

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.33 of 2009

Sri Buttu alias Sri Bidhayak Chowdhury,
S/o Late Ranabir Chowdhury of Jogendranagar,
P.S. East Agartala, District - West Tripura.

..... *Appellant.*

- Vs -

1. Sri Dulal Debnath,
S/o Sri Ranjit Debnath of Bankumari (Nath para),
Jogendranagar, P.S. East Agartala,
District - West Tripura.
2. The New India Assurance Company Ltd.,
Hariganga Basak Road,
P.S. West Agartala,
District - West Tripura.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Ms. S Choudhury, Advocate.

For the respondents : Mr. P Gautam, Advocate.

Date of hearing : 18.12.2014.

Date of judgment : 13.01.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This appeal by the claimant is directed against the award dated 17th April, 2009 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No.TS(MAC)352 of 2002

whereby he dismissed the claim petition on the ground that the claimant has failed to prove that he had suffered injuries in a motor vehicle accident.

2. Briefly stated the facts of the case are that the claimant alleged that on 7.3.2004 at about noon when he was walking on the road he was hit by an auto-rickshaw bearing registration No.TR-01A-4022. The vehicle was insured with the New India Insurance Company Ltd. According to the claimant, he remained under treatment for a long time and he, accordingly, claimed compensation of Rs.8,00,000/- After trial the learned Tribunal rejected the claim petition on the ground that the claimant has failed to prove that he received injuries in a motor vehicle accident.

3. The main grounds which weighed with the learned Tribunal were that though the accident is alleged to have taken place on 7.3.2004 the complaint was lodged with the police on 14.6.2005 after more than 1 year and 2 months and there was no explanation given for the delay. Further no FIR was lodged with the police and only an entry was made in the General Diary Book. The other main ground which weighed with the learned Tribunal was that even in the medical record there is no indication that the claimant suffered an injury in a *‘Road Traffic Accident(RTA)’*.

4. I have heard Ms. S Chaudhury, learned counsel for the claimant-appellant and Mr. P Gautam, learned counsel for the insurance company.

5. It is urged by Ms. Choudhury that there was delay in lodging the complaint with the police because the complainant was under treatment during this entire period. It is further stated that if the ‘doctors’ had not recorded the fact that injuries were received in a motor vehicle accident, it is not a fault of the claimant-appellant.

6. I have gone through the entire pleadings and the evidence and I find that even the owner of the vehicle had not admitted the accident. The insurance company obtained permission under Section 170 of the Motor Vehicles Act to contest the claim on their own grounds. The claimant filed his evidence by way of affidavit. In the said affidavit the only averment with regard to the FIR is as follows :

“5. That, the said incident informed and entered in General Diary of Bishalghar P.S. vide G.D. Entry No.615, dated 14.6.2005.”

There is no explanation worth the name as to why the complaint was lodged after one year and three months. Not a word has been said in FIR in this regard. It would also be pertinent to mention that the ‘G D Entry’ which has been proved on record clearly shows that the same was lodged by Smt. Lila Chowdhury mother of the petitioner. She has also not been examined as a witness. I also fail to understand why the mother should lodge the FIR when the son is a

major, who was aged about 26/27 years and had totally recovered at the time of lodging the FIR.

7. The claimant is a businessman and he makes sweets. He is not a rustic illiterate villager. Therefore, I am in agreement with the learned Tribunal that there is no explanation why there is such a long delay in filing the complaint with the police. No material has been placed on record to show that the police actually acted on this complaint. As far as the medical evidence is concerned, it shows that the claimant was admitted in G.B.P Hospital, Agartala on 7.3.2004 and discharged on 1.4.2004 with '*compound fracture of upper 1/3rd tibia(RL)*'. There is no mention as to how these injuries were sustained.

8. The practice in the State of Tripura like in all other states in the country is that when injuries reported to have taken place in a motor vehicle accident the words "*RTA*" are always mentioned in the discharged certificate and other hospital record. The claimant was discharged from hospital on 1.4.2004 and, thereafter, he had to attend OPD. If the accident had happened there was no reason why the FIR should not have been lodged in March or April, 2004 itself. The claimant, thereafter, went for treatment to Sherwood Hospital Pvt. Ltd., Silchar on 31.5.2004 but again in the record of the hospital at Silchar there is no reference to the injury being received in the motor vehicle accident. This Court can take judicial notice of the fact that if

injuries of this nature are caused in a motor vehicle accident the doctor normally writes down the history as to how the injuries have been caused but in the present case, there is no evidence at all in this regard. The claimant was discharged from Sherwood Hospital on 07.6.2004 and there is no document on record to show that he received any treatment thereafter. Therefore, the claim of the appellant that he was unable to file the complaint till June, 2005 is totally false since he has produced no record of his treatment after June, 2004.

9. Normally this Court takes a very liberal attitude in motor vehicle cases. Unfortunately, as far as the State of Tripura is concerned, my experience has been that a very high percentage of false cases are being filed in the State. The present case also appears to be a totally false case because there is no contemporaneous evidence to support the allegation of the petitioner that he received injuries in a motor vehicle accident. It would be pertinent to mention that even the name of the driver of the motor vehicle has not been mentioned either in the claim petition or in the evidence.

10. In view of the aforesaid discussion, the appeal is dismissed. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu