**HIGH COURT OF TRIPURA**
**AGARTALA**

**MAC APP NO.43/2017**

Sri Nitai Saha

.....Appellant(s)

Versus

Smti. Swapna Begum and others

.....Respondent(s)

For Appellant(s) : Mr. D.K. Biswas, Advocate
Mr. S.S. Debnath, Advocate.

For Respondent (s) : Mr. P. Gautam, Advocate.
Ms. R. Purkayastha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

Date of hearing and judgment : 02.12.2020.

Whether fit for reporting : No.

**JUDGMENT & ORDER (ORAL)**

This appeal is filed by one Nitai Saha, original respondent No.6 of T.S. (MAC) No.134 of 2000 filed by the respondents No.1 to 3 herein. The said respondents Swapna Begum and others were the original claimants. They had filed the said claim petition seeking compensation for death of the husband of Swapna Begum and father of the other two claimants Md. Makaraddas @ Makaradwaz Ali.

2. The origination of the claim petition is rather unusual and needs to be recorded at the outset. These facts are virtually undisputed and therefore one need not refer to the relevant evidence through which these facts were brought on record. Such facts are:

Deceased Md. Makaraddas Ali was a Lance Nayek in Tripura State Rifles. On 12.02.1998, the Government had requisitioned a motor vehicle bearing registration No.TR-02-1502, which was a heavy vehicle for the purpose of carrying out anti-insurgency operations. The vehicle in question originally belonged to R.K. Bhattacharjee, the opponent No.4 herein and original respondent No.5 in the claim petition. He had sold the vehicle to the present appellant on or around 19.04.1997. However the registration of the vehicle was not transferred in favour of the appellant-Nitai Saha and continued in the name of R.K. Bhattacharjee.

3. On the date of the incident i.e. on 12.02.1998, the deceased Md. Makaraddas Ali and other jawans of TSR 3rd Battalion were returning towards Ambassa town travelling in the said vehicle. The vehicle was escorted by three other vehicles of the police. When the convoy of the vehicles was passing between Pati Rai and Jaraham Para, the extremists fired on the vehicles. The two vehicles in the front escaped without much damage. However, the truck in which the deceased Md. Makaraddas Ali was travelling, faced the brunt of the attack by the terrorists. In the firing,

Md. Makaraddas Ali died. His widow and dependent children therefore filed the said claim petition claiming compensation of Rs.29,10,000/- from the opponents which included the erstwhile owner R.K. Bhattacharjee, the transferee of the vehicle, Nitai Saha the appellant; as well as the Government.

4. The Claims Tribunal by the impugned award granted compensation of Rs.4,68,334/- to the claimants to be paid with interest @6% per annum. In order to assume jurisdiction to pass award under the provisions of the Motor Vehicles Act, 1988, the Claims Tribunal simply referred to the decision of the Supreme Court in case of ***Kaushnuma Begum (Smt) and others vs. New India Assurance Co. Ltd. and others***, ***(2001) 2 SCC 9*** and awarded compensation even though he had come to the conclusion that the death of Md. Makaraddas Ali did not occur on account of the negligence of the driver of the vehicle in question. He was of the opinion that even in absence of any negligence of the driver in causing the incident, compensation under the structured formula provided under Motor Vehicles Act can be awarded.

5. Having heard learned counsel for the parties, I find that the judgment and award of the Claims Tribunal is wholly unsustainable for multiple reasons. Most fundamental question of the very jurisdiction of the Claims Tribunal to entertain the said claim petition, I will address last.

First of all, the appellant herein though may have agreed to purchase the vehicle, admittedly, the registration was not transferred in his name. The erstwhile owner as per settled law cannot be absolved of the liability if the award is passed. Reference in this respect may be made to the judgement reported in 2018 3 SCC 1. Secondly, at the time of the incident, the Government had requisitioned a private vehicle. It was in possession of the Government agency and was driven by a driver in the employment of the Government. Again, there are judgments taking a view that in such circumstances during the period when the Government enjoys the control of the vehicle and the vehicle is driven by the driver employed by the Government, for the purpose of satisfying the award of a Motor Accident Claims Tribunal, the Government would be the de facto owner. Surely, an owner whose vehicle is compulsorily, even though temporarily taken over by the Government, cannot be asked to compensate the person injured on account of negligent act of a driver, who is neither employed nor under the control of the owner. The principle of vicarious liabilities in such cases would not apply. It would be miscarriage of justice if the owner is asked to indemnify the driver employed by the Government and the vehicle is under the use and control of the Government.

6. Perhaps all this discussion was not necessary because in my opinion, the death of deceased Md. Makaraddas Ali cannot be stated to have arisen

out of use of the motor vehicle. Sub-Section (1) of Section 165 of the Motor Vehicles Act, 1988 permits the State Government by Notification in an official Gazette to constitute one or more Motor Accident Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involved in the death or bodily injury to persons arising out of the use of motor vehicles or damage to any property so arising. Under sub-Section (1) of Section 166 of the said Act, the person injured or the owner of the property or legal representatives of the deceased could file an application for compensation arising out of accident of the nature referred to in sub-Section (1) of Section 165 of the Act. For instituting a motor accident claim petition therefore what is essential is that there is death or bodily injury or damage to any property which has arisen out of the use of motor vehicles. I am conscious that this expression "arising out of the use of motor vehicles" is liberally construed. However, by no stretch of legal interpretation the incident in question would fall within the said expression. The deceased was a Lance Nayek employed in the State Police service. He received bullet injuries in insurgency operation. Even by the account of the Claims Tribunal, the negligence of the driver driving the vehicle did not contribute in any manner to this unfortunate incident. It was plain and simple case of murder by insurgent elements. The death of Md. Makaraddas Ali did not arise out of negligent act on part of anybody in the course of use of the motor vehicle.

7. The entire law of compensation for death or bodily injuries arising out of the use of the motor vehicles, before and after its codification relies on a negligent act by a person. Barring statutory prescriptions where the law fastens no fault liability to the limited extent, the basic principle of compensating a claimant of the motor accident claim is that he or she has suffered damage on account of death or bodily injury to a person or damage to the property due to a negligent act on part of another person in the use of a motor vehicle. The reference in this respect can be made to the decision by Supreme Court in case of ***National Insurance Co. Ltd. vs. Deepa Devi and others***, ***(2008) 1 SCC 414***.

8. The claimants had tried to project the theory that the unfortunate incident occurred on account of negligent driving by the vehicle in question. This rather ingenious way of trying to bring the case within the fold of a motor accident, itself could not have succeeded. In any case, the Claims Tribunal came to a specific finding that there was no negligence on part of the driver in any manner. That being the position, the Claims Tribunal committed a serious error in exercising jurisdiction under the Motor Vehicles Act which it lacked.

9. It is unfortunate that I have to reverse an award which is in favour of a widow and dependants of a deceased, who lost his life in tragic

circumstances. However, before the Claims Tribunal, the Government had taken a stand that it had given all possible benefits to the family of the deceased. Even otherwise, mere sympathy cannot be the ground for deciding legal issues.

10. In the result, appeal is allowed. Impugned Judgment and award passed by the Claims Tribunal are set aside.

Pending application(s), if any, also stands disposed of. Records may be transmitted to the Trial Court.

HIGH COURT OF TRIPURA

**(AKIL KURESHI), CJ**

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