

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.14 OF 2011

Shri Surja Sarkar
S/O. Late Sachindranath Sarkar,
resident of Ranir Bazar, P.O.-Ranir Bazar,
P.S. - Ranir Bazar, District-West Tripura.

..... Appellant.

- V e r s u s -

1. Smt. Rubi Mitra (Chakraborty),
S/O- Sti Sitangshu Chakraborty,
resident of Govt. Quarter, Type - 3/52,
Malanchanibas, P.O. - Kunjaban,
P.S. - East Agartala, District - West Tripura.
(Owner of Maruti Zen, Vehicle bearing
Registration No. TR01 - F - 0698)
2. The National Insurance Company Ltd.
Represented by its Divisional Manager,
of Akhaura Road, P.O. - Agartala,
P.S. West Agartala, District - West Tripura.
(Insurer of Maruti Zen, Vehicle bearing
Registration No. TR01 - F - 0698)

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. P.K. Dhar, Advocate. Mr. R.G.Chakraborty, Advocate
For the respondent	: Mr. H.K. Bhowmik, Advocate. Mr. S.Lodh, Advocate.
Date of hearing	: 25.06.2015.
Date of judgment	: 15.07.2015
Whether fit for reporting	: NO.

JUDGMENT & ORDER

This appeal by the claimant is directed against the award, dated 11.11.2010, passed by the Learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in Case No. T.S. (MAC) 222 of 2008 whereby he dismissed the claim petition filed by the claimant under section 166 of the Motor Vehicles Act.

2. The petitioner filed a claim petition alleging that on 11.04.2007 at about 1.30 p.m. he was proceeding towards Kachucherra Bazar through Salema-Kachucherra road on foot. When he reached at Kachucherra Colony in front of Colony School, one Maruti Zen bearing No. TR-01-F-0698 coming from Kachucherra Bazar side towards Salema dashed into the claimant.

3. According to the claimant, this vehicle which was being driven rashly and negligently hit the claimant. It is further alleged that due to the accident the claimant sustained fracture injury on his person and he was brought to R.G.M. Hospital, Kailashahar by the local people where he was admitted as indoor patient. Thereafter, he was referred to G.B. Hospital, Agartala and remained admitted as indoor patient from 14.04.2007 to 10.05.2007. Since his condition did not improve he was referred to SSKM Hospital, Kolkata. He could not get any bed in the said hospital and, therefore, got himself admitted in Peerless Hospital and B.K. Roy Research Centre and was treated there from 11.5.2007 to 14.5.2007. He got further treatment in Alpha Medical Services Pvt. Ltd., Kolkata from 14.5.2007 to 23.5.2007. He also obtained treatment at Bellona Nursing Home and Diagnostic Centre,

Diamond Harbour Road, Kolkata and returned to Agartala on 10.06.2007. He was again admitted in the hospital at Agartala on 11.06.2007 and remained there till 14.06.2007. According to the petitioner, he is a hawker selling clothes from village to village and used to earn Rs. 6000/- per month.

4. The Learned Tribunal rejected the claim petition holding that the claimant had failed to prove that he received injuries in a Motor Vehicle Accident. Though the accident had allegedly taken place on 11.04.2007, the complaint was lodged with the Kachucherra Police Station after 7 months on 28.11.2007 by the brother of the complainant.

5. The learned Tribunal held that though the report was lodged in the police station after 7 (seven) months the investigation was stated to have been completed within one hour thereafter. Therefore, he came to the conclusion that the so called investigation was false and fabricated and no reliance could be placed on the same. This award has been challenged in the present appeal.

6. I have heard Sri. P.K.Dhar learned counsel for the appellant and Sri. H.K.Bhowmik, and S. Lodh, learned counsel for the respondents and have carefully gone through the record.

7. I shall first deal with the documentary evidence. The discharge summary issued by the Agartala Government Medical College does not in any manner indicate that the claimant suffered injuries in a Motor Vehicle Accident. I have found that in Tripura the practice is that if a patient or his attendants inform the doctors that

the injured person has suffered injuries in a Motor Vehicle Accident then the words “RTA” are written in the discharge certificate. In this case neither in the discharge summary relating to the treatment from 14th April, 2007 to 10th May, 2007 nor in the discharge summary for the period dated 11th June, 2007 to 14th June, 2007 there is any mention that the claimant had suffered injuries in a Motor Vehicle Accident.

8. The claimant has not even cared to produce the record of the hospital at Kailasahar which was the first hospital which he attended. In the Peerless Hospital where the claimant was admitted in the Brief Clinical History it is mentioned as follows:-

“H/O RTA on 12.04.07 in Tripura when patient travelling in a Matador over turned. He was initially treated at a local Govt. Hospital in Tripura.”

9. For the first time on 11th May, 2007 it is mentioned that when the claimant was travelling in a Matador the same over turned and he received injuries. Thereafter, the claimant came back to Tripura but as pointed out above, even in the discharge slip of 14.06.2007 there is no allegation of having suffered injuries in a Motor Vehicle Accident.

10. The claimant himself did not file a complaint to the police and his brother filed the complaint. The relevant portion of the complaint reads as follows:-

“My humble submission is that my younger brother named Shri Surjya Sarkar(40) had started from kachucharra Bazar on 11.4.07 A.D. Last at about 10.30 O'Clock in order to selling shari (i.e. wearing apparel) by way of travelling in several

places. And thereafter he was standing in front of the Kachucharra Colony School. In the meantime one Maruti Car being No. TR 01-F-0698 coming from Kachucharra to Salema had dashed against (him) forcefully and (he) had spattered from the road."

Here a totally new version has been set up that when the claimant was standing on the side of the road in front of Kachucherra Colony School, one Maruti Car bearing No. TR-01-F-0698 came from Kachucherra to Salema and dashed against the petitioner.

11. As noted above, this complaint has been filed on 28.11.2007 whereas the accident is stated to have taken place more than 7 months earlier on 11.04.2007. Not a word has been stated as to why the complaint was not filed within time.

12. Shockingly the G.D. Entry of 28.11.2007 recorded at 08.05 hrs. shows that after investigation, from the statements of witnesses of this case it had come to light that the facts alleged in the complaint are true and the accident took place due to rash and negligent driving of the driver of vehicle bearing registration No. TR-01-F-0698.

13. It was rightly held by the Tribunal that if the complaint itself had been filed on 28.11.2007 how could the investigation in the matter have been completed on the same day itself and that too, by 08.05 a.m. This clearly shows that the G.D. Entry was false and fabricated for the purpose of helping the claimant.

14. In the claim petition filed by the claimant he has stated that when he had reached Kachucherra Colony in front of the

school and when he was on the extreme left side of the road, at that time one Maruti Zen vehicle bearing Registration no. TR-01-F-0698 which was coming from Kachucherra Bazar towards Salema at a high speed dashed against him. The claimant when he appeared in the witness box made the same statement.

15. Therefore, we have three different versions of the accident. Immediately after the accident on 12.4.2007 no report was lodged. The first report was lodged with the police after 7 ½ months. We have different versions of the accident. A perusal of the report of the Peerless Hospital shows that the claimant informed the hospital authorities at Kolkata that when he was travelling in a Matador Van, the same overturned and he received injuries. There is no mention of the claimant walking on the road or being hit by a car. There is a lot of difference between a Matador Van and a Maruti Car. The second version is that given by the brother to the police in which it was stated that one Maruti Car dashed against the claimant and when the matter came to Court, the Maruti Car was further specified to be a Maruti Zen Car.

16. The claimant did not care to examine his brother who had lodged the complaint and no reason has been given as to why the claimant had lodged the complaint at such a belated stage. The claimant also filed the affidavit of one Sankar Dutta, S/O-Sachindra Dutta, who is purportedly an eye witness and who stated that Maruti Zen Car bearing no. TR-01-F-0698 coming from Kachucherra Bazar hit the claimant. The statement of this witness cannot be relied upon because in cross examination he stated that he did not lodge any FIR relating to the accident nor did he take the claimant

to the hospital. Even according to the claimant he became unconscious after the accident. Most importantly, this witness admits that he cannot read or write the English alphabet or numbers. Therefore, he could not have noted down the registration number of the vehicle because admittedly he does not know the English alphabet or even the English numbers.

17. The owner of the vehicle who is a nursing teacher has examined herself and has stated that the vehicle in question was in Agartala on that date and had never gone to Kachuchera-Salema road. Though she has been cross examined nothing material has been extracted in cross examination.

18. In view of the above discussion, I am clearly of the view that the case set up by the claimant is totally false. The claim was rightly dismissed by the learned Tribunal. I find no merit in the appeal which is accordingly dismissed.

19. Send down the lower court records forthwith.

CHIEF JUSTICE

sabyasachi bhattacharjee

sabyasachi