

THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.100 of 2011

The Oriental Insurance Company Limited,
represented by its Divisional Manager,
Agartala Divisional Office, Central Road,
P.S. East Agartala, District-West Tripura
(Insurer of vehicle bearing No.TR-01-9688, Motor Bike)

.....Petitioner

- Vs -

1. Smti. Mahamaya Das,
wife of late Krishna Kanta Das,
resident of South Kanania,
P.O. Kamalasagar,
P.S. Bishalgarh, District- West Tripura
2. Sri Pranjit Das,
son of late Krishna Kanta Das
3. Sri Biswajit Das,
son of late Krishna Kanta Das

Both are residents of South Kanania,
P.O. Kamalasagar,
P.S. Bishalgarh, District- West Tripura

4. Smti. Gouri Das,
daughter of late Krishna Kanta Das,
wife of Sri Uttam Majumder,
resident of Kaidepa, Madhupur,
P.S. Bishalgarh, District- West Tripura

.....Claimant-Respondents

5. Sri Tapash Das,
son of Sri Rabindra Das,
resident of Kenania,
P.O. Kamalasagar, P.S. Bishalgarh,
District-West Tripura
(Owner and Driver of the Motor Bike No.TR-01-9688)

.....Owner-Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. P. Gautam, Advocate

For the respondent Nos.1-4 : Mr. B. Choudhury, Advocate
Mr. S. C. Majumder, Advocate
Mr. U. K. Majumder, Advocate

For the respondent No.5 : Mr. H. K. Bhowmik, Advocate
 Date of hearing and : **31.03.2015**
 delivery of Judgment
 and order
 Whether fit for reporting : **NO**

Judgment and Order (Oral)

Heard Mr. P. Gautam, learned counsel appearing for the petitioner, the Oriental Insurance Company Limited, as well as Mr. B. Choudhury, learned counsel along with Mr. S. C. Majumder and Mr. U. K. Majumder, learned counsel appearing for the respondent Nos.1 to 4. Also heard Mr. H. K. Bhowmik, learned counsel appearing for the respondent No.5.

02. This is a petition filed under Article 227 of the Constitution of India questioning the legality of the judgment and award dated 10.09.2010 delivered in TS(MAC) No.373 of 2006 by the Motor Accident Claims Tribunal, West Tripura, Agartala.

03. The grounds of objection as canvassed in this petition are primarily two, such as (1) there was no adequate inquiry to ascertain whether the death has arisen out of the use of the motor vehicle or not in terms of Section 165 and 166 of the Motor Vehicle Act and (2) whether the medical records as produced by the claimant No.1 (who was examined as PW-1) has sufficiently indicate that the death has arisen from any motor vehicle accident or not.

04. Mr. P. Gautam, learned counsel appearing for the petitioner has submitted that it is not clear from the medical records under Exbt.3 series whether the said death was attributable to the

accidental injuries or not. Having not appropriately enquired to this aspect of the matter, when the tribunal has passed the award, the said award is bound to be illegal, warranting interference of this court. Apart that, he has submitted that the inquiry is the essential concomitant for determining the just compensation. Such inquiry is conspicuously absent in the present case.

05. It appears from the record that the petitioner even did not cross-examine the respondent No.1 (PW-1) as regards the cause of death. PW-1 has categorically stated in her statement before the tribunal that her husband Krishna Kanta Das received grievous injuries from the motor vehicle accident occurred on 27.12.2005 in a place called Kenania bazaar when her husband was proceeding to the fair price shop at about 10 a.m. The offending motor bike bearing registration No.TR-01-9688 driven by the respondent No.5 herein, dashed him from the back. He received multiple injuries and he was rushed to the GBP Hospital, Agartala for his treatment. He was admitted as the indoor patient and he was discharged after some days. Again on 19.02.2006, her husband had been admitted in Kenania PHC (Madhupur) and the medical officer of that PHC referred him to the GBP Hospital on 19.02.2006 having observed his serious condition. According to the claimant, the said illness was related to the injuries of her husband suffered in the said motor vehicle accident.

06. It is apparent from the records that none of the opposite parties, the respondents herein, cross-examined the claimants on this aspect of the matter and at her instance the documents were

admitted in the records of evidence including Exbt.3 series which contained the gate pass of the GBP Hospital, prescriptions of medicine etc. It appears from one of such prescription issued on 18.02.2006 that the doctor diagnosed the difficulty of the husband of the respondent No.1 and he related the injuries as received with the accidental injury. Some contemporaneous prescriptions are also available. (1) Death certificate issued on 13.04.2006, Exbt.2, but in such executive death certificates the cause of death are not ordinarily recorded. Some ancillary documents were also produced.

07. What Mr. Gautam, learned counsel appearing for the petitioner has tried to project is that the claimants did not produce the best evidence that could have been produced before the tribunal, such as the post mortem examination report. According to Mr. Gautam, learned counsel that unless the post mortem examination report is produced before the tribunal there cannot be any valid decision as to the cause of death.

08. There cannot be any amount of doubt that the post mortem examination report reveals the cause of death. But it cannot be said at the same time that in absence of the post mortem examination report the tribunal while presiding over a summary proceeding cannot enquire and arrive at a finding as to the cause of death. The medical prescriptions as indicated above clearly show that the doctors were treating the husband of the respondent No.1 for the injuries he received in a motor accident. Had the petitioner confronted the statement of PW-1 or the veracity of the medical prescriptions filed before the tribunal by the respondent No.1 to 4, a

probable case for purpose of re-appreciating the evidence would have been made. It is well settled that the scope of interference in the jurisdiction under Article 227 of the Constitution of India is circumspect, unless someone can show that there is a possibility of failure of justice, usually this Court will not interfere in the finding arrived at on the basis of records.

09. Hence, this Court does not find any merit in this petition and accordingly the same is dismissed. However, in the circumstances, there shall be no order as to costs.

10. The order of stay as passed by this Court stands vacated. It is directed that the petitioner shall deposit the entire amount within a period of two months from today with interest, as determined by the tribunal, as the petitioner has indemnified the damages of the respondent No.5 by virtue of the insurance policy.

JUDGE

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