

GAHC010131252017



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

Case No. : MACApp./252/2017

M/S ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE A 25/27 ASAF ALI
ROAD, NEW DELHI 110002 WITH ONE OF ITS REGIONAL OFFICE AT G.S.
ROAD ULUBARI, GUWAHATI-781007 REPRESENTED BY ITS CHIEF
REGIONAL MANAGER

VERSUS

SMTI TARAMAI BORAH and 4 ORS,
W/O LATE GIRISH CH. BORAH

2:BISWAJIT BORAH
S/O LATE GIRISH CH. BORAH

3:SAMARJIT BORAH
S/O LATE GIRISH CH. BORAH

4:JYOTI BORAH
S/O LATE GIRISH CH. BORAH
RESPONDENT NO. 2 TO 4 ARE MINORS AND ARE REPRESENTED BY
THEIR MOTHER AND NATURAL GUARDIAN RESPONDENT NO. 1 SMTI
TARAMAI BORAH
ALL ARE R/O VILL. BORBHOZIA
P.S. ULUWANI
P.O. NAGAON-782001
DIST. NAGAON
ASSAM.

5:MRS. PRASANA BARUAH
S/O LATE AKAN BARUAH
R/O VILL. BARUACHUK
P.S. SAMAGURI

P.O. PURANIGUDAM-782141
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR.A AHMED, MS L DAS,MR. R C PAUL

Advocate for the Respondent : MR.H R A CHOUDHURY, MS.R CHOUDHURY,MS.N BEGUM

Linked Case : I.A.(Civil)/1691/2024

M/S ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE A 25/27 ASAF ALI
ROAD
NEW DELHI 110002 WITH ONE OF ITS REGIONAL OFFICE AT G.S. ROAD
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GUWAHATI-781007 REPRESENTED BY ITS CHIEF REGIONAL MANAGER

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S/O LATE GIRISH CH. BORAH
RESPONDENT NO. 2 TO 4 ARE MINORS AND ARE REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN RESPONDENT NO. 1 SMTI TARAMAI
BORAH
ALL ARE R/O VILL. BORBHOZIA
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DIST. NAGAON
ASSAM.

Advocate for : MR. R C PAUL
Advocate for : MS. R CHOUDHURY appearing for SMTI TARAMAI BORAH and 4
ORS

Linked Case : I.A.(Civil)/1201/2023

M/S ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE A 25/27 ASAF ALI
ROAD
NEW DELHI 110002 WITH ONE OF ITS REGIONAL OFFICE AT G.S. ROAD
ULUBARI
GUWAHATI-781007 REPRESENTED BY ITS CHIEF REGIONAL MANAGER

VERSUS

SMTI TARAMAI BORAH and 4 ORS.
W/O LATE GIRISH CH. BORAH

2:BISWAJIT BORAH
S/O LATE GIRISH CH. BORAH

3:SAMARJIT BORAH
S/O LATE GIRISH CH. BORAH

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RESPONDENT NO. 2 TO 4 ARE MINORS AND ARE REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN RESPONDENT NO. 1 SMTI TARAMAI
BORAH
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DIST. NAGAON
ASSAM.

5:MRS. PRASANA BARUAH

S/O LATE AKAN BARUAH
R/O VILL. BARUACHUK
P.S. SAMAGURI
P.O. PURANIGUDAM-782141
DIST. NAGAON
ASSAM.

Advocate for : MR. R C PAUL
Advocate for : MS. R CHOUDHURY appearing for SMTI TARAMAI BORAH and 4
ORS.

Linked Case : I.A.(Civil)/524/2023

M/S ORIENTAL INSURANCE CO. LTD.
A COMPANY REGISTERED AND INCORPORATED UNDER THE COMPANIES
ACT
1956
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE
A-25/27
ASAF ALI ROAD
NEW DELHI 110002 WITH ONE OF ITS REGIONAL OFFICE AT G.S. ROAD
ULUBARI
GUWAHATI-781007 REPRESENTED BY ITS REGIONAL MANAGER

VERSUS

SMTI TARAMAI BORAH AND 4 ORS
W/O LATE GIRISH CH. BORAH
R/O VILL-BORBHOZIA
P.O.-NAGAON
P.S.-ULUWANI
DIST-NAGAON
ASSAM

2:BISWAJIT BORAH
S/O LATE GIRISH CH. BORAH
R/O VILL-BORBHOZIA
P.O.-NAGAON
P.S.-ULUWANI
DIST-NAGAON
ASSAM

3:SAMARJIT BORAH
S/O LATE GIRISH CH. BORAH
R/O VILL-BORBHOZIA

P.O.-NAGAON
P.S.-ULUWANI
DIST-NAGAON
ASSAM

4:JYOTI BORAH
S/O LATE GIRISH CH. BORAH
R/O VILL-BORBHOZIA
P.O.-NAGAON
P.S.-ULUWANI
DIST-NAGAON
ASSAM

5:PRASANTA BARUAH
S/O LATE AKASH BARUAH
R/O VILL-BARUACHUK
P.O.-PURANIGUDAM
P.S.-SAMAGURI
DIST-NAGAON
ASSAM

Advocate for : MR. R C PAUL
Advocate for : MS. R CHOUDHURY appearing for SMTI TARAMAI BORAH AND
4 ORS

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

| | | |
|---------------------|---|--------------------------------|
| For the Appellant | : | Mr. R.C. Paul, Advocate. |
| For the Respondents | : | Ms. R. Choudhury, Advocate. |
| Date of Hearing | : | 11.06.2024. |
| Date of Judgment | : | 18.02.2025. |

JUDGMENT AND ORDER (CAV)

Heard Mr. R.C. Paul, the learned counsel representing the appellant Insurance Company as well as Ms. R. Choudhury, the learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated

26.02.2016 passed by the learned Member, Motor Accident Claims Tribunal, Nagaon in MAC Case No.14/2009.

3. On 09.09.2000 at about 12.45 P.M., late Girish Ch. Borah was travelling as a pillion rider in a scooter bearing Registration No.AS-02-4459 (LML Vespa Scooter). It was riding by Sri Prasanta Kr. Baruah. It is alleged that the scooter was riding in a rash and negligent manner. When a cow came in front of the scooter, the driver in order to save the cow, took some turns. As a result of which, the scooter lost control and the deceased was thrown away from the scooter. He sustained serious injuries. He was brought to Guwahati for medical treatment. On the next day of the accident, Sri Girish Ch. Borah succumbed to his injuries.

4. In the claim petition, Prasanta Baruah (the rider) and the present appellant were made opposite parties.

5. During the pendency of the case, Prasanta Baruah died and therefore his wife Bina Baruah contested the claim petition. She claimed that the scooter bearing Registration No.AS-02-4459 (LML Vespa Scooter) was duly insured with the present appellant Insurance Company.

6. The appellant Insurance Company, in its written statement, claimed that the scooter bearing Registration No.AS-02-4459 was not driven by an authorized driver with a valid licence. It also claimed that the said scooter was never driven in a rash and negligent manner. According to the Insurance Company, the Insurance Policy No.2441/2002 that was valid up to 31.03.2001, is not available in their office records.

7. On the basis of the pleadings of the parties, the Tribunal framed the following issues:

- I. Whether the claim petition is maintainable?
- II. Whether the accident occurred due to rash and negligent driving of the driver of vehicle No.AS-02-4459 (LML Vespa Scooter)?
- III. Whether the claimant is entitled to receive the compensation, and if so, to what extent and who is liable to pay the same?
- IV. To what relief/reliefs are the parties entitled?

8. At the time of hearing of the claim petition, the claimant examined two witnesses. The Insurance Company did not examine any witnesses.

9. On the basis of the evidence on record, the Tribunal awarded a compensation of ₹12,18,504/-.
10. Aggrieved by the judgment passed by the Tribunal, the appellant filed this appeal.
11. In the memo of appeal, no specific ground has been taken by the Insurance Company. Therefore, the appellant filed three numbers of Interlocutory Applications. In the IA(Civil) No.1201/2023 and in IA(Civil) No.524/2023, the appellant prayed for leave to bring on record certain documents.
12. In IA(Civil) 1691/2024, the appellant's prayer was made under Order 41 Rule 27 of the Code of Civil Procedure praying for leave to allow it to adduce additional evidence in the Tribunal to prove that there was no coverage of Insurance Policy at the time of the accident.
13. I have considered the submissions made by the learned counsel of both sides.
14. An appeal is a remedial concept determined as an individual's right to seek justice against an unjust decree/order by referring it to a Superior Court. Sections 96 to 99A; 107 to 108 & [Order 41](#) of the [Code of Civil Procedure, 1908](#) deal with appeals from original decrees known as First appeals. An appeal is a legal process in which a higher forum reviews the decision of a lower forum on both legal and factual grounds. The word appeal has nowhere been defined in the Code of Civil Procedure. The term appeal means the judicial examination by a higher court of the decision of an inferior court. An Appeal in legal parlance is held to mean the removal of a cause from an inferior or subordinate to superior tribunal or forum in order to test and scrutinize the corrections of impugned decisions.
15. Recently, the Hon'ble Supreme Court in Rama Kt. Barman (Died) Thr. Lrs vs Md. Mahim Ali has held as under:

“As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. However, the Appellate Court can not create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under [Order XLI of CPC](#).”
16. So, the law is very clear. Except a plea of maintainability, no new ground can be taken up by the appellant in an appeal. The plea, intended to be taken by the appellant, was never taken at the time of filing of the written statement. If the prayer of the appellant is allowed, there will be a de novo trial and it is not allowed by law. Therefore, the prayers made by the appellant in the Interlocutory Applications are rejected.
17. I have carefully gone through the impugned judgment.
18. This Court is of the opinion that the impugned judgment is a well reasoned judgment based on

available evidence. The impugned judgment does not require any interference of this Court. The appeal is found to be devoid of merit and stands dismissed accordingly. The connected Interlocutory Applications are also disposed of.

Send back the LCR.

JUDGE

Comparing Assistant