HIGH COURT OF TRIPURA
AGARTALA

MAC APP. No.131/2018

1(a). Smt. Shikha Laskar, W/O. Late Ranjit Laskar,

1(b). Sri Prasenjit Laskar, S/O. Late Ranjit Laskar,
-both are Resident of Melagarh, Indranagar Char, P.O. & P.S.: Melagarh, District-Sepahijala, Tripura. Presently residing at Barjala, P.O.-Barjala, P.S.-West Agartala, District-West Tripura.

1(c). Smt. Kakali Laskar (Das), D/O. Late Ranjit Laskar, W/O. Sri Uttam Das, Resident of Village-Chankhala, P.S.: Amtali, P.O.-Sekerkote, District-West Tripura.

----Appellant(s)

Versus

1. Sri Mukless Miah, S/O. Sarbat Ali, Resident of N.C. Nagar, Sonamura, District-Sepahijala Tripura, Owner of the Motor Vehicle bearing Registration No.TR-01-D-3278 (Mahindra Max).

2. The New India Assurance Company Ltd., Represented by its Divisional Manager, Division Office-4, Mantri Bari Road, Agartala, P.O.-Agartala, P.S.-West Agartala, Dist.-West Tripura, Pin-799001 (Insurer of the offending vehicle bearing No.TR-01-D-3278 (Mahindra Max)).

-----Respondent(s)

For Appellant(s) : Mrs. Sujata Deb (Gupta), Advocate,
Mr. Bikram Paul, Advocate.

For Respondent(s) : Mr. A. Gan Chaudhury, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **3rd December, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal is filed by the original claimant to challenge the judgment and award dated 19.09.2018 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) No.158 of 2017.

2. Brief facts are as under:

According to the claimant on 26.03.2016 at about 6 O'clock in the evening he was standing on the side of the road in Bishramganj town. His uncle Indrajit Dey (Tilak) was present with him. At that time, a Mahindra Max vehicle bearing registration No.TR-01-D-3278 arrived there. It was being driven in an excessive speed. It collided with the claimant and knocked him down causing serious injuries. He was shifted to a hospital where he was treated as an indoor patient for long.

3. Before the Tribunal the claimant deposed as PW-1. His uncle Indrajit Dey alias Tilak Dey was examined as PW-2. One Rafique Miah stated to be a bystander who was present at the time of accident was examined as PW-3. They all deposed that the vehicle involved in the accident was the said Mahindra Max four wheeler. The Claims Tribunal, however, dismissed the claim petition on the ground that the FIR with respect to the accident was lodged by the son of the claimant about a month

and a half later and after investigation the police had filed a final report concluding that involvement of the said vehicle was not established. In that view of the matter, the Tribunal did not assess the compensation payable to the claimant.

4. Appearing for the claimant learned counsel Mrs. Sujata Deb (Gupta) submitted that the Tribunal committed a serious error. 3(three) eye witnesses were examined before the Tribunal. Their evidence was consistent. The findings in criminal proceedings cannot be the sole basis for disbelieving the testimony of the eye witnesses.

5. On the other hand, learned counsel Mr. A. Gan Chaudhury for the insurance company submitted that there was gross delay in filing the FIR. It was a case of hit and run accident and involvement of the vehicle in question was not proved. In the fading light the witnesses could not have read the registration number of the vehicle.

6. In this context we may assess the evidence on record. In the FIR that the son of the claimant lodged he had referred to the involvement of the vehicle in question in causing the accident. PW-1, the claimant, had stated that on the date of the incident at about 6 O'clock in the evening when he was standing along with his uncle waiting for a vehicle, the said

Mahindra Max four wheeler came there and knocked him down. He was taken to Melagarh Hospital from where he was referred to GBP Hospital, Agartala on the same day. In the cross-examination, the insurance company did challenge the version of this witness and confronted him with the fact that the police agency after investigation had filed a report suggesting that the involvement of the vehicle was not established.

7. PW-2, Indrajit Dey, the uncle of the claimant also gave a similar version. He referred to one Rafique Miah who was standing in the vicinity when the accident took place and who had helped this witness to shift the injured claimant to a hospital. Rafique Miah was examined as PW-3. He also gave a similar account of the accident and involvement of the vehicle in question.

8. In view of such evidence, in my opinion, the Tribunal committed an error in holding that the involvement of the vehicle is not proved. It is undisputed that the claimant did receive bodily injuries in a vehicular accident which occurred on 26.03.2016. Perhaps the testimony of the claimant on the registration number of the vehicle involved may be discarded as an exaggeration. However, his testimony is important from the point of view of the presence of his uncle Indrajit Dey and him having been

shifted to a hospital from the scene of incident. Indrajit Dey in turn explained that when the vehicle applied the brakes, with the aid of the brake lights he could read the registration number. His presence was corroborated by the evidence of the claimant himself. Indrajit Dey in turn referred to the presence of Rafique Miah who may be a chance witness, however, being a market place presence of a bystander at 6 O'clock in the evening need not be discarded only on that count. Rafique Miah (PW-3) also supported the version of the claimant of involvement of the vehicle in the accident. He was not related to the claimant and had no reason to make a false claim.

9. Merely because the FIR was lodged after some delay, would not be sufficient to ignore such evidence. Undoubtedly a relevant factor, nevertheless delay was explained in the FIR itself suggesting that after the accident the family was busy with the treatment of the injured which prevented lodging of FIR earlier. Similarly the conclusions of the investigating agency in the criminal proceedings cannot be the sole basis for ignoring the evidence brought on record before the Claims Tribunal. The prosecution in a criminal case serves an entirely different purpose. The nature of proof required to establish an offence against an accused is always higher than one insisted upon by the Claims Tribunal for the purpose of dealing with the claim petition. In fact, the claimant in all fairness had

produced the final report. The insurance company could easily have examined the insured, the owner of the vehicle who could have, if it was true, disowned the accident.

10. In the result, impugned judgment and award is set aside. The proceedings are remanded to the Claims Tribunal for assessing and awarding compensation in accordance with law. There is evidence already on record. No further evidence will be recorded. I am informed that the claimant has expired. His legal heirs are brought on record in this appeal. They shall also be brought on record before the Claims Tribunal. The Claims Tribunal shall hear the advocates of either side and pass a fresh award, preferably within four months from date of receipt of a copy of this order.

11. The appeal is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

12. Records may be transmitted to the concerned Claims Tribunal.

(AKIL KURESHI), CJ

Pulak