

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAC APP. 70 OF 2012 & MAC APP. 71 OF 2012

IN MAC APP. NO. 70 OF 2012:

Claimant Appellant :

Sri Tapan Sarkar,
S/O. Late Biswambar Sarkar,
Resident of North Kalamcharra (Colony No.1),
P.O.-Kalamcharra, P.S.-Boxanagar,
District-Shipahijala, Tripura.
Presently residing at Karaimura, South Badharghat,
P.S.-Amtali, District-Shipahijala, Tripura.

BY ADVOCATE :

Mr. S.B. Debnath, Advocate.

– **Versus** –

Respondents :

1. Sri Paresh Das,
S/O. Late Amulya Das,
Resident of ONGC Singha Mura,
P.O.-Charipara, P.S.-Amtali,
District-West Tripura.
(Owner of Vehicle number TR-01-B-1816, (TATA Mini Truck).
2. Sri Dipak Biswas,
S/O. Late Hari Mohan Biswas,
Resident of Kanchan Tilla, P.O.-Sarbadharma
Mission, P.S.-Amtali,
District-West Tripura.
(Owner of Bike bearing number TR-01-G-7665).
3. The Branch Manager,
The New India Assurance Company Ltd.,
4, Mantribari Road, P.O.-Agartala,
P.S.-West Agartala, Agartala,
District-West Tripura.
(Insurer of Vehicle number TR-01-B-1816, (TATA Mini Truck).
4. The Branch Manager,
The Oriental Insurance Company Ltd.,
44/2, Central Road, P.O.-Agartala,
P.S.-West Agartala, Agartala,
District-West Tripura.
(Insurer of Bike bearing number
TR-01-G-7665).

BY ADVOCATES :

Mr. A. Gon Choudhury, Advocate,
Mr. K. Bhattacharji, Advocate.

IN MAC APP. NO. 71 OF 2012:**Claimant Appellant :**

Sri Tapash Sarkar,
S/O. Sri Monoranjan Sarkar,
Resident of Karaimura (Anganwadi School),
P.O.-Charipara, P.S.-Amtali,
District-Shipahijala, Tripura.

BY ADVOCATE :

Mr. S.B. Debnath, Advocate.

– **Versus** –

Respondents :

1. Sri Paresh Das,
S/O. Late Amulya Das,
Resident of ONGC Singha Mura,
P.O.-Charipara, P.S.-Amtali,
District-West Tripura.
(Owner of Vehicle number TR-01-B-1816, (TATA Mini Truck).
2. Sri Dipak Biswas,
S/O. Late Hari Mohan Biswas,
Resident of Kanchan Tilla, P.O.-Sarbadharma
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District-West Tripura.
(Owner of Bike bearing number TR-01-G-7665).
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(Insurer of Bike bearing number
TR-01-G-7665).

BY ADVOCATES :

Mr. A. Gon Choudhury, Advocate,
Mr. K. Bhattacharji, Advocate.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing & : 03.12.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Both these cases are being disposed of by one common judgment since they both arise out of the same accident.

2. The claimants in both these cases have alleged that on 12.02.2008 at about 8-30 a.m. they were standing near the ONGC Bank Chowmuhani. According to the claimants, one truck bearing No.TR-01-B-1816 which is owned by Sri Paresh Das and insured with the New India Assurance Company Limited was coming towards Agartala from Bishalgarh side. At that time, one Cruiser vehicle whose number is not mentioned came in a very rash manner from the Agartala side (opposite side) and was about to dash against the truck. Therefore, the truck driver, to avoid a head on collision between the two vehicles swerved his vehicle. This truck hit a standing motorcycle bearing registration No.TR-01-G-7665 owned by Dipak Biswas and insured with the Oriental Insurance Company Limited. The claimants suffered injuries when they were hit by the motorcycle and filed the claim petitions.

3. Unfortunately, the claimants could not trace out the number of the Cruiser vehicle. They could not trace out who was

the owner or driver of the said vehicle. While appearing in the witness box, both the claimants gave virtually identical statements relevant portion of which read as follows:-

“xxx xxx xxx xxx

At the time of accident one Cruiser vehicle was coming from Agartala towards Bishalgarh. Truck was proceeding in a normal speed. To avoid dashing by Cruiser truck was running through the side of the road. There was no fault on the part of the truck. I was on the road but not in the carpeting area on the road. The bike was on the side of the carpeting area of the road.

xxx xxx xxx xxx

The bike was in a stationary condition on the left side of the road. The bike was dashed by truck. There was no fault on the part of the bike.”

4. The witnesses have candidly stated that there was no fault on the part of the truck or the bike. Obviously, it means that there was no fault of the truck driver or the motorcycle driver. When there is no fault, then no claim petition under Section 166 is maintainable and the learned Tribunal was justified in dismissing the claim petitions.

5. After going through the entire record, I find no merit in these appeals which are accordingly dismissed.

6. Send down the lower court records forthwith.

CHIEF JUSTICE