

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**MAC App. No. 77 of 2011**

**Appellant-Petitioner:**

**Smt. Jharna Rani Das**

W/o. Late Parimal Chandra Das, resident of  
village-Santnagar, Siddiashram, P.S-Amtali,  
District-West Tripura.

**By Advocate :**

Mr. A. Nandi, Adv.

**Respondent No. 1 :**

**1. Sri Babul Banik,**

S/o. Late Hiralal Banik, resident of Kunjaban  
colony, P.O-Abhoynagar, P.S-East Agartala,  
District- West Tripura ( Owner of the offending  
vehicle bearing No. TR-01A-4445, Auto  
Rickshaw)

**Respondent No. 2 :**

**2. The Divisional Manager,**

The New India Assurance Co. Ltd., Divisional  
Office located at Mantribari Road, Agartala, P.S-  
West Agartala, District- West Tripura, (Insurer of  
the vehicle bearing No. TR-01-A-4445)

**Respondent No. 3 :**

**3. Smt. Sita Rani Das,**

W/o. Late Chaya Ranjan Das,  
Resident of village-Ishanpur, P.O-Ishanpur, P.S-  
Sidhai, District-West Tripura, ( Mother-in-law of  
the appellant-petitioner).

**By Advocate :**

Mr. P. Chakraborty, Adv.

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

Date of hearing &  
Judgment & Order : **30<sup>th</sup> November, 2015.**

Whether fit for reporting : 

|            |           |
|------------|-----------|
| <b>Yes</b> | <b>No</b> |
| √          |           |

### **JUDGMENT & ORDER(Oral)**

This appeal is directed against the award dated 20<sup>th</sup> April, 2011 passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in T.S(MAC) No. 298 of 2008 whereby he dismissed the claim petition filed by the claimant on the ground that the claimant had failed to prove that her deceased husband died as a result of a injuries received in a motor vehicle accident involving Auto Rickshaw No.TR-01-A-4445.

**[2]** The claimant filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 in which she claimed that on 14.04.2007 at about 4.00/4.30 pm when her deceased husband, Parimal Chandra Das was returning to his house driving his scoter, he was hit by auto rickshaw bearing registration No. TR-01-A-4445 near the drop gate, as a result of this accident he suffered injuries. He was shifted to the G.B. P. Hospital where he expired on 16<sup>th</sup> April, 2007. Even according to the averments made in the claim petition the FIR was lodged at the instance of the doctor who made a report to the police station that the deceased Parimal Chandra Das had died as a result of injuries received in a road traffic accident (RTA). No name, number of the vehicle was given and the Officer-in-Charge of the police station carried out investigation and came to the conclusion that the deceased had suffered a heart attack and died by falling of his own scoter. According to this investigating officer no other vehicle was involved. This report was submitted to the Magistrate concerned who also accepted this report.

**[3]** Thereafter, according to the widow she had got information about the accident from one Sri Bimal Chandra Dey of Siddhi Ashram and she then rush to the G.B.P Hospital. According to the claimant she also reported to the concerned police officer of the police station that auto rickshaw bearing

registration No. TR-01-A-4445 was responsible for causing the said accident and that the driver of the vehicle fled from the spot. The claim of the petitioner is that she was unaware of the fact that the police officer had given a report that her husband had died by falling from his own scooter. According to her she came to know about this only in April, 2008 when the employer of her husband i.e. the National Insurance Co. Ltd., Agartala Branch collected some information. However, it is not clearly stated what is the information collected by the National Insurance Co. Ltd. and why this information was collected. The case of the claimant further is that thereafter she reported the matter to the Superintendent of Police, who then ordered fresh investigation to be carried out on 23<sup>rd</sup> June, 2008 and thereafter the investigation was carried out and in this investigation it was found that auto rickshaw No. TR-01-A-4445 was involved in the accident. On this basis the claim petition was filed. Sri Babul Banik, the owner of vehicle bearing registration No. TR-01-A-4445 stated that he himself is the owner-cum-driver of the vehicle and his vehicle did not meet with an accident. He denied the fact that this vehicle was being driven by any other person. The New Indian Assurance Co. Ltd. also took a same stand. It would be pertinent to mention that the widow while filing the claim petition had not even disclosed that the deceased was also survived by his mother. It was only thereafter that the mother filed a separate application for being impleaded and she was impleaded in the appeal.

**[4]** In this case the main issue was whether the accident has taken place with the vehicle in question or not? The claimant has led no evidence to prove the accident. She has only relied upon documentary evidence mainly the subsequent police report. She has not examined any witness. Admittedly, she is not the eye witness to the occurrence. She should have examined some eye witnesses of the occurrence who had met her and told her about the accident.

She has to explain from where she came to know the number of the vehicle. There must have been an eye witness who would have told her the number of the vehicle and that eye witness should have been named in the FIR and should have been examined. I have gone through the complaint made in writing by the complainant to the police on 15.07.2008 on the basis of which the second FIR was registered and in this she has mentioned that her husband who was driving his own scoter was hit by an auto whose number is TR-01-A-4445. We must remember that this complained was made more than one year after the death of the deceased husband. She had to disclose who had told her the number of the auto rickshaw. She has not disclosed the name of the person who told her the number of the auto rickshaw, when the witness is relying upon the statement of some other witness that witness had to be named. A bird could not have told her that her husband had been hit by an auto rickshaw bearing a particular. That information had to be given by a human being and in natural course of event she should have disclose the name of that human being at least in the complained which she was lodged after one year. If that is not done she can produce a witness after 10(ten) years who may or may not have been present at the spot and who will say that yes he has witnessed the accident and particular auto rickshaw had hit the deceased. It is contemporaneous evidence which is important.

**[5]** At the same time, I am clearly of the view that the petitioner wife should be given one more opportunity to prove her case. I do not want that any widow should suffer merely because she has not been properly guided to lead evidence. Therefore, she has given one opportunity to lead evidence. However, I make it clear that while considering the evidence the learned MACT will ensure that the person who is produced an eye witness is named in one of the earlier

records and if that person is not named in any of the earlier records he will not be treated to an eye witness because such person could have been procured at any stage. In case the petitioner leads evidence than the owner of the vehicle and the insurance company shall also be given reasonable opportunity of at least three dates to lead their evidence and thereafter the learned Tribunal shall decide the matter in accordance with law.

**[6]** In view of the above discussions, the award of the learned Tribunal is set aside. The matter is remanded to the learned Tribunal to decide the issue afresh. The learned Tribunal while deciding the issue of negligence shall only rely upon eye witnesses because the petitioner has clearly stated that she was not present at the spot and as already stated hereinabove the names of the eye witnesses must find mention in the contemporaneous record either of the first police investigation report or the second investigation report. Even if they are found in the second investigation report the insurance company and the owner of the vehicle will have full opportunity to cross examine the said witnesses. The parties who are present are directed to appear before the learned Tribunal on 20<sup>th</sup> January, 2016. Thereafter the learned Tribunal shall issue notice to the owner-cum-driver of the auto rickshaw and an attempt shall be made to complete the service by 31<sup>st</sup> March, 2016. Thereafter two opportunities shall be given to the petitioner to lead her evidence in the month April, 2016 or May, 2016. It is made clear that the petitioner will not be entitled to more than two opportunities because she has already been given sufficient opportunity by the trial Court and if she does not lead evidence than the matter shall be decided on merits without considering her evidence. In case she leads evidence then the insurance company and the owner shall be given three opportunities in the months of June, July and August, 2016 to lead evidence. Arguments should be

heard in the month of September/October, 2016 and the matter be disposed of by 30<sup>th</sup> November, 2016.

**[7]** The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

**CHIEF JUSTICE**