

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP.8 of 2010
along with MAC APP.9 of 2010

A) MAC APP.8 of 2010.

1. **The Branch Manager,**
New India Assurance Company Ltd.,
First Floor, Chanuholu Complex,
Raja Gopalachari Street, Goveron Pet.,
Vijoywara - 520002, Andhra Pradesh.
2. **The Branch Manager,**
New India Assurance Company Ltd.,
Hariganga Basak Road, Agartala,
P.S. West Agartala,
Now at Mantribari Road, Agartala,
District - West Tripura.

..... Appellants.

– *V e r s u s* –

1. **Smt. Dipika Das,**
W/o Late Pintu Das.
2. **Smti Sumati Das,**
W/o Sri Nishikanta Das.
3. **Sri Pijush Das,**
S/o Late Pintu Das.
(Being minor represented by his natural
guardian i.e. the mother Smti Dipika Das,
Respondent No.1.)
 - All are residents of Nishchintapur,
P.O & P.S. Amtali,
District West Tripura.
4. **Sri Kondaveeti Venkata Nancharaiah,**
S/o Sri Kondaveeti Panduranga Roa,
40,9,99, M/S. S.V.G.K. Lorry Service,
Srinagar, Vijoywara,
District Krishna, Andhra Pradesh.

..... Respondents.

B) MAC APP. 9 of 2010

The New India Assurance Company Ltd.,
New India Assurance Building,
87, M - 4 Road Fort,
Mumbai - 110001.

..... Appellant.

– *V e r s u s* –

1. Smti Sathi Das,
W/o Late Pintu Das,
Resident of Kumarghat Rail Colony
(Sukanta pally), P.S. Kumarghat,
District North Tripura,
Presently at Tagori,
P.S. Kumarghat, District North Tripura.
2. Kowdaruti Vewkata Nancharaian,
S/o Sri Kawdakuti Pandu Ranga Rao
of Srinagar, Vijayawadda, Andhra Pradesh.
3. Sri Telipula Durga Rao,
S/o Sri Telipula Subba Rao,
Vill. Vijayawadda, P.S. Krishnajuli,
Andhra Pradesh.

..... Respondents.

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Sri P K Dhar, Advocate, Sri R G Chakraborty, Advocate.
For the respondents	: None.
Date of hearing & Judgment	: 21.01.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER (ORAL)

These two appeals are being disposed of by a common judgment since they arise out of the same accident and relate to the death of one person. The reason why there are two appeals is that two ladies both claiming to be the wife of the deceased had filed the two separate claim petitions. The Gauhati High Court had earlier ordered that both the petitions should be heard together.

2. With the consent of the claimants both the petitions were treated to be petitions under 163A of the Motor Vehicles Act. The contention of the claimants was that the petitioner was a labourer hired to load bamboos on a truck and that when he was travelling on the truck he was hit by a bamboo and he died as a result of the injury sustained by him.

3. The main argument raised by Sri P K Dhar, learned counsel on behalf of the insurance company is that from the statement of the claimants as well as the original complaint lodged with the Police it is apparent that the bamboo was outside the road which struck the deceased and therefore, there is no vehicular accident and the accident cannot be said to have arisen out of the use of a motor vehicle.

4. I am not at all in agreement with this submission of Sri P K Dhar. The Apex Court has expanded the scope of the phrase “*accidents arising out of the use of the motor vehicles*”. Even where the persons travelling in a vehicle are the targets of the extremist

violence then also the Courts have repeatedly held that such an incident arises out of the use of a motor vehicle. In this regard, reference may be made to the judgment of the Apex Court in ***Shivaji Dayanu Patil and another v. Smt. Vatchala Uttam More*, AIR 1991 SC 1769**. The Apex Court has even gone to the extent of holding that when a oil tanker had rolled down away from the road and later on when people had gathered to see the oil tanker and somebody threw a lit match and the oil tanker caught fire and one of the persons who was a bystander was burnt due to the fire that the accident arose out of the use of the vehicle.

5. As far as the present case is concerned, in my view, there can be no doubt that the accident arose out of the use of a motor vehicle. The deceased was travelling in a vehicle which was carrying bamboo sticks and he was sitting at the top of the same. The case of the insurance company is that he was hit by a bamboo which was on the road side. Assuming this to be correct then also it is the duty of the driver to drive the vehicle in such a way that any person sitting in his vehicle is not hit by anything outside the vehicle. Therefore, the accident occurred out of the use of a motor vehicle. The award has been made on the basis of '*no fault liability*' and therefore, I find no merit in the appeal which is accordingly dismissed.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu