

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.47 OF 2011

Sri Bishnu Choudhury,
S/O. Sri Niranjana Choudhury,
Resident of village:-East Charakbai,
P.O. & P.S.- Baikhora,
District-South Tripura.

..... **Appellant.**

- V e r s u s -

1. Sri Parimal Debnath,
S/O. Late Gouranga Debnath,
Resident of village:- East Charakbai,
P.O. & P.S.- Baikhora,
District-South Tripura.
2. Sri Haradhan Debnath,
S/O. Late Hasi Kumar Debnath,
C/O-Sri Bishnu Choudhury,
of village:- East Charakbai,
P.O. & P.S.- Baikhora,
District-South Tripura.
Driver of TR-03A-0381 (Auto Canter).
3. The Branch Manager,
United India Insurance Company Ltd.,
Udaipur Branch, Subhas Road,
P.O.-R.K. Pur, District-South Tripura,
Insurer of TR-03A-0381 (Auto Canter).

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. D.C. Roy, Advocate.

For the respondents No.1 & 2 : Mr. P. Dutta, Advocate.

For the respondent No.3 : Mr. S.D. Choudhuri, Advocate.

Date of hearing and
delivery of judgment
and order. : 10.09.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal filed by the owner is directed against the award dated 22-01-2011 passed by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in case No. T.S.(MAC) 60 of 2010 whereby the learned Tribunal has granted compensation of Rs.5,36,000/- in favour of the claimant but has held the owner alone liable to pay the same. The Insurance Company has been exonerated of its liability to pay the compensation.

2. The sole issue is whether the injured claimant was travelling in the vehicle in question as a gratuitous passenger or as owner of the goods.

3. The vehicle in question was a goods carrying auto van. It is a three wheeler. It is registered and the sitting capacity is mentioned as 2(two). In the insurance policy also there is coverage of two passengers. The complainant-victim in his claim petition stated that he had boarded the vehicle as he was carrying his goods in the vehicle. The case set up by the claimant was that he sells vegetables in the market and he had collected vegetables from various villagers and had boarded the auto van along with the vegetables.

4. The case of the owner was of complete denial. The owner did not make any mention whether the deceased was travelling in the vehicle as owner of the goods or as a passenger. The vehicle in question is owned by Bishnu Choudhury and the driver of the vehicle was Haradhan Debnath. They have filed a joint

written statement and in the joint written statement it is stated that the case of the petitioner is totally false and fabricated and the answering respondents deny the same. Not a word has been stated in the written statement with regard to the manner in which the accident happened or the manner in which the victim was travelling in the vehicle. The driver of the vehicle was the best person to state in what capacity the victim was travelling in the vehicle. The allegation made by the claimant in Para-22 that he was a vegetable seller and used to collect vegetables and was travelling in the vehicle along with the vegetables has been specifically denied in Para-9 of the written statement which reads as follows:-

“9. That the contents of Para 21 & 22 of the claim petition are not true. The answering respondents deny all those statements in toto. The claimant made all those imaginary statements in Para 21 & 22 for getting excessive compensation.”

5. FIR in this case was filed by none other than the son of the claimant and in the FIR which has been produced and proved by the claimant himself, it is mentioned that the deceased was walking on the road and he was asked by Haradhan Debnath whether he wanted a lift. In fact, the FIR indicates that he was virtually forced into the van and after the van had only moved 200 metres it overturned and met with an accident. There is no mention of any vegetables in the FIR.

6. This Court may have taken a different view of the matter but for reasons best known to the claimant he has not produced his son who has lodged the FIR. It is only the maker of

the FIR who could have said whether he had made a false statement or not. The stand of the owner and the driver before the Tribunal was that the deceased was not the owner of the goods and now in appeal they cannot turn around and claim that the deceased was travelling in the vehicle as owner of the goods. It is only after the learned Tribunal has accepted the stand of the owner and held that because of the stand that they are liable to pay the compensation, the owner and driver have become wiser and have now taken the plea that the stand of the claimant that he was travelling as owner of the vegetables is correct.

7. A party cannot be permitted to blow hot and cold at the same time. In these very proceedings, the owner and driver had filed a written statement clearly stating that the allegations made in Para-22 of the claim were wrong. Now how can the owner turn around and say that that statement made by him in Para-9 of the written statement is false?

8. In this view of the matter, I find no merit in the appeal which is accordingly dismissed.

9. Send down the lower court records forthwith.

CHIEF JUSTICE