HIGH COURT OF TRIPURA
AGARTALA

MAC APP. No.44/2018

1. Najir Miah, S/o. Late Shukr Mia, father of Late Siraj Miah.

2. Neoyarun Bibi, W/o. Najir Miah, mother of Late Siraj Miah.

3. Rasid Miah, S/o. Najir Miah, brother of Late Siraj Miah.

4. Mayna Miah, S/o. Najir Miah, brother of Late Siraj Miah,

All are of North Hurua, Kadamtala, P.S - Dharmanagar, District - North Tripura.

…… *Claimant-Appellant(s).*

Vs.

1. Md. Habib Miah, S/o. Najir Miah, resident of North Hurua, Kadamtala, P.S - Dharmanagar, Dist - North Tripura.
(Owner of Vehicle bearing Reg. No.TR-05-A-1639).

2. The Branch Manager, Cholamandalam MS General Insurance Company Ltd., 2nd Floor, Teen Sangi, A. K. Road, Opp. of National Insurance Co. Ltd./Peerless, Krishnanagar, Agartala, P.O - Agartala, Dist.- West Tripura.

…… *Respondent(s).*

_B_E_ F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Appellant(s) : Ms. R Purkayastha, Advocate.

For Respondent(s) : Mr. P K Ghosh, Advocate.

Date of hearing & judgment : 18th May, 2020.

Whether fit for reporting : **No**

J U D G M E N T (O R A L)

This appeal is filed by the original claimants to challenge an award dated 16th January, 2018 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala, in Title Suit (MAC) No.152/2016.

[2] Brief facts are as under:

The appellants are original claimants. On 4th April, 2016 one Siraj Miah was driving a transport vehicle carrying goods in the said vehicle. At about 5:40 in the morning near Agartala old motor stand, the driver lost control over the vehicle and as a result, the truck collided with an electric pole on the side of the road. According to the claimants, a dog had suddenly tried to cross the road. While trying to save the dog the driver lost control of the vehicle causing the accident. In this accident the driver received fatal injuries. The claimants i.e. the parents and brothers of the deceased, therefore, filed a claim petition before the Motor Accident Claims Tribunal claiming compensation of Rs.10,26,500/- from the owner and insurer of the vehicle involved in the accident. Incidentally, the owner of the vehicle was the brother of the deceased himself. Before the Claims Tribunal claimant No.2 i.e. mother of the deceased gave evidence. She repeated the cause of accident as narrated in the claim petition. In short, as per the claimants, the accident occurred when the deceased himself was driving the vehicle and lost control because of sudden appearance of a dog on the road.

[3] The insurance company had appeared before the Claims Tribunal and opposed the claim. Principally it had contended that the driver did not have a valid driving licence and in any case, since the

accident occurred on account of negligence of the deceased himself, the insurance company cannot be saddled with the liability to pay the compensation.

[4] By the impugned award, the Claims Tribunal dismissed the claim petition primarily on the ground that the deceased was driving the vehicle and there was no other vehicle involved in the accident and the accident can be said to be due to the driving of the deceased himself. It is this award the claimants have challenged in this appeal. Appearing for the claimant-appellants, learned counsel Ms. R Purkayastha submitted that the claimants had converted the claim petition into one under Section 163A of the Motor Vehicles Act which provides for awarding compensation as per the structured formula on the basis of no fault liability.

[5] On the other hand, learned counsel Mr. P. K. Ghosh for the insurance company opposed the appeal and supported the judgment of the Claims Tribunal.

[6] The main issue involved in the appeal is short. It is not necessary for me to go into the question of that driver not holding a driving licence at the time of the accident. This is the secondary issue and the prime question is, can the claimants seek compensation from the owner and insurer of the vehicle when the accident was as a result of the sole negligence of the deceased himself. The compensation to be awarded under Motor Vehicles Act in general terms is based on the principle of torts. When in the course of use of a motor vehicle accident occurs resulting in death or bodily injury to any person or damage to any property, that driver is liable to compensate the claimant. By the principle of

vicarious liability, the owner of the vehicle is also held liable if the driver is different from the owner. The liability of the insurance company to cover the risk of the owner of the motor vehicle arises out of contractual and statutory obligations. Essentially, however, such compensation is awarded on the basis of fault based liability.

[7] In the present case, the accident was not a *hit and run* case but was as a result of a vehicle colliding with an electric pole when the driver lost control. This caused fatal injuries to the driver himself. The death of the driver was thus not on account of negligence on the part of any other person. The claimants who claim to be dependants of the deceased, therefore, cannot seek any compensation from the owner or an insurer of the vehicle involved in the accident. Even Section 163A of the Motor Vehicles Act provides for awarding compensation on fault based liability. A structured formula is to be applied in a case where the claimants agree for computation of compensation in a summary manner and where the annual income of the deceased at the time of accident is not above the prescribed ceiling limit. However, the application of this structured formula also relies on an establishment of basic facts such as the nature of accident, the cause of injury or death as the case may be, valid insurance of the vehicle and the negligence on the part of some third party other than the deceased or the injured which caused the accident. Such formula cannot be applied in a case where the deceased himself was solely responsible for causing the accident without involvement of any other vehicle and negligence that can be attributed to any other person. The Claims Tribunal, therefore, has committed no error in dismissing the claim petition which was argued under sections 166 and 163A of the Act.

[8] The case of the claimants can, however, be considered for no fault liability under Section 140 of the Motor Vehicles Act which provides for compensation of Rs.50,000/-(Rupees fifty thousand) in case of death without requirement of establishment of fault. The respondents shall, therefore, pay Rs.50,000/- to the claimants with simple interest @ 6% per annum from the date of claim petition till actual payment. Such amount shall be deposited before the Claims Tribunal within 6(six) weeks from today. Upon such deposit the amount would be released by the Claims Tribunal in favour of the parents of the deceased in equal proportion.

Appeal is disposed of accordingly. Pending application, if any, also stands disposed of. Record may be transmitted to the lower Court.

(AKIL KURESHI), CJ

Sukhendu/Dipankar