THE HIGH COURT OF TRIPURA
<u>AGARTALA</u>

<u>MAC APP. 63 of 2009</u>

Sri Pramode Ranjan Roy,
S/o. Late Shyama Charan Roy,
Vill. Lal Charra, Khowai, P.S. Khowai,
Tripura West.

……..…. *Appellant*

- Vs. –

1. Smt. Chitra Pal,
   W/O. Sri Badal Pal,
   Resident of Kalyanpur, Near Satsanga
   Ashram, P.S. Kalyanpur, Dist. West Tripura.

2. The I.C.I.C.I. Lombard General Insurance Co.
   Represented by the Branch Manager, M.G. Road
   Opp. Side of Meghalaya, Secretariat,
   Shillong-1, Meghalaya.

3. Sri Badal Pal, S/o. Unknown,
   Resident of Kalyanpur, Near Satsangha Ashram,
   P.O. + P.S. Kalyanpur, Dist. Tripura West.

……..…. *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	**:**	Mr. M. Kar Bhowmik, Sr. Advocate. Mr. R.R. Dutta, Advocate. Ms. A. Dhar, Advoate.
For the respondents	**:**	None.
Date of hearing & delivery of Judgment & order.	**:**	12.03.2015.
Whether fit for reporting	**:**	No.

JUDGMENT & ORDER (ORAL)

This appeal by the owner is directed against the award dated 06.07.2009 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala whereby he held the appellant-owner liable to pay the compensation.

2. Briefly stated the facts of the case are that the claimant Chitra Pal is the mother of deceased Biswajit Pal, who admittedly died in a motor vehicle accident involving vehicle No.TR-01-E-1915 which is an auto rickshaw pick-up registered as a goods vehicle. This vehicle was owned by the appellant and insured with the ICICI Lombard Insurance Company. The only dispute in this case is whether the deceased was a gratuitous passenger in the goods vehicle as held by the learned Trial Court or was travelling in the vehicle as a workman and as a helper. Mr. M. Kar Bhowmik, learned senior counsel has taken with me through the entire evidence. In the claim petition it was alleged that the deceased was engaged as a helper on the vehicle and he had boarded the vehicle for the purpose of loading the goods on the vehicle. The owner filed a written statement and did not deny these allegations. However, the insurance company denied these allegations and the stand of the insurance company was that the deceased was a gratuitous passenger in a goods carrying vehicle and therefore, the insurance company was not liable to pay the compensation.

3. The claimant Chitra Pal examined herself and filed an affidavit in which again it was reiterated that her son was a labourer by profession and was travelling in the pickup van as a labourer. She has been cross-examined. Initially, she stated that she had not seen the accident personally, but later on she stated that at the time of the accident she was also travelling in the vehicle. She also stated that there were 4/5 other passengers who were travelling in the vehicle. The learned Tribunal only relied upon this portion of the statement of Citra Pal to come to the conclusion that this meant that the deceased was also a gratuitous passenger in the vehicle.

4. Assuming for sake of argument that there were 3/4 gratuitous passengers travelling in the vehicle. The question was whether the deceased Biswajit Pal was a gratuitous passenger or not. Even if the others were gratuitous passengers that would not make Biswajit Pal a gratuitous passenger unless some evidence was led to prove the contrary. The owner had admitted that Biswajit Pal was a labourer though he had not admittedly employment with him. But the owner did not step into the witness box. The insurance company led no evidence to prove its case. This leaves us with the statement of Chitra Pal alone and the preponderance of the evidence is that the deceased was a helper engaged on the truck. From the Registration certificate and the

insurance policy of the vehicle, I find that two persons were allowed to be carried in the vehicle which means that in addition to the driver one other person could be carried on the said vehicle. This person could have been Biswajit Pal and since the insurance company has neither led any evidence nor cross examined Chitra Pal effectively to prove that the deceased Biswajit Pal was not a labourer, I feel that the learned Tribunal gravely erred in exonerating the insurance company of its liability to pay the compensation.

5. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified to the extent that the owner as well as the insurance company will be jointly and severally to pay the amount of compensation. However, since the vehicle was duly insured in terms of the Motor Vehicles Act, the liability to pay the compensation shall be squarely on the insurance company.

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

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

CHIEF JUSTICE

sima