

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.106 OF 2011

The New India Assurance Company Limited,
Represented by its Divisional Manager,
Agartala Division Office, 4, Mantribari Road,
P.S. West Tripura, District-West Tripura.
(Insurer of the vehicle No.TR-01A-0751 Maruti Van).

..... **Appellant.**

- V e r s u s -

1. Sri Sachindra Debbarma,
S/O. Sri Sambu Charan Debbarma,
Resident of Ram Bhakta Para,
Khumulung, P.S. Radhapur,
District-West Tripura.

2. Smti. Romi Debbarma,
D/O. Sri Sachindra Debbarma,
Resident of Ram Bhakta Para,
Khumulung, P.S. Radhapur,
District-West Tripura.

..... **Petitioner-Respondents.**

3. Sri Pradip Das,
S/O. Sri Sunil Chandra Das,
Resident of A.D. Nagar (Manditilla,
Gagaria), S.D. Mission,
P.S. Amtali, West Tripura District.
(Owner of vehicle No.TR-01-A-0751 Maruti Van).

..... **Owner Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P. Gautam, Advocate.

For the respondents
No.1 & 2 : Mr. Somik Deb, Advocate.

For the respondent No.3 : Mr. S. Lodh, Advocate.

Date of hearing and
delivery of judgment
and order. : 13.08.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal by the Insurance Company is directed against the award dated 14-07-2011 passed by the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S.(MAC) 148 of 2009 whereby the learned Tribunal has awarded compensation of Rs.6,42,000/- in favour of the claimants along with interest @ 6% per annum.

2. The claimants Sachindra Debbarma and Smt. Romi Debbarma are the husband and daughter of Late Smti. Bishu Laxmi Debbarma alias Bishwa Rani Debbarma. The undisputed facts are that on 06.02.2009 at about 6 p.m. in between Khumulwng Park and Bible College Maruti van bearing registration No.TR-01-A-0751 dashed into a number of people including Bishu Laxmi Debbarma who died as a result of the accident. The case of the claimants is that they were waiting to board a vehicle and in the mean time, this Maruti van came and hit the deceased.

3. In the claim petition, the name of the driver of the vehicle was not mentioned. The name of the owner was shown to be Pradip Das. Pradip Das in his written statement clearly mentioned that he was both the owner and driver of the vehicle. He admitted the accident but according to him, the accident took place because of the negligence of the deceased who was trying to cross the road. The Insurance Company took the stand that the vehicle was being driven by one Sukanta Jamatia who did not have

a valid driving license and, therefore, the Insurance Company was not liable.

4. The learned Tribunal after contest assessed the compensation at Rs.6,42,000/- and held the Insurance Company liable to pay the amount.

5. At the outset, I may notice that there are certain discrepancies in this case. The FIR was lodged on 06.02.2009 itself, i.e. the date of accident at the instance of one Smti. Budhu Laxmi Debbarma, W/O. Sri Dilip Debbarma and in this FIR, the name of the driver is clearly mentioned as Sukanta Jamatia. However, in the same FIR, the name of the deceased Bishu Laxmi Debbarma alias Bishwa Rani Debbarma is mentioned as Fuchilik. The claimants examined certain witnesses. The husband of the deceased did not step into the witness box. The daughter of the deceased appeared as PW-1 and she has stated that her mother was injured in the accident. She has not, however, named the driver of the vehicle. There is one glaring discrepancy in the statement of this witness. In the affidavit which is filed in the year 2011, this witness has stated her age to be 20 years which would mean that she was 18 years at the time of the accident. However, the age of the mother is shown to be 33 years. This is not believable. A 33 year old woman could not have a 18 year or 19 year old child.

6. The other witness is Mangal Debbarma and in his affidavit he has clearly stated that Bishu Laxmi Debbarma alias

Bishwa Rani Debbarma was also called Fuchilik by the villagers. Therefore, the argument made on behalf of the claimants that the name of the deceased was wrongly mentioned in the FIR is totally incorrect. Therefore, I am not inclined to reject the FIR only on the ground that the name of the deceased was mentioned as Fuchilik because from the statement of Mangal Debbarma it is apparent that the deceased was also known as Fuchilik. Mangal Debbarma has also not named the driver of the Maruti car. The Insurance Company also did not examine any witnesses except for the Manager-in-Charge of the Insurance Company. His statement is not worth the scrap of paper it is written on because he had not witnessed the accident. He has relied upon some statement of the owner made under Section 161 of Cr.P.C. However, this statement has not been produced in Court.

7. I have examined the record of the trial Court and I find that this statement is on the record. However, even though it is on record the same cannot be taken into consideration because the statement recorded under section 161 of Cr.P.C. can only be used to contradict a witness. It cannot be used as a substantial piece of evidence. Even in case the Insurance Company wanted to rely upon this evidence, then the Insurance Company should have summoned the police official who recorded the statement under section 161 Cr.P.C. and he could have stated whether Pradip Das had made such a statement or not. Without examining the maker of the statement or the person whose statement is purportedly recorded under section 161 of Cr.P.C., no reliance can be placed on

the same and to this extent, I am not in agreement with the submission of Mr. P. Gautam, learned counsel for the appellant.

8. The main question is who was driving the vehicle. In the FIR which was lodged immediately after the accident and which was lodged by one of the persons who herself had suffered injuries and whose relatives had suffered injuries, the name of the driver is clearly shown as Sukanta Jamatia. The owner did not step into the witness box. He was the best person to state who was driving the vehicle. Though in the written statement he claimed that he was driving the vehicle, he should have stepped into the witness box and faced cross-examination and this alone could have helped the Court to decide whether he was driving the vehicle or not.

9. I have excluded the statement of the owner recorded under Section 161 of Cr.P.C. from being taken into consideration but on the same ground an adverse inference will have to be drawn against the owner that he purposely did not appear in the witness box because he wanted to hide the truth. His written statement is meaningless and cannot be read as piece of evidence. It is only his statement which was given on oath in Court which could be read in evidence and that statement on oath would have been tested in cross-examination. If the owner had stepped into the witness box, he could have been confronted with his statement under section 161 of Cr.P.C. because the statement under section 161 Cr.P.C. can be used for the purpose of contradicting the witness. The owner cannot have it both ways. He cannot claim that the 161

statement should not be read but also that if he does not appear in the witness box, no adverse inference should be drawn against him.

10. I am clearly of the view that the owner himself did not step into the witness box because he did not want to be confronted with his earlier statements. There is negligence on the part of the Insurance Company also. Even the person at whose instance the FIR was scribed was not called into the witness box. The accident took place on 06.02.2009. The claim petition was filed two months later on 06.04.2009. Neither in the claim petition nor in the statements made on oath in Court had the claimant or the witnesses stated who was the driver of the vehicle. The owner filed a written statement claiming that he was the owner-cum-driver but conveniently did not step into the witness box. Normally this may not have been fatal but the fact remains that the owner if he was also the driver was the best person to disclose not only who was driving the vehicle but also how the accident happened. In the written statement it was also stated that the accident occurred due to the negligence of the deceased. If the written statement of the owner is to be accepted as urged by the claimants for deciding who was driving the vehicle, then why should it not be accepted to decide how the accident had occurred? The claim made in the written statement is only a version of the respondent and not his evidence and, therefore, cannot be read in evidence.

11. The deceased was allegedly working under an NGO. There is no serious challenge to the amount of compensation granted.

12. In the peculiar facts and circumstances of the case where the Insurance Company has also been negligent in not leading the entire evidence, I am clearly of the view that the Insurance Company should satisfy the award but it shall be entitled to recover the same from the owner of the vehicle Pradip Das who has obviously set up a false claim that he was the owner-cum-driver of the vehicle.

13. Accordingly, the appeal is allowed to the limited extent that the Insurance Company shall be entitled to recover the amount paid by it pursuant to the award of the Motor Accident Claims Tribunal from the owner Pradip Das by filing execution proceedings as contemplated under the Motor Vehicles Act. It shall not have to establish its claim in separate proceedings and this judgment of the Court shall be executed by the Motor Accident Claims Tribunal by issuing certificate in accordance with law.

14. Send down the lower court records forthwith.

CHIEF JUSTICE