

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.85 OF 2011

1. Sri Samir Deb,
S/O. Late Ramdhan Deb;
2. Smti. Maya Rani Deb,
Daughter of Late Ramdhan Deb;
3. Smti. Sabita Deb,
Daughter of Late Ramdhan Deb;

All resident of Village-Sukanta Pally,
P.O. Khash Noagaon, P.S.-Bodhjungnagar,
District-West Tripura.

..... **Claimant-Appellants.**

- V e r s u s -

1. The State of Tripura, Agartala,
(represented by the Secretary to the
Government of Tripura,
Health & Family Welfare Department,
Agartala.
2. The Director of Health Services,
Government of Tripura,
Agartala, West Tripura.
3. The Sub-Divisional Medical Officer,
Melaghar, West Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Mr. B. Das, Sr. Advocate, Mr. S. Chakraborty, Advocate.
For the respondents	: Mr. K.K. Pal, Advocate.
Date of hearing	: 13.08.2015.
Date of judgment	: 30.09.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER

This appeal under Section 173 of the Motor Vehicles Act (M.V. Act) is directed against the award dated 25-05-2011 delivered by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in case No. T.S.(MAC) 229 of 2009 whereby he rejected the claim petition filed by the claimants on the ground that the claimants had failed to prove that the deceased died in a motor vehicle accident with the vehicle in question.

2. The claim petition was filed by the brother and sisters of Late Sujit Deb who was a Government Servant employed in a Group-D post. According to the claimants on 17.12.2008 at about 6 p.m. the deceased was riding on his bicycle and was returning from his place of work at Agartala to his residence at village Sukantapalli. At that time, a Government ambulance which was proceeding towards Agartala and was being driven in a rash and negligent manner hit the deceased resulting in his death.

3. The respondents-the State of Tripura denied all the allegations and it was submitted that no accident had taken place with the ambulance in question. The accident took place on 17.12.2008 and the FIR was lodged on 19.12.2008 by the brother and in this FIR it is mentioned that an ambulance (vehicle) had dashed the deceased from behind. It is also mentioned in the FIR that as per the description given by the eye witnesses, the number of the ambulance was TR-01-B-1176 and the vehicle was registered in the name of the Health and Family Welfare

Department. After trial, the learned Tribunal rejected the claim petition. Hence, this appeal.

4. Samir Deb, brother of the deceased, is the first witness. Admittedly, the accident did not take place in his presence. Neither in the FIR nor in the affidavit filed in Court has he stated who was the witnesses who informed him about the number or type of vehicle with which his brother had met with an accident. He, therefore, is not a material witness with regard to the occurrence.

5. PW-2, Gopal Das, is stated to be an eye witness and according to him he had seen the offending vehicle which was bearing registration No.TR-01-B-1176. He states that he was coming back to his residence at Chandrapur from Jirania Mohanpur and he saw the accident at Chandrapur. In cross-examination, he has stated that he was riding on the motorcycle of his friend. He has not named the friend nor given the number of the motorcycle. He only states that the offending vehicle was a white colour van and there was no light on the back side of the vehicle.

The learned Tribunal was right in holding that this witness does not appear to be an eye witness. He never went to the police. He was not examined by the police. He did not take the deceased to the hospital and he could not have noticed the number of the vehicle since he was riding a motorcycle and the accident took place at 6 p.m. in the month of December when it is totally dark.

6. PW-3, Rana Ghosh, is a businessman having a shop at Chandrapur. He states that his shop was closed in the earlier part of the day as there was a strike. Just before 6 p.m. he was going to his shop to open it and just before he reached the shop he saw that some person had met with an accident. He, however, states that he did not see the vehicle which was responsible for the accident. This witness took the injured to the G.B. Hospital which was also passing by the side of the place of accident where the deceased was admitted at the instance of this witness. He also states that from the pocket of the injured he got various slips having different mobile numbers. This witness appears to be truthful. He is the man who took the injured to hospital but this witness in front of whom the accident took place has not noticed what was the vehicle which hit the deceased.

7. The State examined 4(four) witnesses. Golap Harijan, witness No.2, was the driver of the ambulance bearing registration No.TR-01-B-1176. He states that his vehicle never met with an accident on the said date. According to him, he had gone towards Khowai for supply of vaccines of pulse polio immunization programme and after distribution of the vaccines at Khowai he left Behala Bari PHC at about 6 p.m. and then he went to Teliamura and returned to the CMO office at West Tripura at 9 p.m. Therefore, according to him, he could not have been at Chandrapur at 6 p.m. because at that time he was near Teliamura. The statement of the driver is supported by Mangal Debbarma who is the Multipurpose worker and had accompanied the driver of

ambulance No.TR-01-B-1176 for supply of vaccines of pulse polio programme in Khowai Sub-Division on 17.12.2008. According to him, he, the driver Golap Harijan and Sanjit Das, Field Worker, were in the vehicle. He states that they left the office in Agartala at about 8 a.m. They first went to Ranirbazar Hospital. Thereafter, they went to various hospitals to distribute vaccines such as, Jirania Hospital, Teliamura Hospital, Kalyanpur Hospital, Khowai Hospital and lastly at Behala Bari Hospital. According to him, they started from Behala Bari at about 5 p.m. and reached Champaknagar at about 7 p.m. There they stopped for refreshments for about an hour and reached Agartala at about 9 p.m. He states that no accident took place.

8. Similar is the statement of Sanjit Das, the third person in the vehicle. Though these witnesses have been cross-examined, nothing has been extracted from their statement. The statement of the fourth witness Dr. Goutam Debnath is not of much importance since he was admittedly not there at the spot but he has proved the fact that the vehicle was deputed to various hospitals to distribute pulse polio vaccines. He had also conducted an inquiry and found that no accident had taken place.

9. As far as the claimants are concerned, one witness was admittedly not present. He does not even give the name of the person who told him the details of the accident. One witness who was present and took the injured to hospital has not seen the vehicle and the third so called eye witness appears to be a false witness as held by the Tribunal. His testimony does not inspire

confidence. On the other hand, all the three occupants of the ambulance including the driver have appeared in the witness box and stated that their vehicle did not meet with any accident.

10. In this view of the matter, I am clearly of the view that the learned Tribunal was justified in dismissing the claim petition.

11. Hence, I find no merit in the appeal which is accordingly dismissed.

12. Send down the lower court records forthwith.

CHIEF JUSTICE