

THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC App. No. 71 of 2011

Claimant-Petitioner-Appellant :

Sri Bikash Munda,
S/o. Balku Munda,
Resident of Village-Nilkrishna Para,
P.S-Jirania, District-West Tripura.

By Advocate :

Mr. S. K. Dutta, Adv.

Opposite Party-Respondents :

1. Sri Naresh Debbarma,
S/o. Bishu Debbarma,
Village-Maharam Choudhury Para, P.O-
Durganagar, P.S-Ranir Bazar, District-West Tripura.
(Owner of the vehicle No. TR-01-E-1618, Auto
Van).

By Advocate :

None.

2. The New India Assurance Company Ltd.,
Agartala Branch, H.G.B Road, Agartala, West
Tripura, Represented by its Branch Manager.
(Insurer of the vehicle No. TR-01-E-1618, Auto
Van).

By Advocate :

Mr. P. Chakraborty, Adv.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **31st August, 2015.**

Judgment & Order : **11th September, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

This is a rather unusual case where the claimant(appellant herein) is claiming compensation on account of the death of his wife on the

ground that he himself is responsible for the death of his wife who died due to his rash and negligent driving.

[2] The claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. In the claim petition it was alleged that the deceased Dipika Munda was the wife of the claimant. It is also mentioned in the claim petition that with regard to this incident FIR No.11 of 2006 was registered with Jirania Police Station under Section 279/304(A) IPC.

[3] In the claim petition the petitioner alleged that on 13.02.2006 at about 2 am at Belbari (Bishu Kumar Para) on Bailey bridge on Champaknagar-Belbari Road under Jirania Police Station, the victim, Dipika Munda was returning to her house from a cultural function along with other villagers, when the victim and others reached the Bailey bridge of Belbari the offending vehicle No.TR-01-E-1618 came from behind in the same direction and hit the victim. This vehicle was being driven by the claimant, Bikash Munda himself. In the claim petition it is alleged as follows:

“*While the victim Dipika Munda was returning towards her house from a cultural function with some other villagers through Campaknagar-Belbari Road and when they reached at Bailey Bridge of Belbari (Bishu Kumar Para) in the mean time the offending vehicle bearing No.TR-01-E-1618 (Auto Rickshaw) was coming from the same direction and which vehicle was being driven by the victim’s husband Sri Bikash Munda at a very high speed with rashly and negligently and when the driver of the said vehicle saw his wife Dipika Munda on the said Bailey Bridge he was trying to stop the vehicle but due to rash and negligent driving at a very high speed of the vehicle the brake of the vehicle slipped and the said vehicle dashed the victim Dipika Munda on the Bailey Bridge.*****”**

As a result of the injury received, Dipika Munda died. The vehicle was driven by the claimant himself. It was owned by Sri Naresh Debbarma and insured with the New India Assurance Company Ltd. The

insurance company contested the claim petition in which it was alleged that in fact the deceased along with many other persons was travelling in the vehicle which was a three wheeler goods carriage vehicle and not an auto rickshaw. It was also alleged that the driver did not have any valid driven licence and hence the insurance company could not be held responsible. It was also alleged that the claimant could not get the benefit of his own wrong and claim compensation for his own rash and negligent driving.

[4] The claimant Bikash Munda in evidence filed his own affidavit and repeated what had been stated by him in the claim petition. He, however in cross-examination admitted that the vehicle was an auto van and he himself was driving the vehicle when the accident occurred. He also stated that he did not submit any driving licence and he has not produced any driving licence in Court. The claimant also produced certain witnesses. One Parfulla Debbarma was examined who claimed that he was working in a brick field as a skilled labourer and that Dipika Munda was also working in the brick field. According to him on that day Dipika Munda and he along with others were returning from a cultural programme and when the auto came from behind in the same direction at a very high speed the driver of the vehicle dashed against the victim Dipika Munda. Though he stated that Dipika Munda was working in the same brick field he has not named the brick field nor has he named the owner of the brick field.

[5] Surprisingly, the owner of the vehicle appeared as a witness for the claimant. He stated facts about the accident but admittedly he was not present at the time of the accident, so he would know nothing about the accident. He is the person who has lodged the FIR and in the FIR it is stated

that when Dipika Munda was boarding the auto she died. While appearing as the witness for the claimant the owner has stated as follows:

"4. That, thereafter I have filed the FIR in the Jirania Police Station, West Tripura, but when I asked my driver for description of the accident then he was crying for lost of his wife and he was under mental shock, pain and agony and could not described details of the accident to me. As such I thought that the wife of the driver namely Dipika Munda was boarding the Auto, so I described in the FIR that she was in the Auto but after lodging the FIR I have learnt from the other eye witness that the victim was proceeding through the Bailey bridge at Belbari (Bishu Kumar Para) and on seeing her the driver of the vehicle was trying to stop the vehicle on the said Bailey Bridge. But as the vehicle was coming at a high speed so the brake and vehicle was not properly controlled and vehicle dashed the victim Dipika Munda i.e. wife of the driver on the said Bailey bridge and she entered under the vehicle and died on the spot."

In the FIR it is clearly stated as follows:

"I came to Jirania and got Bikash Munda, driver of my vehicle and came to know that last night at about 2 (two) A.M, as (they) were on the way back from Khumria Bazar after visiting a programme, my auto dashed against the railing of the Baily Bridge of Belbari (Bishu Kumar Para). As a result, the driver Bikash Munda's wife Dipika Munda(21), who was in the auto, sustained grievous injuries and died at the place of occurrence and the other one or two passenger(s) sustained minor injuries."

In the FIR it is clearly stated that Dipika Munda had boarded the auto van. This person who has lodged the FIR has made a totally false statement in Court that when he asked his driver for description of accident, the driver was crying as he was in mental shock and pain and agony. How could this witness assume that Dipika Munda was boarding in the auto van. This witness had made an unambiguous statement that the deceased was travelling in the auto van. Later, realizing that the insurance company could not be held liable he has now changed the version. The explanation given by him is totally false and cannot be accepted.

[6] Furthermore, this witness only states that he learnt from other witnesses that Dipika was not travelling in the auto van but he did not name any of the eye witnesses. Another important fact is that this witness in cross examination has admitted that his counsel is none other than Sri Sujit Kumar Dutta, who is the counsel for the claimant also. The collusion between the claimant and the owner is therefore writ large. He has also admitted that his vehicle was only licensed to carry goods and no passenger could be carried at the vehicle. In cross examination it is stated that it is not a fact that his driver did not have a valid driving licence but he admits that he has not submitted his driving licence.

[7] I am not referring to the statement of DW-1 since he was not a person who was on the spot. However, with regard to the manner in which the accident happened, this witness clearly states that the vehicle was not an auto rickshaw but an auto van. It was a delivery van and permit was issued to it as a goods carriage vehicle. The registration certificate also shows that this vehicle was a goods carriage vehicle. The insurance policy in question also shows that the vehicle is a goods carriage vehicle and there is no premium paid for carriage of any passenger and, therefore, there is no question of any passenger being carried in the vehicle.

[8] The learned trial Court came to the conclusion that the story put forth by the claimant is absolutely false. While coming to this conclusion the learned Tribunal held that immediately on the morning following the accident the petitioner Bikash Munda give information about the accident to Sri Naresh Debbarma, the owner of the vehicle who at once lodged the FIR and in this FIR it is clearly mentioned that the Dipika was travelling in the

auto van. The owner while appearing in the witness box states that his counsel is Sri Sujit Kumar Dutta who is also the counsel for the claimant-petitioner which again clearly shows the collusion between the two. The owner after filing written statement never took any effective steps in the case but appeared as a witness for the claimant and tried to build up a false case that he has lodged wrong FIR.

[9] It is even otherwise difficult to believe the version of the claimant. The occurrence took place at 2 am in the morning. The allegation is that the auto van hit Dipika, the deceased from behind. No husband in his right senses would let his wife walk alone at 2 am in the morning and it is more than obvious that the wife was returning from some function along with her petitioner-husband and was not on foot.

[10] It was contended that the insurance company cannot contest the case on these grounds. I am clearly of the opinion that this is a totally fraudulent case set up and fraud vitiates all actions and, therefore, the insurance company was fully entitled to contest the claim on these grounds. The learned trial Court was absolutely right in holding that the claimant and the owner in collusion with each other have set up a cock and bull story to claim compensation.

[11] Assuming for the sake of argument that the version of the claimant is correct then also he is not entitled to any compensation whatsoever. According to the claimant himself, he himself was guilty of rash and negligent driving. A person who is guilty of rash and negligent driving cannot claim compensation for his own rash and negligent driving.

[12] Under the law of torts, the principle wrong doer is the driver of the vehicle who has caused rash and negligent driving. The owner of the vehicle becomes liable only because of the application of the principle of vicarious liability whereby the employer is made liable for the wrongful acts of his employees. The insurance company is there to indemnify the owner. In a case of this nature the driver being the principle wrong doer has to be held jointly and severally liable to pay the compensation along with the owner and though finally the insurance company may be directed to deposit the compensation. The insurance company is to indemnify the owner in terms of the policy and the owner is liable because of the wrongful act of his employee. In such a situation the employee cannot claim compensation for the death of his wife which occurred due to his own rash and negligent driving. It is well settled principle of law that no one can acquire a right of filing an action on account of his own wrong and no one can bring a suit on the basis of his own wrong doing. In this behalf reference may be made to the following principles:

**"Nemo Ex proprio dolo consequetur actionem" and
"Nemo-ex suo delicto meliorem suam conditionem
facere potest" shall apply."**

It means "No one can bring an action for his own fraud and no one can perfect his condition by a crime. Crime is an unlawful act. One cannot acquire a right under a crime. When the source itself is wrong, the benefit from that is also wrong. One can acquire a title by forgery, but that title is not lawful as the means used for obtaining the same is not lawful. The person obtaining a right by unlawful means must return the same to the rightful owner."

[13] The claimant has alleged and stated on oath that his wife died due to his rash and negligent driving. This means that he has committed an offence punishable under the Indian Penal Code. How can a person who is guilty of a criminal offence be granted compensation on account of this very criminal offence. The petitioner himself is the wrong doer and, therefore, he is not entitled to claim any compensation.

[14] In ***Oriental Insurance Co. Ltd. vs. Jhuma Saha and others, 2007 ACJ 818***, the Apex Court held that where the owner of the vehicle himself is to be blamed for the accident and no other motor vehicle is involved then his heirs cannot claim any compensation. The principle laid down was that a person cannot be a plaintiff and the defendant at the same time. The insurance company is only to indemnify the owner and the legal heirs of the owner cannot file a claim against the insurance company.

[15] In ***Ningamma and another vs. United India Insurance Co. Ltd., 2009 ACJ 2020***, the Apex Court was dealing with a case the facts of which case are similar to the facts of the present case. In that case, the deceased had borrowed a motor cycle from the owner. He while driving the motor cycle hit a bullock cart, but no other motor vehicle was involved. The Apex Court held that the borrower of the motor cycle steps into the shoes of the owner and since the owner cannot himself be a recipient of compensation as liability to pay the same is on him the borrower in case of injury or his legal heirs in the case of death of borrower of the vehicle are not entitled to claim compensation. The question considered by the Apex Court has been set out in para 13 of the report which reads as follows:-

"13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of the MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?"

[16] The Court after referring to the legal provisions and various other judgments including ***Oriental insurance Co. Ltd. vs. Rajni Devi and others, 2008 ACJ 1441*** held as follows:-

"18. In the case of Oriental Insurance Co. Ltd. v. Rajni Devi, 2008 ACJ 1441 (SC), wherein one of us, namely, Hon'ble Justice S.B. Sinha was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

[17] It would be pertinent to mention that this view has been followed by the High Court of Andhra Pradesh in ***2013 ACJ 2586, Bajaj Allianz General Ins. Co. Ltd. v. Gaddam Swami Reddy and another***, by the Chhattisgarh High Court in ***2014 ACJ 101, New India Assurance Co. Ltd. vs. Prahlad Sahu and another***, the Allahabad High Court in ***2014 ACJ 252, Raj Kumari Chaurasia and others vs. New India Assurance Co. Ltd.***, the Punjab And Haryana High Court in ***2014 ACJ 2803, Bajaj Allianz General Insurance Co. Ltd. vs. Kanchan and others*** and many other judgments.

[18] It was urged by Sri S. K. Dutta that the claimant may not be able to claim compensation for his own injuries but he can definitely claim compensation for injuries caused to his family members. I am afraid, that argument cannot be accepted. The principle remains that the wrong doer cannot claim any compensation for injury which may have been caused to him due to his own wrong doing. A person cannot be the plaintiff and the

defendant in the same suit. He cannot be the claimant and also the wrong doer.

[19] In view of the above discussion, I am clearly of the view that even if the version of the claimant is believed that the deceased was outside the auto van then also he is not entitled to any compensation. Accordingly, I find no merit in the appeal which is accordingly dismissed. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE