

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.33 of 2023

Sri Tapas Giri,
son of Maran Giri,
resident of Tutabari Purba Kalyanpur,
District Khowai, Tripura.
(Owner of Truck bearing No. TR-06-A-1753).

..... **Appellant**

Versus

- 1. Smti. Sarubala Debbarma,**
Wife of late Khelan Debbarma.
- 2. Smti. Tripurani Debbarma,**
Daughter of late Khelan Debbarma.
- 3. Smti. Raima Debbarma,**
daughter of late Khelan Debbarma.
All are presently residing under
C/O. Sri Upendra Debbarma,
Rabicharan Thakur Para,
P.S. Radhapur, District West Tripura,
Permanently residing at Bairagi Para,
P.O. & P.S. Kalyanpur, District Khowai, Tripura.
- 4. Magma HDI General Insurance Company Ltd.,**
Block 3B, B201-202 ECOSPCE Business Bank,
Ambuja Reality Campus, Action Area,
110 North Twenty four Paraganas,
West Bengal, (State Code-19), PIN-700156
(Insurer of Truck bearing No. TR-0A-1753)

As per Honble Court's order dated 21.06.2023
The local address of the respondent no.4
be also indicated in the array of parties.

Building of Divine Digital Colour Lab,
2nd floor or Nivash, Netaji Chowmuhani,
Landmark: Above HDFC Bank Limited,
Agartala, West Tripura, Pin: 799001
- 5. Bajaj Allianz General Insurance Co. Ltd,**
Sreeji Towe, 3rd Floor,
C/O, Guwahati Tea Ware Housing Pvt. Ltd,
adjacent to Mahindra Show Room,
near Ganesh Guri Fly Over, Christian Basti,
Guwahati-781005, Assam
(Insurer of Scooty bearing No. TR-06-5931)

.....Respondents.

For Appellant(s)	:	Mr. S. Lodh, Adv, Mr. S. Majumder, Adv.
For Respondent(s)	:	Mr. D. C. Roy, Adv, Mr. S. Chakraborty, Adv.
Date of Hearing	:	07.05.2024
Date of delivery of Judgment and Order	:	10.05.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 173 of M.V. Act is preferred challenging the judgment and award dated 20.01.2023 passed by Learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala, in connection with case No.T.S.(MAC) 63 of 2020.

02. Heard Learned Counsel, Mr. S. Lodh, representing the appellant and also heard Learned Counsel, Mr. S. Chakraborty representing the Insurance Company and Learned Counsel, Mr. D.C. Roy representing the claimant-respondent Nos.1 to 3.

03. Before conclusion of this appeal, let us discuss about the subject matter of the claim-petition. The claimant-respondent Nos.1 to 3 filed one application under Section 166 of M.V. Act seeking compensation for the death of one Khelan Debbarma, husband of the respondent-claimant No.1 and father of respondent-claimant-petitioner Nos.2 and 3 who expired in a road traffic accident involving a truck

bearing registration No.TR-06-A-1753 and the scooty bearing registration No.TR-06-5931. According to the claimant-petitioners, on 11.02.2020 morning, the victim Khelan Debbarma was proceeding towards his school at Utabari S.B. School from his residence by riding his scooty bearing registration No.TR-06-5931 and when he reached near the gate of his school at 7 a.m., suddenly, one truck bearing registration No.TR-06-A-1753 came from his back side with high speed, rashly and negligently dashed against him for which the victim fell down and sustained fatal injuries. He was immediately brought to Kalyanpur Hospital from where he was referred to GBP Hospital. But at GBP Hospital, on the same day, the victim succumbed to his injuries. Thereafter, postmortem examination was done over the dead body at GBP Hospital. Accordingly, a police case was registered at Kalyanpur Police Station vide P.S. Case No.12 of 2020. According to the respondent-claimant-petitioners, the deceased was an Under-Graduate Teacher under the Directorate of School Education, Government of Tripura. His monthly salary was Rs.47,475/- and he was 53 years old at the time of his death. It was further submitted that the respondent-claimant-petitioners Nos.2 and 3, being the daughters of the deceased were fully dependent upon his income and the claimant-petitioner No.1 is a Government Servant, as such she was not dependent on the income of the deceased and the father of the deceased namely, Ramchandra Debbarma died long years back. So, he was not

depending upon the income of the deceased. So, the claimant-petitioners claimed compensation to the tune of Rs.65,00,000/-(Sixty five lakhs only) in total. The O.P. No.1 being the owner-cum- driver contested the case by filing written statement wherein he stated that he is the owner cum driver of the Mini Truck bearing registration No.TR-06-A-1753 (Tata ACE Gold) which met with an accident on 11.02.2020 at about 7 a.m. near Tutabari S.B. School and due to accident one Khelan Debbarma was riding a scooty sustained fatal injuries.

It was further submitted that at the time of accident the vehicle was duly insured with the Magma HDI General Insurance Company Ltd. covering the period of insurance from 30.05.2019 to 29.05.2020 and he had valid driving licence at the time of accident. So, according to O.P. No.1, i.e. the owner, if any liabilities arise that should be borne by the Insurance Company. The O.P. No.2, the Magma HDI General Insurance Company Ltd. in their written statement denied the name and father's name of the deceased, address, occupation, income etc. and submitted that the claimant-petitioners are to prove the same by adducing oral/documentary evidence on record. It was further submitted to direct the owner to produce all the original copy of valid driving licence, insurance policy, permit, fitness, tax token, registration number etc. It was also submitted that the accident occurred due to rash and

negligent driving of the scooty bearing registration No.TR-06-5931 by the deceased himself. O.P. No.3 in their written statement denied the age, occupation, monthly income of the deceased and submitted that the petitioners are to prove the case by adducing specific documentary evidence. It was further submitted that the claimant-petitioners in their petition submitted that the accident occurred due to rash and negligent driving of the vehicle bearing registration No.TR-06-A-1753 Truck, as such the owner is liable to pay compensation to the petitioners. So, the O.P. No.3 was not liable to pay any compensation for the accident.

04. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

Issues :

(1) Did deceased Khelan Debbarma die in a road traffic accident occurred on 11.02.2020 at about 7 a.m. near the gate of Utabari S.B. School under Kalyanpur P.S. out of use of vehicles bearing registration No.TR-06-5931 (Scooty) and TR-06-A-1753 (Truck) due to rash and negligent driving by the driver of Truck vehicle?

(2) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same?

(3) To what other reliefs the parties are entitled?

05. To substantiate the case both the parties have adduced oral/documentary evidence on record:

Petitioner's Witness:

PW 1: Smt Tripurani Debbarma

Respondent's Witness:

O.P.W 1 : Sri Tapas Giri

Petitioner's Document:

Exbt.1 : FIR

Exbt. 2 : Ejahar

Exbt. 3: Seizure Memo along with Seizure List

Exbt. 4: Post Mortem Report
Exbt. 5 : Final Report
Exbt. 6 : Salary Certificate
Exbt. 7 : Post Mortem Certificate
Exbt. 8 : Death Certificate
Exbt. 9 : Survival Certificate
Exbt. 10 : Admit Card

OP-Respondent's Documents:

Exbt. A : Driving Licence
Exbt. B : Vehicle Particulars

06. Finally, on conclusion of argument, Learned Tribunal below by judgment and award dated 20.01.2023 allowed the claim-petition. The operative portion of the order/award runs as follows:

"It is, therefore, held that the petitioners are entitled to get compensation of Rs.49,69,500/- (Rupees Forty-nine Lakh Sixty-nine Thousand Five hundred only) with interest @ 7% per annum with effect from 13.05.2020 i.e. the date of filing of the claim petition till the date of actual payment. The O.P. No.1 Sri Tapas Giri, S/O. Sri Maran Giri, resident of Tutabari Purba Kalyanpur, P.S. Kalyanpur, District Khowai, Tripura will pay the amount of compensation with interest within 30 days from today.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 40% and the petitioners no.2 and 3 will 30% each. Out of the respective share of the petitioners no.1,2 and 3, 50% each of their shall be kept in fixed deposit scheme in their respective name in any Nationalized Bank of their locality for a period of five years each and the remaining 50% shall be paid to them through their respective bank account. No loan or withdrawal shall be permitted from any of the fixed deposit certificates without prior permission of this Tribunal. The petitioners no.1, 2 and 3 shall however be at liberty to withdraw monthly interest from their fixed deposit account to meet their day to day expenses.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest."

07. In course of hearing of argument, Learned Counsel for the appellant, Mr. S. Lodh submitted that in this case, the appellant before the Learned Tribunal below

contested the proceeding both by adducing oral/documentary evidence on record and proved the registration certificate as well as driving licence of the offending Truck. But according to Learned Counsel, Learned Tribunal below came to an observation that the offending vehicle was a "goods carrying vehicle" and the driver had the licence to run a non-transport vehicle, as such the owner cum driver had violated the terms and condition of the policy document, although the policy document was not exhibited but according to Section 2(21) of the MV Act, the offending vehicle comes under the purview of "light motor vehicle" and as per registration certificate, the offending vehicle had unladen weights of 840kg. So, the appellant was duly authorized to run the offending vehicle on the day of accident. But the Learned Tribunal below came to an observation that the owner cum driver had broken down the terms and conditions of the policy of the Insurance and as such fastened the liability upon the appellant-owner-cum-driver and urged before the Court to fix the liability upon the Insurance Company.

08. On the other hand, Learned Counsel for the respondent Insurance Company, Mr. S. Chakraborty fairly submitted that he reiterates the submission made by Learned Counsel for appellant but submitted that since the policy document was not exhibited and proved by the appellant before the Learned Tribunal below, so, the case

may be remanded back to Learned Tribunal with a direction to the appellant to produce the Insurance Certificate to substantiate that on the alleged day the driver had valid driving licence and his vehicle was duly authorized to run the vehicle as per Insurance Policy. So, Learned Counsel further submitted to remand back the matter setting aside the award with a direction to the Learned Tribunal below to pass a fresh award. The appellant also did not raise any voice regarding quantum of compensation awarded by the Tribunal.

Learned Counsel, Mr. D.C. Roy, appearing on behalf of the respondent-claimant-petitioners submitted that the claimant is satisfied with the compensation awarded by the Learned Tribunal below and submitted that the entire responsibility for making payment of compensation be fixed upon the Magma HDI Insurance Company Limited.

09. I have heard the rival submissions of both the sides. There is no dispute on record that on the alleged day, the accident occurred due to rash and negligent driving of the owner cum driver of the Mini Truck bearing No.TR-06-A-1753 (Tata ACE Gold). From the relevant prosecution papers, it also appears that the I.O. of the concerned Police Station, after completion of investigation, laid charge-sheet against the owner cum driver of the aforesaid vehicle. To substantiate the claim-petition, the respondent-claimant-petitioners have relied upon certain documents and also at

the same time, the O.P. owner i.e. the present appellant to substantiate his defence has also relied upon the driving licence (Exhibit-A) and the vehicle particulars issued by the Transport Department (Exhibit-B).

10. On perusal of Exhibit-B, it appears that the registration number of the vehicle was TR-06-A-1753 (Tata ACE Gold) and its laden weight is 1550kg and unladen weight is 840kg. Section 2(21) of the M.V. Act provides the definition of 'Light Motor Vehicle':

Definition of Light Motor Vehicle:

Section 2(21):

"light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;

11. From the aforesaid definition and also from the relevant vehicle particulars, it appears that the offending vehicle was a 'goods carrier' and on perusal of Exhibit-A, it appears that the owner cum driver had driving licence for carrying 'light motor vehicle' and by the said driving licence, he was authorized to carry the offending vehicle on that relevant day. But Learned Tribunal below, at the time of delivery of judgment misconstrued the actual legal position and came to an observation that the driver/owner had a driving licence for non-transport vehicle and a driver having a driving licence of non-transport vehicle cannot drive the transport vehicle/Good Carrier.

12. Thus, at the end of judgment, Learned Tribunal fastened the liability to the present appellant, i.e. the owner cum driver, which in view Learned Tribunal below wrongly divided. More so, the owner cum driver i.e. the appellant before the Learned Tribunal below could not take step for marking exhibit of the Original Insurance Policy Certificate of the offending vehicle and until and unless the document is exhibited, there is very least scope to fasten the liability upon the Insurance Company.

13. Hon'ble the Supreme Court of India of **(2013) 7 SCC 62** in para Nos.15, 16, 17, 18 and 19 has pleased to observe as under:

"15. In *National Insurance Company Ltd. v. Annappa Irappa Nesaria*:2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the Insurance Company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the Insurance Company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the Insurance Company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under: (SCC p.468, para 20)

"20. From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time to cover both 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver

who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."

16. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light

motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs."

14. In view of the principle laid down by the Hon'ble Apex Court and after hearing rival submission of the parties, it appears to me that this present case be remanded back to the Learned Tribunal with a direction to give an opportunity to the O.P. owner to produce the Insurance Policy for marking exhibit and thereupon to pass a fresh judgment. If it is found by the Learned Tribunal that the offending vehicle was duly insured with the Insurance Company, then order be passed accordingly fixing the liability for payment of compensation to the Insurance Company. Since, there is no claim regarding the amount of award awarded by the Learned Tribunal below and none of the parties did raise their voice regarding the quantum of compensation awarded by the Tribunal below, so, in my considered view this is a fit case which be remanded back to the Learned Tribunal below.

15. In the result, the appeal filed by the appellant is hereby allowed on contest. The judgment and award dated 20.01.2023 passed by Learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala, in connection with case No.T.S.(MAC) 63 of 2020 is hereby set aside. The

appellant-owner cum driver is asked to appear before the Learned Tribunal i.e. MAC Tribunal No.1 on 20.05.2024 and to produce the Original Policy Document for marking exhibit. The Learned Tribunal is also asked to allow the appellant-owner cum driver to produce the document for marking exhibit and thereupon to pass a fresh judgment as per law on the claim-petition filed by the respondent-claimant-petitioners, keeping it in mind, the principle of law laid down by the Hon'ble Apex Court in the aforesaid case. The entire exercise shall be made within a period of one month from the date of receipt of a copy of this judgment/order. A copy of this judgment/order be supplied to Learned Counsels of the rival parties.

Send down the LCRs along with a copy of this order/judgment.

Pending application(s), if any, also stands disposed of.

JUDGE

SABYASACHI
BHATTACHARJEE

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