

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.09 OF 2015

Smti. Sadhana Bala Das,
Wife of Late Nani Gopal Das,
Vill : Dharmanagar,
P.S.- Teliamura,
District-Khowai.

..... **Petitioner-Appellant.**

- V e r s u s -

1. Sri Bidyut Choudhury,
Son of Sri Debendra Choudhury,
Vill : Jagannathpur,
P.S.- Bodhjungnagar,
West Tripura.
2. The New India Assurance Company Ltd.,
4, Mantri Bari Road,
P.O.-Agartala, West Tripura,
Represented by its Divisional Manager.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. D.K. Biswas, Advocate, Mr. G.K. Nama, Advocate.
For the respondent No.2	: Mr. K. Deb, Advocate.
Date of hearing and delivery of judgment and order.	: 26.08.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal is directed against the award dated 25-9-2014 passed by the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S.(MAC) 402 of 2013 whereby the learned Tribunal dismissed the claim petition on the

ground that the petitioner had not appeared in Court and there was no evidence available with the Tribunal to pass any award in favour of the petitioner.

2. The issues in this case were framed on 23.5.2014. The matter was adjourned to 26.6.2014 for evidence of the claimant. No steps were taken and the case was adjourned to 23.7.2014. The petitioner again prayed for time to lead evidence and the case was adjourned to 16.8.2014. The counsel for the petitioner again prayed for time. Thereafter, on 16.8.2014 the learned Tribunal issued notice to the petitioner to appear and adduce evidence by the next date, otherwise the case would be disposed of on merits. On the next date, the petitioner again did not appear and the Court disposed of the case on merits.

3. I find no error in the order of the Tribunal. However, I still feel that the petitioner who is a claimant in a petition under section 166 of the Motor Vehicles Act should be given one more opportunity to prove her case. It would be pertinent to point out that on 11.8.2015 counsel for respondent No.1 was not present and it was ordered that the matter be listed today and in case, again they are not present, the matter would be decided in their absence.

4. Keeping in view all these facts and circumstances and especially, the fact that the claimant is a poor widow who has filed this claim petition in respect of the death of her son, I allow the appeal and set aside the award of the Tribunal dated 25.9.2014 in

T.S.(MAC) 402 of 2013 and remand the case back to the learned Tribunal. This is, however, subject to the following conditions:-

(i) That, the parties shall appear before the learned Tribunal on 01.10.2015. On that date, the learned Tribunal shall fix a date for the evidence of the claimant in the month of November, 2015;

(ii) It shall be the responsibility of the claimant to produce her witnesses and to appear in the witness box on the said date. In case, she is not present or her witnesses are not produced, then no further opportunity shall be granted and the petition shall be decided on merits on the basis of any evidence which may be available on record;

(iii) In case, the petitioner leads evidence, then obviously the respondents, i.e. both the owner and the Insurance Company shall be granted at least two more opportunities to lead evidence in rebuttal and the matter shall be disposed of in accordance with law.

5. With these observations, the appeal is disposed of.

6. Send down the lower court records forthwith.

CHIEF JUSTICE