

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 95 of 2023

Sri Biswajit Shil

---Appellant(s)

Versus

***Sri Swapan Chandra Bhowmik
and The Br. Manager, Reliance General Insurance Co. Ltd.***

---Respondent(s)

For Appellant(s)	:	Mr. R. G. Chakraborty, Advocate.
For Respondent(s)	:	None.
Date of hearing and date of judgment and order	:	01.07.2024.
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard Mr. R. G. Chakraborty, learned counsel appearing for the appellant.

[2] This is an appeal under Section 173 of the Motor Vehicles Act 1988 against the impugned Judgment and Order of Award dated 25.01.2022 passed by the Ld. Motro Accident Claims Tribunal, South Tripura, Belonia, in TS (MAC) 22 of 2019 whereby and where under the appellant was directed to make payment of rs.6,12,235/- (Rupees six lakhs twelve thousand two hundred and thirty five) only with interest @7% per annum from the date of filing the claim petition i.e. w.e.f. 18.06.2019 to till the date of making the payment in favour of the respondent No.1.

[3] It is the case of the claimant that, on 07.02.2016 the claimant was coming from Tulamura by a commander jeep and he got down from that commander jeep nearby his house At Ashrampara Chowmatha and while he was giving travel fair to the driver of the commander jeep, at that time one motorbike bearing No. TR-03-6842 (Pulsar) coming from north side with high speed dashed the claimant and the claimant fell down on the road. As a result of the accident, the claimant sustained severe injuries on his person.

Soon after the accident the injured was brought to Barpathari PHC wherefrom he was referred to Belonia Hospital and from there he was referred to GBP Hospital, Agartala wherein he was treated up to 17.02.2016. It is stated in the claim petition that the accident took place due to rash and negligent driving by the rider of the vehicle bearing No.TR-03-6842 (motorbike). It is also stated that due to the accident the claimant became disabled to the extent of 20%. Hence, a compensation of Rs.14,26,427/- is prayed for.

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

It is ordered that, a total amount of Rs.6,12,235/- (Rupees six lacs twelve thousand two hundred thirty-five) is awarded in favour of the petitioner as compensation and O.P. No.1 i.e. the owner of the offending vehicle bearing No.TR-03-6842 (motorbike) is liable to indemnify the petitioner. O.P. No.1 is hereby directed to pay the compensation as awarded within two months from today. The O.P. No.1 is also directed to pay the interest @ 7% per annum on total awarded sum from the date of filing of this petition i.e. on 18.06.2019 till the date of realization.

[5] Being aggrieved by and dissatisfied with the judgment and award dated 25.01.2022 passed in connection with T.S.(MAC) 22 of 2019 by the learned Member, Motor Accident Claims Tribunal, South Tripura, Belona, the present appeal has been preferred by the appellant.

[6] It is contended by the counsel for the appellant that at the relevant point of time the vehicle was duly insured with Reliance General Insurance Co. Ltd, therein the respondent No.2, which was issued to a new motor cycle on the day of purchase from the show room valid w.e.f. 07.02.2016 to 06.02.2017 covering all the risk of accident and the said vehicle had also all sorts of relevant papers to ply on the road. In absence of any challenge upon the said insurance policy; the Ld. Tribunal failed to appreciate the same and shifted the liability upon the appellant.

[7] Today, when the case is called for consideration, no representation is made for the respondent no.2 Reliance General Insurance Co. Ltd. despite notice being served and the name is printed in the cause list.

[8] It is seen from the record the said vehicle was insured on 07.02.2016, the same date when it plied out of the showroom premises and had met with an accident. At the time of accident, the owner of the vehicle was riding the vehicle. It is reasonably presumed that once the vehicle is released from the automobile showroom by way of a gate pass, the vehicle will be duly insured with all other relevant papers. In the event if any delay on administration side occurred in automobile showroom or with insurance company in issuing the policy, the laches cannot be attributed to the owner as he already paid the amounts and gate pass is issued to the ply the vehicle. For the act not committed by the owner, he cannot be held responsible.

[9] In view of the same, balance of convenience is in favour of the owner of the vehicle and accordingly fastening of the liability is shifted from the shoulder of the owner of the vehicle to the insurance company since the vehicle is insured on the said date (i.e 07.02.2016). Therefore, the awarded amount shall be deposited to the claimant by the insurance company within a period of one month from the date of receipt of the copy of this order, if not deposited. However, it is made clear that on such deposit, the claimants are at liberty to withdraw the same unconditionally as per procedure.

[10] In the light of the above, the present appeal stands allowed. As a sequel miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE

Dipak