

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.3 of 2011

Shri Dwijendra Debnath,
S/o Late Radha Madab Debnath of
Vill - Purba Dulocherra, P.S. Salema,
District - Dhalai, Tripura.

..... *Appellant.*

- Vs -

1. **Shri Shiba Prasad Deb,**
S/o Late Abinash Deb,
resident of Vill - Tuichindrai of Teliamura,
P.S. Teliamura, Dist - West Tripura.
(Owner of TR-01-2816 Jeep).
2. **The Branch Manager,**
United India Insurance Company Ltd.
Ganaraj Chowmohani, Banamalipur,
P.S. East Agartala, District - West Tripura.
(Insurer of TR-01-2816 Jeep).

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. A Nandi, Advocate.

For the respondents : None.

Date of hearing and
delivery of judgment : 01.6.2015.

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

This appeal is directed against the award dated 25th September, 2010 passed by learned Motor Accident Claims Tribunal (Court No.2), West Tripura, Agartala whereby the learned Tribunal has rejected the claim petition on the ground that there is no material on

record to show that the deceased suffered injuries in a motor vehicle accident and further there is no material on record to show what was the nature of the injuries and whether any disability was caused to the claimant or not.

2. At the outset I may note that the manner in which the claim petition has been filed is totally illegal. The claim petition has been filed by Shri Dwijendra Debnath claiming that his son Amar Debnath was working as an assistant in a '*Commander Jeep*' bearing Registration No.TR-01-2816. It was further alleged that while the injured was dealing with the passengers, the '*Bus*' driver suddenly started the vehicle, as a result of which Amar Debnath fell down and received injuries.

3. Here, it will be pertinent to mention that Amar Debnath was a major as admittedly he was more than 18 years at the time when the accident occurred. No doubt in the claim petition it has been stated that the father has filed the claim petition for the benefit of Amar Debnath but Amar Debnath has not even been made a party to the petition. His name is not even mentioned in the petition as the claimant-petitioner. This Court has repeatedly held that when any person files a claim petition on behalf of another person the heading of the petition should be in the name of the person entitled to the money and the claim petition can be filed through the next friend or guardian. However, the next friend or guardian cannot himself become the

claimant without even mentioning the name of the claimant in the claim petition.

4. Even more shocking is the fact that in Para 1 of the claim petition, the name of the injured is shown as Dwijendra Debnath. Name and address of the petitioner is also shown as Dwijendra Denath. The claimant filed an affidavit in support of the claim petition. Though in the affidavit it is stated that due to the head injury suffered his son Amar Debnath is not capable of looking after his interest, other than this bald statement there is no material on record to support this allegation. There is another allegation that Amar Debnath was treated at BRAM Hospital, Hapania. There is not a shred of evidence on record in support of this claim also.

5. Not only is the claim petition not properly constituted but as rightly held by the Tribunal there is no material also on record to assess what is the injury caused to the claimant, what is the disability, if any, that he is suffering. In such a circumstance, it is impossible for the Tribunal or this Court to assess the compensation. It is the duty of the parties as well as their counsel to assist the Court properly. No effort has been made in 10 years that this claim petition has been pending to get the real claimant i.e. Amar Debnath examined by any doctor. This Court could have also dismissed the claim petition by holding that this claim petition is not properly filed. However, the role of this Court is to do justice between the parties and if, in fact, Amar

Debnath is entitled to any compensation he should not be denied the same due to the fault of the counsel or his father. Therefore, this appeal is rejected.

6. It is, however, made clear that liberty is reserved to Amar Debnath to file a properly constituted petition in his own name or through a person who is duly authorized to represent him either by way of power of attorney or in case proper medical opinion is given that Amar Debnath is incapable of looking after his own interest then alone the father can file the petition as his next friend. If such a petition is filed then it is the duty of the petitioner to lead cogent evidence to prove the accident and negligence of the driver, nature of injuries suffered, the length of treatment, the nature of treatment, the disability if any caused and the loss in earning capacity if any. Thereafter the Tribunal shall assess the compensation in accordance with law.

Petition is disposed of in the aforesaid terms.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu