

THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC APP. 108 OF 2006

- 1. Smt. Puspa Das,**
W/O Late Kumud Behari Das,
- 2. Sri Kamal Das,**
S/O Late Kumud Behari Das,
- 3. Sri Amal Das,**
S/O Late Kumud Behari Das,
- 4. Smt. Tapati Das,**
W/O Sri Mantu Sarkar
D/O Late Kumud Behari Das,
- 5. Sri Bimal Das,**
S/O Late Kumud Behari Das,
All are resident of village- Gokulpur,
P.S.- Radhakishore Pur, Udaipur,
District- West Tripura.

Appellants

Versus

- 1. Sri Sankar Deb,**
S/O Late Dinesh Chandra Deb,
Resident of Amtali, Radha Kishore Pur,
Udaipur, South Tripura.
(owner of auto rickshaw bearing no. TR-03-2014)
- 2. Sri Sukhen Debnath,**
S/O Gopal Debnath,
Resident of Tepania, P.S.- R.K. Pur,
Udaipur, South Tripura.
(driver of auto rickshaw bearing no. TR-03-2014)
- 3. The Branch Manager,**
The Oriental Insurance Company Limited,
Udaipur Branch, Jawahar Road, Udaipur bazaar,
P.S.- R.K. Pur, Udaipur, South Tripura.
(insurer of auto rickshaw bearing no. TR-03-2014)

Respondents

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

- For the appellants : Mr. S. Datta, Advocate.
- For the respondents : Mr. SM Ali, Advocate
Ms. R. Purkayastha, Advocate
- Date of hearing and : **28.02.2014.**
delivery of judgment.
- Whether fit for reporting: **YES**

JUDGMENT & ORDER(ORAL)

This petition by the claimants is directed against the award dated 26.09.2006 passed by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in T.S. (MAC) 195 of 2004, whereby the learned Tribunal dismissed the claim petition on the ground that the claimants had failed to prove that the deceased had died in an accident involving auto rickshaw bearing registration no. TR-03-2014.

2. Briefly stated, the facts of the case are, that the claimants filed a claim petition alleging therein, that on 12.08.2004 the deceased was going to his place of work on foot along the Agartala – Udaipur main road. When he reached near Gokulpur he was hit by auto rickshaw bearing registration no. TR-03-2014. Thereafter, the injured was shifted to Tripura Sundari hospital, Udaipur but unfortunately died soon thereafter.

3. The owner of the auto rickshaw did not deny the factum of the accident but only stated that his vehicle was insured with the Oriental Insurance Company Limited. The insurance company filed a written statement in which even the accident was denied.

4. The learned Tribunal came to the conclusion that the manner in which the accident had been portrayed in the claim petition or by the claimants was not true. While coming to the conclusion the learned Tribunal held that in the FIR the number of the auto rickshaw was given as TR-03-2214 but in the claim petition the same was mentioned as TR-03-2014. This, by itself,

may not be of very great importance because a mistake may happen. However, the claimant or some other person must lead evidence to show how the mistake happened. In this case no such evidence has been done. Furthermore, in regard to the issue of negligence or even the accident taking place the claimant did not examine any witnesses but only placed on record the statements of the witnesses recorded under Section 164(5) Cr.P.C. and the statement of one witness Nanda Dulal Banik, who was examined as a witness in Court in GR case bearing no. 301 of 2004.

5. Though the Motor Accident Claims Tribunal is not a Court and is not required to conduct an enquiry in accordance to the strict rules of evidence, it must follow the basic principles of law and the basic rules of natural justice. Any procedure to be legal and valid must be a procedure which gives the effected party a right to put forth his or her own case. I have no doubt in my mind that evidence recorded in some other case or the statement recorded by the police or Magistrate cannot be used in Motor Accident Claims Tribunal proceedings unless it is proved that the person who made the statement is dead or for some other reason his presence cannot be procured in Court. Reference in this behalf may be made to Section 33 of the Evidence Act, which reads as follows :

" 33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated—

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states, when

the witness is dead or cannot be found, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation— A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

5. One of the pristine rules of our jurisprudence is that the witness examined by one party should be permitted to be cross examined by the other party. It is, therefore, obvious that a statement made before the police or a Magistrate or other judicial authority cannot be read in evidence against some other affected party without giving that affected party a right to cross examine the said witness. Therefore, the Tribunal was right in holding that without examining any of these witnesses, the petitioner could not prove the accident.

6. Having held so, I am of the opinion that in Motor Accident cases, the approach of the Tribunal should be less technical and even if the petitioner was not properly advised by his counsel, this Court should give the petitioners one more opportunity of proving their case. Therefore, the award of the learned Tribunal is set aside and the matter is remanded to the learned Tribunal who shall give two opportunities to the petitioners to examine the eye witnesses with regard to the occurrence. After these eye witnesses are examined the respondent insurance

company can also be given opportunity to lead its own evidence. In case the petitioners fail to lead evidence within these two opportunities or lead no other evidence then obviously the claim petition will have to be rejected. But if they lead evidence, then the learned Trial court shall on the basis of the evidence decide as to whether the auto rickshaw bearing registration no. TR-03-2014 was involved in the accident or not.

7. Since, the matter is an old one, the learned Motor Accident Claims Tribunal, is directed to decide the matter as early as possible and in the event not later than 31st July, 2014. The parties through their counsel are directed to appear before the learned Trial Court on 18th March, 2014.

8. The appeal is thus disposed of in the aforesaid terms.

Send back the LCRs forthwith.

CHIEF JUSTICE