

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.2,  
KAMRUP (M), GUWAHATI**

Present : Shri D. Bhattacharjee, AJS  
Member, M.A.C. T. No.2,  
Kamrup (M), Guwahati

**MAC Case No.932 of 2012**

Smt. Binita Daimary ... Claimant

-Versus-

1. National Insurance Company Ltd.
2. Sri Pardip Choudhury
3. Shri Anil Das ...Opposite Parties

**NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE**

1. For the claimant : Sanjay Singh & Miss Elufa Begum

**DATES OF THE CASE**

1. Claim petition filed on : 28-02-2012
2. Judgment delivered on : 22-03-2017

**J U D G M E N T**

1. The instant motor accident claim case has arisen out of a petition filed by one Binita Daimary, claiming compensation for the death of her mother namely Budhbari Daimary, in a motor vehicle accident.

2. The claimant's case in a nutshell is that on 07-04-2012, at about 01:00 p.m. while the deceased was walking by the side of the road, and on the way, when she reached at Rowta Chariali on the National Highway, near Lalganesh Hotel, she was knocked down by the Traveller Mini Bus bearing registration No.AS-14-C-2755 from the back side, as a result of which her mother sustained grievous injuries on her person and died later on, during the treatment at hospital.

3. Notice was issued to the opposite parties but in spite of receipt of notice, none appeared and hence, the case was proceeded ex-parte against the opposite parties vide order dated 23-04-2014.

4. It is apposite to mention here that the case was posted on 07-06-2014 for ex-parte evidence of claimant but the claimant took adjournment on that date as well on the subsequent dates i.e. on 13-10-2014, 04-02-2015, 06-05-2015, 06-07-2015, 24-08-2015, 17-12-2015, 05-05-2015, 05-09-2016, 02-11-2016, 04-01-2017 on some flimsy grounds. On 22.03.2017, the claimant has remained absent from the proceeding without any step. The above conduct of the claimant shows that she is not interested to proceed with the case. This is an old pending case pending since the year 2012. In such circumstance, I do not find any cogent reason to carry the case by fixing date after date. Hence, relying upon ***Jyoti Rani Debnath (Das) vs. JyotsnaDebnath and ors***, reported in ***2008 (Suppl) GLT 161***, the case is taken up for adjudication.

### **DECISION AND REASONS THEREOF**

5. Under the facts and circumstances of the present case, reliance is placed on ***Jyoti Rani Debnath (Das) vs. JyotsnaDebnath and ors***, reported in ***2008 (Suppl) GLT 161***, wherein the Hon'ble Gauhati High Court has held as follows:

***"Law is well settled by a catena of decisions that an application for claim for compensation cannot be dismissed on account of default. If the claimant does***

***not appear or fails to take steps or does not come forward to prove his claim, learned Tribunal has the power to adjudicate the claim on the available materials on record on merit and accordingly, he may pass award to the effect that the claimant is not entitled to get any compensation as the claimant could not prove his case. Even in case of repeated adjournment and non-cooperation by the claimant, the claim petition could be adjudicated on merits even in absence of a claimant by granting award of compensation that may be justifiable on the available documents.”***

6. Reverting back to the case at hand, it is revealed that the case was posted on 07.06.14 for ex-parte evidence of claimant side. But she failed to adduce evidence. Since then, the case was posted for ex-parte evidence but the claimant took adjournments in each and every date on some flimsy grounds. Even on 22-03-2017 the claimant was absent from the proceeding without any steps.

7. The record reveals that apart from the claim petition, the claimant has not submitted any document to prove the accident and the injuries. Therefore, it has been held that the claimant has failed to prove her case.

8. Hence, relying upon the above referred authority of law, instead of dismissing the claim petition for default, decided the case on merit on the basis of materials available on record.

**ORDER**

9. In the result, the claim petition is dismissed on contest, without cost.
10. The Motor Accident Claim Case is disposed of accordingly.
11. Signed, sealed and delivered in the open Court on this the 22<sup>nd</sup> day of March, 2017, in Guwahati.

(Shri D. Bhattacharjee)  
Member, M.A.C. T. No.2,  
Kamrup (M), Guwahati

Dictated & corrected by me.

(Shri D. Bhattacharjee)  
Member, M.A.C. T. No.2,  
Kamrup (M), Guwahati