

**THE HIGH COURT OF TRIPURA
AGARTALA**

RFA NO.6 OF 2014

1. Union of India,
Represented by Second in Command,
H.Q. 755 BRTF(GREF),
C/O 99 APO.

2. The Officer Commanding,
78 RCC(GREF)(At present),
Earlier 120 RCC(GREF),
C/O 99 APO.

..... Appellants

- *Vs* -

1. Sri Sagarmoy Ghosh,
S/O Sri Biplab Ghosh of
Madhyapara,
P.S. R.K. Pur,
District-South Tripura.

2. Sri Nandan Chakraborty,
S/O Sri Chandan Chakraborty,
R/O Village-Rajdharnagar,
P.S. R.K. Pur,
District-South Tripura.

..... Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS**

For the appellants : Mr. A. Roy Barman, CGSC

For the respondents : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate.

Date of hearing and delivery
of Judgment & order : **14.07.2015**

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

This appeal by the Union of India is directed against the judgment and decree dated 06.04.2013 passed by the learned Civil Judge, Sr. Division, Court No. 1, West Tripura, Agartala, whereby the suit filed by the plaintiff(Union of India), appellant herein has been dismissed.

2. The allegations of the plaintiff in the suit were that Truck No.TR-03-A-1543, belonging to the defendant No.1, Sagarmoy Ghosh and being driven by Nandan Chakraborty, defendant No.2, was proceeding towards R.K. Pur from Agartala side. According to the plaintiff, the truck hit a pillar of a bridge situated over Charilam River at a distance of twenty seven kilometers from Agartala on the Agartala-Sabroom Road. Further, according to the plaintiff, due to the impact of the loaded civil truck, with the pillar, the said bridge collapsed. The claim of the plaintiff is that the bridge collapsed due to the rash and negligent driving of the driver who hit the pillar of the bridge resulting in the collapse of the bailey bridge resulting in loss of ₹18,24,574/-(rupees eighteen lakh twenty four thousand five hundred seventy four) to the plaintiff. Suit for recovery of this amount along with interest was filed. The defendants contested the suit. The defendants raised a preliminary objection that in view of the provision of Section 175 of the Motor Vehicles Act the civil Court had no jurisdiction to entertain the suit. On merits it was alleged that the truck did not hit any pillar of the bridge but when the truck was crossing the bridge,

the bridge collapsed due to weakness in the construction of the bridge. According to the defendants, the truck was neither overloaded nor was there any rash and negligent driving on the part of the driver. The learned trial Court framed the following three issues:-

"1. Whether the suit is maintainable in its present form and nature;

2. Whether the plaintiffs are entitled to get a decree for an amount of Rs.18,5573/- together with interest;

3. Whether the plaintiff are entitled to get any other relief/reliefs."

3. The trial Court held under issue No.1 that the jurisdiction to decide the dispute lay exclusively with the Motor Accident Claims Tribunal in terms of Section 175 of the Motor Vehicles Act which reads as follows:-

"175. Bar on jurisdiction of Civil Courts.—Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court."

In view of the aforesaid provision the trial Court held that since the jurisdiction of the civil Court has been expressly

barred under Section 175, the civil Court had no jurisdiction to decide this case. We see no error in the finding of the trial Court.

4. Having held so, the trial Court went on to decide the other issues on merit. It is urged by Sri A. Roy Barman, learned CGSC that once the trial Court had held that it had no jurisdiction it should not have embarked on the decision on other issues relating to the merits of the case. We cannot accept this submission. *Order XIV Rule 2 CPC* reads as follows:-

"R.2. Court to pronounce judgment on all issues.-

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

5. The mandate of *Sub-Rule (1) of Rule 2 of Order XIV* is that notwithstanding the fact that a suit can be disposed of on a preliminary issue, the Court is required to pronounce judgment on

all issues. The only exception is that if at or before the time of framing of the issues one of the parties brings it to the notice of the Court that any of the issues relates to the jurisdiction of the Court or bars the suit under any law then such an issue can be tried as a preliminary issue. In fact, what has been said in the last part of *Sub-Rule (2)* is that in such a case the Court should postpone the settlement of the other issues until that issue has been determined.

6. Therefore, if the Court wants to treat any issue as a preliminary issue that issue must relate to either the jurisdiction of the Court or must relate to the bar to the suit created by law. In such a situation, the Court should not frame the other issues and postpone the settlement of the other issues. If it decides to frame all the issues and evidence is recorded then the Court is bound to give judgment on all issues. Therefore, we are clearly of the view that the trial Court was justified in giving judgment on all issues.

7. Having held so, since we are in agreement with the trial Court that it had no jurisdiction to deal with the matter, the party who is affected by such decree cannot be prejudicially affected. In case the plaintiff wants to approach the Motor Accident Claims Tribunal in accordance with law then the finding given by the civil Court which had no jurisdiction to decide the issue is a finding without jurisdiction and will not bind the Motor Accident Claims Tribunal and will not operate as *res judicata* in the case. We are not commenting on the merits of the case because if as held by the trial Court it had no jurisdiction to decide the matter then its decision on

the merits as to how the accident happened is a decision without jurisdiction and cannot operate as *res judicata*

8. The appeal, is therefore, disposed of with the aforesaid clarifications.

JUDGE

CHIEF JUSTICE