

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.02 OF 2009

1. Md. Abu Taher Miah,
S/O. Lt. Ali Ahamed,
Resident of Vill. + P.O. Mohanbhog,
P.S.-Melaghar,
District-West Tripura.

Presently residing at:- vill.-Hathicherra,
P.O.-Dakshin Maharani, P.S.-R.K. Pur,
Dist.-South Tripura.
2. Jahar Ali,
S/O. Abu Taher Miah,
Resident of Vill. + P.O. Mohanbhog,
P.S.-Melaghar,
District-West Tripura.

Presently residing at:- vill.-Hathicherra,
P.O.-Dakshin Maharani, P.S.-R.K. Pur,
Dist.-South Tripura.

..... Claimant-Appellants.

- V e r s u s -

1. Sri Nitya Gopal Saha,
S/O. Suresh Chandra Saha,
Resident of vill. Netajinagar,
P.S.-Bishalghar,
Dist.-West Tripura.
(Owner of TR-01-3273 (commander jeep)).
2. The Divisional Manager,
United India Assurance Company Limited,
Agartala Branch, Central Road,
Kaman Chowmuhani,
P.S. West Agartala, District-West Tripura.
(Insurer of TR-01-3273 (commander jeep)).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. N. Majumder, Advocate.

For the respondent No.2 : Mr. S.D. Choudhury,
Advocate.

Date of hearing and delivery of judgment and order. : 19.01.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal is directed against the award dated 23-12-2004 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura in case No. T.S.(MAC) 282 of 2000 whereby he dismissed the claim of the petitioner solely on the ground that the petitioner had failed to prove that he had received injuries in an accident which took place on 30-01-2000 with commander jeep bearing No.TR-01-3273. The claimant Jahar Ali was a minor at the relevant time and the petition was filed by Md. Abu Taher Miah, his father. The petition was not properly constituted inasmuch as the minor was not even made a party in the claim petition.

2. This Court has repeatedly held that when a claim is filed on behalf of a minor or any other person suffering from a disability whereby that person cannot file a suit, the suit has to be filed in the name of the said person but the same may be filed by the natural guardian or next friend, as the case may be. The suit has to be titled "xxx minor through his guardian and next friend yyy". The guardian or next friend has no personal interest of the matter and cannot file a suit in his own capacity claiming it to be on behalf of the minor. However, because this has been the practice prevalent in Tripura for a long time, I am treating this

appeal to be filed by Jahar Ali alone since he has attained majority by now.

3. The allegation of the petitioner was that the injured minor son Jahar Ali was hit by vehicle No.TR-01-3273 and thereafter, he was admitted at the hospital in Melaghar and then at G.B. Hospital, Agartala. The FIR was not filed on 30-01-2000. The FIR was filed on 08-03-2000 and in the FIR it is stated that the accident took place on 06-02-2000. The learned Tribunal rightly held that since the accident was alleged to have taken place on 06-02-2000, then the injuries suffered by Jahar Ali could not have taken place in the accident which took place on 06-02-2000 since he was already admitted in hospital on 30-01-2000.

4. An application under Order XLI Rule 27 of the Code of Civil Procedure has been filed to place on record the FIR, police report and medical documents. These in no way detract from what is written in the complaint filed by the father of the injured who was a minor. No affidavit has been filed on behalf of the father of the injured that the statement given by him to the police is incorrect. The father appeared in the witness box and at that time stated that the accident had taken place on 30-01-2000 but did not say a word as to why in his written complaint to the police he had stated that the accident took place on 06-02-2000. However, from the record I find that when the complainant was admitted in the Melaghar Hospital on 30-01-2000, it has been clearly recorded that he suffered injuries in a road traffic accident.

5. Time and again, this Court is observing that even in such cases where it is clearly stated that a claimant has suffered injuries in a motor vehicle accident, no effort is made to record or to lodge an FIR. Therefore, I feel that certain instructions are required to be issued in this regard.

6. As far as the merits of the case are concerned, the claimant now wants to rely upon certain documents which had not been placed before the trial Court. Furthermore, the father will have to step into the witness box and clarify whether his statement in Court is correct or whether what he has stated in his complaint dated 08-03-2000 is correct. The Insurance Company is the only party contesting the case, since the owner appears to have washed his hands off the matter. The driver was not even made a party to the claim petition. This Court has repeatedly held that though the driver may not be a necessary party, he is definitely a proper party in such petitions. The owner is held liable to pay compensation only by applying the principle of vicarious liability which means that the master is liable for the acts of his employee but the master cannot be held liable unless the employee is first found liable and normally the driver must be made a party to the claim petition. It is only if the driver has left job or cannot be served, then his non-appearance in the case is not fatal to the prosecution.

The Insurance Company is held liable because it has entered into a contract of insurance with the insured. All three, i.e. the driver, the owner and the Insurance Company must be held jointly and severally liable to pay the compensation though

ultimately because of the contract of insurance, it is only the Insurance Company which is liable to deposit the amount.

7. When accidents of this nature take place, there is a criminal offence which is also involved. This criminal offence is a cognizable offence either falling under section 279 of the Indian Penal Code and if grievous injury or death is caused, then sections 337, 338 and even 304A can be attracted. This is a criminal offence and, therefore, it is the bounden duty of the medical authorities as well as the police to lodge an FIR as soon as an accident is reported. Therefore, the following directions are issued:-

(i) That, henceforth, in any case where to the doctor or the hospital it is reported that the injured has suffered injuries in a road traffic accident involving a motor vehicle, he shall clearly mention that in the admission register/prescription or any other document depicting the history given by the patient or his attendants as the case may be;

(ii) Thereafter, the concerned Doctor/Medical Officer/ Superintendent of the Hospital shall immediately inform the concerned Police Station about the fact that a patient who has suffered injuries in a motor vehicle accident has been brought to the hospital and FIR be lodged accordingly. It is, however, made clear that the primary duty of the doctor is to treat the patient and he can send the matter to the police after the treatment of the patient is over;

(iii) The police shall immediately lodge a G.D. entry report and if a cognizable offence is disclosed shall try and find out which is the vehicle, if any, involved in the accident;

(iv) The police shall also ensure that the identity of the driver is established so that proceedings against the driver are initiated under the Indian Penal Code and the provisions of the Motor Vehicles Act.

8. Even the Motor Accident Claims Tribunal can in a given case direct the claimant/the owner of the vehicle to disclose the name of the driver because if an accident has taken place due to the rash and negligent driving of the driver, then once the name of the driver is disclosed, even the Motor Accident Claims Tribunal can direct the police to initiate criminal proceedings against the driver.

9. As far as the present case is concerned, keeping in view the fact of the case, the case is remanded to the learned Motor Accident Claims Tribunal for decision afresh. It is made clear that the Tribunal shall decide the matter strictly on the basis of the evidence led before it and the Insurance Company shall also be given a reasonable opportunity to rebut the evidence, if any, led by the claimant. The documents which are now sought to be produced shall be proved by the claimant in accordance with law and the principles of the Evidence Act. Mere tendering of the document will not amount to proof of the said document.

10. Since the matter has been remanded at the instance of the claimant, the learned Tribunal if it finally decides the claim petition in favour of the claimant shall take into consideration these factors while awarding interest, if any.

11. A copy of this judgment shall be sent to the Director General of Police as well as the Principal Secretary, Health, to the Government of Tripura who shall ensure that a copy of this judgment is sent to all Police Stations, Government hospitals and doctors.

A copy of this judgment shall also be sent to the Secretary of the Tripura Medical Council and it will be the duty of the Chairman or President of the Tripura Medical Council to ensure that every doctor practicing in the State is informed about this order of the Court. In case of violation of the directions issued by this Court, the concerned doctor/police official shall be liable to be dealt with under the Contempt of Courts Act.

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

13. Send down the lower court records forthwith.

CHIEF JUSTICE