



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Principal Seat at Guwahati

MACApp./77/2022

ICICI Lombard General Insurance Company Ltd.,
having its Registered Office & Head Office at ICICI Bank Towers,
Bandra Kurla Complex, Mumbai 400051, its Zonal Office at Apeejay House, 15
Park Street, 7th Floor, Kolkata-700016, and a Branch Office at 3rd floor, office No.
305 and 306, Kamkhya Tower, G. S. Road, Guwahati-781005, Assam.

.....Appellant

-Versus-

1. Smti Gopa Das
W/o Late Bhupesh Ch. Das
2. Sri Joydeep Das
S/o Late Bhupesh Ch Das
Both are residents of:
R/o-Village-Nilibari
P.O. Simlaguri, P.S. Dhaligaon
District: Chirang, BTAD, Assam.
Pincode: 783385.
3. On the Death of Santala Basumatary his Legal Heirs (Deceased)
S/O Late Soni Ram Basumatary,
Resident of Village Gossaigaon, P.O. Ranchaidham,

Dist. Chirang, Assam, 783372.

[Owner of the Vehicle No. AS-19/H-0349 (M/C)]

- 3.1. Bharati Basumatary (Wife),
Resident of Village Gossaigaon, P.O. Ranchaidham,
Dist. Chirang, Assam, 783372.
- 3.2. Dwitun Basumatary,
Resident of Village Gossaigaon, P.O. RANCHAIDHAM,
Dist. Chirang, Assam, 783372.
- 3.3. Manoranjan Basumatary,
Resident of Village Gossaigaon, P.O. Ranchaidham,
Dist. Chirang, Assam, 783372.
- 3.4. Bishnu Jyoti Basumatary,
Resident of Village Gossaigaon, P.O. Ranchaidham,
Dist. Chirang, Assam, 783372.
4. Tabra Brahma,
S/o Late Abath Brahma,
R/o. Village-South Kajolgaon,
P.O. Simlaguri, District: Chirang, BTC, Assam,
Pincode:783381.
[Driver of the Vehicle No. AS-19/H-0349(M/C)]
5. State of Assam, represented by...

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant : Mr. R. Goswami

Advocate for the respondents : Mr. M. Khan (for R-1&2);

Ms. D. Devi, on behalf of
Mr. K.R. Patgiri (for R-3.1 to 3.4);
Ms. D.D. Barman, Addl. Sr. G. A.
(for R-5).

Date on which judgment is reserved : **N/A**
Date of pronouncement of judgment : **23.02.2026**
Whether the pronouncement is of the
operative part of the judgment? : N/A
Whether the full judgment has been
pronounced? : Yes

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. M. Khan, learned counsel for the respondent Nos. 1 and 2; Ms. D. Devi, learned counsel appearing on behalf of Mr. K.R. Patigiri, learned counsel for the respondent Nos. 3.1 to 3.4; and Ms. D.D. Barman, learned Addl. Senior Government Advocate for the respondent No. 5. None appears for the respondent No. 4.

2. This appeal, under Section 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 07.09.2021, passed by the learned Member, Motor Accident Claims Tribunal, Bongaigaon, in MAC Case No. 63/2016.

3. It is to be noted here that vide impugned judgment and award dated 07.09.2021, the learned Member, Motor Accident Claims Tribunal, Bongaigaon ('Tribunal', for short) has directed the appellant

herein i.e. ICICI Lombard General Insurance Company Ltd. to pay a sum of Rs.26,77,358/-, being the compensation to the claimants/respondent Nos. 1 and 2 herein, with interest @ 6% per annum, from the date of filing of the claim petition, till the date of its realization.

Background facts:-

4. The background facts leading to filing of the present petition is briefly stated as under:-

“On 07.07.2015, Bhupesh Chandra Das, since deceased was coming from Tuniapar market towards his home, situated at Nilibari by riding his bi-cycle. Then the driver of a motorcycle, bearing registration No.AS-19/H-0349, which was coming in rash and negligent manner, knocked down said Bhupesh Chandra Das, from behind, on the main road, near Ram Mandir, B.G. Colony. As a result, Bhupesh Chandra Das had sustained grievous injuries over his head and other part of his body and his bi-cycle also got damaged.

After the accident, Bhupesh Chandra Das was taken to Lower Assam Hospital & Research Centre, Bongaigaon. Then on being advised, he was shifted at Hayat Hospital, Odalbakra, Langanesh, Guwahati-34. But on 08.07.2015 at about 11:30, after necessary treatment, the Doctor declared him dead. Later on, the autopsy of the dead body was done at G.M.C. Guwahati.

In connection with the accident, one Joydeep Das, respondent No.2 herein, had lodged one FIR with the Officer-In-Charge on 19.08.2015, upon which Bongaigaon P.S. case No. 675/2015, u/s 279/304(A) IPC was registered against the driver of vehicle bearing registration No.AS-19/H-0349 (Hero Glamour Motorcycle). Thereafter, investigation was carried out, which culminated in submission of charge sheet against the driver of the vehicle bearing registration No.AS-19/H-0349.

Thereafter, the respondent No.1 and 2 herein, being the wife and son have filed a claim petition before the learned tribunal claiming compensation on account of death of Bhupesh Chandra Das. The appellant and other respondent herein had entered appearance and contested the claim petition by filing written statement.

Thereafter, vide impugned judgment and award, the learned tribunal had directed the appellant herein, i.e. ICICI Lombard General Insurance Company Ltd., to pay a sum of Rs.26,77,358/-, being the compensation to the claimants/respondent Nos. 1 and 2 herein with interest @ 6% per annum, from the date of filing of the claim petition till the date of its realization."

5. Being aggrieved, the appellant herein, has preferred the present appeal on several grounds, specially on the ground of fraud.

Submissions:-

6. Mr. Goswami, learned counsel for the appellant, submits that immediately after the accident, the matter was reported to Bongaigaon Police Station, upon which G.D. Entry No.330, dated 07.07.2015, at 8:20 p.m., was recorded by the Officer-in-Charge of the P.S. and traffic S.I., R. Bhuyan, was endorsed to investigate the matter. Accordingly, S.I.- R. Bhuyan, had visited the place of occurrence and upon returning, he reported that a motorcycle, bearing Registration No.AS-16A-4510, had knocked down a person, who was proceeding in the same direction on his bicycle, as a result of which the rider of the bicycle as well as of the motorcycle, both, sustained injuries and the people of the locality had sent both of them to Lower Assam Hospital for treatment by 108 and he also took the motorcycle, bearing Registration No.AS-16A-4510, to the police station for examination. On the basis of the said report, G.D. Entry No.334, was recorded at approximately 10:05 p.m. on 07.07.2015. Mr. Goswami further submits that after 42 days of the said accident, an FIR was lodged with the Officer-In-Charge of Bongaigaon Police Station, upon which Bongaigaon P.S. Case No.675/2015, dated 19.08.2015, was registered under Section 279/304A IPC and in the said FIR, the number of the motorcycle has been mentioned as AS-19H-0349. Thereafter, investigation was carried out and charge-sheet was submitted against the driver of the said motorcycle.

6.1. Mr. Goswami further submits that a claim petition was filed by the respondent Nos. 1 and 2 herein, before the learned Member,

Motor Accident Claims Tribunal, Bongaigaon and after hearing both the parties, the learned Member, MACT, vide judgment and order dated 07.09.2021, allowed the claim petition and directed the appellant/respondent No.1, the Legal Manager, ICICI Lombard GIC Ltd. to pay a sum of Rs.26,77,358/-, being the compensation, and being aggrieved, the appellant/respondent No.1 has approached this Court by filing the present appeal.

6.2. Mr. Goswami submits that in fact, in the said accident the motorcycle bearing Registration No.AS-16A-4510 was involved, as per the G.D. Entry No.334, which was exhibited before the learned Member, MACT, as Exhibit-B. But, subsequently, the vehicle number was changed in the FIR, wherein a different vehicle bearing registration No. AS-19H-0349, was shown to have been involved and after investigation, charge sheet was submitted against one Tabra Brahma, the driver of the motor cycle No. AS-19H-0349. Mr. Goswami further submits that the I.O. of the case had also been examined in the claim petition as D.W.2, and he also admitted to the registration of the G.D. Entry No.334, dated 07.07.2015, but he stated that due to inadvertence, the number of the vehicle had been wrongly mentioned in the G.D. Entry No.334, but such explanation, according to Mr. Goswami, is far from satisfactory and it indicates commission of fraud and the same is required to be investigated.

6.3. It is worth mentioning in this context that vide order dated 19.09.2024, considering the G.D. Entry No.334, dated 07.07.2015, which was exhibited before the learned Tribunal as Exhibit-B, and

having found substance in the submission of Mr. Goswami, learned counsel for the appellant, the State of Assam was impleaded as respondent No. 5 in the appeal and also notice was issued to the said respondent, and one Mr. S. Baruah, learned Government Advocate entered appearance for the respondent No. 5. Thereafter, the case diary of Bongaigaon P.S. Case No.675/2015, as well as the original General Diary of Bongaigaon P.S. commencing from 07.07.2015, till 31.12.2015, and also the G.R. Record relating to Bongaigaon P.S. Case No.675/2015 were called for and the same had been received. Thereafter, vide order dated 17.06.2025, this Court was pleased to call for the scanned copy of the charge-sheet of Bongaigaon P.S. Case No. 675/2015, from the Court of the learned Chief Judicial Magistrate, Bongaigaon.

6.4. Thereafter, on 17.02.2026, during the course of the hearing, Mr. Goswami again submits that in the alleged accident, one motorcycle, bearing Registration No. AS-16A-4510, was involved as per G.D. Entry No.334, dated 07.07.2015, but subsequently, on the basis of FIR, another vehicle was shown to have been involved i.e. AS-19H-0349, and after investigation the Bongaigaon P.S. Case No. 675/2015, was charge-sheeted, and he also submits that a fraud has been committed by the Investigating Officer upon the learned Tribunal, and as such, the judgment and award passed by the learned Tribunal is vitiated, and therefore, the impugned judgment and award dated 07.09.2021, may be set aside and the matter may be referred to the Special Investigation Team, constituted in the State Assam,

pursuant to the observation made by the Hon'ble Supreme Court in the case of **Safiq Ahmad Vs. ICICI Lombard General Insurance Co. Ltd. & Others**, in **Special Leave Petition (Civil) No. 1110 of 2017**, for being investigated commission of fraud in motor accident claim cases.

6.5. Mr. Goswami also pointed out that pursuant to the order of this Court, Ms. Barman, learned Addl. Senior Government Advocate for the respondent No. 5 had received written instructions regarding details of the owner of registration of the motorcycle bearing No. AS-16A-4510, from the District Transport Officer, Bongaigaon, vide letter dated 12.08.2025, and the said letter indicates that one Jakariya Champramary, son of Jahan Champramary, resident of Pub Domgaon of Village:- Coto Nilibari, under Basugaon P.S., district Chirang, is the owner. Mr. Goswami also submits that the matter may be remanded to the learned Tribunal to proceed against the said owner, also arraying him as a respondent in the MAC Case No. 63/2016, and thereafter to proceed with a claim petition in accordance with the law and to pronounce a fresh judgment and award, after ascertainment of the actual vehicle involved in the accident.

7. Mr. Barman, learned Addl. Senior Government Advocate for the respondent No.5, has also subscribed to the submission advanced by Mr. Goswami, learned counsel for the appellant. She submits that as per the letter dated 12.08.2025 of the District Transport Officer, Bongaigaon, in the particulars of the vehicle bearing Registration No. AS-16A-4510, has mentioned nothing about the insurer of the said

vehicle, and that might be the reason for planting another vehicle, in place of the actual vehicle.

8. However, Mr. Khan, learned counsel for the respondent Nos. 1 and 2, has opposed the submission, so advanced by Mr. Goswami, learned counsel for the appellant and by Ms. Barman, learned Addl. Senior Government Advocate. According to Mr. Khan, in the Bongaigaon PS case No. 675/2015, charge sheet has already been filed after due investigation and the witnesses have also been examined, and none of the witnesses deposed about investigation of the vehicle mentioned in the GD Entry No. 334, dated 7-07-2015, and this is nothing but an error of clerical in nature, and as such, the evidence adduced during the trial of MAC Case No. 63/2016 will prevail and as such, he has contended to dismiss this appeal by affirming the impugned judgment and award of the Tribunal.

8.1. In support of his submission, Mr. Khan has referred to the following decisions:

- (i) **Geeta Dubey and Ors. VS. United India Insurance Co. Ltd. and Ors., in Civil Appeal of 2024 [Special Leave Petition (Civil) No. 8551 of 2024].**
- (ii) **National Insurance Company Ltd. vs. Chamundeswari and Ors., in Civil Appeal No. 6151 of 2021.**

(iii) Smti. Chuto Gaur and 3 Ors. Vs. National Insurance Company Ltd. and Ors., in MACApp. No. 437/2018.

(iv) Janabai WD/o Dinkarrao Ghorpade and Ors. vs. ICICI Lombard Insurance Company Limited, reported in (2022) 10 SCC 512.

(v) Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors., reported in (2009) 13 SCC 530.

9. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the memo of appeal and the grounds mentioned therein, and also perused the record received from the learned Tribunal and also the original G.D. registers, received from Bongaigaon P.S. and produced by Ms. Barman, learned Addl. Senior Government Advocate before this Court, and also gone through the record of Bongaigaon P.S. Case No. 675/2015, and this Court finds sufficient force in the submission of Mr. Goswami, learned counsel for the appellant.

10. It is not in dispute that the accident took place on 07.07.2015, at about 07:20 p.m., and the said accident was reported to the Officer In-charge of Bongaigaon P.S., upon which G.D. Entry No.330, dated 07.07.2015, at 8:20 p.m. was recorded by him, and thereafter, he endorsed traffic S.I., R. Bhuyan to investigate the matter. Accordingly, S.I. R. Bhuyan, had visited the place of occurrence and thereafter, he returned to the police station taking the motorcycle, bearing taking Registration No.AS-16A-4510, involved in the accident with him and

reported that the said motorcycle had knocked down a person, who was proceeding in the same direction on his bicycle, and the rider of the bicycle as well as of the motorcycle both sustained injuries and the local people had sent both of them to Lower Assam Hospital for treatment by 108, and on the basis of the said report, G.D. Entry No.334, 07.07.2015, at about 10:05 p.m. at night was recorded.

11. But, interestingly, after 42 days of the said accident, one FIR was filed with the police station, wherein the number of the motorcycle involved in the said accident, was mentioned as AS-19H-0349, upon which Bongaigaon P.S. Case No.675/2015, dated 18.08.2015 was registered, under Sections 279/304A IPC and after investigation, charge-sheet was submitted against the rider of the said motor cycle bearing registration No. AS-19H-0349. It also appears that the I.O. of Bongaigaon P.S. Case No.675/2015, was examined as D.W.2 and he admitted the factum of registration of G.D. Entry No.334, dated 07.07.2015, and the number of motorcycle mentioned therein, however, he explained that the registration number of the vehicle had wrongly been mentioned in the G.D. Entry No.334, dated 07.07.2015. This explanation, so offered by the I.O., is found not at all acceptable, in view of the G.D. Entry No. 334 dated 07.07.2015. And it raises serious doubt about the very involvement of the motor cycle bearing No. AS-19H-0349, in the said accident. Mr. Goswami, learned counsel for the appellant has rightly pointed this out and this Court find substance in the same.

12. Thus, commission of fraud, either by the informant, who lodged the FIR, or by the I.O., who investigated the case and submitted the charge sheet in Bongaigaon P.S. Case No.675/2015, is writ large on the face of the record. And that being so, fastening of liability upon the insurer of the motor cycle, bearing registration No. AS-19H-0349, i.e. the appellant herein, by the learned Tribunal, on the basis of the charge-sheet and evidence led, appears to be unsustainable in law.

13. It is well settled in a catena of decisions of Hon'ble Supreme Court that fraud vitiates everything. One such decision is **Bhaurao Dagdu Paralkar vs. State of Maharashtra** reported in (2005) 7 SCC 605, wherein the foundational understanding of what constitutes fraud in legal proceedings has been dealt with. The Court's exposition in paragraph 9 is particularly illuminating and is extracted herein below: -

"9. By 'fraud' is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression 'fraud' involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others."

13.1. This definition reveals several crucial aspects of legal fraud. First, the motivation behind fraud is irrelevant—whether driven by

greed or malice, fraud remains fraud. Second, fraud requires both deceptive conduct and resulting injury. Third, injury extends beyond economic loss to encompass any form of harm, reflecting fraud's comprehensive corrupting effect.

13.2. The core principle with remarkable clarity is articulated in paragraph 11 of the said decision as under:-

"'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud."

13.3. The phrase "fraud and justice never dwell together" (fraus et jus nunquam cohabitant) captures the fundamental incompatibility between deception and justice. This ancient maxim, has never lost its temper over all these centuries, and continues to guide judicial thinking. And this has been noted in **Meghmala and Ors. vs. G. Narasimha Reddy and Ors.**, reported in **(2010) 8 SCC 383** by the **Hon'ble Supreme Court**. The Court's observation that even innocent misrepresentation may constitute fraud demonstrates the law's concern with protecting the integrity of judicial proceedings rather than merely punishing malicious conduct. This approach

ensures that courts are not misled, whether through deliberate deception or careless falsehood.

13.4. Again, Hon'ble Supreme Court in **A.V. Papayya Sastry and Ors. vs. Govt. of A.P. and Ors.**, reported in (2007) 4 SCC 221 provided comprehensive exposition of this doctrine. The Court began by invoking Chief Justice Edward Coke's three-century-old proclamation: - 4 - "Fraud avoids all judicial acts, ecclesiastical or temporal." Building on this foundation, the Court held in paragraph 22 as under:-

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

13.5. This principle has extraordinary implications. A fraudulently obtained order is not merely voidable—it is void ab initio. It never had legal existence. This nullity can be raised at any stage, in any proceedings, by any court. No limitation period applies, no principle of finality protects it.

14. It is a fact that such a plea of fraud was not taken before the learned Tribunal, by the appellant herein. But, such plea is taken in

the ground Nos.3, 4 and 5 in the present appeal. And in view of the dictum in the case of **A.V. Papayya Sastry(supra)** no fault can be found with the appellant in raising issue before this Court, in this appeal. It is well settled that it can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In that view of the matter, the impugned judgment and award dated 07.09.2021, requires interference of this Court.

15. In the result, this Court finds sufficient merit in the appeal and accordingly, the same stands allowed. The impugned judgment and award dated 07.09.2021, passed by the learned Tribunal in MAC Case No. 63/2016, stands set aside and quashed.

16. It is worth mentioning in this context that Rule 23-A of Order XLI CPC allows the remand of a case even when the lower court disposed of the same on grounds other than a preliminary point, if the appellate court deems it necessary in the interests of justice. In the instant case, in view of the submissions of Mr. Goswami, learned counsel for the appellant and Ms. Barman, learned Addl. Senior Govt. Advocate for the respondent No. 5, and also in the interest of justice, this Court deems it necessary and also ordered accordingly to remand the matter to the learned Tribunal, with a direction to proceed against the owner/rider of the motor cycle bearing registration No. AS-16A-4510, as mentioned in the G.D. Entry No. 334, dated 07.07.2015, namely, Jakariya Champramary, as is apparent from the letter of the District Transport Officer, dated 12.08.2025, by impleading him as opposite party No.4, in the said MAC case. And if the particulars of the insurer of the said

motorcycle, bearing registration No. AS-16A-4510 are furnished, then the said insurance company shall also be impleaded as respondent No. 5. It is further provided that the learned tribunal shall frame an issue as to which of the motorcycle i.e. motorcycle, bearing registration No. AS-16A-4510 or bearing registration No. AS-19H-0349, was involved in the accident and after adjudication of the same, a fresh judgment and award shall be passed. While adjudicating the issue reasonable opportunity of being heard shall also be afforded to both the parties, and also to lead evidence, if found necessary.

17. This Court has considered the submissions of Mr. Khan, learned counsel for the respondent Nos. 1 and 2, and also the decisions referred by him. And in view of the aforesaid discussion and findings, this Court is unable to record concurrence with the same, due to the fact that fraud has been pleaded, and also shown to have been played and it is well settled that fraud vitiates everything.

18. Further, it is provided that the matter shall also be referred to the Special Investigation Team, Assam constituted as per the observation made by the Hon'ble Supreme Court in the case of **Safiq Ahmad Vs. ICICI Lombard General Insurance Co. Ltd. & Others, in Special Leave Petition (Civil) No. 1110 of 2017**, to investigate commission of fraud in the present case by planting a different motorcycle bearing registration No. AS-19H-0349, in place of the motorcycle bearing registration No. AS-16A-4510, which in fact shown to have been involved in the accident leading to the

death of Bhupesh Chandra Das, as per the G.D. Entry No. 334, dated 07.07.2015.

19. The Registry shall return the case record to the learned Tribunal by a special messenger. On receipt of the same, the learned Tribunal shall proceed with the same as directed herein above and also in accordance with law, and shall make an endeavour to complete the hearing as soon as practicable. Further, it is provided that the registry shall also forward a copy of this judgment and order to the Special Investigation Team, Assam for compliance of the direction mentioned in para No. 18 of this judgment and order.

20. In terms of above, this appeal stands disposed of.

J U D G E

Comparing Assistant