

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.50 of 2024**

Sri Manik Lal Majumder,
S/o. Late. Sarat Chandra Majumder,
Resident of Vill. & P.O. Reshambagan,
P.S. East Agartala, District West Tripura.
(Owner of Maruti Suzuki Celerio bearing no.TR-01-AP-0508)

---- Appellant(s)

Versus

1. Sri Rajib Debnath,
S/o. Late Subodh Debnath,
Resident of Dhaleswar Road No.16,
P.S. East Agartala, District West Tripura.
Pin-799007

2. The Branch Manager,
New India Assurance Company Ltd.
Mantribari Road, Agartala, West Tripura.
Pin-799001
(Insurer of Maruti Suzuki Celerio bearing No.TR-01-AP-0508)

----Respondent(s)

For Petitioner(s)	:	Mr. Soumendu Roy, Adv.
For Respondent(s)	:	Mr. K. Deb, Adv.
Date of hearing	:	06.09.2024
Date of delivery of Judgment & Order	:	07.09.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and award dated 21.02.2022 delivered by Learned MAC Tribunal No.1, West Tripura, Agartala in connection with case No.TS(MAC) No.147 of 2018.

2. Heard Learned Counsel Mr. Soumendu Roy for the appellant and also heard Learned Counsel Mr. K. Deb for the respondent No.2 i.e. New India Assurance Company Ltd. None appeared on behalf of the respondent-claimant.

3. The respondent-claimant has filed one application under Section 166 of M.V. Act before the Learned Tribunal below on behalf of his minor injured son namely Rajdeep Debnath who sustained injuries due to a road traffic accident. The case of the claimant before the Learned Tribunal below was, in short, is that on 24.04.2015 at about 9/9:15 am when the minor son of the claimant, Rajdeep Debnath was standing at Ashram Chowmuhani near Satadal Sangha with his bicycle, that time, the offending vehicle bearing No.TR-01-AP-0508 came from the eastern side in a rash and negligent manner and dashed against the minor son for which the accident took place and due to that accident, his minor son sustained multiple fracture injury on his body. Soon after the accident, his son was shifted to AGMC and GBP Hospital wherein he got admitted as an indoor patient and was treated therein up to 27.04.2015. The doctor of GBP Hospital advised him to go outside the State for better treatment for which he had to spend some money. On that issue, a police case was registered vide East Agartala Police Station police case No.215/EAG060 (may be 2015/EAG060) under Section 279/338/427 of IPC. According to the appellant, as the minor son was aged about 12 years on that relevant point of time so the petition was filed claiming compensation.

4. The present appellant as OP No.1 contested the claim petition by filing his written objection denying the date, time and place of alleged accident. It was the plea of the present appellant as respondent No.1 that there was no rash and negligent driving on the part of the driver of the offending vehicle and he further submitted that the victim did not sustain any injury due to accident of vehicle bearing No.TR-01-AP-0508. It was further submitted that at the time of accident his vehicle was duly insured with New India Assurance Company Ltd. covering the date of accident. So, the appellant as respondent No.1 claimed for dismissal of the claim petition.

5. The OP No.2 i.e. the Insurance Company contested the case by filing written statement stating that the accident took place due to negligence of the victim himself. They also denied the rash and negligent driving of the vehicle bearing No.TR-01-AP-0508 and also denied the age, income of the injured, expenditure incurred for the treatment, etc and finally, the Insurance Company stated that the claim petition is subjected to strict proof.

6. On the pleadings of the parties, Learned Tribunal below framed the following issues:

- i) **Did petitioner Shri Rajdeep Debnath sustain injuries in a road traffic accident occurred on 24.04.2015 at about 9/9.15 am at Ashram Chowmuhani near Satadal Sangha on Assam Agartala Road out of use of vehicle bearing registration No.TR-01-AP-0508 (Maruti Suzuki Celerio) due to its rash and negligent driving?**

ii) Is the petitioner/victim entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same?

iii) To what other reliefs the parties are entitled?

7. To substantiate the issues, the appellant i.e. respondent No.1 herein was examined as PW-1 and certain documents were submitted which were marked as Exbt.1 to 5.

8. The present appellant as OP No.1 filed some photocopies of document through a firisti in respect of the vehicle like tax token, registration certificate, pollution certificate, insurance policy, driving licence of the driver but the said respondent No.1 on the day fixed for evidence did not turn up nor produced his documents for marking of exhibits.

9. So, on conclusion of proceeding, Learned Tribunal below allowed the claim petition by the judgment and for want of documents, fastened the liability of making payment of compensation to the present appellant in place of Insurance Company.

10. For the sake of convenience, I would like to refer hereinbelow the relevant portion of the judgment and award dated 21.02.2022 of the Learned Tribunal below:

AWARD

"It is, therefore, held that the petitioner Sri Rajib Debnath is entitled to get compensation of Rs.1,00,900/- (Rupees One Lakh Nine hundred) only on behalf of his minor son with interest @ 6% per annum from 10.09.2018 i.e. the date of filing of the claim petition till the dated of actual payment. O.P. no.1, Sri Manik Lal Majumder, S/O. Late Sarat Chandra Majumder, resident of village Reshambagan, P.S. East Agartala, District West

Tripura will pay the amount of compensation with interest within 30 days from today.

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

The claim petition stands disposed of on contest."

11. It is to be noted here that the present appellant preferred one Review Petition which was numbered as Civil Misc.(Rev.) No.2 of 2022 and the same was later on withdrawn with a liberty to file a fresh case before the appropriate forum and accordingly this present appeal was preferred.

12. At the stage of hearing of argument, Learned Counsel for the appellant submitted that the claim petition was submitted by claimant-respondent No.1 before the Learned Tribunal below and before the Tribunal the present appellant as owner of vehicle No.TR-01-AP-0508 appeared and filed written statement but in course of evidence on record, the present appellant could not produce the original documents for marking of exhibits for which the Learned Tribunal below fastened the liability of payment of compensation upon the present appellant for which the interference of the Court is required and Learned Counsel for the appellant further submitted that another application is filed for allowing the appellant to adduce evidence under Order XLI Rule 27(aa) along with Section 151 of CPC. Learned Counsel further submitted that on the day of alleged accident the vehicle of the appellant had valid insurance certificate and if this present appeal is not allowed by allowing the appellant to adduce evidence in support of his defence then the appellant would be highly prejudiced. So, Learned Counsel

urged for allowing this appeal by setting aside the judgment and award of the Learned Tribunal below and to allow the present appellant to adduce documents in support of his defence to exonerate him from the liability of payment of compensation to the respondent-claimant as ordered by the Learned Tribunal below.

13. On the other hand, Learned Counsel for the Insurance Company submitted that admittedly the appellant inspite of allowing opportunity failed to adduce his documentary evidence before the Learned Tribunal below. So, Learned Tribunal below rightly and reasonably has fastened the liability of payment of compensation upon the present appellant and Learned Counsel urged for dismissal of this appeal with costs.

14. I have heard Learned Counsel of both the sides and also perused the record of the Learned Tribunal below including the judgment and award. In para No.15 of the judgment and award, it was specifically mentioned by the Learned Tribunal below that as per order dated 19.09.2019, the OP No.1 i.e. the present appellant herein submitted some photocopies of documents in respect of his vehicle like tax token, registration certificate, pollution certificate, insurance policy, driving license of the driver by a firisti but those documents were not exhibited. So, the Learned Tribunal below fastened the liability of payment of compensation/award upon the appellant in place of Insurance Company.

15. I have also perused the photocopies of the documents submitted before the Learned Tribunal by the said OP No.1 i.e. the present appellant herein. It appears that on the day of alleged accident, the offending vehicle had valid insurance certificate under OP No.2 i.e. the respondent No.2 herein but may be for some unknown reasons, the present appellant could not produce the original documents before the Tribunal for marking of exhibits. So, considering all and also for fair ends of justice, it appears that for proper adjudication of the matters in dispute an opportunity be given to the present appellant to allow the appellant to adduce the documents for marking of exhibits so as to enable the Tribunal to shift the liability of payment of compensation upon the Insurance Company if the documents are found to be valid.

16. In the result, the appeal filed by the appellant is hereby partly allowed. The judgment and award dated 21.02.2022 delivered by Learned MAC Tribunal No.1, West Tripura, Agartala in connection with case No.TS(MAC) No.147 of 2018 is hereby set aside. The case is remanded back to the Learned Tribunal below with a direction to allow the appellant-owner of the vehicle bearing No.TR-01-AP-0508 to file examination-in-chief in affidavit afresh, if not filed, and to allow the appellant to produce the documents for marking exhibits after affording opportunity to the other rival contesting parties for cross-examination of the appellant i.e. the OP No.1 and thereafter to deliver a fresh judgment in accordance with law, if the

documents are found to be valid. The Learned Tribunal below shall dispose of the case within a period of 3(three) months from the date of receipt of copy of this judgment. The appellant shall appear before the Learned Tribunal below on 21.09.2024. Further Learned Tribunal below shall inform Learned Counsel for the claimant before recording evidence.

A copy of this judgment be given free of cost to the Learned Counsel for the appellant and also to the Learned Counsel for the Insurance Company for information.

Send down the LCR along with a copy of this judgment.
Pending application(s), if any, also stands disposed of.

JUDGE



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