

**HIGH COURT OF TRIPURA  
AGARTALA**

**MAC.APP 56 of 2022**

**Shriram General Insurance Company Ltd.**

**---Appellant(s)**

**Versus**

**Shri Nutan Sarkar**

**---Respondent(s)**

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|------------------------------------------------|----------------------------|
| For Petitioner (s)                             | : Mr. P.K. Ghosh, Adv.     |
| For Respondent(s)                              | : Ms. R. Purkayastha, Adv. |
| Date of hearing and date of judgment and order | : 31.05.2023.              |
| Whether fit for reporting                      | : No                       |

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**Judgment & Order (Oral)**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 22.03.2022 passed in case No. TS(MAC) 02 of 2018 by the learned Motor Accident Claims Tribunal (IST), Unakoti District, Kailashahar, Tripura, awarding Rs.3,72,000/- only with interest @6% per annum from the date of filing of this claim petition i.e. from 07/02/2018 to the claimant-petitioner within 02 (two) months from today, against the appellant-opposite party No.5 Shriram General Insurance Company Limited, failing which the opposite party-appellant No.5 shall have to pay penal interest 9% per annum till the date of actual payment.

**[2]** The fact of the case as manifested from the claim-petition is that on 01/11/2016 at about 1530 hours complainant Nutan Sarkar, S/O Jogesh Sarkar of Shantipalli, PS- Manu while proceeding towards Manu from 82 mile, Dhalai Tripura (NH 44 road) by a vehicle bearing registration No. TR 02 B 2520 (TATA magic) and reached near the Manu parking area, the said vehicle collided with another vehicle bearing registration No. AS 01EC 3666(truck) which was coming from the opposite direction. Due to rash and negligent driving of the drivers of the aforesaid two vehicles, complainant Nutan Sarkar sustained grievous injury

on his persons and his right hand fingers, left hand and right elbow joint were broken. After the accident complainant Nutan Sarkar was shifted to Manu CHC for treatment and thereafter, he was referred to AGMC & GBP hospital, Agarala and then at South City Hospital, Meherpur, Silchar for better treatment. It is also stated by the claimant-petitioner that due to sustaining injury in the road traffic accident he has become fully disabled and presently he cannot perform his daily works and other works due to his physical pain and sufferings. The complainant also obtained 60% disabled certificate for 5 years from the medical board. The complainant also stated that he is a Govt. employee working under I.C.A.T. and his monthly income was Rs. 22,000/- on the date of accident. He also stated that a criminal case has been registered at Manu PS vide Manu PS case No. 37/2016 under Sections 279/338/427 of IPC and 184/187 of MV Act narrating the accident. The claimant-petitioner has claimed compensation of Rs.16,18,726/- (Rupees sixteen lakhs and eighteen thousand seven hundred and twenty six) only from the opposite parties.

**[3]** In response to the notice OP Nos. 3, 4, 5 & 6 have appeared and contested the case by filing their written statement.

**[4]** OP Nos. 3 & 4, owner and driver of the vehicle bearing No. TR 02B 2520, conjointly stated in their written statement that claim application of the claimant-petitioner is not maintainable and there is no cause of action against them and as such, there is no locus standi to file the instant claim petition by the claimant-petitioner. The statement and allegations of the instant claim application are all baseless, false and made for wrongful gain. OP Nos. 3 & 4 also stated that the documentary papers, i.e., Insurance Policy certificate, Pollution certificate, Registration of offending vehicle, Fitness Certificate, Route permit of the vehicle bearing No. TR 02B 2520 (TATA Magic) and the driving licence of the driver were valid at the time of accident and as such, the liability of paying compensation is to be shouldered on the Insurance company. Apart from this OP

No. 3 & 4 have denied all others claims and allegations of the claimant-petitioner in the instant suit.

**[5]** Considering the pleadings of the parties and documents submitted, the following issues were framed by the tribunal:-

- (I) Whether the claimant Nutan Sarkar sustained grievous injury in a road traffic accident occurred on 01.11.2016 at about 1530 hours in front of Manu parking area under Manu PS involving vehicle No. AS 01 EC 3666(truck) and TR 02 B 2520(Tata magic)?
- (II) Whether the accident occurred due to rash and negligent driving of the drivers of said vehicle bearing Nos. AS 01 EC 3666(truck) and TR 02 B 2520(Tata magic)?
- (III) Whether the claimant-petitioner entitled to get compensation? If so, what will be the just amount of compensation and who is to pay the same?
- (IV) To what other relief/relieves is the parties entitled?

**[6]** Learned court below after hearing both the parties awarded Rs.3,72,000/- (Rupees Three lacs seventy two thousand) in the following manner:

**"In the result, it is ordered that O.P. No. 5, the Branch Manager, Sriram General Insurance Company Limited, E-8, RIICO Industrial Area, sitapur, Jaipur, Rajasthan State, the Insurer of the offending vehicle bearing No. AS-01-EC-3666 (truck), shall pay the amount of compensation of Rs. 3,72,000/- (Rupees Three lacs seventy two thousand) with interest @ 6% per annum from the date of filing of this claim-petition, i.e., from 07-02-2018 to the claimant-petitioner within 02(two) months from today, failing which the OP No.5 shall have to pay penal interest of 9% p.a. till the date of actual payment."**

**[7]** Being aggrieved and dissatisfied with the impugned judgment and award passed on 22.03.2022, by the learned Member, Motor Accident Claims Tribunal (IST), Unakot Judicial District, Kailashahar in T.S.(MAC) 02 of 2018, the appellant has filed this present appeal praying for the following reliefs:-

- (i) *Admit the appeal*
- (ii) *Call for the lower court record of case No.TS(MAC) 02 of 2018 from the Court of Ld. Motor Accident Claims Tribunal (1<sup>st</sup>), Unakoti, Kailashahar, Tripura.*
- (iii) *Issue notice upon the respondents*
- (iv) *After giving an opportunity to both the parties, this court may be pleased to set aside the impugned judgment/award dated 22.03.2022 passed by the Ld. Motor Accident Claims Tribunal, (1<sup>st</sup>), Unakoti Kailashahar, Tripura in Case No.TS(MAC) 02 of 2018.*

**[8]** Heard Mr. P. K. Ghosh, learned counsel appearing for the appellant as well as Mr. R. Purkayastha, learned counsel appearing for the respondent No.6.

**[9]** It surfaces from the records that there is no specific rule mentioned in the written statement to prove that the impugned order passed by the court below is not just. It also appears to this court that the offending vehicle which is insured with the appellant-insurance company and is only involved with the rash and negligence driving resulting the collision. Since there is no defence *prima facie* in the written statement to fasten the liability upon other insurance company of the alleged vehicle, no evidence has been led and no evidentiary document has been filed or marked in support of their argument which learned counsel appearing for the appellant-insurance company is making before this court presently, this court is of the opinion that the appellant-insurance company in the present appeal cannot improve the version of their case since the said argument was not raised before the court below in support of their pleadings of their case. Accordingly, the appeal stands dismissed. Since MV accident claims Act is a beneficial legislation, any statement made inadvertently or innocently by the claimant, cannot be taken as an advantage by the insurance company to deprives his legitimate right and also deny the right.

**[10]** So after considering the impugned award dated 22.03.2022, this Court is of the view that the award as passed by the learned Tribunal is based on the legal parameter and material findings. This Court finds no infirmities in the impugned award dated 22.03.2022 and as such the same is upheld.

**[11]** Accordingly, this present appeal stands dismissed. Stay if any stands vacated. Pending application(s) if any also stand closed.

**JUDGE**

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