

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.47 of 2010

Smt. Jharna Sarkar,
W/o Late Binanda Sarkar,
Resident of Village - Madhupur,
P.O. - Madhupur, P.S. Amtali,
District - West Tripura.

..... *Appellant.*

- Vs -

1. Sri Bhola Saha,
S/o Late Matilal Saha,
Resident of Village - Shanti Para
(Near Ananda Bazar Patrika delivery office,
P.O - Agartala, P.S. East Agartala,
District - West Tripura.

2. The Oriental Insurance Co. Ltd.,
Divisional Office, Central Road,
P.O. Agartala, District West Tripura,
Represented by its Divisional Manager.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. S K Dutta, Advocate.
For the respondents	: Mr. S Debnath, Advocate.
Date of hearing	: 03.3.2015.
Date of judgment	: 06.5.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

This appeal by the claimant-appellant arises out of the award, dated 15th May, 2010 delivered by the learned Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in Case No.TS(MAC)03 of 1999 whereby he rejected the claim of the appellant.

2. The admitted case of the parties is that the deceased Binanda Sarkar was travelling in the vehicle TRS-488(Bus) as a passenger on 19.10.1997. At Kanurampara a group of extremists opened fire on the vehicle. Some passengers sustained bullet injuries. Thereafter the extremists kidnapped Binanda Sarkar. Eleven days later on 30.8.1997 the dead body of Binanda Sarkar was found lying on the road.

3. The most important issue to be decided is whether the death of Binanda Sarkar can be said to have arisen out of the use of a motor vehicle. This Court has taken the view in a number of cases that if there is firing on a vehicle and the driver and conductor have been negligent in taking the vehicle into an area, which is infested with terrorism then the injury of the death could be said to be arising out of the use of the vehicle. Where there is an attack on a vehicle by terrorists/extremists then that may fall within the purview of the Motor Vehicles Act, but when a particular person or group of persons from inside a vehicle are killed either in the vehicle or outside the vehicle only with the intention of causing harm to those particular person(s) and not to all the persons travelling in the vehicle then the occurrence is a felonious occurrence and not an accident.

4. In this regard, reference may be made to the judgment of the Apex Court passed in ***Rita Devi and others v. New India Assurance Co. Ltd. and another***, 2000 ACJ 801 which actually expanded the scope and meaning of the phrase “arising out of the use of a motor

vehicle”. However, in this Judgment also certain parameters have been laid down in Para 10, which reads as follows :

“10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts . The difference between a “murder” which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

In Rita Devi’s (supra) case, the Apex Court clearly held that where the intention of the perpetrators of the crime is to kill any particular person or persons then that is not an accident and is a murder simpliciter.

5. To elaborate this position further supposing a person boards a vehicle solely with the intention of killing of some other passenger travelling in the vehicle and either causes injury or kills the passenger in the vehicle can it be said that such an incident arises out of the use of the motor vehicle only because the motor vehicle is moving? In my view, the answer has to be an emphatic ‘no’ because in view of Rita Devi’s (supra) case, if the intention is to cause harm to a particular

person or persons then the intention is to commit a criminal felonious act and that cannot be an accident.

6. Mr. S. K Dutta learned counsel has relied upon a Judgment of a learned Single Judge of the Gauhati High Court in ***Oriental Insurance Co. Ltd. Vs. Dongkholam & Ors., 2006 (2) GLT 1***, wherein relying upon Rita Devi's (supra) case and some other cases, the learned Single Judge held that the occurrence which was the subject matter in that case arose out of the use of a motor vehicle. However, that is a case in which the vehicle with 40-45 passengers was passing through a jungle. The bus was stopped and the driver was informed that there were armed persons in the area and he should not proceed with the vehicle into that area. However, the driver did not listen and proceeded towards that dangerous area and when the bus had moved ahead and was negotiating a curve some armed persons stopped the bus and fired indiscriminately at the bus resulting the death of 28 passengers of the bus. That case stands on a different footing because there was indiscriminate firing on the bus and this Court in MAC APP No. 122 of 2004 and many other cases decided thereafter has held that where there is indiscriminate firing on the vehicle then it is a case of an accident. However, at the cost of repetition it may be reiterated that when it is not a case of indiscriminate firing but some particular person or persons being targeted then that is not a case of accident but a case of murder.

7. It may also be pointed out that a Division Bench of the Gauhati High Court in ***National Insurance Co. Ltd. vs. Smti. Kasheni & Ors, 2005 (3) GLT 465*** dealt with a similar issue. In that case, the deceased was travelling in an auto rickshaw and some un-identified persons tried to stop the vehicle. The driver of the auto rickshaw instead of stopping the vehicle sped away. Thereafter, the auto rickshaw was fired on and the bullet hit the deceased and killed him on the spot. The assailants fled away. The Division Bench held on the basis of the evidence that even before the deceased had boarded the auto rickshaw he had been chased by the miscreants and therefore their intention was to kill him and as such, the occurrence did not arise out of the use of the motor vehicle.

8. The claim petition was filed by widow of Late Binanda Sarkar. The question that arises is whether such an incident can be said to be an accident or not? No doubt the terrorists attacked the vehicle. Those who were injured in the initial attack would be deemed to be victims of a motor vehicle accident. The deceased, however, was not injured in the firing but was kidnapped later on. It is not clear whether he was kidnapped for ransom or extortion or whether the terrorists wanted to murder simpliciter him. Whatever be the situation he did not suffer injuries in the firing which took place but was kidnapped and later on was found dead. When a vehicle is fired upon then the dominant intention is to create terror and that action is not directed

against any particular person and, therefore, cannot be said to be an accident but after a person has been taken out from a bus kidnapped and then killed this is a murder and not an accident and it cannot be said that the incident arises out of the use of a motor vehicle.

9. Lastly, even if it is held that the occurrence arises out of the use of the motor vehicle the question would be whether the insurance company can be held liable? In the present case, the policy of insurance excludes riot, strike and terrorism and this act would be an act of terrorism and the insurance company therefore, also cannot be held liable. In this behalf reference may be made to the Judgment of the Apex Court in ***Muralidhar Sarangi vs. The New India Assurance Co. Ltd., AIR 2000 SC 934***. In that case, the trucks belonged to the insured were destroyed and attacked in Assam by the Bodo terrorists and the Apex Court held that this could not be said to be a malicious act but was an act of terrorism and therefore, the insurance company was not liable.

10. In this view of the matter, there is no merit in the appeal which is, accordingly, dismissed.

CHIEF JUSTICE