

THE HIGH COURT OF TRIPURA
AGARTALA

IN MAC APP. NO. 44 OF 2010:

Appellant :

Sri Anil Chanda,
S/O. Sri Ranjit Chanda,
Of Vill.-Narayanpur,
P.O.-Laxmipur, P.S.-Gandachera,
District-Dhalai.

BY ADVOCATE :

Mr. S.B. Debnath, Advocate.

– **Versus** –

Respondent-Opposite Parties :

1. Sri Fanil Chandra Goon,
S/O. Lt. Makul Chandra Goon alias Nakul,
of Indranagar, Agartala,
P.S.-East Agartala,
District-West Tripura.
(Owner of the offending vehicle bearing
Its Regd. No.TR-01-C-1652, Truck)
2. The Oriental Insurance Company Ltd.,
Represented by its Divisional Manager,
Having its office at Kaman Chowmuhani,
Central Road, P.S. East Agartala,
District-West Tripura.

BY ADVOCATES :

Mr. K. Bhattacharji, Advocate,
Mr. A. Nandi, Advocate.

IN MAC APP. NO. 45 OF 2010:

Appellant :

Sri Samarjit Chakma,
S/O. Lt. Suresh Chakma,
Of Vill.-Dhalajari,
P.O.-Laxmipur, P.S.-Gandachera,
District-Dhalai.

BY ADVOCATE :

Mr. S.B. Debnath, Advocate.

– **Versus** –

Respondent-Opposite Parties :

1. Sri Fanil Chandra Goon,
S/O. Lt. Makul Chandra Goon alias Nakul,
of Indranagar, Agartala,
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Having its office at Kaman Chowmuhani,
Central Road, P.S. East Agartala,
District-West Tripura.

BY ADVOCATES :

Mr. K. Bhattacharji, Advocate,
Mr. A. Nandi, Advocate.

IN MAC APP. NO. 46 OF 2010:**Appellant :**

Sri Khokan Das,
S/O. Sri Ram Charan Das,
Of Vill.-60-Card, P.O.-Saima,
P.S.-Gandachera,
District-Dhalai.

BY ADVOCATE :

Mr. S.B. Debnath, Advocate.

– **Versus** –

Respondent-Opposite Parties :

1. Sri Fanil Chandra Goon,
S/O. Lt. Makul Chandra Goon alias Nakul,
of Indranagar, Agartala,
P.S.-East Agartala,
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(Owner of the offending vehicle bearing
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District-West Tripura.

BY ADVOCATES :

Mr. K. Bhattacharji, Advocate,
Mr. A. Nandi, Advocate.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing & : 02.07.2015.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

All these three appeals are being disposed of by a common judgment since the issues involved are virtually identical.

2. All the three claimants were travelling in truck No.TR-01-C-1652 which was going from Gandacherra to Ambassa. This truck went off the road and fell into a lunga (ditch) and the claimants suffered injuries. All the claimants filed claim petitions claiming that they were engaged as labourers on the truck in question and, therefore, claimed compensation.

3. The owner of the vehicle in his written statement in each of the three cases denied the fact that the claimants were labourers and stated that he had not engaged any labourer. However, during the course of the trial, the owner did not appear at all. Awards were passed in favour of the claimants and in all these awards the owner was held liable to pay the compensation because the owner had not even produced the insurance policy before the learned Tribunal. Thereafter, the claimants filed appeals in this Court which are being decided by this judgment. In the mean time, the owner filed review petitions before the learned

Tribunal and along with the review petitions filed the policies of insurance. It appears that notice of the review petition was served upon the Insurance Company which did not put in appearance and without any further discussion the Motor Accident Claims Tribunal fastened the liability on the Insurance Company. The Insurance Company has not challenged the order passed in review.

Now I proceed to decide the quantum in each of the three cases.

In MAC APP.44 of 2010:

4. In this case, the injured Sri Anil Chanda suffered fracture of both bones of the forearm. He was admitted in hospital for 33 days and thereafter was treated as an outdoor patient. The learned Tribunal has awarded Rs.6,600/- for attendant charges for 33 days. In my view, a patient would require at least two attendants and the cost of each attendant would be Rs.200/- per day and the cost of two attendants for 33 days would be **Rs.13,200/-**.

5. As far as the medical expenses are concerned, the learned Tribunal has awarded Rs.10,100/- but the claimant may have spent some more amount on medical treatment for which receipts may not have been kept and, therefore, he is awarded **Rs.15,000/-** under this head.

6. The learned Tribunal has assessed the income of the claimant at Rs.100/- per day and has awarded **Rs.15,000/-**

towards loss of income for five months. This, according to me, is reasonable and calls for no interference.

7. The claimant has been awarded total sum of Rs.5,000/- each, i.e. Rs.10,000/- for pain and suffering and compensation on mental shock and agony. In my view, this is very much on the lower side. The claimant remained in hospital for 33 days and after that he remained as an outdoor patient for a number of days. Therefore, he is awarded **Rs.20,000/-** for pain and suffering etc.

Therefore, the total compensation works out to Rs. (13,200 + 15,000 + 15,000 + 20,000) = Rs.63,200/- (rupees sixty three thousand two hundred).

In MAC APP.45 of 2010:

8. In this case, the injured Sri Samarjit Chakma suffered fracture of both bones of the left leg. He was admitted in hospital for 35 days and thereafter was treated as an outdoor patient. The learned Tribunal has awarded Rs.7,000/- for attendant charges for 35 days. In my view, a patient would require at least two attendants and the cost of each attendant would be Rs.200/- per day and the cost of two attendants for 35 days would be **Rs.14,000/-**.

9. As far as the medical expenses are concerned, the learned Tribunal has awarded Rs.11,000/- but the claimant may have spent some more amount on medical treatment for which receipts may not have been kept and, therefore, he is awarded **Rs.16,000/-** under this head.

10. The claimant has been awarded **Rs.4,500/-** for attending the OPD on 9(nine) occasions and this award is reasonable.

11. The learned Tribunal has assessed the income of the claimant at Rs.100/- per day and has awarded **Rs.18,000/-** towards loss of income for six months. This, according to me, is also reasonable and calls for no interference.

12. The claimant has been awarded total sum of Rs.5,000/- each, i.e. Rs.10,000/- for pain and suffering and compensation on mental shock and agony. In my view, this is very much on the lower side. The claimant remained in hospital for 35 days and after that he remained as an outdoor patient for a number of days. Therefore, he is awarded **Rs.25,000/-** for pain and suffering etc.

Therefore, the total compensation works out to Rs. (14,000 + 16,000 + 4,500 + 18,000 + 25,000) = Rs.77,500/- (rupees seventy seven thousand five hundred).

In MAC APP.46 of 2010:

13. In this case, the injured Sri Khokan Das suffered fracture of both bones of the right forearm. He was admitted in hospital for 24 days and thereafter was treated as an outdoor patient. The learned Tribunal has awarded Rs.4,800/- for attendant charges for 24 days. In my view, a patient would require at least two attendants and the cost of each attendant would be Rs.200/-

per day and the cost of two attendants for 24 days would be Rs.9,600/- which is rounded off to **Rs.10,000/-**.

14. As far as the medical expenses are concerned, the learned Tribunal has awarded Rs.6,600/- but the claimant may have spent some more amount on medical treatment for which receipts may not have been kept and, therefore, he is awarded **Rs.10,000/-** under this head.

15. The learned Tribunal has assessed the income of the claimant at Rs.100/- per day and has awarded **Rs.12,000/-** towards loss of income for four months. This, according to me, is reasonable and calls for no interference.

16. The claimant has been awarded total sum of Rs.5,000/- each, i.e. Rs.10,000/- for pain and suffering and compensation on mental shock and agony. In my view, this is very much on the lower side. The claimant remained in hospital for 24 days and after that he remained as an outdoor patient for a number of days. Therefore, he is awarded **Rs.20,000/-** for pain and suffering etc.

Therefore, the total compensation works out to Rs. (10,000 + 10,000 + 12,000 + 20,000) = Rs.52,000/- (rupees fifty two thousand).

17. In view of the above discussion, the appeals are allowed. The awards of the learned Tribunal are modified and the compensation in MAC APP. 44 of 2010 is enhanced from Rs.41,700/- to Rs.63,200/-, i.e. by Rs.21,500/-; in MAC APP. 45 of

2010 from Rs.50,500/- to Rs.77,500/-, i.e. by Rs.27,000/-; and in MAC APP. 46 of 2010 from Rs.33,400/- to Rs.52,000/-, i.e. by Rs.18,600/-. On the amount of compensation so awarded, the claimants shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

18. Since the Insurance Company has not challenged the order passed by the learned Motor Accident Claims Tribunal in the review petition, the Insurance Company is held liable to pay the amount of compensation so awarded along with interest in the Registry of this Court within four months from today after deducting/adjusting the amount, if any, already paid/ deposited by them along with proof of such earlier deposit.

19. Before parting with the case, I am compelled to make certain observations. The owner in the reply to the claim petition had clearly stated that the injured were not the workmen employed by him. He had in no uncertain term stated that he had no connection with the claimant persons. As pointed out above, the owner did not even care to appear before the trial Court nor did he care to file the insurance policy before the trial Court till the award had been passed. The owner did not even care to cross-examine the witness or produce any documents during trial of petition. After the award had been passed, the owner filed a review petition. This Court is not going into the question whether review petition is maintainable or not but even if a review petition is maintainable,

then the Court which is hearing the review petition after deciding the review petition has to recall the order which was passed by it earlier and thereafter the entire case has to be decided afresh after hearing the owner also. Only by shifting the liability, the review petition cannot be disposed of. When a review petition is allowed what it means is that the award earlier passed by the Tribunal has been recalled and, therefore, there is no award existing in the eyes of law.

20. The other aspect of the matter is that supposing a party does not contest the review petition. It is at least entitled to contest the main petition after the review petition has been allowed. In the present case, the owner had clearly stated the injured were not his labourers and in case, the learned Motor Accident Claims Tribunal had cared to go into this written statement, he may not have held the Insurance Company liable. Furthermore, once a party is given an opportunity in a review petition or opportunity of leading additional evidence or is permitted to place on record certain documents, the party which has been affected by the production of such documents must be given an opportunity to rebut the documents. Even if the insurance policy is valid and the insurance policy as produced is correct, the Insurance Company can take the plea that it is not liable under the terms of the policy. It can take the plea that the driver does not have a valid driving license. It can take the plea that there is violation of the terms of the policy. An opportunity has to be given to the Insurance Company after allowing the owner to file the

policy to put forth its case. Normally, I would have interfered in the matter but since the Insurance Company is satisfied by the order passed in review, therefore, it means that it is accepting its liability under the policy and, therefore, it is held liable to pay the amount of compensation.

21. With these observations, the appeals stand disposed of.

22. Send down the lower court records forthwith.

CHIEF JUSTICE