THE HIGH COURT OF TRIPURA
A G A R T A L A
MAC App. No. 86 of 2010

Claimant-Appellants:

1. Smti. Kalpana Debnath.
W/o Late Sunil Chandra Debnath.

2. Shri Ratan Debnath,
S/o. Late Sunil Chandra Debnath.

3. Smt. Dipika Debnath,
D/o. Late Sunil Chandra Debnath.

All are residents of village-East Gakulnagar, P.S. Bishalgarh, Dist. West Tripura.

By Advocates :

Mr. K.N. Bhattacharji, Sr. Adv.
Mr. P.S. Roy, Adv.

Respondents :

1. Sri Parimal Bhowmik,
S/o. Shri Radhakanta Bhowmik, resident of vill. Cheshrimile, West Tripura District (Owner of Vehicle No. TR-01-J-1518, Canter Truck)

2. The Oriental Insurance Co. Ltd.,
Central Road, Kaman Chowmuhani, P.S. West Agartala, P.O. Agartala, West Tripura District, Represented by the Branch Manager. (Insurer of vehicle No. TR-01-J-1518, Canter Truck)

By Advocates :

Mr. T. D. Majumder, Adv.
Mr. P. Gautam, Adv.

CO (FA) No. 01 of 2011

O.P-Cross Objector-Respondent :

Sri Parimal Bhowmik,
S/o. Late Radha Kanta Bhowmik, Village-Cheshrimile, P.O. Cheshrimile P.S. Bishramgang, District-West Tripura (Owner of Vehicle No. TR-01-J-1518, Canter Truck).

By Advocate :

Mr. T. D. Majumder, Adv.

Appellant-Respondents :

1. Smti. Kalpana Debnath.
W/o Late Sunil Chandra Debnath.

2. Shri Ratan Debnath,
S/o. Late Sunil Chandra Debnath.

3. Smt. Dipika Debnath,
D/o. Late Sunil Chandra Debnath.

All are residents of village-East Gakul Nagar, P.S. Bishalgarh, Dist. West Tripura.

Opposite Party-Respondent :

4. The Oriental Insurance Co. Ltd.,
Represented by the Branch Manager. Agartala Branch, Central Road, Kaman Chowmuhani, P.S. West Agartala, P.O. Agartala, Tripura.
(Insurer of vehicle No. TR-01-J-1518, Canter Truck)

By Advocates :

Mr. K.N. Bhattacharji, Sr. Adv.
Mr. P.S. Roy, Adv.
Mr. P. Gautam, Adv.

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

Date of hearing &
Judgment & Order : **6th July, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Both the appeal and the cross objection are being disposed of by a common judgment since the both arise out of the award of the learned Motor Accident Claims Tribunal, Agartala, West Tripura dated 21.09.10 in Case No. T.S(MAC) 65 of 2009 whereby the learned Tribunal awarded compensation of Rs.5.30,000/- in favour of the claimants.

[2] The claimants are the widow and children of Late Sri Sunil Chandra Debnath. In the claim petition it was stated that on 26.08.2008 at 9.30 pm the deceased Sunil Chandra Debnath was standing on the side of the road when he was hit by vehicle No. TR-01-J-1518. The owner of the truck did not deny the accident and the occurrence was admitted. The learned Tribunal on the basis of an affidavit filed by the employer of the deceased held his income to be

Rs.5,000/- per month and accordingly assessed the compensation at Rs.5,20,000/- and Rs.5000/- was awarded for funeral expenses and Rs.5000/- for loss of consortium. The claimants have filed the appeal claiming enhancement of compensation. The learned tribunal however held that the deceased was travelling in the truck in question as a gratuitous passenger and as such the insurance company was not liable to pay the compensation.

[3] One appeal has been filed by the claimants claiming enhancement and the cross-objection has been filed by the owner in which it is submitted that the entire liability should be fastened upon the insurance company.

[4] I shall first take up the issue of quantum of compensation to be awarded. In the claim petition it was stated that the deceased was a businessman aged about 45 years and earning Rs.6,000/- per month. In para-22 of the petition it is stated that the deceased Sunil Chandra Debnath was a businessman. However, what was the nature of the business was not stated in the claim petition at all. Smt. Kalpana Debnath, the widow of the deceased appeared in the witness box. She is not an eye witness to the occurrence but in her examination-in-chief she now changed her version. Whereas earlier it had been stated that the deceased was a businessman without specifying what was the nature of his business while appearing in the witness box the claimant stated that her husband was an employee in a cloth shop Chunilal Textiles at Battala and his monthly salary was about Rs.5000/- per month. She also produced a certificate issued by M/s. Chunilal Textiles showing that the income was Rs.5,000/- per month. The son and daughter did not step into the witness box. The mother has not stated a word in her examination-in-chief as to what is the age of the son and daughter. She has not stated whether they were employed or not, whether they were studying or not. The affidavit is totally silent in this behalf. The claimant also examined one Shambhunath Saha who is a businessman and who stated that the deceased was a employee working in his shop at a salary of Rs.5,000/- per month. According to him the deceased was working with him for more than six years. He further states that on 26.08.2008 after the claimant had finished his duty at about 9.30 p.m. he was proceeding on foot with another person, at that time the canter truck which came on a high speed had dashed against him. In cross examination this witness admits that he has three shops at Battala market. He also states that he has six employees working under him. He stated that he is maintaining books of accounts but he did not produce any books of accounts when he appeared in the witness box. Another witness has also been examined to show that the deceased was hit by the vehicle in question. He sells fish in battala market. The learned Tribunal relied upon the FIR to come to the conclusion that the deceased was travelling in the truck and was not a pedestrian.

[5] The FIR has been lodged by none else but the son of the deceased who is also one of the claimants in the case. The FIR though lodged by one of the claimants was not produced before the motor accident claims tribunal. It was only after the Tribunal directed the claimants to produce the FIR that the FIR was produced and the FIR was lodged at the instance of Sri Ratan Debnath, who was shown to be aged about 32 years immediately after the occurrence. In this FIR it is stated that the deceased along with 4/5 other passengers was travelling in the vehicle when the same overturned and the passengers received injuries and one of the passengers i.e. Sunil Chandra Debnath died on the spot. I have no doubt in my mind that the finding of the learned Tribunal in this regard is absolutely correct that the deceased was a passenger in the truck in question. He was not a pedestrian as falsely made out in the claim petition and also as set out in the examination-in-chief. The statement of PWs 2 and 3 is absolutely false and therefore, it is difficult to rely upon the statement of the PW. 2 with regard to the income of the deceased also. He is a businessman having three shops and having more than six employees. He admittedly maintained accounts with regard to the shops. The best evidence with regard to the income of the deceased would be his salary as recorded in the account books but no account books were produced. This has to be read in conjunction with the stand of the claimants in the claim petition that the deceased was a businessman whereas in examination-in-chief they have now changed track and have stated that he was an employee of PW-2.

[6] This Court is normally very liberal in claim petitions but any person who expects discretionary relief from the Court must approach the Court with clean hands. The claimants stated that the age of the deceased was 45 years whereas in the FIR the age of the son Ratan Debnath is shown to be 32 years. That would mean that the father had given birth to the child when he was only 13 years old. Even more shocking is the fact that when the mother appeared in the witness box more than one year later she gave her age to be 42 years which would mean that she was only 9 years old when she gave birth to the son. This casts grave doubt on the correctness of the version of the claimant with regard to income of the deceased and therefore, I feel that this is not a fit case to grant any enhancement whatsoever.

[7] As far as the liability is concerned the insurance company cannot be exonerated of its liability to pay the compensation. The owner of the vehicle has produced on record the policy of insurance which clearly shows that the seating capacity of the vehicle has been mentioned as 3 + 1. Fifty rupees has been paid as premium to cover extra liability in respect of the driver and one fifty rupees has been paid for premium to non fare paying passengers. This means that the insurance company has covered liability for the driver and three non-fare paying passengers because the total seating capacity is four. In this view of the matter the insurance company cannot escape its liability and it is held liable to pay the awarded amount.

[8] In view of the above discussion, the appeal filed by the claimant is rejected, however, cross-objection file by the owner are allowed and the award of the Tribunal is modified to the limited extent that the insurance company shall be held liable to pay the entire awarded amount.

No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE