

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.32 of 2011

Shri Parimal Paul,
S/O. Late Dhananjoy Paul,
A resident of Village – Icharbil,
PO – Teliamura, PS – Teliamura,
District – West Tripura.

..... *Appellant*

- Vs. -

1. Shri Kanai Chandra Deb,
S/O. Late Sashimohan Deb,
Of Dasamighat,
P.O. Teliamura, PS – Teliamura,
District – West Tripura.
(Owner of the vehicle No.TR-01-1921, Mini Truck)

2. The New India Assurance Company Ltd.,
Agartala Branch Office – Mantribari Road,
P.O. – Agartala, P.S. West Agartala,
District – West Tripura.
(Insurer of the Vehicle No.TR-01-1921, Mini Truck)

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S. Bhattacharjee, Advocate.

For the respondent : Ms. S. Deb Gupta, Advocate.
No.1.

For the respondent : Mr. K. Bhattacharjee, Advocate.
No.2.

Date of hearing & : 03.08.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

This appeal by the claimant is directed against the award dated 20.12.2010 passed by the learned Motor Accident Claims Tribunal (Court No.2), West Tripura, Agartala in T.S. (MAC) 24 of 2007 whereby, he rejected the claim petition of the claimant on the ground that it is not clearly proved that the claimant is the same person, who suffered injuries.

2. Briefly stated the facts of the case are that the claimant filed a claim petition alleging that on 06.07.2005 at 8.30 a.m. he was going to the Mungiabari market. According to the claimant he had boarded a mini Truck No.TR-01-1921, which he had hired for carrying his goods and on the way the vehicle met with an accident. The claimant claimed that he was earning Rs.8,000/- per month. He also claimed that he was admitted in the G.B. hospital on 06.07.2005 and remained admitted there till 18.07.2005. Since his injuries were serious he was referred to the hospital at Kolkata. He, however, decided to get himself treated at Christian Medical College (CMC), Vellore and he remained admitted there as a patient from 01.08.2005 to 12.08.2005. Thereafter, he had to stay 6 weeks in Vellore in connection with his treatment. According to the claimant, he had suffered severe injuries and he, accordingly, prayed for compensation.

3. The owner filed written statement. He in his written statement admitted that the claimant-petitioner along with many other persons had loaded their business goods in the vehicle of the owner and thereafter, the claimant-petitioner and the others forcibly boarded the rear portion of the vehicle though they were requested several times by the driver of the truck not to board the vehicle, which is a goods carrying vehicle. However, the claimant-petitioner and the others became violent and threatened to kill the driver and therefore, the driver was compelled to carry the petitioners. It is not disputed that the petitioner and the other persons, who boarded the vehicle as owner of the goods were not travelling in the cabin of the vehicle, but were travelling in the rear portion, which is meant for carriage of goods and material and not for carriage of passengers.

4. As far as the insurance company is concerned, it took various pleas but the main ground was that the claimant was not the owner of the goods and if, he was the owner of the goods, the insurance company was not liable to pay compensation since only one owner or two owners can be covered and in this case a large number of passengers were travelling in the goods vehicle and that too not in the cabin.

5. On behalf of the insurance company, it was urged that in fact, in the FIR lodged by one of the persons travelling in the

vehicle itself it has been mentioned that 20 to 22 small scale businessman were carrying their goods from Teliamura on mini truck bearing No.TR-01-1921 and all these persons were sitting on top of their goods in the rear portion of the vehicle.

6. From the FIR, the reply of the owner and the reply of the insurance company, I cannot find any material from which it can be inferred that the claimant was not travelling in the vehicle in question. The learned Tribunal has stated that whereas in the list of injured persons prepared by the police, the name of the injured was given as Parimal Paul, son of Gobinda Pal of Icherbill, the case has been filed by Parimal Paul, son of late Dhananjoy Paul of Icherbill. Therefore, the learned Tribunal has concluded that the claimant is not the person, who received the injuries.

7. To say the least, the approach of the learned Tribunal is hyper technical. The list of injured is prepared at the spot. At that time, the claimant and other persons were injured. The name is correct, the village is correct. Only the father's name is different. This could happen due to a mistake. The claimant has appeared in the witness box and made a statement on oath that he is the person who was travelling in the vehicle and he has not been cross-examined as far as this aspect of the matter is concerned. The learned Tribunal has made out a case for the respondents, which was not even pleaded by them. The learned Tribunal also

lost sight of the fact that the claimant on the day of accident was admitted to hospital and thereafter, referred to Kolkata. The medical evidence shows that the claimant had suffered fracture of the femur head with dislocation of the right head. Thereafter, he was referred to Kolkata, but he chose to go to CMC Vellore and in the case history, it is clearly mentioned that the claimant suffered injury in a road traffic accident and he has been operated upon. I am clearly of the view that the claimant is the person, who was travelling in the vehicle and has received injuries and I proceed to decide the matter accordingly.

8. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

9. The first question to be decided what was the income of the deceased. The case of the claimant was that he was earning Rs.8,000/- per month, but he has not led any evidence in this regard other than making a bold statement in support of his claim. It can also be presumed that the claimant was a businessman because they admitted a case of the parties is that the claimant was carrying his goods for sale to Mungiabari market and he was travelling in the vehicle along with the goods. He was a petty businessman not having a permanent shop, but doing business of selling goods from village to village. Even so, his income can easily be assessed even in the year 2005 at Rs.200/- per day, which would be Rs.6,000/- per month. However, this Court must take into consideration the fact that this type of businessman, who go from village to village do not earn everyday and sometimes when the weather is bad etc. they cannot go to earn and therefore, for purposes of this claim petition, his income is taken at Rs.5,000/- per month. The claimant remained admitted in hospital at Agartala for 12 days. The cost of one attendant at Agartala is taken at Rs.200/- per day and in a Government hospital at least, two attendants would be required. So, the cost of two attendants is taken to be Rs.400/- per day and for 12 days it works out to Rs.4,800/- which is rounded off to **Rs.5,000/-**.

10. The claimant went to Vellore and travelled by air. He left Agartala in the end of July and was admitted in the hospital at Vellore on 01.08.2005 and remained admitted till 12.08.2005. Therefore he remained admitted in the hospital at Vellore for 12 days. However, the claim of the claimant is that he had to remain in Vellore for a further period of two months since he was advised to remain in Vellore as an outdoor patient. From the discharge certificate, I find that the claimant was advised bed rest for 6 weeks and obviously, he could not have come back to Agartala and then gone back to Vellore for further treatment because that would have been equally expensive. Therefore, he remained along with one attendant at Vellore for two months. At Vellore, the attendant and the claimant had to arrange for their boarding, lodging, food etc. and all these factors have to be taken into consideration. Even in the year 2005, the cost for 2 persons in Vellore would not have been less than Rs.15,000/- per month and therefore, I award **Rs.30,000/-** on this count to the claimant.

11. Next comes the issue of medical expenses. The claimant has proved on record vouchers and bills for expenses of Rs.1,12,208/-. This Court can take judicial notice of the fact that some vouchers may not have been taken over this long period of treatment and therefore, the claimant is awarded **Rs.1,20,000/-** under this head. The claimant has produced vouchers for air tickets, railway tickets, ambulance charges and taxi charges of the

amount of Rs.37,395/- and accordingly, he is awarded **Rs.38,000/-** under this head. The claimant remained hospitalized in Agartala for 12 days. The accident happened on 06.07.2005. The claimant was advised 6 weeks bed rest on 12th August which means till the end of September, 2005 he could not have even left the bed. The claimant could not have hopped out of the bed and starting working immediately especially, keeping in view the fact that he does the business of selling goods from village to village. He needs to be fit and therefore, I assess that for 6 months at least he could not have worked and he is awarded **Rs.30,000/-** under this head.

12. The claimant has undergone long treatment that to both in Tripura and outside the State of Tripura and he is awarded **Rs.25,000/-** for pain and sufferings.

13. In view of the above discussion, the claimant is held entitled to **Rs.2,48,000/-** (Rs.5,000/- + Rs.30,000/- + Rs.1,20,000/- + Rs.38,000/- + Rs.30,000/- + Rs.25,000/-) and also interest on the said amount @ 7.5% per annum from the date of filing of the claim petition till payment of the same.

14. Next comes the question as to who should pay the compensation. On behalf of the claimant, it is urged that since the claimant is the owner of the goods, the liability to pay the amount

is on the insurance company. However, Mr. K. Bhattacharjee, learned counsel for the insurance company submits that this is not an ordinary case of an owner travelling in the goods. From the evidence on record, it is apparent that in this mini truck as many as 20 to 22 persons were travelling in that portion of the truck which is meant for carrying of goods. It is accordingly, submitted that these passengers were travelling not as owner of the goods, but were actually travelling as passengers carrying some goods.

15. On the other hand, Ms. S. Deb Gupta, learned counsel submits that the owner or the driver is not at fault because they tried their best to prevent the petitioner and others from climbing on to the vehicle. Unfortunately, neither the owner nor the driver stepped into the witness box to support their case and therefore, this plea cannot be accepted.

16. A Truck is primarily meant to carry goods. It is not meant to carry passengers. The owner of the goods may travel with the goods but every truck has a sitting capacity and the number of owners can never exceed the sitting capacity of the truck. The Apex Court dealt with a similar matter in ***National Insurance Co. Ltd. vs. Choleti Bharatamma and others : (2008) 1 SCC 423***. In that case also, the question involved was whether the insurance company is liable to indemnify the owner of the vehicle in respect of death of a large number of passengers

travelling in a goods carriage vehicle. The Apex Court held that the Motor Vehicles Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods. The relevant portion of the judgment reads as follows:-

"8. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of the goods or his authorized representative."

17. Thereafter, the Apex Court referred to a large number of judgments. In the case before the Apex Court, the persons were travelling along with rice, tent house articles, chairs, utensils and vegetables required on the occasion of marriage. A large number of persons were also travelling in the rear portion of the truck. The Apex Court held that the predominant purpose for which the truck was being used was not carriage of goods, but carriage of passengers and therefore, held that the insurance company could not be burden with the liability to pay the compensation. The Apex Court clearly held that the owner if he must travel in the goods vehicle should travel only in the cabin of the vehicle and not in the rear portion with the goods. In this behalf reference may be made to Para 19 of the judgment, which reads as follows:-

"19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle."

18. In the present case, admittedly, the claimant injured were not travelling in the cabin of the vehicle, but was travelling in

the rear portion meant for carrying of goods and therefore, the insurance company cannot be held liable in view of the law laid down in the ***National Insurance Co. Ltd. vs. Cholleti Bharatamma and others (supra)***.

19. In view of the above discussion, the appeal filed by the claimant is allowed. He is entitled to compensation of **Rs.2,48,000/-** (Rupees Two lakh forty eight thousand). However, the liability to pay this amount of the owner-respondent No.1 and not of the insurance company.

20. The appeal is disposed of in the aforesaid terms.

21 . Send down the lower court records forthwith.

CHIEF JUSTICE

sima