

HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.104 of 2024

Go Digit General Insurance Limited,
to be represented by its Manager,
First Floor, Jackson Gate Building,
Lenin Sarani, Agartala, Pin-799001,
P.S.-West Agartala, District-West Tripura.
(Insurer of vehicle No.TR-08-3821 TVS Auto-Rickshaw)

----Appellant(s)

Versus

1. Sri Nirendra Tripura,
S/o Late Mohan Kumar Tripura,
resident of Mahim Sardar Para,
P.S.-Manubazar, District-South Tripura.

----Claimant Respondent

2. Sri Chiranjit Tripura,
S/o Sri Gouranga Tripura,
resident of Das Colony, Chalitachari,
P.S.-Manubazar, District-South Tripura.

(Driver of vehicle No.TR-08-3821 TVS Auto-Rickshaw)

---- Driver Respondent(s)

3. Sri Karan Tripura
S/o Khagendra Tripura @ Kharendra Tripura,
resident of Chatakchari, Sonaichari,
P.S.-Sabroom, District-South Tripura.

(Owner of vehicle No.TR-08-3821 TVS Auto-Rickshaw)

----Owner Respondent(s)

For Appellant(s)	:	Mr. Shubhajit Chakraborty, Adv.
For Respondent(s)	:	Mr. Bibek Banerjee, Adv. Ms. Saswati Nag, Adv. Ms. Ruma Majumder, Adv.
Date of hearing	:	20.05.2025
Date of delivery of Judgment & Order	:	28.05.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and award dated 22.03.2024 delivered by Learned Member, Motor Accident Claims Tribunal, South Tripura, Sabroom in connection with Case No.T.S. (MAC) 08 of 2023.

2. Heard Learned Counsel, Mr. Shubhajit Chakraborty appearing on behalf of the appellant-Insurance Company. Also heard Learned Counsel, Mr. Bibek Banerjee and Learned Counsel, Ms. Ruma Majumder appearing on behalf of the respondent-claimant petitioner and Learned Counsel, Ms. Saswati Nag appearing on behalf of the respondent-owner of the vehicle.

3. At the time of hearing of argument, Learned Counsel for the appellant-Insurance Company drawn the attention of this Court that before the Learned Tribunal below the owner and the driver did not produce any oral/documentary evidence on record in support of their defence. Learned Counsel for the appellant-Insurance Company further submitted that the Learned Tribunal below simply on the basis of certified copy of Insurance Certificate which was marked as Exbt.-13, 13(i) delivered the judgment and award without examining the documents of the offending vehicle as well as the driving license. Learned Counsel further submitted that until and unless the documents as well as the driving license are proved, in that case it would be difficult on the part of the appellant-Insurance

Company to pay the award to the respondent-claimant petitioner. It was further submitted that at the time of accident the deceased was drunken i.e. the deceased himself was responsible for the accident but the Learned Tribunal below did not consider the same and fastened the liability of payment of compensation upon the appellant-Insurance Company for which the interference of this Court is needed. Finally, Learned Counsel urged this Court to set aside the judgment and award and to remand back the matter to the Learned Tribunal below.

4. On the other hand, Learned Counsel for the respondent-claimant petitioner submitted that although the appellant-Insurance Company submitted written objection/statement but they did not adduce any documentary evidence on record. As such, no reliance can be placed upon the written statement filed by the appellant-Insurance Company. Learned Counsel for the respondent-claimant petitioner also submitted that the claimant petitioner proved the certified copy of the Insurance certificate of the offending vehicle although the owner did not adduce any documentary evidence on record and in that case there is scope for pay and recovery policy. So, Learned Counsel urged for dismissal of this appeal.

Learned Counsel, Ms. Nag although appeared on behalf of the respondent-owner of the vehicle but did not submit anything rather sought for accommodation for hearing.

5. In the case at hand, the respondent-claimant petitioner filed one claim petition under Section 166 of M.V. Act,

1988 before the Learned Tribunal below. According to the claimant petitioner on 01.12.2020 at about 22:30 hours one Gerendra Tripura was returning back to his house at Mahim Sardar Para, Manubazar by boarding an auto-rickshaw bearing registration No.TR-08-3821 being driven by Chiranjit Tripura through Uttar Betaga Pucca road at Karichandra Para under Sabroom police station when the said vehicle met with an accident due to plying of the vehicle in excessive speed for which said Gerendra Tripura received multiple injuries. After the accident, the driver immediately fled away from the place of occurrence instead of shifting the injured to the hospital. On the following day, i.e. on 02.12.2020 at about 5:00 hours, the claimant petitioner found the deceased lying dead on the bridge of the said road. Thereafter, the dead body was recovered by the police and post-mortem was conducted and it was alleged that the deceased succumbed to his injuries due to road traffic accident. Police triggered up investigation and on completion of investigation submitted charge-sheet against Chiranjit Tripura, the respondent-driver for his prosecution punishable under Section 279/338/304A of IPC and Section 181/187 of the Motor Vehicles Act, 1988. Before the Learned Tribunal below, the appellant-Insurance Company, the respondents-owner and the driver of the vehicle appeared and filed their written statements denying the claim of the claimant petitioner. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:-

“(i) Whether suit is maintainable in its present form and nature?

(ii) Whether on 01.12.2020 at about 10:30 p.m. on Uttar Betaga Pucca road at Karichandra Para under Sabroom Police Station any road traffic accident occurred due to rash and/or negligent driving of a vehicle bearing registration No.TR-08-3821 (TVS Auto Rickshaw) by Respondent No.1?

(iii) Whether one Gerendra Tripura succumbed to injury/injuries in consequence of such road traffic accident?

(iv) Whether Claimant Petitioner would be entitled to get compensation sought for due to the death of his deceased brother?

(v) Whether Respondents would be liable to pay compensation?

(vi) To what other relief(s) the parties are entitled?”

6. To substantiate the issues, the claimant petitioner examined as PW-1 and relied upon some documents which were marked as exhibits.

Exhibits of the claimant petitioner:

- 1)Exhibit-1-Original copy of Death certificate of deceased Gerendra Tripura;**
- 2)Exhibit-2-Original copy of Death certificate of deceased Mohan Kumar Tripura;**
- 3)Exhibit-3-Photocopy of family ration card;**
- 4)Exhibit-4-Extract copy of ROR issued by Satchand R.D. Block, South Tripura;**
- 5)Exhibit-5, 5(i) to 5(xi)-Certified copy of detail accident report;**
- 6)Exhibit-6, 6(i)-Certified copy of printed form of FIR;**
- 7)Exhibit-7-Certified copy of FIR;**
- 8)Exhibit-8-Certified copy of inquest report of deceased Gerendra Tripura;**
- 9)Exhibit-9, 9(i), 9(iii)-Certified copy of PM report;**
- 10) Exhibit-10, 10(i)-Certified copy of forensic report;**

- 11) Exhibit-11-Certified copy of forwarding report addressed by Director cum Chemical Examiner, Tripura State Forensic Laboratory through SDPO Sabroom;
- 12) Exhibit-12, 12(i) to 12(iv)-Certified copy of Charge sheet;
- 13) Exhibit-13, 13(i)-Certified copy of Insurance policy certificate of offending autorickshaw bearing registration No.TR-08-3821."

7. In spite of allowing opportunity, no oral/documentary evidences were adduced by any of the opposite parties and finally on conclusion of the proceeding, Learned Tribunal below passed the judgment and award. The operative portion of the judgment and award of the Learned Tribunal below runs as follows:

"18. In the result, petition stands allowed to the following extent:

AWARD

19. (i) Loss of dependency:(M-17×10,000×12 months)=Rs.20,40,000/-

(ii) Loss of consortium:- Rs.40,000/-

(iii) Funeral expenses:- Rs.15,000/-

(iv) Loss of estate:- Rs.15,000/-

(v) Expenses for transportation of dead body:- Rs.10,000/-

Total=Rs.21,20,000/-

(twenty-one lac twenty thousand only)

20. So, total amount of compensation would stand at Rs.21,20,000/-(twenty-one lac twenty thousand only) along with interest to be added at the rate of 9% per annum from the filing date of petition (30.03.2023) till realization of awarded compensation and the same shall be paid by respondent No.3 to claimant-petitioner.

21. The awarded amount of compensation along with accrued amount of interest shall be transferred by respondent No.3 to the official bank account of this Tribunal exclusively maintained for the purpose of compensation payment pertaining to MAC Cases through RTGS/NEFT.

22. Petitioner shall open his self bank account in any nationalized bank nearby his residence and furnish the details of the same to the Nazarat Section of the O/o Additional District & Sessions Judge, South Tripura, Sabroom. On realization of the awarded compensation along with the interest, 75% of total amount shall remain in fixed deposit in the single name of claimant-petitioner till the period of next five years and the remaining 25% shall be credited directly by the bank in the saving account of claimant-petitioner.

23. In view of section 168(2)(3) of the Act, copies of this judgement and award be supplied to the parties within a period of 15(fifteen) days invariably by the concerned dealing Clerk of this Tribunal and respondent No.3 shall make payment of compensation in adherence to the aforesaid terms of order/award within 30(thirty) days from today."

8. Challenging the said judgment and award this appeal is preferred.

9. I have gone through the record of the Learned Tribunal below and also the judgment and award delivered by the Learned Tribunal below.

10. In the memo of appeal though so many assertions were made by the appellant-Insurance Company but at the time of the hearing of argument Learned Counsel for the appellant-Insurance Company only confined his argument to the fact that the documents of the offending vehicle and the driving license were not produced by the owner/driver of the offending vehicle for marking of exhibits. So, Learned Counsel urged for remanding back the matter to the Learned Court below. Learned Counsel also submitted that the deceased was drunk at the time of accident and there was contributory negligence on his part.

11. In this regard, I have seen the judgment and award delivered by the Learned Tribunal Below. Although the

medical officer initially opined that there was chance that the cause of death was probably due to ethanol intake at the time of death approximately within 12 hours which was subjected to SFSL report but in the SFSL report it was opined that there was no sign or presence of any ethyl alcohol, rather the same was found to be negative. So, Learned Tribunal below did not believe the said fact and ultimately delivered the judgment and award.

12. In a case of this nature, it is the duty of the owner/driver of the offending vehicle to produce all the relevant documents of the vehicle including the driving license for marking of exhibits. Because, if the claim petition is allowed, in that case it is the liability of the owner to pay the compensation to the claimant but, since the vehicle remains insured with the Insurance Company so, on behalf of the owner it is the duty of the Insurance Company to indemnify the compensation to the claimant petitioner. Here, in the case at hand, surprisingly it appears that before the Learned Tribunal below both the owner and the appellant-Insurance Company appeared and filed their written statement but ultimately at the time of recording of evidence no oral/documentary evidences were adduced by either of the contesting respondents. So, based on the Accident Information Report (for short, A.I.R.), Learned Tribunal below delivered the judgment. Legally there is no bar to deliver judgment based on the A.I.R. but at the same time without hearing the other side or perusal of the relevant documents there is no scope to allow any compensation because if it is

found that the offending vehicle does not have any such documents relating to the claim petition in that case it would be difficult on the part of the Motor Accident Claims Tribunal to allow the claim petition.

In this case since the owner of the offending vehicle appeared so, it was the duty of the Learned Tribunal below to ensure production of those documents by the owner of the offending vehicle. If it is found that in spite of allowing opportunity the owner of the offending vehicle fails to produce any relevant documents of the vehicle like registration, pollution, tax token, driving license etc., in that case the liability may be fastened upon the owner of the offending vehicle in case of non-availability of Insurance Certificate. In this case, the claimant petitioner produced the certified copy of the Insurance Certificate which was marked as Exbt.-13, 13(i) but there is no finding as to whether the vehicle had the required documents or not. There is also no observation by the Learned Tribunal below that the owner failed to produce the documents and as such, the Learned Tribunal below allowed the claim petition subject to pay and recovery policy by the Insurance Company from the owner of the offending vehicle. Thus, it appears that the Learned Tribunal below committed error in delivering the judgment without ensuring production of those documents by the owner of the offending vehicle before fastening of liability upon the appellant-Insurance Company.

13. So, considering all, it appears that the matter needs to be remanded back to the Learned Tribunal below to

give opportunity to the OP owner and the driver to produce all the relevant documents of the offending vehicle including the driving license so as to arrive at a definite finding by the Learned Tribunal below regarding fixing liability of payment of compensation. Since, Learned Counsel for the appellant-Insurance Company only confined his argument to the extent as stated above, as such, no other points are discussed accordingly.

14. In the result, the appeal is allowed. The judgment and award dated 22.03.2024 delivered by Learned Member, Motor Accident Claim Tribunal, South Tripura, Sabroom is hereby set aside.

The matter is remanded back to the Learned Tribunal below with a direction to record oral/documentary evidence of the OP owner and the driver and thereafter to deliver a fresh judgment in accordance with law. If the owner and the driver of the offending vehicle in spite of allowing opportunity remains absent and in that case if the Learned Tribunal below only based upon certificate of insurance decides to allow the claim petition, then the Learned Tribunal below first of all shall have to be ascertained as to whether the pay and recovery policy can be applied or not. If the Learned Tribunal below comes to the conclusion that pay and recovery policy can be applied only in that case in view of the law laid down by the Hon'ble Apex Court the Learned Tribunal below can ask the Insurance Company to pay compensation to the claimant petitioner, otherwise not.

The respondent-owner and the driver shall appear before the Learned Tribunal below on 27.06.2025 and shall produce all the relevant documents of the offending vehicle including the driving license for marking of exhibits. Thereafter, the Learned Tribunal below shall give an opportunity to the claimant petitioner and the appellant-Insurance Company to cross-examine the OP owner and the driver, if any, if they are so advised.

Send down the LCR along with a copy of this judgment.

With this observation, the instant appeal is disposed of.

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

JUDGE



Snigdha

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