

THE HIGH COURT OF TRIPURA

AGARTALA

MAC App. No. 89 of 2010

Appellants :

1. Smt. Kajal Chakraborty,
W/o. Late Swapan Chakraborty.

2. Sri Biswajit Chakraborty
S/o. Late Swapan Chakraborty, both are
resident of Siddhi Ashram, P.O-Siddhi Ashram,
Agartala, West Tripura.

By Advocate :

Ms. S. Deb Gupta, Adv.

Respondents :

1. Sri Anjan Ghatak,
S/o. Nityananda Ghatak,
Resident of Bardowali, P.S-West Agartala, West
Tripura, (Owner of the vehicle Bearing No. TR-
01-4471, Commander Jeep).

2. The Divisional Manager,
New India Insurance Company Ltd. Central
Road, Agartala.

By Advocate :

None.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **25th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

By means of this appeal the petitioner-appellants have challenged the judgment dated 14th September, 2010 delivered by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in case No.TS(MAC) 621 of 2002 whereby he dismissed the claim petition of the claimants on the ground that the claimants had failed to prove that the accident had taken place.

[2] The petitioner-claimants filed the claim petition alleging that Late Sri Swapan Chakraborty, husband of the appellant No.1 and father of the appellant No.2 was going on foot from ONGC towards Siddhi Ashram and one vehicle bearing registration No.TR-01-4471 hit him near the Nimbark Power Office. As a result Swapan Chakraborty sustained serious injuries. He was shifted to the hospital and died soon thereafter.

[3] The learned Tribunal rejected the claim petition basically relying upon the Surathal (inquest) report prepared by the police official. In the said report it is mentioned that the police officers learnt from the witnesses whose signatures are on the side of the Surathal report that the deceased all of a sudden fell down on the ground and that is the cause of injury to his head. The learned Tribunal held that this clearly showed that there was no motor vehicle accident involved. Now I may make reference to the post mortem report wherein against column No.7 in the column of injuries the injuries are mentioned and it is reflected as history of road traffic accident as per police record. In the brief history as per inquest report including FIR/DD etc. it is mentioned alleged history of R.T.A and admitted to G. B. P. Hospital. In additional matters it is written possibility of R.T.A as per injury pattern and police report. Therefore, though the Surathal report may be to the contrary and does not indicate that any vehicle was involved the post mortem report which was prepared within 24 hours immediately after the death of the deceased clearly indicates that the deceased had suffered injuries in a road traffic accident. It is obvious that the doctors had no personal knowledge and therefore in the post mortem report at three places it is mentioned that the history recorded as road traffic accident is on the basis of the police record. In addition thereto the claimant produced one witness PW-2 who stated that he had witnessed the accident. According to him he was on his bicycle travelling on the same road and he had seen the Commander Jeep

bearing registration No.TR-01-4471 coming from Bishalgarh side at a high speed and hitting the one person. When he went to the spot he found that the person was Swapan Chakraborty. He shifted the said person along with others to the G. B. P hospital.

[4] The learned Tribunal has doubted the statement only on the ground that the widow in her statement stated that Bimal Chandra Roy and Kamal Choudhury who are her neighbours and Shiba Prasad Chakraborty who is her brother-in-law shifted her husband to the hospital. This may be a fact because even PW-2 states that some persons had accompanied him to the hospital but he says no relative of Swapan accompanied him to the hospital. Even if the statement with regard to the brother-in-law is incorrect that would not show that the other neighbours did not accompany the deceased to the hospital.

[5] In this view of the matter, I am clearly of the view that the claimants have proved that the deceased died as a result of injuries received in a motor vehicle accident.

[6] With regard to negligence the statement of PW-2 is reliable. The driver of the offending Commander Jeep did not care to step into the witness box and he did not clearly deny the accident or say anything on negligence. Therefore, this issue is decided in favour of the claimants.

[7] Coming to the quantum of compensation. The claimants have alleged that the deceased was 45 years of age. In the post mortem report the age of the deceased is given at 50 years. It would be pertinent to mention that the deceased was identified by his brother, Shiba Prasad Chakraborty before the doctors and therefore, this age is taken to be correct.

[8] It was alleged that the deceased was earning Rs.5,000/- per month and working as a sub-contractor. However, no documents have been relied. The accident took place on 13.03.2001 and at that time the minimum wages were less than 100 rupees a day and therefore, I take the income of the deceased at Rs.100/- per day and assessed at Rs.3000/- per month. Since the deceased was 50 years or above nothing further can be added for future prospects. Rs.1000/- is deducted for the personal expenses of the deceased leaving dependency of Rs.2000/- per month or Rs.24,000/- per year. Keeping in view the age of the deceased multiplier of 11 is applied and the compensation works out to Rs.2,64,000/-. In addition thereto the widow is awarded Rs.30,000/- for loss of consortium and Rs.6,000/- is awarded for funeral expenses. This amount has been awarded slightly on the lower side because this is a case relating to a death which took place in the year 2001. Therefore, the total compensation works out to Rs.3,00,000/-. On this amount the claimants shall be entitled to interest at the rate of 9% per annum from the date of filing of the claim petition till deposit of the amount. The insurance company is directed to deposit the amount of compensation along with proportionate interest thereupon in the Registry of this Court within four months from today.

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

Send down the LCRs forthwith.

CHIEF JUSTICE