

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 57 of 2009

Sri Chandan Saha,
Son of Late Nakul Saha of Julaibari,
P.S. Baikhora, District – South Tripura.

..... *Appellant*

- Vs. -

Shri Ranjit Saha,
Son of Sri Narayan Chandra Saha of
Julaibari, P.S. Baikhora, District – South
Tripura.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S.C. Majumder, Advocate.

For the respondent : None.

Date of hearing & : 12.03.2015.
delivery of
Judgment & order.

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

Yesterday (11.03.2015) this matter was heard in part and none had appeared for the respondent. After hearing learned counsel for the appellant, the Court had found some merit in the argument of the appellant and therefore, the matter was adjourned for today.

Unfortunately, today also, none has cared to put in appearance on behalf of the respondent. Therefore, I proceed to decide the appeal on merits itself.

2. This appeal by the owner is directed against the award dated 30th April, 2009 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala whereby he passed an award of Rs.1,09,934/- along with interest in favour of the claimant and held the appellant-owner liable to pay the amount.

3. Briefly stated the allegations are that the claimant filed the claim petition alleging that on 07.01.2005 at about 6.30 p.m. he had boarded vehicle No. TRT-2103 and was going from No.1 Rubber Bagan to Jolaibari. According to the claimant, near Sachirambari the vehicle stopped to let some passengers get down when the claimant was getting down, the vehicle was suddenly started and as a result, the petitioner suffered injuries. He was taken to the Tripura Sundari hospital, Udaipur and was admitted there from 07.05.2005 to 15.03.2005 and was again admitted there from 21.04.2005 to 29.04.2005. On this basis compensation was claimed. The learned Tribunal decided issue No.1 in favour of the claimant.

4. The main argument raised by Mr. Majumder, learned counsel for the owner is that in fact no accident in question had

taken place and this behalf he has specifically urged that though the accident is stated to have taken place on 07.01.2005, no information regarding the accident was given to the police up to 12th April, 2005. He also submits that even in the medical record, there is nothing to indicate that the claimant sustained injuries in a road accident. It is submitted by Mr. Majumder, learned counsel that the learned Trial Judge wrongly relied upon the complaint on the statement of the claimant wherein it is alleged that a written complaint was made to the police on 13th January, 2005, but no action was taken by the police.

5. I have gone through the entire record in detail. The whole issue is whether the claimant received injuries in a motor vehicle accident or not. The accident is alleged to have occurred on 7th January, 2005. The FIR is lodged on 17th April, 2005 and in the FIR itself, it is mentioned that the complaint (ejahar) was received on 17th April, 2005 itself and never earlier. A complaint is stated to have been filed by Ajit Saha, brother of the claimant on 18th January, 2005. A copy of the document which is attached with the FIR shows that it is stated to have been filed with the Sub-Divisional Judicial Magistrate. However, no certified copy from the Court of the Sub-Divisional Judicial Magistrate has been proved and nothing has been shown that any such complaint was actually filed with the Sub-Divisional Judicial Magistrate. The police has not lodged the FIR on the basis of some reference made to it by the

Magistrate, but only on the basis of the written complaint. The issue is whether any complaint was made on 13th January, 2005 or not.

6. Admittedly, this complaint was not made by complainant Chandan Saha and was allegedly made by his brother Ajit Saha. The said Ajit Saha has not been examined in the witness box and not a word has been said by him as to why the complaint was lodged at a later date.

7. It is not only this delayed complaint which is coming in the way of the complainant. The discharge certificate which has been produced by the complainant itself shows that the complainant was admitted in the Tripura Sundari District hospital, Udaipur on 7th January, 2005 and was released on 15th March, 2005. The practice in the State of Tripura is that normally in the discharge certificate in case the person has received injuries in a motor vehicle accident, it is mentioned that he has received injuries in a Road Traffic Accident (RTA). In this case, neither in the discharge certificate nor any other document produced by the claimant is it mentioned that the claimant received injuries in a road traffic accident. There is no contemporaneous evidence on record to support the case of the claimant that he received injuries in a motor vehicle accident.

8. On the other hand, the owner examined himself and one other witness to prove that the vehicle which is alleged to have been involved in the accident was in fact handed over to one Tapan Sen, proprietor of Tripueswari Greel & Steel Furniture vide Exbt. No. A on 25th December, 2004. This vehicle had been given for repairs and in Exbt. A it is mentioned that Rs.9,500/- would be the approximate charges and it would take one month to deliver the vehicle. Advance of Rs.5,000/- had been received on the date of execution of the document and Rs.4,500/- was to be paid on the delivery date i.e. 25th January, 2005. The second document on record is Exbt. B which shows that the vehicle was handed over by Tapan Sen to the appellant-owner Sri Chandan Saha on 25.01.2005. It is thus urged that the vehicle was lying in the garage for repairs and it could not have been involved in the accident on the said date.

9. The owner has stepped into the witness box and has fully supported his case. Tapan Sen unfortunately died and he could not be examined but it has been proved that he had died. One witness to both the documents namely, Sri Sankar Choudhury has been examined as DW 2 and he has fully supported the owner. It is indeed surprising and shocking that the Motor Accident Claims Tribunal has not even referred to the statement of the owner or his witness while deciding this issue. The Tribunal has the jurisdiction to decide the issue, but it must deal with the entire evidence which

has been led before it before deciding such issue. On the basis of the above discussion, I find that there is not a shred of evidence on record to support the claim of the claimant that he suffered injuries while travelling in the vehicle in question.

10. Therefore, the appeal is allowed. The award of the learned Tribunal is set aside and the claim petition is dismissed.

11. Send down the L.C.Rs forthwith.

CHIEF JUSTICE

sima