI
DIST.- KAMRUP(M)
ASSAM. (RESPONDENT NO. 2 BEING MINOR IS REP. BY HER LEGAL
GUARDIAN MOTHER I.E. RESPONDENT NO. 1).
VERSUS

NEW INDIA ASSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 87
M.G. ROAD
FORT
MUMBAI- 40710 AND ITS REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI- 781005
ASSAM.

Advocate for : MR. S K JAIN
Advocate for : MR. R GOSWAMI appearing for NEW INDIA ASSURANCE
COMPANY LTD.

Linked Case : I.A.(Civil)/3247/2017

MAMTA DAS and 2 ORS

VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD. and 6 ORS

Advocate for : MR.S K JAIN
Advocate for : MS.P HUJURIR- 1-4 appearing for THE NEW INDIA ASSURANCE
COMPANY LTD. and 6 ORS

Linked Case : MC/20/2015

APURBA CHANDRA BARTHAKURIA and 3 ORS

S/O LATE KESHAB CH. BARTHAKURIA

2: SMT. SARASWATI BARTHAKURIA

3: RAMEN BARTHAKURIA

4: SMT. DHIRA BARTHAKURIA

NO. 2 I THE WIFE

NO. 3 IS THE SON AND NO.4 IS THE DAUGHTER OF LATE PREMADHAR
BARTHAKURIA

ALL ARE R/O KUMARPARA

F.A. ROAD

GUWAHATI 781001

KAMRUP METROPOLITAN DIST.

ASSAM.

VERSUS

SMT. JAYANTI BARTHAKURIA and 5 ORS

2:SRI RITESH BARTHAKURIA

3:SMT. DIPALI BARTHAKURIA

NO. 1 IS THE WIFE NO. 2 IS THE SON AND NO. 3 IS THE DAUGHTER OF LATE
KHAGENDRA NATH BARTHAKURIA

4:SMT. BIMALA BALA

D/O LATE MAHENDRA BARTHAKURIA

W/O SRI RAMESWAR CHAMUA

ALL ARE R/O KUMARPARA

F.A. ROAD

GUWAHATI-781001

KAMRUP M

DIST. ASSAM.

5:SMT. INDUPRAVA DEVI

W/O SRI PRANABENDRA NARAYAN DEB

R/O EASTERN DECORATORS

RAJGARH ROAD
GUWAHATI 781003
KAMRUP M DIST.
ASSAM.
6:SRI SURENDRA CH. DAS

S/O LATE BHABIT CH. DAS
R/O KUMARPARA
F.A. ROAD
GUWAHATI 781001
KAMRUP M DIST.
ASSAM.

Advocate for : MR.P CHAKRABORTY
Advocate for : MR.D MOZUMDERR-1TO3 appearing for SMT. JAYANTI
BARTHAKURIA and 5 ORS

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGMENT & ORDER (Oral)

Date : 12-03-2024

Heard Mr. R. Goswami, learned counsel for the appellant along with Mr. B.K. Jain, learned counsel for respondent Nos. 1-3.

2] The instant appeal is filed under Section 173 of the Motor Vehicles Act of 1988 against the Judgment & Award dated 05.07.2014 passed by the learned Additional District Judge No.2, Kamrup (M) in MAC Case No. 2277/2010 filed under Section 166 of the Motor Vehicles Act, 1988.

3] The facts of the case narrated in the impugned Judgment in brief is that, on 06.11.2010 at about 12 midnight, while the deceased Abhijit Das was coming by

his own Motor Cycle bearing Registration AS-01/AH-5390 from Maligaon Chariali towards Lachit Nagar, when he reach Maligaon Railway Gate No.3, the offending vehicle AS-91-AP/4138 (Santro Car) driven in a rash and negligent manner knocked him down from the back side. As a result of the accident, the said Abhijit Das sustained grievous injuries and was immediately admitted at GNRC Hospital, Guwahati. However, on 09.11.2010 the said Abhijit Das succumbed to his injuries and the post mortem on the death body was conducted in the hospital.

4] At the relevant time the Santro Car was driven by the opposite parties/respondent No.3 and was insured with opposite party No.1/instant appellant. The Insurance Company in the written statement claimed that the amount of compensation claimed by the claimant was highly in calculated and that the Insurance Company decline to accept liabilities. The opposite party No.2/owner of the vehicle and opposite party No.3, the Driver did not contest the case by filing their written statement. The case then proceeded ex-parte against them.

The following issues were framed by the learned Trial Court :

- i) *Whether the victim, Shri Abhijit Das died as a result of injuries sustained by him in the alleged road accident dated 06.11.2010 involving vehicle No.AS-01-AP/4138 and whether the said accident took place due to rash and negligent drive of the driver of the offending vehicle?*

ii) Whether the claimant is entitled to get any compensation, if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

5] The learned trial court after considering the evidence adduce by the claimant and the Insurance Company found that the claimant are entitled to get Rs.28,00,000/- (Rupees twenty eight lakhs) *only* with an interest @ 6% per annum from the date of filing the claimed petition i.e. 21.12.2010 till payment from the opposite party No.1, New India Assurance Company Limited. The learned trial court found that there was no dispute to the fact that there relevant time of the accident, the offending vehicle AS-01/AP-4138 (Santro Car) was insured with the New India Assurance Company Limited and was driven by the opposite party No.3 having valid licence. As such, the compensation was to be paid by the Insurance Company/Opposite party No.1.

6] Mr. R. Goswami, learned counsel for the appellant submits that the instant appeal has been filed mainly on the grounds that the Judgment & Award dated 05.07.2014 in MAC Case No. 2277/2010 has been obtained by fraud. That the learned Tribunal was misled by the claimant who had failed to disclose about a first G.D.E Entry vide No. 158 dated 06.11.2010 of Jalukbari P.S Traffic Branch and the G.D.E entry vide No.159 dated 06.11.2010. The G.D. entries in 158 and 159 dated 06.11.2010, stated that the accident had occurred on 06.11.2010. As per the said

GD entries "the driver of Motor Cycle vide Registration No.AS-01/AH-5390, while coming from Bharalumukh towards Maligaon hit the divider of the road at Maligaon gate No.4 and the rider sustained injuries."The Motor Cycle was brought to the Police Station". However, the claimant in the MAC Case No.2277/2010 had filed the FIR on 05.12.2010 and led the learned Tribunal to believe that the accident on 06.11.2010 occurred when her husband was hit by a Santro Car vide Registration No.AS-01/AP-4138 at Maligaon gate No.3 when he was returning home from Jalukbari towards Bharalumukh riding a Motor Cycle bearing Registration No.AS-01/AH-5390. The police had also then registered at Jalukbari P.S. Traffic Branch as. GDE NO.173 dated 05.12.2010.

7] The learned counsel for the appellant submits that the concerned Police Station was in collusion of the claimant, had made another GD entry No.173 of 05.12.2010 without making any mention of the previous G.D Entry No.158 and 159, wherein the Motor Cycle was brought to the Police Station. He submits that, the F.I.R. was submitted one month later and made the second entry No.173 on 05.12.2010, the Motor Cycle of the deceased and the Santro Car was said to be seized by the Police State by registering Jalukbari Case No.755/2016.

8] The learned counsel submits that the separation of the original G.D. Entries (158 & 159) and the seizure of the same vehicle i.e. Motor Cycle bearing

registration No.AS-01/AH-5390 twice is an indication of fraudulent collusion by the police, claimant and the owner of the vehicle. He submits that the claimed that the Santro Car bearing Registration No.AS-01/AP-4138 was involved with the accident on 06.11.2020 is completely false and the claimed was made only to make wrongful gains at the cost of public money.

9] The learned counsel further submits that while the Insurance Company was processing to file an appeal against the impugned Judgment & Award dated 05.07.2014, after a thorough investigation, this fabricated story of the claimant that, the accident occurred due to the collusion of the Motor Cycle of the deceased Shri Abhijit Das with the Santro Car, was discovered at a later date and was not known to the appellant Insurance Company while the case was pending before the learned court which was subsequently disposed of on 05.07.2014. It was only after the disposal of the case that the appellant company discovered the fraudulent acts.

10] The learned counsel submits that due to the wrong submission of the facts by the claimant, the Judgment & Award was obtained in their favour through fraudulent means which is not sustainable and submits that the Judgment & Award dated 05.07.2014 being obtained by playing fraud upon Court is a non-est in the eyes of law and is liable to be set aside and quashed.

11] The learned counsel submits that the Apex Court in the case of **United India**

Insurance Co. Ltd. Vs. Rajendra Singh & Ors with **United India Insurance Co. Ltd. Vs. Sanjay Singh & Ors.** reported in **AIR 2000 Supreme Court 1165** had referred to its decision in **India Bank Vs. Satyam fibres (India) Pvt. Ltd., (1996) 5 SCC 550** : wherein, it was held that fraud affects that solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court and the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court.

12] The learned counsel has also relied on the Judgment of the Apex Court in **Lalita Kumari Vs. State of Uttar Pradesh & Ors** reported in **2014 2 SCC 1**, wherein the Apex court held that there is a mandatory registration of F.I.R. on receipt of information disclosing a cognizable offence as a general rule and only in certain cases preliminary investigation is required. That the police in the instant case should have also referred to the earlier GD Entry on receipt of the F.I.R.

13] Mr. B.K. Jain, learned counsel for respondents on the other hand submits that there was no fraud committed by the claimant before the learned Tribunal and submits that the previous G.E. Entries Nos.158 & 159 dated 06.11.2010, was made based on the preliminary enquiry made by the Police officer on receiving the information of an accident that occurred on 06.11.2010. He further submits that

there is no seizure report of the Motor Cycle bearing Registration AS-01/AH-5390 which was later formally seized after the filing of an FIR. He submits that the written FIR was received on 05.12.2010 after a month and the case was registered on 05.12.2010 at Jalukbari P.S. Traffic Branch No. GDE No.173 it was duly investigated into. The formal seizure of the Motor Cycle No. AS-01/AH-5390 and the offending vehicle Santro Car No. AS-01/AP-4138 formally seized by the seizure memo dated 05.12.2010. There was no intention to deceive or make any fraudulent claim at wrong fully claimed by the appellant. He submits that there was delay in filing the FIR was because the victim Mr. Abhijit Das had to be rushed to the hospital GNRC, Guwahati where on 09.11.2010 he succumbed to the injuries sustained by him in the accident. The claimant because of the death of her husband was in bereavement and could not immediately file the F.I.R.

14] The learned counsel further submits that the Insurance Company/appellant has now at a belated stage come up with the plea of fraud and deceit being committed by the claimant before the trial court only because the Judgment and Award dated 05.07.2014 was not decreed in their favour. The learned counsel submits that the usual procedure was that the investigation should have commenced and be completed much earlier, since such investigations practiced by the Insurance Companies commences immediately after the accident or when a claim for compensation is filed before the Trial Court. It is unbelievable that the

Insurance Company should discover the said allegation only at the appellate stage.

15] The learned counsel for the respondent submits that, it was for the appellant Insurance Company to have taken due care and conducted proper investigation so that the false allegations made by them against the respondents should have been brought in evidence before the learned trial court. He further submits that a holistic view of the matter is to be taken in the claims made under Section 166 M.V. Act and that the learned trial court had a right at its finding on the *prima facie* materials such as F.I.R. to prove the existence of the correct facts in the instant case.

16] In support of his submission, the learned counsel has relied on the decision of the Apex Court in **Bimla Devi & Ors Vs. Himachal Road Transport Corporation & Ors.** reported in **(2009) 13 SCC 530** and the decision of a Co-Ordinate Bench of this Court in **Godavari Devi Sharma & Ors vs. United India Insurance Company Ltd. & Ors.** in **MAC. Appl. No.258 of 2005** reported in **2012 0 Supreme (Gau) 720**, wherein the Apex Court was of the view that strict prove of an accident is not necessary and that the claimants were merely to establish their case on the touchstone of preponderance of probability.

17] Having heard the submissions made by the learned counsels for both the parties and on perusal of the records made available, this court finds that there are

G.D. Entries made on different dates i.e. GD 158 & GD 159 dated 06.11.2010 and G.D.E No.173 dated 05.12.2010, both of them were registered at Jalukbari P.S. The G.D. Entry No.173 dated 05.12.2010 was made on the filing of the FIR on 05.12.2010. It is seen that in both the entries dated 06.11.2010 and 05.12.2010, the victim/deceased is Shri Abhijit Das and the accident Motor Cycle is registered as AS-01/AH-5390. The placed of occurrence of the accident is also at Maligaon while that the deceased Shri Abhijit Das was returning home from Jabukbari towards Bharalumukh. It is however seen that the G.D Entry No. 158 & 159 dated 06.11.2010 mentions that the Motor Cycle hit the divider of the road at Maligaon Gate No.4 and the rider sustained injury while in the G.D. Entry 173 dated 05.12.2010 mentions the accident occurred by Shri Abhijit Das was hit by a Santro Car vide registration No.AS-01/AP-4138 at Maligaon gate No.3. There is no evidence to support the explanations given by the learned counsel for the respondent that the first GD Entry Nos. 158 & 159 dated 06.11.2010 were just a preliminary enquiries.

18] A perusal of the impugned Judgment & Order dated 05.07.2014 shows that there was no mention of the previous GD Entry NO.s. 158 & 159 dated 06.11.2010 and therefore, no evidence was adduced with regards to the said GD Entry. The learned counsel for the appellant has candidly explained that they discovery of the previous Entry Nos. 158 & 159 was only after the learned Court of Additional

District Judge No.2, Kamrup (M) in MAC Case No. 2277/2010 had passed the impugned Judgment & Award dated 05.07.2014 and that this fact was discovery while they were in the process of filing an appeal against the impugned Judgment.

19] This court has taken into consideration the fact that there was no evidence adduced explain/justify the previous GD Entries No. 158 & 159 dated 06.11.2010 where there was no mentions of the involvement of a Santro Car in the accident and considering the observation of the Apex Court in United India Insurance Company Ltd. Vs. Rajendra Singh & Ors. (Supra) while the Apex had relied and referred to Indian Bank Vs. Satyam fibres (India) Pvt. Ltd., (1996)5 SCC 550 where it was held that :

“16. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

17. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a

situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

20] Thus, in view of the nature of the allegation made, this court is of the considered view that the appellant Insurance Company may be given the opportunity to substantiate their contentions which if substantiated might lead to a serious miscarriage of justice.

21] For the aforesaid reasons, this court finds that the instant appeal should be allowed by setting aside the impugned Judgment & Award dated 05.07.2014 till the newly discovered facts as alleged is looked into.

22] This court thus finds it appropriate that the matter may be remanded to the learned MACT-I, Kamrup (M), since the learned Additional District Judge No.2, Kamrup (M) is no longer taking up MACT matters, to consider the claims put forth by the appellant after affording reasonable opportunity to the appellant Insurance Company to adduce their evidence to substantiate their allegations. Opportunity must also be afforded to the claimant/respondents to adduce their evidence to counter the allegations.

23] Both the parties are to appear before the learned Additional District Judge

No.2, Kamrup (M) on 19th April, 2024 for further necessary steps.

24] A perusal of the records show that an amount of Rs.10,00,000/- (Rupees ten lakhs) only of the award is now custody of this High Court, which was deposited in connection with the dismissed W.P.(C) No.4040/2016. This court vide its order dated 15.12.2021 in the I.A.(C) No.3247 had stated that the application for the release of the Rs.10,00,000/- (Rupees ten lakhs) only shall be decided at the time of the disposal of the connected appeal in MAC.Appl. No.72/2018.

25] In view of the above the mentioned Rs. 10,00,000/- (Rupees ten lakhs) only may be deposited as fixed deposit in the Account of the Registry till the disposal of the MAC Case No.2277/2010 by the learned Additional District Judge No.2, Kamrup (M). An attempt should be made by the learned Tribunal to dispose of the matter expeditiously considering the long pendency of the case.

26] Accordingly, MAC. App./72/2018 stands allowed and disposed of with the above directions.

JUDGE

Comparing Assistant