

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.11 OF 2012

1. The State of Tripura,
Represented by the Secretary,
Public Works Department,
Government of Tripura,
Agartala.
2. The Chief Engineer,
Public Works Department,
Government of Tripura,
Agartala.
3. The Executive Engineer,
Public Works Department,
Mohanpur Division,
West Tripura.
4. The Sub-Divisional Officer,
Public Works Department,
Khayerpur Sub-Division,
Khayerpur, West Tripura.

..... **Appellants.**

- V e r s u s -

1. Sri Jiban Das,
S/O. Late Akhil Das,
Resident of Dalura, P.S. East Agartala,
P.O. Khayerpur, District-West Tripura.
2. Shri Dulal Debnath,
S/O. Late Mahim Chandra Debnath,
Resident of Trinath, Khayerpur,
P.S. East Agartala, P.O. Khayerpur,
District-West Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Mr. D.C. Nath, Advocate.
For the respondent No.1	: Mr. H.K. Bhowmik, Advocate.
For the respondent No.2	: Mr. D.R. Choudhury, Advocate, Mr. D. Deb, Advocate.
Date of hearing and delivery of judgment and order.	: 24.11.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER(ORAL)

This appeal by the State of Tripura is directed against the award dated 12-07-2011 delivered by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in case No.T.S.(MAC) 414 of 2006 whereby he held the State liable to pay compensation of Rs.2,45,780/- along with interest.

2. The undisputed facts are that the claimant Jiban Das was engaged as labourer by the contractor. He was working as labourer doing the job of metalling and carpeting of the road. While the claimant was so working, one road roller owned by the State was being used for the purpose of carpeting of the road. The claimant-petitioner was engaged in the work of standing behind the wheel of the road roller, pouring water of the wheel and removing the earth from the wheel of the running roller. While doing so, the claimant suffered an injury and two of his fingers had to be amputated. The claimant thereafter filed a claim petition and has been awarded aforesaid amount. This award is under challenge in this Court.

3. The only ground of challenge is that the claimant should have filed a petition under the Workmen's Compensation Act (W.C. Act) and in that event, the State could have recovered the amount from the contractor.

4. I find no merit in this contention. Under Section 167 of the Motor Vehicles Act (M.V. Act), an option is available to a party

to file a claim petition either under the M.V. Act or under the W.C. Act. Section 167 reads as follows:-

“167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.”

5. Therefore, if a workman receives injuries during the course of his duty by a motor vehicle, he can decide whether to file a petition under the W.C. Act or under the M.V. Act. Once the claimant had exercised his option to file a petition before the Motor Accident Claims Tribunal, the M.V. Act alone will apply and the provisions of the W.C. Act could not be incorporated to bring a new defence for the State.

6. The vehicle in question, i.e. the road roller was owned by the State. There is no dispute in this regard. It is contended by Sri D.C. Nath, learned counsel for the State-appellants, that a road roller is not a motor vehicle. A motor vehicle has been defined under Section 2(28) as follows:-

“2(28). “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transferred thereto from an external or internal source and includes a chassis to which a body has

not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters.”

7. Therefore, any vehicle which is mechanically propelled for use upon roads whether the power of propulsion is transmitted by an external or internal source is a motor vehicle. A road roller is also used on the roads and is definitely a motor vehicle. In this regard, it may be mentioned that Section 2(21) reads as follows:-

“2(21).“light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;”

(emphasis supplied)

8. Therefore, even a road roller which is less than 7,500 Kgs. in weight is a light motor vehicle and if the road roller is between 7,500 to 12,000 Kgs. in weight it will be a medium vehicle and if it is over 12,000 Kgs. in weight it will be a heavy vehicle but a road roller is definitely a vehicle.

9. Reference may also be made to Section 10 which deals with licensing and specifically provides that in the license in case of a road roller the person should be specifically authorized to drive a road roller. Therefore, the M.V. Act clearly indicates that road roller is also a motor vehicle. In fact, this point is no longer *res integra*.

10. The Apex Court in ***Chairman, Rajasthan State Road Transport Corporation & Ors. v. Smt. Santosh & Ors. [AIR 2013 SC 2150]*** held that even a 'Jugaad' is a motor vehicle. A 'Jugaad' is only a vehicle which is made by using the motor of a tractor or any other motor and, therefore, when a 'Jugaad' is stated to be a motor vehicle, then I fail to understand how a road roller would not be a motor vehicle.

11. Therefore, I find no merit in the appeal which is accordingly dismissed.

12. Send down the lower court records forthwith.

CHIEF JUSTICE