

THE HIGH COURT OF TRIPURA

AGARTALA MAC APP 94 OF 2011

Shri Parimal Choudhury,
Son of Shri Harimohan Choudhury,
Resident of Joynagar near Mahabir Club,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.

..... **Appellant.**

- V e r s u s -

- 1. Smt. Manti Das,**
Wife of late Dipankar Das
- 2. Master Ankur Das,**
Son of late Dipankar Das,
(being minor represented by his mother i.e.
Respondent No.1.)
- 3. Shri Krishnadhan Das,**
Son of late Birendra Das,
- 4. Smti. Urmila Das,**
Wife of Shri Krishnadhan Das,
-all residents of village and P.O. - Sekerkote,
Fultali, Rajyeshwar Nagar, (Pandavpur),
P.S. Amtali, District West Tripura.

.....**Claimant Petitioner Respondents.**

- 5. Sri Dulal Nandi,**
Son of Shri Jitendra Chandra Nandi,
(owner of vehicle bearing No. TR-01-A-1246), resident of
Sundertilla, P.O. & P.S. Sidhai, District Tripura West.
- 6. The Divisional Manager,**
National Insurance Co.Ltd.42, A.K. Road,
P.O. Agartala, P.S. West Agartala, District West Tripura
(Insurer of TR-01-A-1246)

..... **Opposite Party Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. R Dutta, Adv.

For the respondents : Mr. P.K. Biswas, Sr. Adv.
Mr. K. Bhattacharjee, Adv.

Date of judgment and order : 12.8.2015

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by Sri Parimal Choudhury is directed against the award dated 16.06.2011 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No. TS(MAC) 465 of 2008, wherein it was held that the appellant herein was equally responsible for the accident and, therefore, was liable to pay 50% of the compensation awarded.

2. Briefly stated, the facts of the case are that the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 in respect of death of Late Sri Dipankar Das which took place in a motor vehicle accident.

3. The allegation in the claim petition was that deceased Dipankar Das was riding as a pillion rider on a Motor Cycle No. WB-01-M-4312. This motor cycle was proceeding from Agartala main town towards the airport and outside the Raj Bhawan there was a collision between this motor cycle and a passenger mini bus bearing No. TR-01-A-1246. As a result of the collision the deceased Dipankar suffered injuries and died on the same night.

4. In the claim petition no allegation of negligence was made against Parimal Choudhury. However, the Insurance Company in its written statement specifically raised a plea that this was a case of head on collision between two vehicles and, therefore, the Tribunal should decide who was responsible to pay the compensation. The learned Tribunal, thereafter, decided the

case by holding that drivers of both the vehicles were equally responsible.

5. Aggrieved by this award Sri Parimal Choudhury has filed this appeal.

6. Mr. R. Dutta, learned Counsel for the appellant has submitted that in the claim petition or in the evidence there is no allegation of negligence against the appellant and he has wrongly been held to be liable. He also submitted that Sri Parimal Choudhury in his written statement denied that he was driving the vehicle and also denied the fact that he was the owner of the vehicle and since no issue has been framed in this regard no award could be passed, against him.

7. Smti. Manti Das, wife of the claimant No.1 appeared in the witness box and stated that her husband Dipankar Das was travelling on a motor cycle driven by Parimal Choudhury and near the Raj Bhawan, the said motor cycle was hit by bus bearing Registration No. TR-01-A1246. No doubt, this witness has alleged that the accident occurred due to the rash and negligent driving of the driver of the bus but the fact remains that she was not an eye witness to the accident and, therefore, she could not say how the accident had taken place. It would be pertinent to mention that this witness was cross-examined by the opposite party and in cross examination she stated that her husband was travelling as a pillion rider on the motor cycle of Parimal Choudhury. She denied the suggestion that the accident occurred due to the negligent driving

of Parimal Choudhury. She was not cross-examined by Parimal Choudhury to the effect that the deceased was not riding on the motor cycle of Parimal Choudhury or that Parimal Choudhury was not driving the motor cycle in question. There is no cross examination to this effect. Therefore, the statement of this witness shows that the deceased was traveling on a motor cycle driven by Parimal Choudhury. However, who was negligent could not be stated by this witness since she was not at the scene of occurrence.

8. The claimants relied upon one, Gouranga Das, P.W. 3 who claim to be an eye witness to the accident and stated that he was travelling in the bus in question. In his examination in Chief he has only stated that the bus knocked down the two-wheeler in front of Governor House and both the riders of the motor cycle were injured. He has not stated who was at fault. In cross-examination the witness stated that he did not know Parimal Choudhury. He also states that he did not know Dipankar Das or his family members. He also stated that he was never examined by the police in the case. According to him, he was asked to depose in the case of Dipankar Das but could not say who brought him to Court. How can reliance be placed on the testimony of a witness who claims that he does not know the parties and whose statement was never recorded by the police and who does not even know how the accident occurred? In fact, if the statement of this witness is accepted, he does not say that the bus driver was negligent.

9. The most important witness was Parimal Choudhury. He was the person who was driving the motor cycle and he could have best deposed how the accident took place. He was a party to the petition but choose not to appear in the witness box and, therefore, adverse inference has to be drawn against him. When a party who is in knowledge of certain facts does not appear in the Court, a presumption can be drawn that he is avoided to appear in Court because he does not want to tell the truth. Even otherwise the FIR and the police documents relied upon by the learned MACT clearly indicate that the accident was a result of negligence of both the drivers.

10. Therefore, I find no merit in the appeal which is accordingly dismissed. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE

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