

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.10 OF 2011

Smti. Anima Sarkar,
D/O. Shri Ashutosh Sarkar,
Of Village-Rangutia(Bamutia),
P.O.-Bamutia, PS-Lefunga,
District-West Tripura.

..... **Claimant-Appellant.**

- V e r s u s -

1. Smti. Biswa Laxmi Debbarma,
W/O. Shri Joy Kumar Debbarma,
Of Village-Barkhatal,
P.O.-Sidhai Mohanpur, PS-Sidhai,
District-West Tripura.
(Owner of the vehicle No.TR-01 B-3866).

2. The Divisional Manager,
Oriental Insurance Company Limited,
Divisional Office-Central Road,
P.O.-Agartala, PS-East Agartala,
District-West Tripura (Insurer of the
Vehicle No.TR-01 B-3866).

..... **O.P.-Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S. Bhattacharji, Advocate.

For the respondent No.2 : Mr. K. Bhattacharji, Advocate.

Date of hearing and : 16.06.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimant is directed against the
award dated 12-10-2010 passed by the learned Motor Accident
Claims Tribunal, Court No.3, West Tripura, Agartala in case No.

T.S.(MAC) 92 of 2008 whereby the claim petition filed by the claimant was dismissed.

2. The case set up by the claimant was that on 13-08-2007 she was travelling on motorcycle bearing No.TR-01/C-7294 as a pillion rider. The bike was being driven by her relative Swapan Debnath. Near Boalia the offending jeep bearing No.TR-01-B-3866 came from the opposite direction at a high speed and rashly and negligently dashed against the motorcycle as a result of which she suffered injuries.

3. The learned Tribunal dismissed the claim petition on the ground that the FIR was lodged by the brother of the driver of the motorcycle on 20.8.2007, 7 days after the occurrence and, therefore, according to the learned Tribunal the claimant had not proved that she had received injuries in a motor vehicle accident.

4. Sri Suman Bhattacharji, learned counsel for the claimant, has drawn my attention to the discharge slip which shows that the claimant was admitted in hospital on 13.8.2007 and she was discharged on 16.8.2007 and under the heading "case and symptoms", it is mentioned RTA which is normally used in medical reports to refer to road traffic accident. To support his plea, learned counsel has also drawn my attention to the injury report of the driver of the vehicle Swapan Debnath which shows that he was admitted in hospital on 13.8.2007 and in the same also there is history of RTA. Therefore, the story of their having suffered injuries in a road traffic accident cannot be said to be false.

5. Next comes the question as to who was responsible for the accident. The claimant appeared as her own witness. She stated that the accident had occurred due to the negligence of the driver of the Cruiser Jeep which was being driven at a high speed. She has been cross-examined but there is virtually no effective cross-examination. Only a suggestion has been put to her that the accident took place due to the fault of the motorcycle driver. None of the parties led any other evidence. One option open to me is to remand the case with a permission to let the parties lead evidence but in my view, keeping in view the nature of injuries it would not be proper to remand the case at this stage. Therefore, with the agreement of the parties, I propose to dispose of this petition on the basis of the evidence on record.

6. The evidence of the claimant cannot be relied upon wholly. She unfortunately did not examine the driver of the motorcycle who would have been a better witness. On the other hand, neither the Insurance Company nor the owner of the vehicle came to examine the driver of the jeep. There has been a head-on collision between two vehicles on a main road. Even the police report has not been placed on record. There is no other evidence. Keeping in view the fact that the Cruiser Jeep is a larger vehicle and the motorcycle is a smaller vehicle, I hold that the liability for the accident was two-third upon the driver of the Cruiser Jeep and one-third upon the driver of the motorcycle. Since the driver of the motorcycle has not been made a party, the claimant is deemed to have waived of that portion of her claim.

7. Now comes the question of assessment of damages. The claimant remained in hospital for 3 days. She has suffered a fracture of the right clavicle (right shoulder bone). She has also suffered fracture of the third rib but there is no permanent disability certificate on record. These fractures appeared to have healed and there is nothing to show that the claimant has suffered a permanent disability. Keeping in view the nature of the injuries and the period of treatment which stretches to almost two months if we take into consideration the treatment which the claimant took in a private hospital, I assess the total loss for medical attendant, medicines, doctor fees, transportation etc. at Rs.10,000/-.

8. The claimant remained in hospital for 3(three) days and she is awarded Rs.10,000/- for pain and suffering.

The claimant may not have been able to work for one month. She was in private service and has stated that her income was Rs.6,000/- per month but that is income as commission agent. This is not regular income. Therefore, I assess the income at Rs.5,000/- per month and award her loss of income for two months which works out to Rs.10,000/-.

Therefore, the total compensation works out to Rs.(10,000 + 10,000 + 10,000)=Rs.30,000/- (rupees thirty thousand).

9. Since I have held that the motorcyclist would be responsible for 1/3rd, the owner of the Cruiser Jeep and the Insurance Company are only liable to pay 2/3rd which is

Rs.20,000/-. On this amount, the claimant shall also be entitled to interest @7.5% per annum from the date of filing of the claim petition till payment/deposit of the amount. The Insurance Company has not disputed its liability. It is, therefore, directed to deposit the amount of compensation of Rs.20,000/- along with interest in the Registry of this Court within 3(three) months from today.

10. The appeal is disposed of in the aforesaid terms.
Send down the lower court records forthwith.

CHIEF JUSTICE