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

MAC APP. NO.101 OF 2011

New India Assurance Company Ltd.,
Agartala Branch, represented by its
Branch Manager.

..... **Appellant O.P.**

– V e r s u s –

1. Smt. Sarala Debbarma,
W/O. Late Manoj Kumar Debbarma.

2. Master Mriton Debbarma,
S/O. Late Manoj Kumar Debbarma.

3. Master Sebashtine Debbarma,
S/O. Late Manoj Kumar Debbarma.

4. Smt. Falguni Debbarma,
W/O. Late Chandramani Debbarma.

All are of Village & P.O.-Baijalbari,
P.S.-Khowai, Dist-West Tripura.

..... **Respondent Claimants.**

5. Sri Sushil Debbarma,
S/O. Late Raj Chandra Debbarma,
Of Village-Uddab Das Baishnab Para,
P.O.-Baijalbari, P.S.-Khowai,
West Tripura.
(Owner of the Vehicle No.TR-01-4242,
Commander Jeep)

6. Commandant (PROV) HQ TCM FTR,
Border Security Force, Salbagan,
Agartala, West Tripura.
(Owner of the Vehicle No.
TR-01-C-1540, Truck)

7. Sri Tapan Chakraborty,
S/O. Late Nagendra Chakraborty,
Of Village & P.O.-Vivekanandanagar,
P.S.-Ambassa, District-Dhalai, Tripura.
(Driver of the Vehicle No.
TRL-3445, Truck)

..... **Respondent Owners.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. A. Gon Choudhury, Advocate.
For the respondents 1 to 4	: Mr. T.D. Majumder, Advocate.
For the respondent 6	: Mr. A. Roy Barman, CGC.
Date of hearing and delivery of judgment and order.	: 29.09.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER (ORAL)

This is an appeal by the Insurance Company praying that the award of the learned Tribunal holding the Insurance Company solely liable to pay the compensation be modified.

2. The main grievance of the Insurance Company is that there was a head on collision between a jeep insured with the Insurance Company and a truck belonging to the BSF. It is contended that since there was a head on collision between two vehicles, the liability should have been fixed upon both the drivers.

3. Sri A. Gon Choudhury, learned counsel for the Insurance Company, has placed reliance on the FIR which was lodged at the instance of one Smt. Supriya Jamatia and in which it is mentioned that the accident took place due to the rash and speedy driving by drivers of both the vehicles. Though the FIR has been tendered in evidence, Supriya Jamatia was not examined. When a document is tendered, it will only prove that an FIR has

been recorded. The contents of the document will have to be proved by the person who got the FIR recorded. Without examining Supriya Jamatia, the contents of the FIR could not be held to be proved.

4. The claimant appeared as her own witness. She is the widow of the deceased. She in her statement made in Court clearly stated that the jeep was being driven at a high speed. Though she has stated that the accident occurred between two vehicles, she has not even made a whisper that the driver of the truck belonging to the BSF was at fault.

5. As far as the Union of India is concerned, they examined 2(two) witnesses. The first witness was CT. Md. Rafiq who was travelling in the truck in question and according to him, the accident occurred due to the rash and negligent driving of the jeep bearing registration No.TR-01-4242. It is alleged that the said jeep was overloaded and was being driven at a high speed. This witness was tendered for cross-examination but none appeared on behalf of the Insurance Company to cross-examine the witness. Therefore, his statement has been accepted to be the gospel truth.

6. The Insurance Company only examined Ajoy Kumar Saha but he is an Administrative Officer having no personal knowledge of the accident. Sri Ajoy Kr. Saha has tendered in evidence a mechanical inspection report done by the police. The same has also not been proved in accordance with law because the

person who prepared the report has not been examined by the Insurance Company.

7. The Insurance Company was given opportunity to lead evidence. If it wanted to contest the case on merits, nothing prevented the Insurance Company from summoning the person at whose instance the FIR was lodged or the Motor Vehicle Inspector or, in fact, any other witnesses to show how the accident had taken place. The Insurance Company did not even care to cross-examine the witnesses who appeared on behalf of the Union of India. Therefore, the Insurance Company cannot be heard to argue that there was contributory negligence on the part of the driver of the truck belonging to the BSF.

8. Therefore, I find no merit in the appeal which is accordingly dismissed.

9. Send down the lower court records forthwith.

CHIEF JUSTICE