

**HIGH COURT OF TRIPURA
AGARTALA**

Mac App No.65 of 2018

Sri Tapan Lal Barik, S/o. Late Babul Barik, of Vill- Dhajanagar,
Udaipur, P.S. R.K. Pur, Dist. Gomati Tripura.

-----Claimant petitioner/appellant(s)

Versus

1. Sri Dhanu Miah, S/o. Chan Miah alias Bindu Miah, Of Rajarbag,
P.S. R.K. Pur, Dist. Gomati Tripura. (Owner cum Driver of the
vehicle bearing No.TR03-3608, Auto Rickshaw).

2. The Branch Manager, National Insurance Company Ltd.,
Udaipur Branch, Udaipur, P.S. R.K. Pur, Dist. Gomati Tripura.
(Insurer of the vehicle bearing No. TR03-3608, Auto Rickshaw).

-----Opposite Parties-Respondent(s)

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HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL

For Appellant(s) : Mr. Ratan Datta, Advocate.

For Respondent(s) : Mr. P. Gautam, Advocate,
Mr. T.D. Majumder, Advocate.

Date of judgment : **29th June, 2019.**

Whether fit for reporting :

Yes	No
	✓

J U D G M E N T (O R A L)

Having heard learned counsel for the parties, this Court is of the considered view that the findings returned by the Tribunal holding the claimant/petitioner to have been contributed to the accident, being perverse, cannot be said to be borne out from the true and correct reading and appreciation of evidence led by the parties. And as such, for the reasons to follow are quashed and set aside.

[2] On the basis of pleadings of the parties, the Tribunal framed the following issues :

“(1) Is the petitioner Tapan Lal Barik suffered any injury due to any road traffic accident occurred on 25-05-2013 at West Khupilong Muslim Para, P.S. Killa out of use of vehicle No.TR03-3608 (auto rickshaw) due to rash and negligent driving by its driver ?

(2) Is the petitioner entitled to get any compensation? If so, what should be the amount of compensation and who is/are to pay the same?

(3) To what other relief(s) the parties are entitled?”

Obviously no issue with regard to the negligence of the claimant was framed.

[3] Be that as it may, the Tribunal was still bound to determine the cause of accident and determine the liability in terms of the evidence led by the parties.

[4] In the instant case, it is not in dispute that the accident occurred on 25th May, 2013 as a result of which the claimant sustained injuries. At the time of accident, he was riding a motorbike bearing registration No.TR-03-E-5949(Pulsar) which was hit by the offending vehicle bearing registration No.TR03-3608(Auto Rickshaw).

[5] The claimant while stepping into the witness box has categorically deposed that while he was riding the motorbike, suddenly, the offending vehicle driven by the respondent No.2 came at a high speed and in a rash and negligent manner,

dashed into his motorbike. Now significantly there is no cross-examination, more so by the insurer on this aspect.

[6] Not only that, the claimant has corroborated his testimony by leading other credible evidence through independent witnesses namely, Sri Dulal Debnath (P.W.2), Sri Sachinandra Ch. Das (P.W.3) & Sri Manoj Ramkumar (P.W.4). Careful perusal of their testimonies also reveal the claimant to have sustained injuries in the accident; the fault being purely that of driver of the offending vehicle; the claimant to have incurred expenditure for undergoing treatment; and that the claimant suffered loss.

[7] At this stage, learned counsel for the appellant contend that the claimant shall be content if the appeal is allowed only to the extent of fastening the liability solely upon the insurer and not enhancing the amount of compensation so determined by the Tribunal.

[8] Taking the statement on record, as prayed for, appeal is allowed holding the claimant entitled to the entire amount of compensation of **3,64,000/-**, instead of half thereof, so determined by the Tribunal, to be paid by the insurer namely, National Insurance Company Limited in terms of the impugned award dated 9th January, 2018 passed by the learned Member, Motor Accident Claims Tribunal, Court No.1, Gomati Judicial District, Udaipur in Case No. T.S. (MAC) 39/2015 titled as *Shri Tapan Lal Barik versus Shri Dhanu Miah & another*. Any amount

already paid shall be adjusted accordingly. Record be sent back immediately.

(SANJAY KAROL), CJ

Dipesh

