

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 97 of 2008

Appellant :

Sri Prasenjit Saha,
S/o. Sri Bidhulal Saha, resident of
Briddhyanagar, P.S-Ranirbazar, Dist-West
Tripura.

By Advocate :

Mr. A. Nandi, Adv.

Respondent No. 1:

1. Tukan Roy alias Sibasish Roy,
S/o. Sri Jagadish Roy resident of Motor
stand P.O + P.S- Ranirbazar, Dist.- West
Tripura.
(Owner of the vehicle bearing No. TR-01-E-
0296).

Respondent No.2 :

2. The Branch Manager,
The New India Assurance Company
Limited, Mantribari road, Agartala, P.S-West
Agartala, Dist.-West Tripura.
(Insurer of the vehicle bearing No. TR-01-
E-0296).

By Advocate :

Mr. G. S. Das, Adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **5th February, 2015.**

Judgment & Order : **12th February, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

This appeal by the claimant is directed against the award dated
26.05.2008 passed by the learned Motor Accident Claims Tribunal, West
Tripura, Agartala whereby he dismissed the claim petition on the ground that

the claimant had not proved that he had suffered injury in a road traffic accident out of the use of Maruti vehicle bearing registration No. TR-01-E-0296.

[2] Briefly stated, the facts of the case are that the claimant Prasenjit Saha filed a claim petition under Section 166 of the M.V. Act, 1988 claiming that he suffered head injury in a road traffic accident involving vehicle bearing registration No. TR-01-E-0296 owned by Sri Tukan Roy alias Sibasish Roy, son of Sri Jagadish Roy. It was alleged that when the claimant was returning to his home from Ranirbazar motor stand towards Bridyanagar at about 4 p.m the offending vehicle was moving towards Ranirbazar at a high speed and the driver of the vehicle attempted to avoid a probable accident since a dog had dashed across the road and resultantly the claimant was injured. In the claim petition as originally filed the insurance company was mentioned as National Insurance Company Ltd.. However, by later amendment the name of the insurance company was changed to New India Assurance Co. Ltd.

[3] The owner of the vehicle admitted the accident but stated that while a passerby was returning from Bridyanagar from Ranirbazar in the middle of the road all of a sudden considering the contributory negligence on the part of the injured the accident occurred. It was further stated that the vehicle was duly insured and, therefore, the liability is handed over to insurance company.

[4] The New India Assurance Company Ltd. filed its written statements denying the allegation made in the claimant petition in toto and a specific plea was taken that no accident had taken place and the claim

petition had been filed by the petitioner in collusion with the owner of the vehicle and the same should be rejected. It was specifically pointed out that no police case was registered nor investigated by the police and, therefore, the liability to pay compensation was denied.

[5] The parties led evidence. The claimant stated that he met with the accident on 7.7.2004 and again repeated that the driver of the vehicle tried to avoid an accident with a dog and dashed against him. He received injuries and thereafter was admitted in G. B. P. Hospital and then referred to S.S.K.M Hospital, Kolkata. According to the claimant his family members were under the idea that the FIR with regard to accident had already been reported and, therefore, the report with regard to the accident was actually lodged on 1.8.2004 i.e. after he was discharged from G. B. P. Hospital.

[6] In cross-examination the claimant admitted that he had submitted the copy of the G. D entry dated 1.8.2004. The owner of the vehicle filed his affidavit and stated that his name was Sibasish alias Token Roy and stated that he was the owner of the Maruti Van and his vehicle was duly insured and had all other valid documents. He stated that his driver had told him about the involvement of the vehicle in the accident in question on 7.7.2004. He further stated that he discharged the driver and does not remember his name.

[7] The learned Tribunal found glaring contradictions in the case of the claimant and dismissed the claim petition. The learned Tribunal found that there was no evidence produced to show that the plaintiff was treated in G.B. P Hospital from 07.07.2004 to 29.07.2004 and no record of this treatment had been proved. The learned Tribunal also found that in the Out

Door Patient (OPD) ticket dated 31.07.2004 issued from SSKM Hospital, Kolkata it was mentioned that the petitioner had sustained injury on his head due to the fall on 10.07.2004. In another Out Door Patient ticket dated 03.08.2004 issued from S.S.K.M Hospital it was mentioned that the petitioner sustained head injury "by falling in an accident". Before the word "accident" another word has been deleted but it is quite obvious that the word was 'cycle' and the same has been over written. The learned Tribunal called for the General Diary Book from the police station at Ranirbazar which the claimant had not produced and found that on 01.08.2004 at 7.30 am Biswajit Saha, brother of the claimant had lodged the complaint with the police. In the said report the reason given for delay is that the brother was engaged in the treatment of the claimant injured whereas the case set up by the injured was that his family members were under the impression that the report had already been lodged. In the said G. D. Entry name of one Tapan Sinha was mentioned as the eye witness. Neither Tapan sinha nor Biswajit Saha were examined in support of the case by the claimant.

[8] With regard to the statement of the owner who had admitted the accident, the Tribunal found that this owner could not even remember the name of the driver which was unnatural. The owner in Cross-Examination stated that he could not even disclose what is the name of his advocate? In cross examination the owner of the vehicle stated that he had got the affidavit filed by him in examination-in-chief from Sri Asish Nandi, Advocate, who is in fact the counsel for the claimant. The learned Tribunal also found that the written statement filed by the owner had been received on behalf of the claimant by Sri Sajal Chakraborty, an advocate clerk and in the affidavit the said owner had also been identified by the very same Sajal Chakraborty.

The learned Tribunal came to the conclusion that there was collusion between the claimant and the owner of the Maruti Vehicle and that no accident had taken place.

[9] During pendency of this appeal, this Court to find out the truth had also obtained a report from the Medical Superintendent of the G.B. P Hospital, Agartala and now copy of the admission register has been received which actually shows that Prasenjit Saha was admitted in the hospital on 07.07.2004 with head injury falling road traffic accident. Therefore, to this extent the judgment of the learned Tribunal may not be correct and it appears that the claimant suffered the injury in an accident. However, I am still of the view that either the claimant suffered injuries while driving a cycle or he was hit by some unknown vehicle and thereafter in connivance with the owner this totally false case has been filed. While coming to this conclusion, this Court has taken into consideration a number of factors.

[10] In the G. D. Report which has been relied upon by the claimant, the cause of accident is stated to be that one Cow suddenly came from the road side and thereafter the Van dashed against the claimant. The case of the claimant is that it was a dog which dashed across the road. A cow cannot turn into a dog or vice-versa. The accident is alleged to have taken place on 07.07.2004 but no report was filed till 1st August, 2004. The explanation given by the claimant is that his family members were under the impression that the report had already been lodged with the police but on perusal of the G. D. entry shows that the brother had stated that since he was engaged with the treatment of the injured he did not file the complaint.

[11] When a person sustains serious injuries in a road traffic accident and the number of the vehicle is known, the complaint with the police should have been filed immediately and in fact it was the duty of the doctor also to have reported the matter to the police.

[12] In the G.D. entry name of witness is stated to be Tapan Sinha but neither Tapan Sinha nor Biswajit Saha were examined in Court. With regard to the medical record also there are many inconsistencies. No doubt, in the report now given by the G. B. Hospital it is mentioned that the claimant suffered injury in a road traffic accident but this Court cannot lose sight of the fact that in the outdoor patient ticket dated 31st July, 2004 which is prior to the report being lodged with the police the history given is history of fall on 10.07.2004. Apparently the patient was conscious and in all probability the history was recorded at the instance of the patient.

[13] The next outdoor patient ticket is of 3rd August, 2004 and it is mentioned that he suffered injury in a cycle accident. The word 'cycle' has been scored off. It is contended by Sri Nandi that it is not proved that the claimant has scored off the word 'cycle'. I have perused the original Out-Door Patients slip of 3rd August, 2004 and I find that the word 'cycle' has been attempted to score off. It is apparent to the naked eye that this scoring off has not been done with the same pen and ink used by the doctor to write down the history. The colour of the ink and the size of the point of the pen are different. It is apparent that the word 'cycle' was scored off at a later date. Therefore, it was for the claimant to explain how this word 'cycle' was scored off.

[14] The collusion between the owner and the insurance company is writ large in the present case. The owner filed a written statement signed by him as Sobasish alias Token Roy. Surprisingly, the owner also admitted that his vehicle was insured with the National Insurance Co. Ltd., Agartala though in fact, later it was found that the vehicle was insured with the New India Assurance Company Ltd. The written statement is signed by Sri Biplab Bhattacharji, Advocate and as pointed out by the learned Tribunal the copy on behalf of the counsel for the claimant has been received by Sri Sajal Chakraborty, an advocate Clerk on 18.07.2005

[15] Shockingly, the owner of the vehicle admits in cross examination that the affidavit by which he submitted his cross examination-in-chief as evidence was prepared by the counsel for the claimant. On the affidavit before the oath Commissioner the owner Sibasish alias Token Roy has been identified by Sri Sajal Chakraborty, the advocate clerk of the counsel for the claimant. Nothing more is required to prove the connivance between owner and the claimant.

[16] This owner who filed a written statement and affidavit supporting the claimant very conveniently forgot the name of the driver who according to him had caused the accident and reported the matter to him. The learned Tribunal rightly held that such conduct is highly unnatural. No person can forget the name of the driver.

[17] Another shocking aspect of the matter is that though the owner claimed that he had forgotten the name of the driver, he filed two sets of documents. The first set of document was filed along with a list of documents on 19.07.2005. In the index there is mention of four documents

i.e. token tax, registration certificate, insurance policy and driving licence. But in fact only the record of the tax, the registration and the insurance policy was filed and no driving licence was filed. On 8.8.2007 a document was filed which was purported to be the driving licence of Jotish Ch. Dey. It would be pertinent to mention that this list of documents is signed only by Sri Biplab Bhattacharji and is not signed by the owner of the vehicle. What has been filed is a photocopy of a driving licence. If the owner could file the driving licence on 8.8.2007 why would he one month later say that he did not remember the name of the driver. It is apparent that he was not even aware whose driving licence had been filed before the Tribunal.

[18] Another disturbing aspect of the matter is that the copy of the driving licence which has been filed shows certain over writing in the number but it is clear that the driving licence is valid only from 16.11.2006 to 14.11.2009. An attempt appears to have been made to conceal the driving licence number. The accident is alleged to have occurred on 7.7.2004 and one fails to understand how this driving licence is relevant to held that on the date of accident the driver hold a valid driving licence.

[19] In view of the above discussion, I am clearly of the view that the leaned Tribunal was fully justified in coming to the conclusion that the petitioner-claimant and the owner of the vehicle had connived with the each other in filing a false claim and trying to fasten the liability on the insurance company. Even if the accident was proved, the insurance company could not have been held liable because the driving licence of the driver produced by the owner does not show that it was valid on the date of accident.

[20] I am constrained to observe that in the State of Tripura in the last two years, I have seen a large number of totally false cases being filed claiming compensation under the Motor Vehicles Act. Normally, this Court is very sympathetic to claimants in motor accident cases and the evidence is never scanned very carefully. The Courts may be liberal and sympathetic to victims of motor vehicle accidents but this sympathy cannot be extended to such an extent that false cases are permitted to be filed and claimants should not be awarded money when the allegations made in the claim petitions are totally false. I have carefully gone through the entire evidence, both documentary and oral and in my opinion, there is no doubt that the learned Tribunal was fully justified in coming to the conclusion that a totally false case has been set up by the claimant.

[21] It appears to me that the claimant suffered injuries when he fell down from a cycle on the road, but was not hit by the vehicle in question and false case was lodged in connivance with the owner of the vehicle. Shockingly the owner taking advantage of the fact that his vehicle was insured admitted the claim. Therefore, this appeal is dismissed.

[22] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE