

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.34 OF 2022**

Shri Pranab Debnath

..... **Appellant(s)**

Vs.

Shri Laxman Paul and ors.

..... **Respondent(s)**

For the Appellant(s) : Mr. S. Lodh, Sr. Advocate.
Ms. A. Saha, Advocate.

For the Respondent(s) : Mr. K.C. Bhattacharjee, Advocate.

Date of hearing and delivery of
Judgment & Order : 19.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present application has been filed under Section 173 of the Motor Vehicles Act, 1988 against the impugned Judgment and Award dated 10.01.2022, passed by the learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in T.S.(MAC) No.183 of 2017.

2. The facts of the case of the claimant-petitioner-appellant, in brief, is that on 22.10.2015 he was coming towards Agartala by riding his motorbike bearing no. TR-01-U-6753 along with his friend namely, Sri Litan Debnath as pillion rider

after visiting puja pandal. When he reached near a fast food shop by the side of Amtali Police Station, at that time, a Maruti Van bearing no. TR-01-AK-0603 coming from the opposite direction in a rash and negligent manner dashed his motorbike and they met with an accident. As a result, he sustained grievous fracture injuries on his head, left leg, right hand, face, and other parts of the body. Immediately after the accident, he was taken to Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital for his treatment wherein he got admitted as an indoor patient w.e.f. 22.10.2015 to 16.11.2015. During the period of his treatment, an operation was done on his left leg. Thereafter, again on 11.01.2016, he got admitted to the said hospital wherein further operation was also done on his left leg and he was discharged on 18.01.2016 and by this way, he spent Rs.5,95,000/- for his medical treatment. Concerning the said accident a police case was registered at Amtali Police Station vide Amtali P.S. Case No.150/2016 (maybe 150/2015 according to FIR) under Sections 279/337/338 I.P.C. As stated, he was a private job holder having a monthly income of Rs.7,000/- and was 25 years old at that time. Thus, the said petition was filed claiming compensation of Rs.38,95,000/-.

3. O.P. No.1 therein i.e., the owner-respondent in his written objection formally denied the age, occupation, and

monthly income of the petitioner. In his written objection he admitted the accident but pleaded that the said accident occurred due to rash and negligent driving of the motorbike bearing No. TR-01-U-6753 driven by the petitioner himself accompanied by Sri Litan Debnath as a pillion rider. He also pleaded that the Maruti Van bearing no. TR-01-AK-0603 was not responsible for the said accident. He further pleaded that his vehicle was duly insured with the National Insurance Company Ltd. covering the date of the accident and the vehicle had its all valid documents at that time. So, if any compensation is awarded that should be paid by the insurer of the said vehicle.

4. O.P. No.2, National Insurance Company Ltd. in their written statement formally denied the involvement of the Maruti Van bearing no. TR-01-AK-0603 in the accident which took place on 02.10.2015 (*maybe 22.10.2015*) near Amtali Police Station, registration of Police Case vide FIR No.150/2016 (*maybe FIR no.150/2015*) under Sections 279/337/338 IPC and Section 184 of M.V. Act, sustaining of injuries, admission and undertaken treatment at Tripura Medical College and Dr. B.R. Ambedkar Memorial Hospital, age, the income of the petitioner etc. O.P. No.2 in their written statement stated that the claim of the petitioner is highly excessive. Lastly, O.P. no.2 stated that the Insurance Company is not liable to pay any compensation as

the vehicle had no valid vehicular documents like Driving Licence and Insurance Policy, etc., and as such the claim of the petitioner is liable to be dismissed *in limine*.

5. O.P. No.3, Oriental Insurance Company Ltd. in their written objection formally denied the rash and negligent riding of the motorbike bearing No. TR-01-U-6753 by its rider, income, occupation, age, etc. However, the petitioner is put to strict proof thereof. O.P. No.3 in their written objection stated that the matter of the accident was not reported by the owner of the Motorbike bearing No. TR-01-U-6753 in collusion with the petitioner with a view to sustain loss to the Insurance Company. They also stated that the compensation claimed by the petitioner is highly excessive. Lastly, they prayed for the dismissal of the case.

6. To prove the case, the appellant herein adduced 2(two) witnesses including himself and on the other side, the respondents did not adduce any evidence. After hearing the parties, learned Tribunal below dismissed the claim petition holding that the accident took place due to rash and negligent driving of the appellant as held in the police report.

7. Aggrieved by the impugned Judgment and award dated 10.01.2022, passed by the learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in

T.S.(MAC) No.183 of 2017, the appellant has preferred this present appeal to set aside the impugned judgment and award dated 10.01.2022 passed by the learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala.

8. Heard Mr. S. Lodh, learned counsel assisted by Ms. A. Saha, learned counsel appearing for the appellant as well as Mr. K.C Bhattacharjee, learned counsel appearing for respondent No.2.

9. Mr. S. Lodh, learned counsel appearing for the appellant submits that the learned Tribunal failed to appreciate the evidence on record and passed the impugned judgment and award. The learned Tribunal below at the time of passing the impugned judgment and award relied on the police report but the learned Tribunal has not appreciated the deposition of P.W.- 1 and P.W.2. P.W.2 is the eyewitness of the case. Apart from these two no other witnesses turned up, and the respondents failed to shake the deposition of the claimant-petitioner. The claimant-petitioner in clear and unambiguous terms narrated about the accident. The learned Tribunal below failed to appreciate the same and disbelieved the depositions of P.W.1 and P.W.2 and passed the impugned Judgment and order. Hence the same is liable to interfere.

In support of his argument that the findings of the charge sheet, police report, and FIR cannot be relied upon to discard the evidence witnesses, Mr. Lodh, learned counsel placed reliance upon **Paras-5 and 5A** of the Judgment of this Hon'ble Court reported in **(2014) 2 TLR 14** titled as **Puspa Das and ors. Vs. Sankar Deb and ors** which is reproduced herein-under:-

"5. Though the Motor Accident Claims Tribunal is not a Court and is not required to conduct an enquiry in accordance to the strict rules of evidence, it must follow the basic principles of law and the basic rules of natural justice. Any procedure to be legal and valid must be a procedure which gives the effected party a right to put forth his or her own case. I have no doubt in my mind that evidence recorded in some other case or the statement recorded by the police or Magistrate cannot be used in Motor Accident Claims Tribunal proceedings unless it is proved that the person who made the statement is dead or for some other reason his presence cannot be procured in Court. Reference in this behalf may be made to Section 33 of the Evidence Act, which reads as follows :

" 33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: Provided- that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross examine; that the questions in issue were substantially the same in the first as in the second proceeding. Explanation- A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

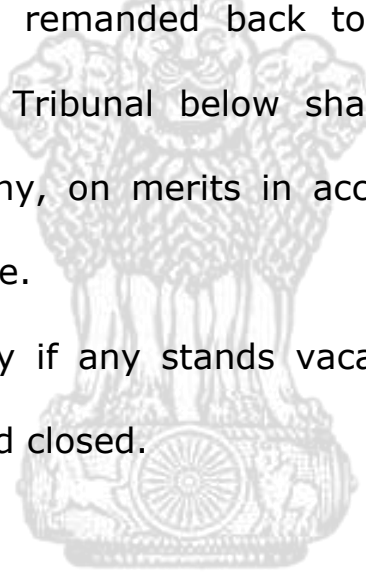
5. One of the pristine rules of our jurisprudence is that the witness examined by one party should be permitted to be cross examined by the other party. It is, therefore, obvious that a statement made before the police or a Magistrate or other judicial authority cannot be read in evidence against some other affected party without giving that affected party a right to cross examine the said witness. Therefore, the Tribunal was right in holding that without examining any of these witnesses, the petitioner could not prove the accident.

On the same point, learned counsel also relied upon the Judgment and Order of this Hon'ble Court reported in

(2016) 2 TLR 975 titled as **Rampati Chakma and Sunil Kumar Ram and ors.**

10. Heard and perused the evidence on record. In terms of the judgment cited and argument placed by the learned counsel appearing for the appellant-herein, this Court is convinced that the matter herein needs to be remanded back to the learned Tribunal below for re-consideration of the same on its merit. Accordingly, the appeal stands allowed and the impugned Judgment and order of the learned Tribunal below is set aside and the matter is remanded back to the learned Tribunal below. The learned Tribunal below shall decide the matter of compensation, if any, on merits in accordance with law as expeditiously as possible.

11. As a sequel, stay if any stands vacated. Pending application(s), if any also stand closed.


सत्यमेव जयते **JUDGE**