

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP 120 OF 2011

Superintendent of Police,
Mobile Task Force,
Arundhuti Nagar,
P.S. - West Agartala,
P.O. - A.D. Nagar,
District - West Tripura
(In charge of the jeep
bearing No. TR01B-1077)
Pin- 799003

.....**Appellant.**

- V e r s e s -

1. Sri Abdul Karim,
S/O. Late Nurul Haque,
Resident of South Ramnagar,
P.S.- West Agartala.
P.O.- Agartala,
District- West Tripura.
Pin-799001.
2. Sri Sattar Miah,
S/O. Late Aitali Miah,
Resident of Border Golchakkar,
Ramnagar, P.S.-West Agartala,
District- West Tripura (Owner of the bike
bearing No.TR-01C-4597).
P.O.- Agartala-799001

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. J. Majumder, Advocate.

For the respondents : None.

Date of hearing and : 21.07.2015.
delivery of judgment
& order.

Whether fit for reporting: **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the Superintendent of Police of Mobile Task Force (S.P., MTF) is directed against the award dated 30th July, 2011 passed by the learned Motor Accidents Claims Tribunal in T.S. (MAC) 504 of 2008 whereby, he allowed the claim petition and awarded a sum of Rs. 1,12,000/- in favour of the claimant along with interest.

2. Briefly stated the facts of the case are that the claimant filed a claim petition under Section 166 of the Motor Vehicles Act. In this claim petition, it was alleged that on 12.11.2007, the claimant was traveling as pillion rider on motor cycle bearing No. TR-01-C-4597. This Motor cycle was being driven by one Sattar Miah. According to the claimant, this motor cycle was at a normal speed and the vehicle No. TR-01-B-1077, jeep came at a high speed in a rash and negligent manner and hit the front portion of the motor cycle by the back side of the jeep. Both the driver and the pillion rider received grievous injuries and the petitioner became unconscious at the spot. The local people shifted the petitioner to the Agartala Medical College and G.B. Panth Hospital where he remained admitted from 12.11.2007 to 11.12.2007 i.e. for a period of one month. The petitioner claimed that he had received serious injuries and his leg has been permanently disabled and, therefore, claimed compensation of Rs.4,26,000/-.

3. The respondent No. 1 contested the claim petition and submitted that the true facts were that on 12.11.2007, the

commander jeep bearing No. TR-01-B-1077 of MTF organization had been taken by Head Constable Kajal Das along with Constable Purna Behari Jamatia from the MTF headquarters to deliver some urgent dak at police headquarters. The case of the respondent is that the vehicle was parked on the left side of the main road near police headquarters and that Purna Behari Jamatia had gone inside the headquarters to deliver the dak. After some time, the said constable returned to the vehicle after delivering the dak papers and when the vehicle had just been started there was a severe jerk and it was found that the motor cycle had hit the jeep from behind. According to the respondents, both the driver and the constable got down and noted the motor cycle number. There were 3 persons on the motor cycle and one of them was the petitioner. It was therefore contended that there was no fault of the driver of the jeep.

4. Issues were framed and evidence was led.

5. The learned Tribunal held that the claimant in his deposition had categorically stated that the offending jeep suddenly took a back turn without any caution or signal and dashed into the motor cycle and the accident occurred due to rash and negligent driving of the offending vehicle. According to the learned Tribunal, there was virtually no cross-examination of the claimant and he has discarded the statements of the driver and Constable Purna Behari Jamatia, who were admittedly present at the spot. The learned Tribunal, thereafter, passed an award of Rs.1,12,000/- along with interest.

6. Mr. J. Majumder, learned counsel for the appellant submits that the learned Tribunal gravely erred in holding that the negligence was of the driver of the jeep. He submits that from the evidence on record it is apparent that the case set up in evidence is different to that which was set up in the original pleading. He also submits that admittedly, the jeep was hit from behind and therefore, it was for the motor cycle driver to explain how the jeep had been hit from behind. He lastly submits that the learned Tribunal has gravely erred in ignoring the statements of the driver of the jeep and the persons traveling in the vehicle.

7. At the outset, I may observe that in the claim petition, it was stated that when the motor cycle reached in front of 'Trinayani Club', at that time the jeep vehicle suddenly tried to turn back and hit the front portion of the bike. While appearing in the witness box, the claimant has filed an affidavit, which is a carbon copy of the claim petition and nothing further has been said. In cross-examination, he admitted that he was the pillion rider of the motor cycle and Sattar Miah was the driver of the motor cycle. A suggestion was put to this witness that the motor cycle dashed into the jeep from behind since the motor cycle was being driven in a rash and negligent manner. He denied this suggestion. A suggestion was also put to him that the driver of the motor cycle did not have a driving license, but he denied this suggestion.

8. The claimant did not examine the driver of the motor cycle. The best person to depose as to how the accident happened

was the driver of the motor cycle. At the cost of repetition it is stated that the admitted case is that the motor cycle hit the rear portion of the jeep. When a vehicle hits the rear portion of the vehicle in front then presumption will be that the person coming from behind was at fault. It is the person who was behind and who has seen the traffic in front who has to be careful. Assuming for the sake of argument that the jeep was reversing then also the person who was behind could have noticed that there is a jeep parked there and he should not have gone so close to the jeep. In any event this was something which only Sattar Miah could have deposed and the pillion rider i.e. the claimant could not depose about what was going on in the mind of Sattar Miah. We must remember that in a motor cycle, the pillion rider is seated immediately behind the driver and normally, it is not possible for him to see what is happening in front of the motor cycle. The driver of the jeep stepped into the witness box and stated that he had not reversed the vehicle and that he had just started the vehicle when it was hit from behind. Similar is the statement of Purna Behari Jamatia. He denied the suggestion that he suddenly put his vehicle in back gear and then dashed the motor cycle. In my view, if a vehicle is standing at a particular spot even if it is put into reverse gear, it can never move fast immediately. It would take time to gather speed. Admittedly, this vehicle was parked outside the police headquarters and the story of the petitioner that it turned back does not appear to be correct. Assuming that instead of turning back what the party meant was that it suddenly reversed then also I am of the view that the negligence is not of the jeep

driver because there is nothing on record to show what precaution the motor cycle driver took while driving the vehicle.

9. The learned Tribunal heavily relied upon the fact that in the police case the driver of the jeep was charge sheeted. He, however, totally ignored the fact that the FIR in the case was filed more than one month after the accident had taken place and the driver of the jeep had been acquitted in the criminal case. Merely because a charge sheet has been filed against the driver is not a ground to hold that he is negligent. Negligence has to be proved on the basis of the evidence led on the record of the Tribunal. I am also of the view that the petitioner failed to explain the abnormal delay of one month in lodging the FIR. Admittedly, he was accompanied by at least one other person i.e. the driver of the motor cycle. Even if the claimant was injured, the driver of the motor cycle at least should have lodged an FIR immediately after the accident. The FIR has been lodged by the brother of the claimant more than one month after the alleged accident.

9. The accident is not disputed, but the question is who was at fault. It stands clearly proved that the jeep was parked outside the police headquarters and it was hit from behind by the motor cycle. In such a circumstance, the principle liability will be that of the motor cycle driver. The driver of the motor cycle is the real brother of the owner of the motor cycle. There is no insurance of the motor cycle pleaded or proved on record. Therefore, I hold that the liability to pay the compensation as assessed by the

learned Tribunal is only that of the owner of the motor cycle Sattar Miah.

10. The appeal is allowed in the aforesaid terms. The appellant is held not liable to pay the compensation and the liability to pay the compensation is fixed on Sattar Miah. The amount, if any, deposited by the State in this appeal, shall be returned to the Department concerned on the learned counsel filing a formal application to the Registrar Judicial giving details of the Bank Account or other Bank details of the appellant-Department.

CHIEF JUSTICE

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