

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MFA(W/C) NO.12 of 2011

Sri Anil Sarkar,
S/o Lt. Jagabandhu Sarkar,
Resident of Village - Ghilatali,
P.O - Ghilatali, P.S. Kalyanpur,
District - West Tripura.

..... *Appellant.*

- Vs -

1. **Sri Kanu Das,**
S/o Manoranjan Das,
Resident of Madhya Banamalipur,
P.O - Agartala, P.S - East Agartala,
West Tripura, Pin- 799001,
(Owner of the vehicle bearing NO.TR-01-1792, Truck).

2. **The National Insurance Company Ltd.,**
Divisional Office, 42 Akhaura Road,
P.O - Agartala, West Tripura,
Represented by its Divisional Manager,
(Insurer of the vehicle No.TR-01-1792, Truck).

..... *Respondent.*

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S K Dutta, Advocate.

For

Respondent No.1 : Mr. H Debnath, Advocate,
Ms. M Das, Advocate.

Respondent No.2 : Mr. K Bhattacharjee, Advocate.

Date of hearing : 24.6.2015.

Date of judgment : 02.7.2015.

Whether fit for reporting :

Yes	No
	J

JUDGMENT & ORDER(ORAL)

This appeal by the claimant is directed against the award dated 25th June, 2011 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S.(W/C)1 of 2007 whereby he held that the claimant petitioner has failed to prove that he was an employee on the vehicle in question and therefore, dismissed the claim petition.

2. The claimant filed the claim petition alleging that he was engaged as a labourer of the motor vehicle bearing No.TR-01-1792(Truck) for loading and unloading of mud. According to him, on 28.02.2006 during the course of his duties while he was working on the vehicle and loading the mud, a huge quantity of mud all of a sudden fell on the vehicle and on the victim causing serious injuries to him. He, therefore, claimed compensation.

3. The owner denied that he had engaged the petitioner as a workman. He also denied that any such incident had taken place and according to him, the entire claim was a false and concocted claim. The owner admitted that he was the owner of Truck bearing No.TR-01-1792 but according to him, he had not employed the claimant as workman. The owner admitted that some time the local Panchayets used to hire his vehicle but only the vehicle was hired and the labourer, if any engaged to load and unload, was engaged by the Panchayet and not by the owner. According to the owner, from November, 2005 to March, 2006 the vehicle was hired with the

Rotia Panchayet and the driver was one Ajoy Deb. According to the owner, Rotia Panchayet is about 10 km. from Bagber where the accident allegedly took place.

4. The petitioner appeared as his own witness and repeated what he had stated in his claim petition. In cross-examination, a suggestion was put to him that the vehicle did not go to Bagber for loading mud. The petitioner also examined one Smt. Sandhya Debnath of Bagber who stated that she had witnessed an occurrence on 28.02.2006 and huge quantity of mud had fallen on top of the claimant. Gopendra Debnath and Ratan Debnath also made similar statements. The driver of the vehicle, appeared in defence and stated that the vehicle was at Rotia Panchayet. He denied that the petitioner was worked as a labourer on the vehicle and according to him, the vehicle never went to Bagber from Rotia. The learned Commissioner issued summons to Bhanulal Das Panchayet Secretary of Durgapur Panchayet who stated that the vehicle bearing No.TR-01-1792 was engaged at Ratia under South Durgapur Panchayet for development work and that the petitioner was not a labourer on the said vehicle. He denied that any accident of the vehicle had taken place.

5. There is conflicting evidence on both sides. However, the claim of the petitioner has been supported by three witnesses who are villagers of that area. If an accident had taken place then there should be a police report immediately after the accident

which took place on 28.02.2006. However, I find that the petitioner was admitted in G.B.P.Hospital on 24.4.2006 and the G.D. entry was made on 08.8.2006. There is no explanation why no complaint was made to the police even after the petitioner was released from hospital. The learned Commissioner rightly held that no reliance can be placed in this G.D entry because it is highly belated. The finding given by the learned Commissioner that the claimant did not receive injuries in an accident, as alleged by him, is pure finding of fact. This finding of fact cannot be said to be perverse. There is no question of law much less a substantial question of law involved in this appeal. Therefore, the same is dismissed.

Send down the LCR forthwith.

CHIEF JUSTICE