

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 36 of 2010

Sri Chandan Sengupta,
Son of Late Birendra Sengupta,
Resident of Ramnagar Road No.2,
P.S. West Agartala, Dist. West Tripura.

..... *Appellant*

By Advocate : Mr. P.K. Dhar.

- Vs. -

1. Sri Ranju Chakma,
Son of Sri Ramani Chakma,
Resident of Sarat Karbaripara,
P.S. Manu, District - Dhalai.
2. Sri Prantosh Rudrapal, Driver,
Son of Subal Kumar Rudrapal,
Resident of Rupabati (Mainama),
P.S. Manu, District - Dhalai.
3. The National Insurance Company Ltd.,
Dharmanagar Branch P.O. & P.S. Dharmanagar,
District - North Tripura,
Represented by its Branch Manager.

..... *Respondents*

By Advocates :

For respondent No.1 – Mr. A. Bhowmik,
For respondent No.2. – Mr. B. Datta,
For respondent No.3 – Mr. S. Lodh.

MAC APP. 25 of 2012

1. The State of Tripura,
Represented by the Secretary,
Department of Home,
Government of Tripura,
New Capital Complex, P.O. Kunjaban,
Agartala, West Tripura, Pin – 799006.
2. The Director General of Police,
Police Head Quarter,

Fire Service Chowmuhani,
P.O. Agartala, West Tripura.
Pin – 799001.

3. The Commandant,
8th Bn. T.S.R., P.O. – Chailengta.
Manu, Dhalai, District, Tripura.
Pin – 799273.

..... *Appellants*

By Advocate : Mr. B. Datta.

- Vs. -

1. Smt. Rinku Bhowmik (Sur),
W/O. Late Rana Sur,
2. Sri Durjadhan Sur,
Father of Late Rana Sur

Both are resident of Chatakchari,
P.O. Rupaichark, P.S. Sabroom,
District – South Tripura,
Pin – 799145.

3. The Divisional Manager,
National Insurance Company Ltd.,
42, Akhaura Road, Agartala,
West Tripura. Pin – 799001.
(Insurer of Vehicle No. TR-01A-1870).
4. M/S. Chandan Sengupta,
FIRM (Owner of the offending vehicle
Bearing No.TR-01-A-1870 – Truck).
Ramnagar Road No.2, P.O. – Ramnagar-799002.
Agartala, Tripura (W).

..... *Respondents*

By Advocates :

For respondent No.1 & 2 – Mr. R. Datta,
For respondent No.3. – Mr. P. Gautam,
For respondent No.4 – Mr. P.K. Dhar,
Mr. R.G. Chakraborty.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : 20.03.2015.

Delivery of : 06.04.2015.
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER

These two appeals are being disposed of by a common judgment since they both arise out of the same accident.

2. MAC Appeal No.36 of 2010 is directed against the award dated 24th March, 2010 passed by the learned Motor Accident Claims Tribunal, North Tripura, Kailashahar, whereby he held that the claimant is entitled to get compensation Rs.1,48,000/- along with interest, but exonerated the insurance company and fixed the liability to pay compensation on the owner, who has filed MAC Appeal No.36 of 2010.

3. MAC Appeal No.25 of 2012 is directed against the award dated 14.09.2011 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala whereby he held the claimants entitled to pay compensation of Rs.15,32,570/- and the liability of the insurance company was limited to Rs.75,000/- and that the State was held liable to pay the balance amount of Rs.14,57,570/-.

4. The undisputed facts are that one tanker bearing registration No.TR-01A-1870 was owned by Sri Chandan Sengupta. The said tanker was being driven by Sri Prantosh Rudrapal. On 04.05.2005 at about 1415 hours, the said tanker fell into a deep gorge at S.K. Para. In the said tanker, one police officer and four labourers are alleged to be travelling. In this case, we are dealing with two claim petitions, one filed by Sri Ranju Chakma, an injured person and the other by the widow and father of Rana Sur, a Tripura State Rifles (hereinafter referred to as 'TSR')) police official travelling in the vehicle.

5. In T.S. (MAC) No.04 of 2009 filed by Sri Ranju Chakma, it was stated that the injured was 39 years of age and was working as day labour in Northern-Frontier Railway and name and address of the employer was shown to be Railway Contractor, S.K. Para, Manu, Dhalai. It was also alleged that after duty hours the claimant used to earn extra amount by produces incense sticks out of bamboo (agarbati). It was stated that the deceased was travelling by the offending vehicle which was a water Lorry, but nowhere it was stated that the claimant was engaged as a labourer on the truck in question.

6. The owner filed written statement and denied all the allegations made in the petition. He denied the fact that the

claimant suffered injury in the accident. In fact each and every averment made in the claim petitions is denied. It would be pertinent to mention that in Para 10 at the reply filed by the owner he stated as follows:-

"10. That, it is submitted that the claim petition of the claimant petitioner is silent as to the fact how the claimant petitioner became the victim of alleged accident and how he was proceeding through the water lorry in question and on what capacity he went there. In absence of specific averments therefor, the claim petition of the claimant petitioner is not entertainable and the averments of the claimant petitioner are not believable."

7. There is not a whisper in the claim petition that the injured person was travelling in the vehicle as a labourer hired by the owner of the goods or by the truck. The learned Tribunal held that the claimant was a gratuitous passenger and therefore, held the owner alone liable to pay compensation.

8. The owner did not step into the witness box and the award was passed *ex parte* against him. Along with the appeal, the owner has filed two applications one under Order XLI Rule 27 to adduce additional evidence and in this application it is stated that the claimant was a labourer under the appellant employed and in discharge of contract work under the Railway authority the water was being carried in the lorry in question and the claimant was deputed by the owner appellant on that lorry to carry water and therefore the claimant was wrongly treated to be a gratuitous passenger. The second application is that an additional issue be

framed as to whether the claimant was a gratuitous passenger or not.

9. I find no merit in both the applications. The owner has not placed any material to show that he was a Railway contractor. The evidence in fact shows that the truck was hired by the State of Tripura and used to carry water to the TSR battalion. Railway contractor would not be concerned with this work. In the original reply, the owner had denied that the claimant was his employee. Now he wants to take a totally contrary stand with a view to absolve himself of the liability to pay compensation. This stand is patently false because from the material on record, it is apparent that the lorry was on hire with the TSR and there was no question of the claimant being deputed on the lorry. The claimant himself in the claim petition had also not claimed that he was working as a labourer on the lorry nor had he claimed that he was employed with the owner of the vehicle. It is, thus, apparent that the stand taken by the owner is totally false. Since the claimant was a gratuitous passenger, the insurance company cannot be held liable to pay compensation. It is obvious that the claimant was a gratuitous passenger in a goods vehicle and therefore, the insurance cannot be held liable.

10. The issue whether the Insurance Company is liable in respect of gratuitous passengers being carried in a goods vehicle has been subject matter of a number of decisions. In ***National Insurance Co. Ltd. V. Bommithi Subbhayamma, 2005 ACJ 721(SC)***, the Apex Court held as under :-

"It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect persons other than the owner of the goods or his authorized representatives remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers who were neither contemplated at the time the contract of insurance was entered into nor any premium was paid to the extent of the benefit of the insurance to such category of people."

11. In ***New India Assurance Co. Ltd. V. Vedwati, (2007)9 SCC 486***, the Supreme Court further held as under :

"13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'WC Act'). There is no reference to any passenger in "goods carriage".

14. The inevitable conclusion, therefore, is that the provisions of the Act do not enjoin any statutory liability on

the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and the insurer would have no liability therefore.

15. Our view gets support from a recent decision of a three-Judge Bench of this court in New India Assurance Co. Ltd. –Vs- Asha Rani, 2003 ACJ 1 (SC), in which it has been held that Satpal Singh's case, 2000 ACJ 1(SC), was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

12. In ***National Insurance Co. Ltd. vs. Prema Devi, 2008 ACJ 1149(SC)***, the Apex Court reiterated the above view.

13. In ***National Insurance Co. Ltd. vs. Kaushalaya Devi, 2008 ACJ 2144 (SC)***, the question before the Supreme Court was whether the insurance company can be held liable in respect of death of gratuitous passenger in a public goods vehicle. After discussing the entire law on the subject, the Supreme Court held that insurance company could not be held so liable.

14. The facts of MAC APP 25 of 2012 are that in this case the widow and father of one Rana Sur, who was employed as a Rifleman in the TSR filed the claim petition. In this claim petition it was alleged that the deceased was performing his duties as Rifleman with truck vehicle bearing No. TR-01-A-1870 for bringing water for 8th Battalion when the accident took place. When the truck fell into the gorge unfortunately, the deceased died.

15. The owner in this case also filed a reply denying all the allegations made in the claim petition. He specifically denied the fact that the deceased was travelling in the truck as representative of the owner of the goods though it was alleged that the vehicle was duly insured.

16. The insurance company specifically took the plea that the deceased was a gratuitous passenger in a goods vehicle and therefore, the insurance company was not liable. The State of Tripura and the Commandant of the 8th Battalion TSR filed a joint reply and in this reply, it is stated that *the deceased RFN left his place of posting in the afternoon on 4.5.05 on 2 (two) days casual leave but without any legal authority, he boarded the water tanker to go to Manu and invited his own peril.*

17. Evidence was led by both the parties. The widow, who appeared on behalf of the claimant, stated that her husband was travelling as a police escort on the vehicle. However, it would be pertinent to mention that she was not an eye witness and present at the place of duty of the deceased. She admitted in her cross-examination that she had got a job after the death of her husband and also received all other benefits.

18. The respondent Nos.3 and 4 also examined one Sri Arabinda Datta, Naib Subedar of TSR 8th Battalion as a witness. He in his affidavit stated as follows:-

"So far information derived the deceased RFN left his place of posting in the afternoon on 4.5.05 on 2(two) days Casual leave but without any legal authority. He boarded the water tanker to go to Manu and invited his own peril."

19. The learned Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the truck. The learned Tribunal did not decide the specific dispute raised by the insurance company that the deceased was a gratuitous passenger and hence, the insurance company was not liable. The learned Tribunal held as follows:-

"8(g) Now, let me decide who shall be liable to pay the compensation.

The exhibited documents suggest the involvement of the offending vehicle bearing no.TR-01-A-1870 (Truck) in the alleged accident. On perusal of the evidence on record as well as the relevant papers including the FIR, ejahar, charge-sheet, post-mortem report under exhibit it appears that the accident occurred due to fault on the part of the Water Lorry (Truck) vehicle bearing no.TR-01-A-1870 (o.p. no.1).

From the facts and circumstances as well as the evidence on record it appears that the vehicle bearing registration No.TR-01-A-1870 (Truck) was hired by the Government and the same was being used as water lorry to carry water for the 8th Bn TSR, Manu and at the time of accident, the vehicle was under the control of the department concerned i.e. the Government. The vehicle was insured with the National Insurance Company Limited (O.P. No.2) covering the date of accident. As per terms of the Policy the liability of the Insurance Company, in any event, was limited and its liability could not exceed ₹.75,000/- in respect of all the claim petitions arising out of one accident.

Since at the relevant time of accident the vehicle was insured with the O.P. No.2 and the same was under the control and

supervision of the Government, out of the total awarded sum, the Insurance Company's liability to make payment is up to ₹.75,000/- and the rest amount shall be borne by the Government (O.P. No.3). Accordingly, both the issues are decided in the affirmative."

20. I am constrained to observe that the learned Tribunal did not even decide the issue as to who was liable to pay the compensation in the proper perspective. The dispute raised before it was that the deceased was a gratuitous passenger. The Tribunal held the insurance company liable to pay Rs.75,000/- and the Government liable to pay the rest. I am totally unable to understand how the liability of the insurance company has been fixed and after fixing the same how it was limited to Rs.75,000/-. First of all the learned Tribunal was duty bound to decide whether the insurance company is liable to pay compensation at all. This issue it did not decide. In view of the specific plea of the insurance company that the deceased was a gratuitous passenger a duty was cast upon the Tribunal to decide this issue. It did not decide this very important issue. This is not the way Courts or Tribunal shall function.

21. The learned Tribunal held that as per terms of the insurance policy the liability of the insurance company could not exceed Rs.75,000/-. I have carefully gone through the insurance policy which is on the record of the case, but I find that there is no such stipulation. In fact, if the deceased was travelling in the goods vehicle as owner of the goods or as the representative of the owner of the goods and not as a gratuitous passenger, then the

liability of the insurance company would be unlimited. The learned Tribunal has totally misunderstood the policy. The liability of the insurance company under Section 147 of the M.V. Act in respect of an authorized passenger would be unlimited. The limit of Rs.75,000/- is in respect of damage to property and not in respect of the liability to the owner of the goods or the authorized representative of the owner. The learned Tribunal has totally misread the insurance policy.

22. Now comes the question as to whether the deceased was travelling in the vehicle as owner of the goods or representative of the owner of the goods. Admittedly, he was a Rifleman in the TSR and could not be a labourer or workman on the vehicle. His own employer both in the written statement and in the evidence had clearly stated that the deceased had proceeded on two days casual leave. It was stated that he boarded the water lorry of his own at his peril. Nothing has been stated that he was authorized by the TSR to travel in the vehicle either as an escort or as representative of the owner of the goods. It is obvious that after taking two days casual leave he had taken a lift on the vehicle. He was thus a gratuitous passenger and in view of the law cited above, the insurance company could not be held liable.

23. The learned Tribunal has held the State liable to pay an amount of Rs.14,57,570/- only on the ground that since at the time of accident the vehicle was under the control and supervision of

the Government, the Government is liable to pay this amount. The State has filed the present appeal challenging this portion of the award.

24. There is not an iota of evidence to show that the State had full control over the vehicle. No doubt, the State had hired the vehicle for delivery water to the TSR Battalion. The truck, however, continued to be owned by the owner and he was in control of the truck. The driver was his employee. It would be pertinent to mention that the owner in his written statement has not even taken the plea that he was not in effective control of the truck and that the same was in the effective control of the State Government.

25. The owner can be absolved of his liability to pay compensation where the vehicle is requisitioned by the State and the owner does not exercise any control of the vehicle. In the present case, the owner did not even plead these facts so he cannot even be permitted to argue or prove such facts. Otherwise any person who hired a vehicle would be liable to pay compensation. There is no material on record to show that the lorry was under the total control of the Government or the TSR.

26. In this view of the matter, the TSR could not have been held liable to pay the compensation.

27. In view of the above discussion, MAC Appeal No.36 of 2010 filed by the owner is dismissed with costs assessed at Rs.5,000/- (Rupees Five thousand). Exemplary costs have been imposed because the owner has taken a totally false stand in this appeal which is contrary to the stand taken in the Trial Court.

28. MAC Appeal No.25 of 2012 filed by the State is allowed and the liability to pay the entire compensation is fixed on the owner. However, since the insurance company has not challenged its liability to pay Rs.75,000/- even though the insurance company has been held not liable to pay compensation, it shall not be entitled to recover this amount.

29. Send down the lower court records forthwith.

CHIEF JUSTICE

sima