

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.52 of 2004

The New India Assurance Company Ltd.,
Agartala Branch, Hariganga Basak Road,
Agartala, P.S. West Agartala,
District - West Tripura,
Presented by its Branch Manager.

..... *Appellant.*

- Vs -

1. **Smt. Baijanti Debbarma,**
W/o. Late Rati Raman Debbarma.
2. **Shri Bijan Kumar Debbarma,**
S/o. Late Rati Raman Debbarma.
3. **Miss. Resma Debbarma,**
D/o. Late Rati Raman Debbarma.
4. **Miss. Runi Debbarma,**
D/o. Late Rati Raman Debbarma.
All resident of Village - Duranta Karagpara (Ramgmala),
P.S. Bishalgarh, District - West Tripura.
5. **Shri Santosh Debbarma,**
S/o. Late Rajendra Debbarma.
C/o. Sri Kajal Chandra Deb of
North Banamalipur, P.S. East Agartala,
District - West Tripura.
(Owner of the vehicle No.TR-01-A-2386).

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P Chakraborty, Advocate.

For the respondents : None.

Date of hearing and
Delivery of judgment : **31.07.2013.**

Whether fit for reporting : **Yes/No.**

JUDGMENT & ORDER(ORAL)

This appeal by the insurance company is directed against the award, dated 05.10.2002, passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No.TS(MAC)155 of 2000 whereby the claim petition, filed by the claimants was allowed and they were awarded compensation of Rs.8,81,792/- along with interest and the appellant insurance company was held liable to pay the compensation.

2. The undisputed facts are that the deceased, husband of claimant No.1 and father of the three minor children and son of claimant No.5, was travelling in commander jeep No.TR-01-A-2386 belonging to Santosh Debbarma. At about 2.15 P.M when the vehicle reached Baghmara chowmohani on Bishramganj-Ramnagar road some persons gave signal to the driver to stop the vehicle but the driver sped away and lost control over the vehicle. At that time the miscreants also threw bombs on the vehicle and, thereafter, the deceased received multiple injuries and died on the spot.

3. The learned Tribunal awarded compensation as aforesaid. The main point raised by Sri P Chakraborty, learned counsel, appearing on behalf of the insurance company, is that the accident did not arise out of the use of a motor vehicle and therefore, the Tribunal had no jurisdiction to decide the matter.

4. In fact this matter is no longer *res integra*. The High Court of Himachal Pradesh in ***Himachal Road Transport Corporation and others vs. Om Prakash and others, 1992 ACJ 40***, was dealing with a matter in which extremists had planted a bomb in a HRTC bus. The same objection was raised and the Himachal Pradesh High Court negated the objection holding that the conductor and the driver of the bus have a duty to take care that there is no un-indentified object lying in the bus before they proceed with the bus. It was, therefore, concluded that the accident occurred due to the use of a motor vehicle. After discussing the entire law on the subject, the High Court held that Road Transport Corporation was liable to pay compensation.

5. The Apex Court in ***Samir Chanda vs. Managing Director, Assam State Transport Corporation, 1998 ACJ 1351***, was dealing with the case where passengers travelling in the Road Transport Corporation's bus sustained injuries when they were alighting from a stationary bus at the bus stop and a bomb blast took place. The Gauhati High Court dismissed the claim petition. The claimants went to the Apex Court which came to the conclusion that since the explosion had taken place inside the bus and the police escort was not there, the Transport Corporation would be fastened with the liability to pay

compensation since it was negligent in the performance of its duty of ensuring the safety of the passengers.

6. A Division Bench of the Gauhati High Court, Agartala Bench in ***Bipal Bashi Das vs. Oriental Insurance Company Ltd. & Another, 2005 (3) GLT 407***, decided a case in which the deceased died as a result of an extremist attack when the extremists attacked and fired upon the vehicle in which the deceased was travelling. The Division Bench following the Samir Chanda's case came to the conclusion that the Amarapur-Teliamura road, at the relevant time, was infested with extremists and, therefore, the driver and the owner should have been vigilant and should have taken precautions to ensure that such an attack does not take place.

7. A learned single Judge sitting in the then Agartala Bench of the Gauhati High Court has decided a large number of cases vide ***Smt. Basu Mati Debbarma and ors. Vs Smt. Anita Debbarma and ors. (MAC APP. No26 of 2001) etc.*** and held that even in cases of extremist violence where the passenger travelling in a motor vehicle suffered injuries, the accident arises out of the use of a motor vehicle and those persons (other than security personnel) travelling in the vehicle which subjected to extremists violence are entitled to compensation under the Motor Vehicles Act, 1988. I am in respectful

agreement with the view of the learned single Judge and the other laws cited above.

8. In view of the above discussion, I am clearly of the view that the Tribunal had the jurisdiction to decide the matter. As far as the issue of negligence is concerned, the finding of the Tribunal is absolutely just and reasonable and calls for no interference. Even as far as the quantum is concerned, the learned Tribunal has followed the unit method in arriving at the compensation and no fault in this can be found with the said judgment. Therefore, I find no merit in the appeal which is accordingly dismissed.

CHIEF JUSTICE