THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>MAC APP. NO.20 OF 2011</u>

The Branch Manager,
The New India Assurance Company Limited,
Agartala Branch, Mantri Bari Road,
P.O. Agartala, P.S.-West Agartala,
West Tripura District.
(Insurer of Vehicle No.TR-02-B-1797,
Auto Delivery Van).

..... **<u>Appellant</u>.**

– V e r s u s –

1. Smt. Ranjita Das,
W/O. Late Dhiraj Chandra Das,
alias Dilip Das,
Vill. Samridhipur,
P.O. Durgarband Bazar,
P.S. Ramkrishnanagar,
Dist. Karimganj, Assam.

At present residing at-
C/O. Shri Nalinikanta Bhattacharjee,
Vill. Madhya Nayapra, Kalibari Road,
P.O. & P.S. Dharmanagar,
Dist. North Tripura.

2. Shri Dhirendra Mohan Das,
S/O. Lt. Surjyamani Das,
Vill. Samridhipur, P.O. Durgarband Bazar,
PS-Ramkrishnanagar,
Dist. Karimganj, Assam.

3. Smt. Anjali Das,
W/O. Shri Dhirendra Mohan Das,
Vill. Samridhipur, P.O. Durgarband Bazar,
PS-Ramkrishnanagar,
Dist. Karimganj, Assam.

..... **<u>Claimant-Respondents</u>.**

4. Shri Dilip Das alias Dilip Narayan Das,
S/O. Shri Dwijendra Narayan Das,
alias Dwijendra Mohan Das,
Vill. & P.O. Tarakpur, PS-Kadamtala,
Dist. North Tripura (Owner of vehicle
No.TR-02-B-1797, Auto Delivery Van).

..... **<u>Owner-Respondent</u>.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. P. Gautam, Advocate.
For the respondent Nos.1 to 3	: Mr. G.K. Nama, Advocate.
Date of hearing & judgment	: 26.08.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER(ORAL)

This appeal by the Insurance Company is directed against the award dated 10-09-2010 passed by the learned Motor Accident Claims Tribunal, North Tripura, Dharmanagar in case No. T.S.(MAC) 17 of 2009 whereby he awarded compensation of Rs.3,67,000/- to the claimants and held the Insurance Company liable to pay the same.

2. The only ground raised by the Insurance Company is that it is not liable to pay the compensation since the deceased was a gratuitous passenger on a goods vehicle and, therefore, not covered by the terms of the policy.

3. The claimants in the claim petition had made a specific allegation that the deceased was travelling in the vehicle which is a three wheeler auto delivery van. According to the claimants, the deceased was carrying fish belonging to Sri Krishnapada Dhar alias Kajal Dhar, fish merchant and commission agent of East Bazar, fish market at Dharmanagar. Therefore, the case of the petitioners is

that the deceased was travelling as representative of the owner of the goods.

4. The owner filed a written statement denying all the details of the accident and all the allegations made in the claim petition were denied. The stand of the Insurance Company was that it was not liable to pay compensation since it was not covered under the terms of the policy.

5. The claimant widow of the deceased filed her affidavit in support of the claim petition and again reiterated the fact that her husband was travelling as representative of the owner of the goods. There is no cross-examination directed to her by the Insurance Company to the effect that her husband was not travelling in the vehicle as owner of the goods. The only cross-examination is that she has not seen the accident and that the accident did not occur due to rash and negligent driving of the driver of the vehicle. When the witness in her affidavit had clearly stated that her husband was travelling as representative of the owner of the goods and she was not submitted to any cross-examination, the fact had to be accepted to be correct. The claimant also examined one other witness Nepal Datta who also supported the petitioner and clearly stated that the deceased was working as a casual worker of M/S Renubala Fish & Dry Fish Agency owned by Krishnapada Dhar alias Kajal Dhar and that he was travelling in the auto delivery van along with the fish belonging to Krishnapada Dhar.

6. As far as the Insurance Company is concerned, it only examined its Administrative Officer. In the affidavit of this witness, the fact that Dhiraj Chandra Das, deceased, was travelling in the auto van and died as a result of the accident is not denied. That is specifically admitted. The only defence taken is that since the said van was an auto delivery van and it has the sitting capacity of the driver only, no other person could travel in the vehicle. This defence is different to what has been taken now. In the screen report of the vehicle, the sitting capacity is given 2(two). Even in the insurance policy, I find that there is personal accident coverage for the owner-cum-driver and also coverage for one employee. Therefore, it means that the sitting capacity was 2(two). In a goods vehicle, the owner of the goods or the representative of the owner of the goods can travel and the Insurance Company is bound to cover their liability in terms of Section 147 of the Motor Vehicles Act.

7. Therefore, I find no merit in the appeal which is accordingly dismissed.

8. Send down the lower court records forthwith.

CHIEF JUSTICE