

GAHC010208742021



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

Case No. : MACApp./77/2022

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AND 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 3ED FLOOR, OFFICE NO. 305 AND 306,
KAMAKHYA TOWER, G.S ROAD, GUWAHATI 781005, ASSAM

VERSUS

GOPA DAS AND 3 ORS.
W/O LATE BHUPESH CH. DAS,
RESIDENT OF VILLAGE NILIBARI, PO SIMLAGURI, PS DHALIGAON, DIST
CHIRANG, BTAD, ASSAM, 783385

2:SRI JOYDEEP DAS

S/O LATE BHUPESH CH. DAS

RESIDENT OF VILLAGE NILIBARI
PO SIMLAGURI
PS DHALIGAON
DIST CHIRANG
BTAD
ASSAM
783385

3:ON THE DEATH OF SANTALA BASUMATARY HIS LEGAL HEIRS
S/O LATE SONI RAM BASUMATARY

RESIDENT OF VILLAGE GOSSAIGAON
PO RANCHAIDHAM
DIST CHIRANG

ASSAM
783372.
(OWNER OF THE VEHICLE NO. AS-19/H-0349 (M/C)

3.1:BHARATI BASUMATARY
(WIFE) 46 YEARS
RESIDENT OF VILLAGE GOSSAIGAON
PO RANCHAIDHAM
DIST CHIRANG
ASSAM
783372.

3.2:DWITUN BASUMATARY
AGE 30 YEARS
RESIDENT OF VILLAGE GOSSAIGAON
PO RANCHAIDHAM
DIST CHIRANG
ASSAM
783372.

3.3:MANORANJAN BASUMATARY
AGE 26 YEARS
RESIDENT OF VILLAGE GOSSAIGAON
PO RANCHAIDHAM
DIST CHIRANG
ASSAM
783372.

3.4:BISHNU JYOTI BASUMATARY
AGE 18 YEARS
RESIDENT OF VILLAGE GOSSAIGAON
PO RANCHAIDHAM
DIST CHIRANG
ASSAM
783372.

4:TABRA BRAHMA
S/O LATE ABATH BRAHMA
RESIDENT OF VILLAGE SOUTH KAJOLGAON
PO SIMLAGURI
DIST CHIRANG
BTC
ASSAM
783381
(DRIVER OF THE VEHICLE NO. AS-19/H-0349 (M/C

5:THE STATE OF ASSAM.

Advocate for the Petitioner : MR. R GOSWAMI, MR S K BEHARA,MS. P BORTHAKUR

Advocate for the Respondent : MR. M KHAN, MS CHITRALEKHA DAS (R-3.1. to 3.4),MR. K R PATGIRI (R-3.1. to 3.4),MR R ISLAM,MR. J RAHMAN,FOR CAVEATOR

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

19.09.2024

Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Mr. M. Khan, learned counsel for the respondent Nos.1 and 2 and Mr. K.R. Patgiri, learned counsel for the respondent Nos.3.1 to 3.4.

Mr. Goswami, learned counsel for the appellant in the course of hearing, has pointed out 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 has visited the place of occurrence and on returning he had reported that one motorcycle, bearing Registration No.AS-16A-4510, knocked down one 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 had also taken 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, 07.07.2015, at about 10:05 p.m. at night was recorded.

Mr. Goswami further submits that after 42 days of the said accident, one FIR was filed with the police station, upon which Bongaigaon P.S. Case No.675/2015, dated 18.08.2015 has been 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. Mr. Goswami further submits that a claim petition was filed by the claimants 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 has 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.

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 has been changed. Mr. Goswami further submits that the I.O. of the case had also been examined in the claim petition as DW-1 and he also admitted about registration of the G.D. Entry No.334, dated 07.07.2015, but stated that due to inadvertence, the number of the vehicle has been wrongly mentioned in the G.D. Entry No.334, but the explanation is far from satisfactory and it indicates commission of fraud and the same is required to be investigated to unearth the same.

In view of the submission of Mr. Goswami, learned counsel for the appellant and also considering the facts and circumstances on the record, specially G.D. Entry No.334, dated 07.07.2015, which is exhibited before the learned Tribunal as Exhibit-B, this Court is of the view that there is substance in the submission of Mr. Goswami, learned counsel for the appellant and the same is required to be looked into.

In view of above, this Court is inclined to implead the State of Assam as respondent No.5 in this appeal and also issue notice to the respondent No.5.

Since Mr. S. Baruah, learned Government Advocate, Assam, has entered appearance and wish to receive notice on behalf of the State respondent No.5, no formal notice is required to be issued to the said respondent.

However, a copy of the memo of appeal and the relevant documents be furnished

to Mr. Baruah, during the course of the day.

Further, this Court is of the view that examination of 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 are necessary here in this case. Accordingly, Mr. Baruah, learned Government Advocate is directed to produce the aforesaid case diary, GR record and General Diary before this Court, on the next date.

Registry shall list the matter after 4(four) weeks by reflecting the Government Advocate for the State respondent in the cause list.

Registry shall also amend the cause title of the appeal.

Sd/- Robin Phukan
JUDGE

Comparing Assistant