

# THE HIGH COURT OF TRIPURA

## A G A R T A L A

MAC APP. No. 57 of 2012

**Opposite-Party-Appellant :**

**The Chief Executive Officer,**  
Tripura Tribal Arrears Autonomous District  
Council (TTAADC).  
Khumulwng, P.S. Jirania.  
District- West Tripura

**By Advocates :**

Mr. T.D. Majumder, Adv.  
Mr. R. Chakraborty, Adv.

**Claimant-Petitioner-Respondents :**

- 1 Smti. Sishupati Reang,**  
Wife of late Khusha Chandra Reang,  
Resident of Village-Krishnatilla,  
P.O. Machmara, P.S. Pecharthal,  
Sub-Division Kumarghat,  
District-Unokuti Tripura.
- 2. Smti Dipali Rani Tripura (Reang),**  
Wife of Sri Budhirai Debbarma,  
Resident of Village & P.O. Kanchancherra (82 miles),  
P.S. Manu, Longthorai Valley Sub-Division,  
District- Dhalai, Tripura.
- 3. Master Jeremin Reang,**  
Son of late Jitendra Reang,  
Resident of Village & P.O. Kanchancherra (82 miles),  
P.S. Manu, Longthorai Valley Sub-Division,  
District- Dhalai, Tripura.

*Respondent No.3, being minor, is represented by  
Sri Khalindra Tripura who was appointed guardian  
of respondent No.3 by the District Judge, North  
Tripura vide order dated 20.02.2009.*

**By Advocate :**

Mr. D.K. Biswas, Adv (For Noticee).

**B E F O R E**

**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing : **8<sup>th</sup> April, 2016.**

Date of Judgment : **29.04.2016**

Whether fit for reporting : **YES**

## **JUDGMENT & ORDER**

- On 25<sup>th</sup> August, 2015 I received a complaint with regard to the manner in which the proceedings had been conducted in execution proceedings numbered as Civil Misc. No.03 of 2013 filed under Section 174 of the Motor Vehicles Act, 1988 for realization of the awarded amount. After examining the record of the execution proceedings I had passed a detailed order on *26<sup>th</sup> August, 2015*.

**[2]** Briefly stated, the facts of the case are that a claim petition was filed by the mother, widow and minor son of late Shri Jitendra Reang under Section 166 of the Act. This claim petition was filed against the Chief Executive Officer of the Tripura Tribal Arrears Autonomous District Council (TTAADC for short) as well as the State of Tripura represented by the Chief Secretary. The allegation in the claim petition was that the deceased was employed with the TTAADC as Sub-Divisional Development Officer. On the ill-fated day, he himself drove Jeep No.TRA-2573 which met with an accident. The allegation in the claim petition was that the driver lost control over the steering and the vehicle turn turtle and fell by the side of the road. The driver was none else but the deceased himself namely, Jitendra Reang. He, unfortunately suffered serious injuries in the accident and died as a result thereof.

**[3]** In the claim petition there was no allegation that there was any sudden mechanical breakdown on the vehicle. In fact, the claim petition was drafted in a roundabout manner in which it was mentioned that the deceased had boarded the vehicle and the accident occurred because of the fact that the driver lost control of the vehicle. There was no allegation of mechanical breakdown. The

Presiding Officer of the Motor Accident Claims Tribunal (MACT) made out a new case for the petitioners while passing the award and though he came to the conclusion that the deceased himself was driving the vehicle, he held that since there was failure of brakes, the owner of the vehicle was responsible for the accident.

**[4]** The owner of the vehicle TTAADC was held liable to pay compensation of Rs.22,09,130/- along with interest @ 6% per annum if the amount is deposited by 13<sup>th</sup> September, 2004 and 9% per annum if the amount was not deposited by the said date. The Chief Executive Officer of the TTAADC filed Appeal No.57 of 2012 in this Court. It would be pertinent to mention that in this Court one compromise petition being CM Application No.368 of 2012 was filed in which it was stated that the matter in dispute has been amicably settled between the parties and the settlement was that the petitioner-respondents have relinquished their claim over the amount awarded by the MACT. In sum and substance, the compromise application was in the nature of a withdrawal of the claim petition itself without taking into consideration the fact that one of the claimants who had been awarded compensation was a minor and no compromise could have been affected unless it was for the benefit of the minor. A learned Single Judge of this Court passed the following order on the said compromise petition.

"14<sup>th</sup> August, 2012

*The petition for recording compromise cannot be entertained by this Court for undoing the entire award as made by the Tribunal.*

*Let the case be passed over.*

*Sd/-  
(S. Talapatra,J)"*

In effect the order is that the compromise petition was rejected.

**[5]** On 3<sup>rd</sup> January, 2013 a petition was filed before the learned Tribunal under Section 174 of the Act by Shri Bhupendra Debnath, advocate purportedly on behalf of the petitioners, Dipali Rani Tripura and Smt. Sishupati Reang in which amount of Rs.39,48,819/- was claimed. According to the complaint received by me as well as the statement made by Mr. R. Chakraborty in Court when the Chief Executive Officer of the TTAADC asked these two ladies whether they had filed the petition, they gave a declaration in writing that they had not signed any such execution petition. It may also be noted that under Section 174 of the Act, the MACT is only to issue a certificate regarding recovery of the amount and cannot proceed like a normal Executing Court.

**[6]** An objection was raised before the Tribunal that the petitioners had not actually signed the execution petition. The TTAADC placed on record of the Tribunal photocopies of two letters purportedly written by the two ladies [(Smt. Sishupati Reang and Smt. Dipali Rani Tripura (Reang))] in which they had stated that they had never come to Agartala and that they had never signed any papers regarding filing of petition under Section 174 and that they had not taken any steps in this regard. They also clearly stated in the letter that they do not know who has filed the petition (Civil Misc 03 of 2013) on their behalf. These letters were addressed to the Chief Executive Officer of the TTAADC, Khumlung and were received in his office on 23<sup>rd</sup> February, 2013 and copies of these letters are available on the record of the execution proceedings filed under Section 174 of the Motor Vehicles Act.

**[7]** Thereafter, the Tribunal directed the petitioners to appear-in-person before the Court. The first direction was given on 30<sup>th</sup> March,

2013. The counsel for the petitioners was unable to procure the presence of the petitioners. Thereafter, the Tribunal issued notice to Smt. Sishupati Reang and Smt. Dipali Reang and also issued notice to Shri Dhananjoy Debbarma, Executive Officer to appear-in-person. On 15<sup>th</sup> May, 2014 the MACT passed an order directing the TTAADC to file written objections. Again on 25<sup>th</sup> June, 2014 notice was again issued to Smt. Sishupati Reang and Smt. Dipali Reang to appear before the Tribunal as also to Dhananjoy Debbarma.

**[8]** The Motor Accident Claims Tribunal had issued various notices to Smt. Sishupati Reang and Smt. Dipali Rani Tripura(Reang) to appear before it. They had been directed to appear before the Tribunal because an application had been filed by the TTAADC before the learned Tribunal that both these ladies had sent letters to the TTAADC that the execution proceedings had not been filed at their instance and that they had not come to Agartala on 03.01.2013 the date on which this petition was allegedly filed. Surprisingly when these ladies appeared on 26.08.2014 their statements were not recorded on oath. In the order sheet it has been mentioned as follows:

*“ On being asked the claimant petitioner Smt. Sishupati Reang and Smt. Dipali Rani Tripura (Reang) verbally submits that they have arrived at a settlement with the O.P, outside the court regarding payment of compensation, awarded in this case and they are not willing to proceed further with the instant execution proceeding. The above two petitioners also verbally submitted that they will submit a petition before this Tribunal to that effect. It is also stated by Smt. Dipali Rani that she married another person after death of her earlier husband and has been living separately.”*

**[9]** It would be pertinent to mention here that Mr. R. Chakraborty who was till then representing the TTAADC and was present in Court on that day has stated before this Court that when

these two ladies appeared before the Tribunal, they had stated that they had not signed or filed any petition before the Tribunal. However, the Presiding Officer of the Tribunal did not record such statement. Instead of recording the statement the Tribunal recorded their verbal submission that they had entered into a settlement out of Court and are not willing to proceed further in the execution proceedings.

**[10]** This is a case where first joint petition for compromise had been filed before the High Court and that petition had been rejected by Hon'ble Mr. Justice S. Talapatra clearly holding that allowing such a compromise petition would mean setting at naught the order of the Tribunal. Another aspect of the matter was that Sri R. Chakraborty who was till then handling the case on behalf of the TTAADC both in the claim petition as well as in the proceedings under Section 174 before this Court was removed as counsel by the TTAADC and another counsel was appointed in his place. Thereafter, another compromise petition was filed before the learned Tribunal as per the original award the awarded amount was Rs.2,20,9130/-. The interest was awarded @ 9% per annum w.e.f. 13.09.2004 and, therefore, by the time this alleged compromise was arrived at more than Rs.40,00,000/- was due as per this award. According to this award, the widow was to get Rs.8,09,130/- the mother was get Rs.7,00,000/- and the son was to get Rs.7,00,000/- with proportionate interest thereupon.

**[11]** Mr. R. Chakraborty had very fairly stated before this Court that he may be permitted to withdraw from the case in view of the subsequent developments. I had, however, requested him to assist me in the matter till I disposed of this petition.

**[12]** As per the compromise filed the widow Dipali Rani Tripura

was to get only Rs.50,000/-, the mother Sishupati Reang would get only Rs.2,50,000/- and the minor son would get Rs.1,50,000/-. Here it would be pertinent to mention that another petition was filed on behalf of the minor by Sri Bhupendra Debnath, learned counsel in which he prayed that the compromise petition with regard to the minor be rejected. What is surprising is that Sri Bhupendra Debnath has signed the main compromise petition in which all the terms are settled and then he has also signed the application that the compromise petition be rejected as far as the compromise on behalf of the minor is concerned.

**[13]** On perusal of the facts I had felt that adverse remarks may have to be passed with regard to the conduct of various persons and, therefore, I had issued notice to the Chief Executive Member (CEM) of the TTAADC who was directed to personally inquire into the matter and answer the following questions:

*(a) Why the matter was sought to be compromised in proceedings under Section 174 of the Act before the MACT when the High Court had rejected the prayer for compromise?*

*(b) Why was the order passed by Hon'ble Mr. Justice S. Talapatra on 14<sup>th</sup> August, 2012 not brought to the notice of the Tribunal?*

Notice was also directed to be issued to the Chief Executive Officer who had signed the compromise petition and he was to answer the same two queries.

**[14]** Notice was also issued to the then Presiding Officer of the Motor Accident Claims Tribunal who was directed to answer the following queries:

*(i) Why did he not record the statements of Smt. Sishupati Reang and Smt. Dipali Rani Tripura*

*(Reang) when they had been specifically summoned by him to appear in Court?*

*(ii) Why did he not pass any orders on the objection made by the TTAADC that Smt. Sishupati Reang and Smt. Dipali Rani Tripura (Reang) had not signed the Civil Misc 03 of 2013 petition filed under Section 174 of the Motor Vehicles Act?*

*(iii) Why did he entertain an application for compromise of the case in 174 proceedings in which his only job was to issue a certificate?*

*(iv) He shall inform this Court whether he was aware of the order passed by Hon'ble Justice S. Talapatra. He shall also answer why he did not consider it proper to direct the parties to refer the matter to the High Court because an appeal was pending in the High Court and he had no business of entertaining a compromise petition.*

**[15]** Notice was also issued to Sri Bhupendra Debnath to file his reply to the following:

*“Before taking any further action on the matter, I feel that it is necessary to hear certain persons. A notice be issued to Shri Bhupendra Debnath, Advocate of Tripura Bar Association to explain how he has filed this petition when the ladies clearly stated in writing that they have not signed any papers. He shall also explain how he has signed the compromise petition and has also filed another petition that the compromise on behalf of the minor be rejected. He shall also explain why he did not feel it fit to file a compromise petition in the High Court where the appeal is pending and why this compromise petition was filed in 174 proceedings which had no jurisdiction to entertain such compromise petition. “*

**[16]** Thereafter, replies were filed by the Chief Executive Member, the Chief Executive Officer and Mr Bhupendra Debnath and time was sought by the Presiding Officer Mr. Kripankar Chakraborty. On perusal of the replies filed by the Chief Executive Member as well as the Chief Executive Officer of the TTAADC and I had found that the stand of both these officers was that they were unaware of the order passed by the High Court rejecting the application for compromise.



According to them, there was a communication gap and they were not informed about this order by Mr. R. Chakraborty, Advocate. Thereafter, this Court had directed them to file fresh affidavits explaining if they were under the impression that the compromise petition filed before the High Court had not been disposed of, why the second petition was prepared and filed before the Motor Accident Claims Tribunal. In the meantime, Mr. R. Chakraborty learned counsel was also asked to place on record the material to show that he had communicated the order to the TTAADC in writing.

**[17]** Before dealing with the affidavits of the officers of the TTAADC let me deal with the affidavits filed by the counsel and the Presiding Officer. Sri Bhupendra Debnath in his affidavit has stated that he was asked by one Sri Gajendra Tripura, former elected member of the TTAADC to file Motor Accident Claim petition on behalf of Sri Kusha Chandra Reang (father of the victim), Smt. Sishupati Reang (mother of the victim), Smt. Dipali Rani Tripura (Reang) (widow of the victim) and Master Jerimine Reang (minor son of the victim). During the trial Kusha Chandra Reang died and his name was deleted. According to him, after the award was passed he proposed to Sri Gajendra Tripura to institute Certificate Proceedings under Section 174 of the Motor Vehicles Act. At that time Dipali Rani Tripura came to his office but Sishupati Reang did not come. That day Dipali Rani Tripura signed in his presence. He further states that he then handed over the drafted petition to Dipali Rani Tripura to obtain the signature of Sishupati Reang and it was done accordingly. He had no reason to believe that the signature of Sishupati Reang was not genuine.

**[18]** At this stage it would be pertinent to mention that Sishupati Reang has not signed any document but she has only thumb marked the document. According to Sri Debnath, he retained a photocopy of the execution petition after Dipali Rani Tripura had signed the same. He stated that the statement made by Dipali Rani Tripura or Sishupati Reang to the contrary is absolutely false. He further stated that he was not aware of any proposal for compromise and the claimants behind his back communicated with the TTAADC for compromise of the matter. He also states that he had issued a caution that he would file a petition to protect the interest of the minor. According to Mr. Debnath, he was never informed by the claimants that they were contesting an appeal in the High Court and he was totally in dark about the appeal. He also states that he had no knowledge about the dismissal of the compromise petition in the High Court until *30<sup>th</sup> March, 2013* when Sri R. Chakraborty learned counsel filed an application in the Tribunal on behalf of the TTAADC in which it was alleged that the execution case had not been filed by the petitioners and in this application it was also prayed that an order be passed compelling the attendants for the petitioners. He has also urged that even in this petition it was not mentioned that the compromise petition had already been dismissed.

**[19]** I have gone through the application filed by Sri Bhupendra Debnath for protecting the interest of the minor. This application is not signed by the guardian Sri Khalindra Tripura who was appointed as guardian of the minor Jerimine Reang vide order of the learned District Judge, North Tripura, Kailashahar in Civil Misc (GC) 26 of 2008. Normally every application is supposed to be signed by a party and

must be accompanied by an affidavit of the party. As far as application for recording compromise on behalf of the minors is concerned, the procedure is even more rigorous. Reference in this behalf may be made to Order XXXII of the Code of Civil Procedure which deals with suits by or against minors and persons of unsound mind. The principle of Order XXXII which are inconsonance with the principle of natural justice and have been enacted with a view to protect the interest of the minor must be applied even in proceedings under the Motor Vehicles Act. In cases under the Motor Vehicles Act on many occasions the claimants are minors and it is the duty of the Tribunal to ensure that the interest of the minors are properly looked after.

**[20]** Order XXXII Rule 7 reads as follows:

*7. Agreement or compromise by next friend or guardian for the suit.-(1) No next friend or guardian for the suit shall, without the leave of the court, expressly recorded in the proceeding, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.*

*(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:*

*Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the court from examining whether the agreement or compromise proposed is for the benefit of the minor.*

*(2) Any such agreement or compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor."*

The Apex Court in ***Dokku Bhushayya v. Katragadda Ram Krishanayya and others AIR 1962 SC 1886*** held that the

duty of safeguarding the interest of the minor has been thrown upon the Court. Therefore, it is the duty of the Court to ensure that in terms of Order XXXII Rule 7 that no compromise is recorded on behalf of the minor unless the Court grant leave which is expressly recorded in writing in the proceedings.

**[21]** I fail to understand how in a case where an award has been passed, the compromise by which a minor is given a lesser amount than what was payable to him under the award can be set to be a compromise for the interest of the minor. It is unfortunate that this aspect of the matter was not looked into either by the learned Tribunal or by the Court. Reference may also be made to Order XXIII Rule 1 and 2 which reads as follows:

***“1. Withdrawal of suit or abandonment of part of claim.-*** (1) *At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.*

*Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned Without the leave of the court.*

*(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.”*

Proviso to sub-rule 1 clearly lays down that where the plaintiff is a minor the suit nor any part of the claim shall be abandoned without the leave of the Court.

Sub-rule 2 provides that an application for leave under sub-rule 1 shall be accompanied by an affidavit of the next friend and, if the minor is represented by a counsel, by a certificate of the counsel

to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor. The principle of Order XXIII especially insofar as they relate to protecting the interest of the minors are applicable to proceedings under the Motor Vehicles Act and the Tribunals must ensure that the interest of the minor is protected.

**[22]** According to Mr. Bhupendra Debnath, he was not aware of any proposal for compromise till the date he filed the petition under Section 174 of the Motor Vehicles Act. He, however, states that after the petition for compromise was drafted by the parties and made ready for filing it was brought to him for putting his signature to identify the claimant petitioners. He states that he did it only for this purpose but also cautioned that he would file a petition to protect the interest of the minor. With regard to the question as to why he did not file the compromise petition in the High Court where the appeal was pending he states that he was never informed by the claimants that they were contesting any appeal in the High Court and he was totally in dark about the appeal and was also not aware of the dismissal of the compromise petition until *30 March, 2013* when Sri R. Chakraborty filed an application in the Tribunal.

**[23]** Reference may be made to the application filed on behalf of the TTAADC by Sri R. Chakraborty which reads as follows:

*“Application by the Opposite Party under Order V Rule 3(2) of the C.P. Code for direction to the petitioners to appear before the Hon'ble Tribunal in person.*

*1. That the petitioners instituted the instant proceeding in this Hon'ble Tribunal on 03.01.2013 for recovery of awarded amount with interest from the O.P. in compliance with the judgment and award dated 25.02.2012 passed by this Hon'ble Tribunal in T.S. (MAC) No.494 of 2004.*

*2. That against the said judgment & award dated 25.02.2012, the O.P. preferred Appeal*

before the Hon'ble Gauhati High Court, Agartala Bench impleading the present petitioners as respondents. The appeal was registered as MAC. App. No.57 of 2012 and was admitted for hearing. Receiving notice, the respondents appeared before the Hon'ble High Court. The parties amicably settled the matter out of the court and a joint petition of compromise was submitted by the parties in the Hon'ble High Court for orders.

3. That under those circumstances, receiving notice issued by this Hon'ble Tribunal, the O.P. made contact with the petitioners to know as to why suppressing the fact of appeal pending in the Hon'ble High Court and that of filing joint compromise petition in the Hon'ble High Court by the parties for orders, the petitioners instituted the present proceeding for realization of awarded amount.

4. That in reply, the petitioners No.1 & 2 informed the O.P. by separate letters dated 23.02.2013 that they do not know anything about institution of the instant proceeding no. Civil Misc. (MAC) 03 of 2013 in this Tribunal and they do not know who instituted the proceeding in their names. The petitioners further informed the O.P. that none of them came to Agartala on or before 03.01.2013 to file this proceeding nor did they sign any paper for filing this proceeding.

Photo copy of the 2 letters dated 23.02.2013 written by petitioners No.1 & 2 addressing the O.P. are annexed hereto and are marked as annexure-1 & 2.

Under the circumstances as stated above, the O.P. respectfully prays that the Hon'ble Tribunal would be kind enough to consider the facts as stated above and pass necessary orders directing the petitioners to appear before the Hon'ble Tribunal in person on the next date to ascertain if the petitioners instituted this proceeding and signed the application and the Vakalatnama that has been filed in this Hon'ble Tribunal and oblige thereby.

#### **VERIFICATION**

I Sri Dhaanjoy Debbarma, son of Late Dayendra Debbarma, the Executive Officer, TTAADC, Khumulwng, P.S. Jirania, West Tripura, being authorized by the O.P., the Chief Executive Officer, TTAADC, solemnly declare that the statements made in paragraphs No. 1 to 4 above are true to my knowledge and the rest are the submission of the O.P. and in acknowledgement thereof, I put my signature in this verification this 23<sup>rd</sup> day of March, 2013 at the Agartala Court premises."

This application has been verified by Sri Dhananjoy Debbarma, the Executive Officer of the TTAADC after being duly authorized by the Chief Executive Officer, TTAADC. In this affidavit it is

clearly stated that against this judgment and award dated 25.02.2012 passed by the Motor Accident Claims Tribunal in T.S(MAC) No.494 of 2004 an appeal was filed by the TTAADC before the Agartala Bench of the Guwahati High Court which was numbered as MAC APP NO.57 of 2012.

**[24]** This led to the filing of the application quoted hereinabove. After notices were served upon the TTAADC in the petition filed under Section 174 of the Motor Vehicles Act, the TTAADC made contact with the petitioners as to why they had filed execution petition suppressing the fact of filing appeal and also suppressing the fact of filing joint compromise petition in the Hon'ble High Court. Therefore, the major claimants informed that they had not instituted any proceedings for execution and that none of the claimants had come to Agartala on or before 03.01.2013 nor had they signed any paper for filing the proceedings. The letters sent by the major claimants to the TTAADC have already been extracted hereinabove.

**[25]** It is true that in this application filed under the signature of Mr. R. Chakraborty there is no reference to the order passed by Hon'ble Mr. Justice S. Talapatra but there is reference to the appeal filed as well as to a compromise petition pending in the High Court. Therefore, the averment made by Sri Bhupendra Debnath that he was not aware that the claimants were contesting an appeal in the High Court and that he was completely in dark about the appeal is totally false. At least on 30.03.2013 Sri Bhupendra Debnath knew that an appeal was pending in the High Court. At least at this stage, he should have taken care to ensure that no compromise petition is filed before

the Executing Court because the High Court was already seized of the matter.

**[26]** At this stage I would make reference to Section 174 of the Motor Vehicles Act which reads follows:

*“ Recovery of money from insurer as arrear of land revenue.-Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.”*

A bare perusal of this section clearly shows that the Tribunal is only to issue a certificate for recovery of the awarded amount. It is not to execute the award like an Executing Court. Therefore, I am clearly of the opinion that the learned Tribunal while dealing with an application under Section 174 of the Motor Vehicles Act had no business to entertain a compromise petition.

**[27]** I am clearly of the opinion that Sri Bhupendra Debnath did not act in accordance with the standards expected from a member of the noble profession of law. He at least after the execution petition was filed was aware about some compromise applications having been filed in the High Court. If he was not aware about the dismissal of the said application by the High Court it was all the more reason that he should have advised his clients to first approach the High Court where the matter was pending. As per the version of Sri Debnath, it was only after Sri R. Chakraborty filed the affidavit that he realized that there was some appeal pending in the High Court and according to him he was also aware that a compromise petition was pending in the High Court but he was not aware that Hon'ble Mr. Justice S. Talapatra had



rejected the compromise petition. Therefore, it is obvious that he should not have filed the second compromise petition.

**[28]** As noted earlier in the order sheet dated 13.11.2014 it is mentioned that a petition is filed by the learned Advocate for the petitioner for protection of the right of the minor petitioner No.3. I have carefully perused the record of the Tribunal and I find from the record that on 13.11.2014 Sri Bhupendra Debnath had filed an application for protecting the interest of the minor and in this petition it was stated that necessary orders be passed for recovery of share of the minor petitioner with upto date interest by issuing certificate. This application is signed only by Sri Bhupendra Debnath. Who instructed Sri Bhupendra Debnath to appear on behalf of the minor? I do not find anything on record to show that he had been issued any power of attorney by Sri Khalindra Tripura who was the guardian of Master Jerimine Reang.

**[29]** The power of attorney issued to Sri Bhupendra Debnath which is on record has been executed in his favour by Smt. Sishupati Reang and Dipali Rani Tripura only and in the power of attorney it is not stated that they have executed this power of attorney as guardian of the minor. In fact perusal of the application filed on 13.11.2014 shows that Sri Bhupendra Debnath was aware that Sri Khalindra Tripura had been appointed guardian of the property of Jerimine Reang. He has attached copy of the judgment along with this application. Therefore, I fail to understand how the counsel could have filed the application without any instructions. It would be pertinent to mention that Sri Khalindra Tripura appointed Sri Sudip Sutradhar as an Advocate and that too only on 13.07.2015.

**[30]** On 13.07.2015 a compromise petition was filed by Dipali Rani Tripura, Sishupati Reang and Khalindra Tripura who acted as guardian of Jerimine Reang. It is true that in this application Sri Bhupendra Debnath has identified Dipali Rani Tripura. However, he has not withdrawn his power of attorney and therefore, he continued to represent Sishupati Reang and Dipali Rani Tripura as their lawyer. By this application Dipali Rani Tripura was to get Rs.50,000/-, Sishupati Reang was to get Rs.2,50,000/- and Jerimine Reang, the minor was to get only Rs.1,50,000/-. On the same date i.e. on 13.07.2015 again Sri Bhupendra Debnath filed another application for protecting the rights of Master Jerimine Reang but he did not get this application signed from Khalindra Tripura who was obviously present in Court on that date since he had signed the other applications. This clearly shows that Sri Bhupendra Debnath was acting in a manner not expected of a member of the legal profession.

**[31]** Coming now to the replies filed by the Presiding Officer of the Tribunal Sri Kripankar Chakraborty. He first filed an application stating that since he had retired he may be permitted to inspect the record. After he had inspected the record he filed another reply and I shall only deal with this reply. In reply to the first question put to the Presiding Officer he states that he did not record the statements of Smt. Sishupati Reang and Smt. Dipali Rani Tripura when they appeared before him as member of the Tribunal. He states that he verbally asked them whether they had arrived at a settlement and these two ladies told him that they had arrived at a settlement. It is shocking that an officer has summoned the parties on an application filed by the opposite party in which the prayer made is to ascertain if the

petitioners instituted the proceedings and signed the application and the Vakalatnama. It was on this application that this Presiding Officer had summoned the two petitioners but when they appeared before him he did not confront them with the letters allegedly written by them to the TTAADC nor did he try to find out from them whether they had signed the petition under Section 174 of the Motor Vehicles Act. This clearly shows that something was not proper. I fail to understand how an extremely senior member of the Tripura Judicial Service who had been re-employed after retirement could have made a mistake of this nature. To my mind it does not appear to be an innocent mistake. Reference may be made to the order dated 26.08.2014 passed by the learned Tribunal in which he further stated that two petitioners are majors and they can arrive at a settlement with the opposite party on any terms and conditions but since Master Jerimine Reang is a minor, his interest should not be curtailed by the act of the petitioner. He thereafter, directed the petitioners to submit an application mentioning the terms and conditions of the settlement.

**[32]** To the second query put to Sri Kripankar Chakraborty as to why he did not pass any order on Civil misc.03 of 2013. His answer is that there is no specific order passed on this application but according to him, this petition was ignored vide order dated 30.03.2013. He admits that it was on this application that he directed the petitioners to appear. It is indeed shocking and surprising that he has the audacity to state this before this Court. As already observed by me above, the purpose of summoning these two petitioners was to ascertain whether they had signed the execution petition or not and this fact was never ascertained by the learned Tribunal showing total lack of diligence in his working.

**[33]** As far as query number 3 is concerned, the reply given is that no application for compromise was entertained by this officer till his retirement. After perusal of the file of the learned Tribunal I find that the statement is not wholly correct. It may be true that no formal written application under Section 174 had been filed but in the order dated 26.08.2014 the learned Tribunal has ordered both the petitioners who were present before him on that day to submit a petition stating that they had settled the dispute with the judgment debtors mentioning the terms and conditions of settlement. No such application was filed on the next date i.e. on 13.11.2014 and the learned Tribunal instead of issuing a certificate in terms of Section 174, adjourned the matter to 8.01.2015 again for the presence of the petitioners 1 and 2. I do not understand what was the need for re-summoning the petitioners 1 and 2. Thereafter, the matter was adjourned at the request of the counsel for the claimants. Sri Bhupendra Debnath also filed an application on 13.11.2014 to protect the interest of the minor and the matter was adjourned time and again for filing a compromise petition. This compromise petition was actually filed on 13.07.2015 after Sri Kripankar Chakraborty had retired.

**[34]** Sri Kripankar Chakraborty has stated that he was not aware of the order passed by the Hon'ble Mr. Justice S. Talapatra. That may be true and his explanation in this regard is accepted. However, he was also asked to explain why he did not consider it proper to direct the parties to refer the matter to the High Court because an appeal was pending in the High Court. As far as this aspect of the matter is concerned, Sri Kripankar Chakraborty has given no answer.

**[35]** As pointed out earlier in the application filed by Mr. R. Chakraborty for summoning the two petitioners there was a specific reference to an appeal having been filed and also a compromise petition having been filed in the High Court. It is presumed that Sri Kripankar Chakraborty must have read the contents of this application before he issues notices to the petitioners No.1 & 2 to appear in person before him. In that application it was clearly mentioned that an appeal is pending and a compromise petition was filed in the High Court. I fail to understand how Mr. Kripankar Chakraborty could have even asked the parties to file a settlement petition in proceedings under Section 174 knowing fully well that his order was under challenged before the High Court and any compromise after filing of the appeal could only have been entertained by the appellate Court. He had become *functus officio* and had no business of entertaining any submission with regard to a compromise knowing fully well that the matter was pending in the High Court. I am constrained to observe that the manner in which Sri Kripankar Chakraborty, Presiding Officer of the Motor Accident Claims Tribunal conducted the matter was wholly unsatisfactory.

**[36]** Now coming to the responses filed by the Chief Executive Member and the Chief Executive Officer of the TTAADC. As far as the first query is concerned, the stand of the both the officers is that they were not aware of the rejection of the compromise by Hon'ble Mr. Justice S. Talapatra. According to them, this information was never conveyed to them by Mr. Ramendra Chakraborty. However, Sri Ramendra Chakraborty had also filed an affidavit and in this affidavit

he had stated that he had orally informed various officials of the TTAADC about the order.

**[37]** Sri Ramendra Chakraborty had filed the appeal on behalf of the TTAADC in this Court which was registered as MAC APP No.57 of 2012. The appeal was admitted on 21.06.2012 and notices were issued in the stay petition. According to Sri Ramendra Chakraborty, after the claimant respondents received notice in the appeal they settled the matter with the TTAADC out of Court. In the High Court the claimants were represented by Mr. Debabrata Chakraborty and a joint compromise petition was filed wherein it was prayed that compromise be recorded. However, when this matter came up before Hon'ble Mr. Justice S. Talapatra on 14.08.2012 he refused to grant stay. According to Sri Chakraborty, he had informed Sri Dhananjay Debbarma, Executive Officer(Administration) of the TTAADC who used to perform all the administrative functions about the order passed by Hon'ble Mr. Justice S. Talapatra. Further, according to Sri Chakraborty he also apprised the then Chief Executive Officer Sri Abhinoy Halam, IAS about the order dated 14.08.2014 by a telephone. He further states that he also informed about the matter to the then Chief Executive Member Sri Ranjit Debbarma who is presently Chairman of the TTAADC. According to him, at the request of Sri Ranjit Debbarma he went to the residence of Sri Ranjit Debbarma along with law clerk Prabas Dey and informed him about the refusal of the High Court to entertain the compromise petition.

**[38]** Thereafter the petition under Section 174 was filed and then the TTAADC instructed Mr. Ramendra Chakraborty to file the application in which it was alleged that the two ladies Sishupati Reang and Dipali Rani Tripura (Reang) had not signed the application etc.

Therefore after Sri R. Chakraborty filed the affidavit I had permitted the other parties to file their affidavits. I had also specifically asked the CEM and the CEO to explain that even if they were unaware of the order passed by the High Court rejecting the application for compromise then they must be under the impression that the compromise petition had not been disposed of then why did they file the second petition for compromise before the Motor Accident Claims Tribunal. The response of Sri Abhishek Singh, IAS Chief Executive Officer to this question is that the matters are normally looked after by the learned Advocate and since the learned Advocate stated that the Tribunal had directed that such an application being filed he has filed the said application.

**[39]** As far as the CEM Sri Radha Charan Debbarma is concerned, he has stated that the allegations made by Sri Ramendra Chakraborty are absolutely false. His explanation is that he dealt by the noting put on the file and being an elected member he just signed the file. To say the least, the conduct of both the CEO and the CEM is highly unacceptable. When any party files an affidavit in Court or approves the filing of an affidavit in Court it is expected that the party carefully goes through the affidavit and ascertains that what is stated in the affidavit is correct. It is no excuse for senior IAS officers and the Chief Executive Members to state that they have only followed the advice of the lawyer. In this regard reference may be made to one interesting fact and that fact is that Sri Ramendra Chakraborty was removed as a lawyer on 11.03.2015 when he was directed to handover all the documents to Sri Sajal Sarkar, Head Clerk. Interestingly on 26.08.2014 the two ladies had appeared before the Motor Accident Claims Tribunal. Thereafter, the Tribunal gave dates for

fixing of the compromise and on 11.03.2015 Sri Ramendra Chakraborty was removed and new counsel engaged. No doubt it is the prerogative of a client to remove a counsel and engage a fresh counsel. However, there must be some cause why the earlier counsel who was handling the appeal as well as the compromise petition should be removed. No explanation worth the name has been given why Sri Ramendra Chakraborty was removed. It appears to me that Sri Ramendra Chakraborty is right in stating that he had informed the officials of the TTAADC about the order passed by Hon'ble Mr. Justice S. Talapatra and since he would not have signed a fresh compromise petition he was removed and a new counsel engaged to file the compromise petition before the Tribunal.

**[40]** Assuming for the sake of argument that Sri Ramendra Chakraborty had not communicated the order passed by Hon'ble Mr. Justice S. Talapatra to the officials of the TTAADC then their impression should have been that the earlier compromise petition is still pending in the High Court. If according to them the earlier compromise petition was still pending in the High Court their action of filing a fresh compromise petition before the Motor Accident Claims Tribunal in proceedings for grant of certificate becomes totally suspicious and clearly shows that the officials of the TTAADC wanted to get out of the order of the High Court by hook or by crook and, therefore, filed the petition before the presiding officer of the Tribunal who was willing to entertain such application knowing fully well that the case is still pending in the High Court. The conduct of both the CEO and the CEM is, therefore, not proper and I hold that they have acted in a manner not befitting the high office which they hold.



**[41]** Coming to the appeal on merits. The allegations in the claim petition are that the deceased himself was driving the vehicle and it is alleged that due to the negligent driving of the deceased the accident occurred. A specific stand had been taken that since negligence of the deceased himself had been alleged no compensation could be claimed.

**[42]** P.W-1 was the widow Dipali Rani Tripura. She was not present when the accident took place but she herself states that her husband was driving the vehicle and the driver lost control over the steering and as such the vehicle turn turtle. The other side examined two witnesses. O.P.W-1 stated that Jitendra Reang was an employee of the TTAADC and he died in a vehicular accident involving the vehicle in question. It was also stated that though some other person was engaged to drive the vehicle at the time of the accident the vehicle was being driven by the deceased himself.

**[43]** The learned Tribunal did not decide the question as to who was driving the vehicle and only because the deceased had died in a Motor Accident the claimants were entitled to compensation. This finding is wholly incorrect. The question whether the legal heirs of a person who himself was driving the vehicle and was responsible for the accident are entitled to claim under Section 166 of the Motor Vehicles Act is no longer in doubt. In ***Oriental Insurance Co. Ltd. vs. Jhuma Saha and others, 2007 ACJ 818***, the Apex Court held that where the owner of the vehicle himself is to be blamed for the accident and no other motor vehicle is involved then his heirs cannot claim any compensation. The principle laid down was that a person cannot be a plaintiff and the defendant at the same time. The

insurance company is only to indemnify the owner and the legal heirs of the owner cannot file a claim against the insurance company.

**[44]** In ***Ningamma and another vs. United India Insurance Co. Ltd., 2009 ACJ 2020***, the Apex Court held thus:

*“13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of the MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?”*

**[45]** The Court after referring to the legal provisions and various other judgments including ***Oriental Insurance Co. Ltd. vs. Rajni Devi and others, 2008 ACJ 1441*** held as follows:-

*“18. In the case of Oriental Insurance Co. Ltd. v. Rajni Devi, 2008 ACJ 1441 (SC), wherein one of us, namely, Hon'ble Justice S.B. Sinha was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorized to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.*

19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

The present case is clearly covered by the aforesaid judgments.

[46] It would be pertinent to mention that this view has been followed by the High Court of Andhra Pradesh in **2013 ACJ 2586, Bajaj Allianz General Ins. Co. Ltd. v. Gaddam Swami Reddy and another**, by the Chhattisgarh High Court in **2014 ACJ 101, New India Assurance Co. Ltd. vs. Prahlad Sahu and another**, the Allahabad High Court in **2014 ACJ 252, Raj Kumari Chaurasia and others vs. New India Assurance Co. Ltd.**, the Punjab And Haryana High Court in **2014 ACJ 2803, Bajaj Allianz General Insurance Co. Ltd. vs. Kanchan and others** and many other judgments.

[47] As far as the present case is concerned, the same has been filed under Section 166 of the Motor Vehicles Act in which to claim compensation, negligence of some other person has to be proved. The legal heirs of a person who himself is negligent and causes the accident cannot claim compensation from the owner/insurer of the vehicle. In this view of the matter the appeal filed by the TTAADC has to be allowed.

**[48]** However, I am clearly of the view that in view of the conduct of the TTAADC in trying to compromise the appeal I must award something in favour of the minor claimant. In the compromise petition filed before the learned Tribunal the TTAADC had offered Rs.50,000/- to Smt. Dipali Rani Tripura, Rs.2,50,000/- to Sishupati Reang and Rs.1,50,000/- to Jeremin Reang. Sishupati Reang and Dipali Rani Tripura being majors are not entitled to any compensation. Since TTAADC had offered a sum of Rs.4,50,000/- and was ready and willing to pay this amount I direct the TTAADC in the peculiar facts and circumstances of this case to pay compensation of Rs.4,50,000/- to Jeremin Reang only. This amount may be deposited in the Registry within a period of 2(two) months from today failing which it shall bear interest @ 9% per annum from today. This amount shall kept in a fixed deposit till Master Jeremin Reang attains the age of 21 years. However, the interest accruing on this amount shall be paid to his legal guardian Sri Khalindra Tripura on quarterly basis by remitting it to his personal bank account, details whereof along with photocopy of the first page of the passbook be filed in the Registry of this Court within 2(two) months from today.

**[49]** The appeal is disposed of in the aforesaid terms.

**[50]** Send down the LCRs forthwith.

**CHIEF JUSTICE**

*Dipesh*