

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.39 of 2023

1. Sri Goutam Ghosh.

..... Appellant

-VERSUS-

1. Sri Krishna Charan Debnath & 4 Others.

..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. G. S. Das, Advocate.
		Mr. K. Deb, Advocate.
		Mr. S. Das, Advocate.
		Mr. A. K. Deb, Advocate.
Whether fit for reporting	:	<u>YES/NO</u>

Judgment and order dated 20th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Bhattacharjee, learned counsel appearing for the appellant also heard Mr. G.S. Das, learned counsel, Mr. K. Deb, learned counsel and Mr. S. Das, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the impugned award dated 20.03.2023 passed by the learned Member, Motor Accident Claims Tribunal No.4, West Tripura Agartala, in connection with case No. T.S. (MAC) 12 of 2017 for shifting the liability as imposed by the learned tribunal below from the owner of the alleged offending vehicle to the insurance company.

[3] The appellant has prayed for the following reliefs:

i. Admit the instant appeal filed under Section-173 of the Motor Vehicles Act, 1988 against the award dated 20.03.2023 passed by the learned Member, Motor Accident Claims Tribunal, Tribunal No.4, West Tripura, Agartala in case No.T.S.(MAC) 12 of 2017.

ii. Issue notice upon the respondents.

iii. Call for the records of T.S. (MAC) 12 of 2017 from the file of the learned Motor Accident Claims Tribunal, Tribunal No.4, West Tripura, Agartala.

iv. After hearing, allow the instant appeal by shifting the liability of satisfying the award, passed by the learned Member, Motor Accident Claims Tribunal, Tribunal No.4, West Tripura, Agartala, dated 20.03.2023 in T.S. (MAC) 12 of 2017 and the respondent No.4, New India Assurance Co. Ltd, shall be directed to satisfy the awarded amount of compensation to the claimants.

v. Pass an order staying the operation/execution of the impugned award dated 20.03.2023 passed by the learned Member, MACT, Tribunal No.4 in T.S. (MAC) 12 of 2017, till disposal of the appeal.”

[4] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“ In the result, claim is awarded in following terms:

(i) Claimant petitioners are entitled to get the award of Rs.16,25,400/- (Rupees sixteen lakhs twenty five thousand four hundred) only along with 9% simple interest per annum from the date of the petition i.e. w.e.f. 17.01.2017 till the date of realization thereof from the O.P. No.3 the New India Assurance Co. Ltd.

(ii) 40% of the award of both the claimants be invested by purchasing separate Fixed Deposit Certificates from Nationalised Bank for a period of five years with auto renewal facility and the claimant petitioners shall open savings account in the same bank. No loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal. The interest accrued on the fixed deposit certificates shall be directly transmitted to the individual savings accounts by the concerned bank. The concerned bank shall retain the original fixed deposit certificates and the copies of the certificates to be handed to all the claimant petitioners. The claimant petitioners are directed to submit photocopies of their bank pass book.

(iii) The O.P. No.3 New India Assurance Co. Ltd. shall deposit the amount so ordered along with interest thereon within one month to this Tribunal from the date of the order.

(iv) Copy of this order so awarded to be served upon the parties not later than 15 days from the date of this award.

(v) The case stands disposed on contest.”

[5] Being aggrieved by and dissatisfied with the judgment and award dated 20.03.2023 passed in T.S. (MAC) 12 of 2017, the present appeal has been preferred by the appellant.

[6] Question arises whether the insurance company is liable to pay compensation as the driver Rakesh Dutta was not having a valid driving licence to drive commercial vehicle. The Ext. B driving licence of Rakesh Dutta is for the light motor vehicles. Though it is mentioned in the investigation report that the accident took place due to the driver Rakesh Dutta who was not authorized to drive the vehicle owned by the O.P. No.1 when the accident took place on 17.03.2016.

[7] It is an admitted fact as can be ascertained from the cross examination of OPW1 Goutam Ghosh the driving licence of Rakesh Dutta was issued on 28.04.2017. Now in the given circumstances, it is to be considered and seen whether the insurance company (O.P. No.3) is liable to indemnify the compensation when the vehicle was driven without authority on the relevant date of accident. The owner who has employed the driver did not take reasonable care to find out as to whether the driver Rakesh Dutta had valid driving licence.

[8] The learned tribunal below has failed to observe on to the issue of pay and recovery. For the purpose of reference, let us discuss the terms as such as LMV and HGV for coming to a definite conclusion regarding pay and recovery.

LMV: 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 un-laden weight of any of which, does not exceed 7500 kilograms.

HGV : Heavy goods vehicle means any goods carriage the gross-vehicle weight of which, or a tractor or a road-roller the un-laden weight of either of which, exceeds 12,000 kilograms.

[9] In the light of the above, it is seen from the record that at the time of accident the driver has valid driving licence under the caption of Light Motor Vehicle to drive the vehicle under the caption of Light Goods Vehicle. According to this Court the insurance company which has already paid the amount shall not be recovered from the owner of the vehicle, the appellant herein. As this Court finds that the offending vehicle falls under the category of LMV. The holder of a driving licence to drive class of light motor vehicle as provided in Section-10(2) d is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not

exceed 7500kg or a motor car or tractor or road-roller, the un-laden weight of which does not exceed 7500kg.

[10] In view of above discussion, the present appeal stands allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

T. AMARNATH GOUD, J

A.Ghosh

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HIGH COURT OF TRIPURA



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