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

MAC APP. NO.61 OF 2009

The Officer Commanding,
115 Bn. CRPF, B. Coy,
Chamanu, P.S.-Chamanu,
District-Dhalai.

..... **Appellant**.

– V e r s u s –

1. Smt. Arati Chouhan,
   W/O. Lt. Karan Chouhan,
2. Shrii Prasanta Chouhan,
   S/O. Lt. Karan Chouhan,
3. Namita Chouhan,
   D/O. Karan Chouhan,
4. Shri Santa Chouhan,
   S/O. Lt. Karan Chouhan,(16 yrs)
   (Being minor, represented by the
   Claimant No.1).

   All are residents of Bhalukia Tilla,
   P.S.-East Agartala, West Tripura.

..... **Claimant-Respondents**.

5. Shri Priyalal Sarkar,
   S/O. Satish Sarkar, of
   Chailengta, P.S. Manu,
   Dist. Dhalai (Owner of
   Vehicle NO. TR-04-2051,
   Auto-Rickshaw).
6. The New India Assurance Co. Limited,
   Agartala Branch, Mantribari Road,
   Agartala, West Tripura.

..... **Respondents**.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. A. Lodh, Advocate.
For the respondents 1 to 4	: Mr. D.C. Roy, Advocate, Mr. N. Choudhury, Advocate.
For the respondent No.5	: Mr. I. Chakraborty, Advocate.
For the respondent No.6	: Mr. P. Gautam, Advocate.
Date of hearing and delivery of judgment and order.	: 18.02.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER (ORAL)

This appeal by the CRPF is directed against the award dated 06-08-2008 passed by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in case No. T.S.(MAC) 152 of 2003 whereby the learned Tribunal held the claimants entitled to compensation of Rs.8,39,648/- and fixed the liability to pay the compensation equally on the CRPF which was owner of bus No.USI-6593 and upon the New India Assurance Company Limited with whom the auto rickshaw No.TR-04-2051 was insured.

2. The allegation of the claimants was that there was a head on collision between the two vehicles, i.e. the auto rickshaw and the bus and according to the claimants, the drivers of both the vehicles were negligent. This was denied by the CRPF and issues were framed. The claimants only examined Smti. Arati Chouhan, the widow of the deceased. Admittedly, she was not present at the spot. Therefore, her evidence is not at all relevant for deciding how the accident took place.

3. It is urged by Sri Arindam Lodh, learned counsel for the appellant, that the learned Tribunal has not at all considered the evidence of the driver of the bus belonging to the CRPF.

On the other hand, it is urged by Sri P. Gautam, learned counsel on behalf of the Insurance Company, that the FIR clearly indicates that the same was lodged by a person who was travelling in the auto rickshaw and in the said FIR, the negligence has been attributed to both the drivers. It is also urged that in the judgment the learned Tribunal has stated that there is no explanation worth the name as to why the driver of the bus of the CRPF was not charge-sheeted by the police.

4. I have gone through the entire record. Unfortunately, the claimants led no evidence of any eye witness. As far as the CRPF is concerned, it examined the driver of the bus as OPW-1 and according to his statement, he had stopped the bus but the auto rickshaw came further and it rolled and actually did not strike the bus but he helped the passengers who had been injured by taking them to hospital. The accident took place on 04-12-2001. An FIR was lodged by one of the eye witnesses on 07-12-2001, i.e. after 3 days in which it was alleged that the accident occurred due to the negligence of both the drivers. However, the Insurance Company did not choose to either summon the person who lodged the FIR or the driver of the auto rickshaw to prove its case. Insurance Companies have a lot of money at their disposal. They also have lot of manpower at their disposal. In case, the Insurance Company wants to contest the claim on merits, then I see no reason why the Insurance Company should not have led evidence to counter the evidence led by the CRPF.

5. As far as the evidence on record is concerned, the only evidence with which we are left is the statement of the OPW-1, i.e. the driver of the CRPF bus who states that there was no negligence on his part and, in fact, according to him, there was no collision between the two vehicles. As far as the Insurance Company is

concerned, it is only relying upon the FIR. Unfortunately for the Insurance Company, the FIR was investigated by the police and after investigation the police recommended the filing of a charge-sheet only against the driver of the auto rickshaw and not against the driver of the bus. This Court in these proceedings cannot decide whether that decision was right or wrong but no reliance can be placed on the FIR since the author of the FIR was not examined in Court and secondly, even the police during investigation did not find the allegations alleging negligence against the driver of the CRPF to be true.

6. Therefore, the appeal is accepted. The award of the learned Tribunal is set aside to the limited extent that the entire compensation shall be paid by the Insurance Company.

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

8. Send down the lower court records forthwith.

CHIEF JUSTICE