HIGH COURT OF TRIPURA
AGARTALA

MAC APP No.04/2020

The Oriental Insurance Company Ltd.
Represented by the Divisional Manager,
Agartala Division Office,
H.B. Road, (Near Sarkar Nursing Home),
Agartala, West Tripura.

.....Appellant(s)

Versus

1. Smt. Sunity Bala Sarkar
   W/O. Late Krishnadhan Sarkar,
   Resident of South Indranagar,
   P.S. – East Agartala,
   District – West Tripura.

2. Nepal Ghosh
   S/O. Nanigopal Ghosh,
   Resident of Amtali (Veveknagar),
   Madhuban, P.S. – Amtali,
   District – West Tripura.

.....Respondent(s)

For Appellant(s) : Mr. Biswanath Majumder, Advocate.

For Respondent(s) : Mr. Samarjit Bhattacharjee, Advocate.
Mr. Bijan Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : 10.12.2020.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

This appeal is filed by the insurance company to challenge the judgment and award dated 07.07.2017 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) No.118 of 2014. The said claim petition was filed by the dependants of deceased Kshitish Sarkar, who died in a vehicular accident which took place on 27.02.2014. Claimant No.1 is a mother and claimant No.2 is a younger brother of the deceased. According to the claimants, on the date of the incident, the deceased was travelling on a scootty when an auto rickshaw insured by the appellant-insurance company came from the opposite direction and collided with a scootty causing the death of the driver. To prove the negligence of the driver of the auto rickshaw, the claimants had examined Dulal Chowdhury and Prasenjit Roy, as P.W.2 and 3. They were the eye witnesses. They had stated that the accident took place at about 1.30 in the afternoon on 27.02.2014. They were members of a marriage party and had seen the incident themselves. They had stated that the driver of the auto rickshaw was driving the vehicle rashly and negligently in a high speed. In fact, P.W.3, Prasenjit Roy had stated that after the accident, he had taken the injured to a nearby hospital and from where he had informed the younger brother of the deceased about the accident. The Tribunal believed the testimony of these eye witnesses and held that the driver of the auto rickshaw was solely negligent in causing the accident. The deceased was a

school teacher. He was unmarried at the time of accident. The Claims Tribunals awarded 50% of his future income by way of loss of dependency benefits. A total compensation of Rs.12,05,000/- was awarded only in favour of the mother of the deceased.

2. This award, the insurance company has challenged only on the ground of negligence. Learned counsel for the insurance company submitted that this is a case of contributory negligence on part of the deceased himself. He pointed out that in the criminal case, the police had concluded that the accident occurred on account of negligence of the deceased himself.

3. I do not find that the Claims Tribunal has committed any error. The claimant No.1, mother of the deceased was examined before the Tribunal. However, she was not the eye witness and therefore naturally could not state the manner in which the accident took place. The claimants, however, examined two eye witnesses who were present at the spot when the accident took place. One of the witnesses had helped shift the injured to a nearby hospital and from where he had also informed his younger brother about the accident on phone. In fact, the insurance company did not examine the driver of the auto rickshaw. In view of such evidence, the Tribunal was perfectly justified in drawing its conclusions about the negligence. Police investigation cannot be the sole basis for deciding

negligence in motor accident claim case. When there was independent, reliable eye witness account, the same was correctly accepted by the Tribunal, particularly, when the insurance company chose not to examine the driver of the auto rickshaw who would have been in the best position to depose before the Court about the precise manner in which the accident took place. This being the sole contention of the insurance company, I find no merits in appeal, the same is dismissed.

4. Amount of Rs.25,000/- deposited by the insurance company at the time of filing appeal will be transmitted before the Claims Tribunal.

5. Record may be transmitted back. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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HIGH COURT OF TRIPURA
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