

THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC APP. No.95 OF 2011

Sri Priyatosh Rudra Paul,
S/O. Lt. Manindra Rudra Paul,
of Vill- Bibekanandapalli, Damdama,
P.S.- Sabroom, District- South Tripura.

.....Claimant Appellant.

- V e r s u s -

1. Sri Sanjoy Chandra Rudra Paul,
S/O. Lt. Manindra Rudra Paul
of Vill- Bibekanandapalli, Damdama,
P.S.- Sabroom, District- South Tripura.
(Owner of Hero Honda Motor Bike bearing
No.TR-01/TC.No(F)-2865).
2. The Branch Manager,
The Oriental Insurance Company Ltd.
Udaipur Branch, Udaipur, Jahar Road,
P.S. Radhakishorepur, District- South Tripura.
Insurer of the Hero Honda Motor Bike
bearing No.TR-01/TC.No(F)-2865.

.....Opposite Party-Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Ms. P. Ghatak, Advocate.

For the respondent No.2 : Mr. P. Gautam, Advocate.

Date of hearing and : 26.8.2015
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 07.02.2011 delivered by the learned Motor Accident Claims Tribunal, South

Tripura, Udaipur in case No. T.S. (MAC) 06 of 2010 whereby he awarded a sum of Rs.99,684/- in favour of the claimant.

2. The claimant himself was driving one motorcycle No. TR-01/TC.No.(F)-2865. This vehicle was owned by one Sri Sanjoy Chandra Rudra Paul and insured with the Oriental Insurance Company Ltd.

3. The case of the claimant is that when he was driving the motorcycle and taking a turn, a cow suddenly crossed the road and in process of saving that cow, the claimant fell on the road and sustained grievous injuries.

4. The Insurance Company contested the claim and one of the grounds raised was that the Insurance Company was not liable to pay the compensation since the claimant himself was responsible for the accident. Another ground raised was that the driver did not hold a valid driving license to drive a motorcycle.

5. The learned Court below rejected both the grounds and held that the Insurance Company was responsible to pay the compensation of Rs.99,684/-. The Insurance Company has not filed any appeal against the said award. However, the fact remains that no compensation at all could have been awarded in the case because in a claim petition filed under Section 166 of the Motor Vehicles Act, negligence of some other party has to be pleaded and proved. Even if the case of the petitioner is taken to be correct that the cow came across the road, there is no negligence of any third

party. This is not a claim petition filed under Section 163A but one filed under Section 166 and, therefore, nothing could have been awarded. The claimant has already got almost Rs.1,00,000/- which should not have been awarded in his favour but since the Insurance Company has not filed an appeal, I am not interfering that portion of the award. However, I am clearly of the view that claimant is not entitled to any enhancement whatsoever.

6. Therefore, I find no merit in the appeal which is accordingly rejected.

7. Send down the lower court records forthwith.

CHIEF JUSTICE