

THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC APP. NO.67 OF 2011

Appellants :

- 1. The Director of Postal Services,**
Government of India,
Head Office Agartala, West Tripura,
(owner and custodian of the vehicle
No.WB-03A-8560 (Mail Van).
- 2. The Superintendent**
Deptt. of Postal Services,
Dharmanagar Division,
Dharmanagar, North Tripura.

By Advocate :

Mr. A Roy Barman, CGC

Respondents :

- 1. Smti Surabala Debbarma,**
Wife of Late Brajendra Debbarma,
- 2. Smti Gandhi Debbarma,**
D/o Late Brajendra Debbarma,
- 3. Smti Baijanti Debbarma,**
D/o Late Brajendra Debbarma,
- 4. Sri Biswajit Debbarma,**
S/o. Late Brajendra Debbarma,
- 5. Smti Irani Debbarma,**
D/o. Late Brajendra Debbarma,
- 6. Sri Santosh Debbarma,**
S/o. Late Brajendra Debbarma,
- 7. Smti Rita Debbarma,**
D/o. Late Brajendra Debbarma,
- 8. Master Thomas Debbarma(minor)**
S/o. Late Brajendra Debbarma,
- 9. Sri Jyoti Lal Majumder,**
S/o. Sri Sukh Lal Majumder,
Village- North Dhanichhara,
P.S. Pecharthal, Dist. North Tripura,
(Owner of the vehicle No.TR-02-2766 (Auto).
- 10. The United India Insurance Company Limited,**
Agartala Branch, Banamalipur, Agartala,
(insurer of the Auto-Rickshaw bearing No.TR-02-2766)

By Advocates :

For respondent Nos. 1 to 8 Mr. D.C. Saha, Adv.

For respondent No. 10 Mr. P. Gautam, Adv.

**B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing &
Judgment & Order : **08.09.2015**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

This appeal by the appellant-Director of Postal Services is directed against the award dated 04.4.2011 whereby the learned Tribunal awarded a sum of Rs.7,52,130/- in favour of the petitioners.

(2) The petitioners filed a claim petition under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, West Tripura, Agartala alleging that on 11.10.2003 at about 9 am deceased Brajendra Debbarma was hit by Mail Van bearing registration No.WB-03-A-8560. It was further alleged that the Mail Van bearing No.WB-03-A-8560 collided with the auto-rickshaw. The stand of the owner of the auto-rickshaw was that the Mail Van was being driven rashly and negligently. In the claim petition it was stated that there was no negligence on the part of the auto-rickshaw driver. The claim was contested by the respondents. As a result of the injuries sustained in this accident Shri Brajendra Debbarma unfortunately expired. The claimants are the widow, daughters and son of late Shri Brajendra Debbarma and filed the claim petition. The learned Tribunal held that the claimants were

entitled to compensation and, therefore, awarded the amount as aforesaid.

(3) The appellant appeared and contested the claim petition. It was alleged that the accident did not occur due to the negligence of the driver of the Mail Van. According to the respondents, the deceased was travelling in an auto-rickshaw bearing No.TR-02-2766 and the accident occurred due to the rash and negligent driving of the auto driver.

(4) As far as the Postal Department is concerned, it did not deny the accident or the death of the deceased. However, a preliminary objection was raised that the claimant-petitioners had earlier filed case No. TS(MAC) 28 of 2003 before the learned Motor Accident Claims Tribunal, North Tripura, Kailashahar against the opposite parties and on receipt of the notice issued by the said Tribunal the answering respondents had appeared before the Tribunal but on 19.4.2004 the claimant-petitioners remained absent and thereafter, the case was adjourned *sine-die* because the claimants were not appeared in Court by Order dated 19.04.2004. Instead of taking any action to revive the case of 19.4.2004, the claimants choose to file a fresh petition. Even more shocking is the fact that in the fresh petition they did not even make a whisper that they had earlier filed a claim petition at Kailashahar. On merits, the stand of the respondents was that there was no negligence on the part of the driver of the Mail Van and the negligence was only of the auto-rickshaw driver.

(5) I shall first deal with the issue as to whether the second Tribunal had jurisdiction to entertain the second claim petition or not. The Tribunal has dealt with this objection in a very very casual fashion and it would be pertinent to refer to Para 8 of the judgment which reads as follows :

“It was argued by the learned counsel appearing for the OP no.1 and 2 that on the same matter the present claimant-petitioners filed a claim case before the Motor Accident Claims Tribunal, North Tripura, Kailashahar and that case was adjourned sine-die due to default on the part of the claimant-petitioners and as such, the claim of the instant claim-petitioners is not maintainable.

I have gone through the documents submitted under Exbt.A series including the order passed by the Learned Motor Accident Claims Tribunal, North Tripura, Kailashahar in TS(MAC)28/2003. On perusal of the order it appears that the Learned Tribunal was pleased to adjourn the claim case due to default on the part of the claimant-petitioners but not on merit. The legitimate claim of any person cannot be brushed aside on the ground of default until and unless the same is disposed of on the ground of merit. If the Learned Tribunal had adjourned the claim on the ground of merit then it can be said that the claimant-petitioners has got no claim. Therefore, in this regard, the submission of the learned counsel appearing for the OP No.1 and 2 holds no water.”

To say the least, the aforesaid observations of the learned Tribunal show total lack of knowledge of law.

(6) Order dated 19.04.2004 passed by the Motor Accident Claims Tribunal, North Tripura at kailashahar reads as follows :

“19.04.04. Learned Advocate Mr. A. Bhattacharjee is present on behalf of respondent No.1 and 2 and on the other hand Learned Advocate Mr. C. Bhattacharjee is present on behalf of the respondent No.3.

No step from the side of the claimant-petitioners.

Perused the case record. It is found that the instant claim petition was preferred on 10.11.2003 and thereafter, no step is taken

from the side of the claimant petitioner. As such I find that the claimant-petitioners are not at all interested to proceed with the instant case and accordingly the instant case is adjourned sine die for default of the claimant petitioner."

(7) This Court is not commenting whether the order dated 19.4.2004 passed by the Motor Accident Claims Tribunal, Kailashahar was proper or not. The fact remains that he adjourned the proceedings *sine-die* for default of the appearance of the claimant petitioner. The proceedings had not come to an end. They had only been adjourned *sine-die*. Therefore, the only course open to the claimants was to approach the Motor Accident Claims Tribunal, North Tripura, for revival of the claim petition in accordance with law. The claimants could not have filed another claim petition at another station. No party is entitled to file more than one claim petition with regard to one accident relating to one person. There can only be one claim petition and that claim petition had been filed at Kailashahar. Even if the claim petition at Kailashahar was dismissed in default or treated to be dismissed in default then also a fresh claim petition had to be filed only at Kailashahar and not before any other Tribunal.

(8) As far as judicial proceedings are concerned any aggrieved party is entitled to file proceedings for redressal of its grievances. It can, however, only file one set of proceedings and cannot file two proceedings before two separate Courts. Under the Motor Vehicles Act the claimants have three choices as to where to file the claim petition.

(9) Section 166(2) of the Motor Vehicles Act reads as follows:

“166(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

Therefore, the claimants or applicants under Section 166 have an option of filing a claim petition before

- (i) the Claims Tribunal having jurisdiction over the area in which the accident occurred
- (ii) the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or
- (iii) the Claims Tribunal having jurisdiction of the place where the defendant resides.

An option is given to the claimant to choose any of the three Motor Accident Claims Tribunal. Therefore, any claimant under the Motor Vehicles Act can choose to file the claim petition either at the place (i) where the accident took place (ii) at the place where the claimant resides for work and gain (iii) at the place where the defendant resides. However, once the claimant exercises such option he cannot withdraw the case and file it before another Tribunal because that would amount to forum hunting which cannot

be permitted. Once the claimants have chosen to file a claim petition before a particular Tribunal they must proceed before that Tribunal alone and no other Tribunal.

(10) It may be true that claimants under the Motor Vehicles Act are to be treated with sympathy but the law also has to be followed. Prior to the amendment of the Motor Vehicles Act, 1994 the claim petition could only be filed at the place where the accident took place or where the defendant resides. This is a beneficial piece of legislation which empowers the claimant to file a claim petition even at the place where he resides, even though, no part of the cause of action may have taken place at that time. However, once the claimant files a claim petition before a Tribunal he must follow that claim petition and cannot change the forum.

(11) In this case what has happened is even worse. The claimants did not appear before the Tribunal at Kailashahar. The said Tribunal instead of dismissing the claim petition for default or deciding it on merits in which case it was bound to be dismissed because there was no evidence decided to adjourn it *sine-die* as per the then prevailing practice. It may be clarified that this Court in **MAC APP NO.10 OF 2007** has clearly held that a claim petition cannot be dismissed in default and has laid down the procedure to be followed by the Tribunals in such cases. Whether the order of the Tribunal at Kailashahar is right or wrong is not the question. The issue is whether the claimants could file a fresh petition in Agartala. Even more shocking is the aspect that the claimants purposely withheld these facts from the Court and did not inform the Court

that they had earlier filed a claim petition at Kailashahar and even after such claim petition was brought to the notice of the learned Tribunal it has passed a totally illegal order holding that the legitimate claim of any person cannot be brushed aside and the same should be disposed of on merit.

(12) The approach of the Tribunal may have been sympathetic but it is a totally illegal approach. There has to be some discipline and respect *inter se* Judges also. One Motor Accident Claims Tribunal is equal to any other Motor Accident Claims Tribunal. The second Motor Accident Claims Tribunal at Agartala had no jurisdiction to sit over judgment or set aside the order of the Motor Accident Claims Tribunal at Kailashahar. The result is that we have two conflicting orders of two Claims Tribunal. One Claims Tribunal has adjourned the case *sine-die* and the other Claims Tribunal with regard to the very same incident has passed an award awarding compensation in favour of the claimants. If these things are permitted to go on, it will lead to chaos in the Judiciary. The order of a Motor Accident Claims Tribunal can either be reviewed only by the very same Motor Accident Claims Tribunal or set aside in appeal under the Motor Vehicles Act or in proceedings under Article 227 of the Constitution of India by the High Court. No other Motor Accident Claims Tribunal has jurisdiction to virtually nullify the order for award of another Tribunal of equal jurisdiction. The order which has been passed shows total lack of discipline and the learned Tribunal has gone on to virtually set aside the order of the Motor Accident Claims Tribunal, Dharmanagar in TS(MAC) 28 of 2003 without having any jurisdiction to do so.

(13) This Court is clearly of the view that the Motor Accident Claims Tribunal, Agartala had no jurisdiction to entertain the claim petition and once the claim petition was entertained by him and it was brought to his notice that the claimants had earlier filed a claim petition, the Tribunal should have advised the claimants to have again gone to the Tribunal at Dharmanagar. Since the award of the learned Tribunal is without jurisdiction, I have no other option but to set aside the same without going into the merits of the case. The entire proceedings before the Motor Accident Claims Tribunal are without jurisdiction in view of the orders passed in TS(MAC) 28 of 2003 by the Motor Accident Claims Tribunal, North Tripura Kailashahar.

(14) Having held so, I am clearly of the view that the claimants should not suffer because of the wrong advise of the counsel or even the wrong approach of the Judge. It is also clear that the order dated 19.4.2004 passed by the MAC, North Tripura, Kailashahar adjourning the case *sine die* is contrary to the law laid down by this Court in **MAC APP NO.10 OF 2007** case. Therefore, in exercise of the powers vested in this Court under Article 227 of the Constitution of India the order dated 19.4.2004 passed by the Motor Accident Claims Tribunal, North Tripura at Kailashahar is also set aside and the claimants are given an opportunity to appear before the said Tribunal and proceed with a claim petition before the said Tribunal. The parties through their learned counsel for the parties are directed to appear before the Motor Accident Claims Tribunal, Kailashahar on 25th November, 2015 and thereafter, the learned

Tribunal shall proceed from the stage when the earlier orders was passed. In case written statement has not been filed before the Court at Kailashahar the party shall file their written statement before him and thereafter, the matter shall be decided in accordance with law.

(15) I have been informed that 50% of the awarded amount was deposited in this Court, which has been released in favour of the claimants. Normally this amount would have had to be refunded but at this stage I am not directing refund of the said amount but if the claim petition filed by the claimants is dismissed by the Tribunal at Dharmanagar then they shall have to refund the amount. However, in case their claim petition is allowed then the amount already paid to them shall be adjusted in the amount, if any, awarded to them. Since the claimants have received some amount which was not due to them and they filed the second claim petition without disclosing the fact that they had earlier filed a claim petition at kailashahar it is further ordered that the claimants shall not be entitled to any interest from the date of 19.04.2004 till 04.04.2011 and no interest for this period shall be awarded to them by the Motor Accident Claims Tribunal at Dharmanagar even if an award is passed in their favour.

No costs.

CHIEF JUSTICE

Dipesh