

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.40 OF 2009

Sri Bikash Das,
S/O. Sri Monoranjan Das,
Resident of Bijohnagar, Sabroom,
P.S.-Sabroom, District-South Tripura.

At present residing under
C/O. Smti. Laxmi Rani Sarkar,
near grocery shop of
Sri Arjun Debnath, bridge/Ranir
Bazar Primary Health Centre,
P.O. Durganagar, P.S. Ranir Bazar,
District West Tripura.

..... Appellant.

- V e r s u s -

1. Sri Sakti Biswas,
S/O. Sri Abinash Ch. Biswas,
Bridhyanagar, P.S. Ranir Bazar,
District West Tripura.
(Owner of the vehicle No.TR-01-3109, Commander Jeep).
2. National Insurance Company Ltd.,
Registered Office 3, Middleton Street,
Post Box No.9229, Kolkata-00071,
Division XI, 19, R.N. Mukherjee Road,
Kolkata, represented by the
Divisional Manager,
National Insurance Company Ltd.,
42 Akhaura Road, Agartala,
P.S. West Agartala, District West Tripura.
(Insurer of the vehicle No.TR-01-3109, Commander Jeep).
3. The Commandant,
37 Bn. B.S.F., Kasiyamangal,
P.S. Teliamura, District West Tripura.
(Owner of the vehicle No.AS-01-L-7704, Maruti Gypsy).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. U.K. Majumder, Advocate.
For the respondent No.2	: Mr. P. Gautam, Advocate.
For the respondent No.3	: Mr. P.K. Biswas, Asstt. S.G.

Date of hearing and delivery of judgment and order. : 04.02.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimant is directed against the award dated 20-05-2009 passed by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in case No. T.S.(MAC) 634 of 2005 whereby he has dismissed the claim petition filed by the victim on the ground that since the claim of the petitioner is not covered by 3rd party rights under the policy of insurance, the petition itself is not maintainable.

2. Briefly stated, the facts of the case are that the claimant was travelling in commander jeep bearing No.TR-01-3109 from Champaknagar to Agartala as assistant driver in the said vehicle. An accident took place between this vehicle and Maruti Gypsy bearing No.AS-01-L-7704 owned by the Border Security Force (BSF). It was alleged that the accident occurred due to the rash and negligent driving by the drivers of both the vehicles. The factum of accident was not denied but both sets of parties contested the claim petition on other grounds.

3. The learned Tribunal held that the accident had taken place due to the rash and negligent driving of the commander jeep in which the claimant was employed. This finding has not been challenged in this Court.

4. The Tribunal, in my view, did not even understand the basic principles with regard to grant of compensation. The liability to pay compensation to an injured person is an age-old liability under the Law of Torts. The Motor Vehicles Act codifies this liability when the injury takes place due to the use of a motor vehicle. The wrongdoer, in fact, is the driver of the vehicle and first of all, it is his wrongdoing for which he is made liable to pay the compensation. Thereafter, the principle of vicarious liability is applicable whereby the master is held liable for the wrongful acts of his servant. The Insurance Company becomes liable due to a contract entered between the Insurance Company and the owner of the vehicle whereby the Insurance Company agrees, on payment of premium to indemnify the insured for the damages which he may be liable to pay on account of the accident.

5. Section 146 of the Motor Vehicles Act, 1988 (M.V. Act) provides that no person other than a passenger shall use or cause to be used a motor vehicle in a public place unless it is covered by a policy of insurance. It is a penal offence to knowingly ply a vehicle which is not duly insured.

6. Section 147 of the M.V. Act lays down the requirements of the policy and limits of the liability and reads as follows:-

“147. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.”

7. The learned Tribunal has rejected the claim petition on a totally ludicrous plea that since the policy of insurance only covered 3rd party liability and the claimant was not a third party, therefore, the petition was not maintainable. Even if this situation

was correct, the driver and the owner could not escape their liability to pay compensation. The claim petition is maintainable though in a case where the Insurance Company is not liable to pay the compensation in terms of the policy, then it may not be held so liable but then also the liability will be of the wrongdoer and applying the principle of vicarious liability of the owner.

8. If the reasoning given by the learned Tribunal is to be accepted, then no claim petition would be maintainable where a vehicle is not duly insured. That would be turning the law on its head and making the wrongdoer who has violated the provision of section 146 of the M.V. Act immune from action even though he has committed a tort. That can never be the legislative intent and even otherwise the legal provision is absolutely clear. Therefore, I am of the considered view that the judgment of the learned Tribunal is totally illegal and is bound to be set aside.

9. I am also of the view that the learned Tribunal gravely erred in holding that the petitioner was not a third party only on the ground that he was travelling in the vehicle. The case as set up and as accepted by all the parties was that the claimant was employed as an assistant driver in the commander jeep. Therefore, he was travelling in the jeep not as a fare paying or gratuitous passenger but as an employee of the owner. He was thus a workman. Section 147 of the M.V. Act clearly applies to such a situation because it provides that in cases of workmen, the policy of insurance shall not be required to cover any liability in respect of death or injury other than the liability arising under the Workmen's

Compensation Act. In cases of workmen, the liability of the Insurance Company is limited to the extent of compensation payable under the Workmen's Compensation Act and if any higher compensation is awarded, then that has to be paid by the owner and driver jointly and vicariously if they are both parties to the petition.

10. I have perused the policy of insurance which is on record. It appears to be an act policy and no liability other than the liability mentioned in Section 147 of the M.V. Act is covered and, therefore, the liability of the Insurance Company has to be limited to the amount payable under the Workmen's Compensation Act.

Now, I proceed to decide the quantum of compensation payable.

11. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases where the claimant is a young

unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

12. In the present case, the evidence led on record shows that the claimant suffered a fracture and was admitted in G.B. Hospital on 30-09-2005 and discharged therefrom on 31-10-2005, i.e. after 32 days. The petitioner also placed on record the disability certificate issued which shows that he has suffered 10% permanent disability. Keeping these factors into consideration, the case has to be decided. The petitioner was again admitted in hospital on 01-02-2007 and discharged therefrom on 08-02-2007 and in discharge certificate it is mentioned that the fracture has united. Therefore, the total period of hospitalization works out to 40 days.

13. As far as the income of the injured is concerned, there is no document and even the owner of the vehicle has not come to prove what was the income of the injured but in the year 2005 even the daily wages of an assistant of driver would have been at least Rs.100/- per day or Rs.3,000/- per month and keeping in view the future prospects, the income is assessed at Rs.4,500/- per month for assessing the future loss of income.

As far as loss of income is concerned, the claimant remained in hospital for 40 days. It can easily be assumed that he could not have worked for three months and loss of income at Rs.3,000/- per month works out to **Rs.9,000/-**.

14. As far as medical expenses are concerned, the cash memos for a sum of Rs.9,108/- have been submitted. Some cash memos may not have been kept and, therefore, I award **Rs.15,000/-** for medical expenses.

15. As far as attendant charges are concerned, in the year 2005 even if the cost of one attendant is taken at Rs.150/- per day, there would have been two attendants to attend upon the patient who is hospitalized and the cost of two attendants works out to Rs.300/- per day and for 40 days, it works out to **Rs.12,000/-**.

16. As far as future loss of income is concerned, as I assess the future income at Rs.4,500/- per month and the disability is 10%, I assess the loss at Rs.450/- per month or Rs.5,400/- per year. The claimant was 23 years and, therefore, multiplier of 18 is applied and the compensation under this head works out to **Rs.97,200/-**.

17. The claimant is also awarded **Rs.10,000/-** for pain and suffering and **Rs.10,000/-** for loss of amenities and future discomfort in life.

Therefore, the total award works out to Rs.(9,000 + 15,000 + 12,000 + 97,200 + 10,000 + 10,000) = Rs.1,53,200/- (rupees one lakh fifty three thousand two hundred).

18. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is set aside and the claimant is

awarded compensation of Rs.1,53,200/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 12% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

19. Now comes the question as to what is the liability of the Insurance Company. As held by me above, in this case the policy is only an act policy and in terms of the proviso to sub-section (1) of section 147 of the M.V. Act, the liability of the Insurance Company is limited to the liability arising under the Workmen's Compensation Act since no extra premium has been paid by the owner for coverage of wider liability.

The income of the injured has been taken at Rs.3,000/- per month and as per section 4 of the Workmen's Compensation Act, 60% of the monthly wages have to be multiplied by the relevant factor to assess the total compensation in case of 100% liability and to arrive at 10% disability, it shall be 10% of the said amount. The claimant was earning Rs.3,000/- per month and 60% of that works out to Rs.1,800/-. As per Schedule IV of the Workmen's Compensation Act, in the case of a person aged 23 years, the relevant factor is 219.95 and the compensation payable under the Workmen's Compensation Act would be, in case of total liability, Rs.3,95,910/- but in case of 10% liability it will be Rs.39,591/- only.

Therefore, the liability of the Insurance Company is limited to paying Rs.39,591/- along with interest @ 12% per annum from the date of the accident till payment of the awarded

amount because under the Workmen's Compensation Act, the interest is payable from the date of accident itself. The excess amount of compensation can be recovered by the claimant from the owner of the vehicle.

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

21. Send down the lower court records forthwith.

CHIEF JUSTICE