

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 90 of 2005

The Officer Commanding, 120 RCC
GREF, Bagafa,
P.O. & P.S. Santirbazar, Belonia,
South Tripura,
(Owner of the vehicle No.99E-66345)

..... *Appellant*

- Vs. -

1. Sri Bimal Ch. Sarkar @ Bimal Sarkar,
Son of Late Haripada Sarkar,
Resident of Bagma (Bagabasa),
P.S. R.K. Pur, Udaipur,
South Tripura.
2. Sri Pranab Debnath,
Son of Sri Haripada Debnath,
Resident of Bardwali,
Arundhutinagar,
P.O. Arundhutinagar, West Kotowali,
Agartala, West Tripura.
(owner of vehicle No.TR-01-1391 (Kishan Bus).
3. The New India Assurance Company Limited,
Represented by the Branch Manager,
Agartala Branch of Hariganga Basak Road,
Agartala, P.S. West Agartala,
Pin – 799001,
Agartala Tripura West.
(Insurer of vehicle No.TR-01-1391 (Kishan Bus).

..... *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P.K. Biswas, Asstt. SG.
Mr. P. Majumder, Advocate.
Ms. C. Bhowmik, Advocate.

For the respondent : Ms. P. Dhar, Advocate.
No.1.

For the respondent : Mr. A. Gon Choudhury, Advocate.
Nos.2 & 3.

Date of hearing & : 10.02.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

This appeal by the GREF is directed against the Award dated 03.05.2005 delivered by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur whereby he allowed the claim of the claimant-petitioner and awarded him compensation of Rs.90,815/-.

2. Before advertng to the facts of the case, I may mention that the claimant had filed an appeal for enhancement, but that appeal was dismissed for default on 19.07.2013 and no application for restoration has been filed.

3. As far as the present appeal is concerned, it is urged by Mr. P.K. Biswas, learned Assistant SG that the findings of the learned Tribunal are based totally on misreading of evidence.

4. Briefly stated the facts necessary for decision of the appeal are that the claimant was driver of a bus No. TR-01-1391. He was driving the bus from Sabroom to Udaipur. He made an

allegation that there was a collision with vehicle No.99E 66345, Tata Tiper belonging to the GREF. The claim was contested by the GREF and it was alleged that the claimant himself was negligent and the accident occurred due to his own negligence.

5. Both sides lead evidence. The learned Tribunal discarded the evidence of the driver of the GREF vehicle on three counts. Firstly, that he had made a false statement in his affidavit that his father was alive though in cross-examination he had admitted that his father has died 10 years back. Secondly, that this driver in his cross-examination had stated that he did not know what was written in the written statement or in the affidavit and he had simply put his signature on the same. Lastly, on merits, the Tribunal held that the claimant had alleged that he had taken his vehicle to the extreme left of the road and therefore, the claimant could not be held responsible for the accident.

6. I find that all the three findings are totally incorrect and against the record. As far as the first finding is concerned, in the affidavit, there is no statement that the father of the claimant is alive. It appears that where the name of the claimant and his parentage is given since the word 'late' was not written before the name of the father of the witness, the learned Tribunal assumed that he had made a false statement. I fail to understand how the statement is false. Even if the statement is false it would have no

relevance to the case in hand. Whether the father of the witness was dead or alive has nothing to do with the merits of the case. What would the witness gain by making a false statement in this regard? When the affidavit of a witness is prepared the lawyer or the person preparing the affidavit only ask him what is his father's name? He may give his name without explaining whether his father is dead or alive. Merely because the word 'late' is not written in front of the name of his father does not mean that he has given a false statement.

7. As far as the second aspect of the matter is concerned, I may refer to the statement of the witness in cross-examination which reads as follows:-

"I do not know what has been written in the affidavit. It was not read over to me. I put my signature.

W.V. The contents were not read over to me. But the subject matter was read over to me, as I do not know english. Thereafter I put my signature. My officer told me the contents of the affidavit. It is not a fact that I am not that man i.e. the driver of the said vehicle and I am not that man who sworn in the affidavit."

The whole statement of the witness as well as the portion stated hereinabove, have to be read together.

8. The witness was not conversant in English. In Tripura neither counsel nor Court are very well conversant with Hindi and it is apparent from the name and parentage of the driver that he did not belonged to Tripura and was not conversant with Bengali.

If his entire statement is read holistically, it is obvious that what he meant was that he did not know English and therefore, the contents were not read over to him, but his officer had explained to him what was written in the affidavit. Furthermore, in cross-examination, he has supported what was written in the affidavit.

9. Surprisingly, the learned Tribunal which picked holes in the statement of the witness on highly technical grounds itself fell into a grave error and ascribed the statement made by the driver of the GREF vehicle to the claimant himself.

10. The claimant in his statement has nowhere stated that he was on the extreme left side of the road and that there was no further place left on the left side. All he has stated is that the vehicle of GREF was being driven at a very high speed. He has not stated that the vehicle belonging to GREF was being driven on the wrong side. In fact, in the affidavit of the driver of the GREF vehicle Harnam Singh it is stated that he had taken the vehicle to the left side of the road, but the driver of the civil bus i.e. the claimant could not control his vehicle covered more than 70% of the carriage way and dashed against his vehicle. What was stated by the driver of the vehicle belonging to the appellant GREF has been treated by the Tribunal to be the statement of the claimant. This is highly irresponsible.

11. From the evidence led it is apparent there was a head on collision. Unfortunately, even the respondents did not lead any independent evidence. There were many passengers in the bus. No independent witnesses were examined by either party though such evidence was available and therefore, I proceed to hold that though both the drivers were equally responsible for the accident.

12. In this view of the matter, the appeal of the GREF is partly allowed and compensation payable to the claimant is halved and reduced from Rs.90,815/- to Rs.45,407.50. He shall however, be entitled to interest on the said amount @ 9% per annum from the date of the filing of the claim petition till payment of the same.

CHIEF JUSTICE

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