

**HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.125 of 2024**

1) The Director General of Police,
Near Fire Brigade Chowmuhani,
Government of Tripura, Agartala,
Tripura West

2) The Superintendent of Police,
Udaipur, P.S.-R.K.Pur, District-Gomati Tripura

----- Appellant(s)

Versus

1) Smt. Mamata Chowdhury,
wife of Late Nikhil Chowdhury

2) Smt. Piyali Chowdhury,
daughter of Late Nikhil Chowdhury

-----Claimant-Respondent(s)

For Appellant (s)	:	Mr. Karnajit De, Addl. G.A.
For Respondent(s)	:	Mr. Asutosh De, Adv. Ms. Meena Ali, Adv. Mr. Robel Hossain, Adv.
Date of Hearing of Judgment & Order	:	30.06.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred by the appellant challenging the judgment and award dated 30.08.2024 passed by Learned Member, Motor Accident Claims Tripura No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC)101 of 2020.

[02] Heard Mr. Karnajit De, Learned Addl. G.A. appearing on behalf of the appellant OPs and also heard Mr. Asutosh De, Learned counsel assisted by Ms. Meena Ali, Learned counsel and Mr. Robel Hossain, Learned counsel appearing on behalf of the respondent-claimant petitioners.

[03] Taking part in the hearing, Learned counsel for the appellant first of all drawn the attention of the Court referring para-8 of the judgment and award of the Learned Tribunal that there was no evidence of rash and negligent act on the part of the driver of the alleged offending vehicle of the appellants but the Learned Tribunal below did not appreciate the evidence on record properly for which the judgment and award of the Learned Tribunal below needs to be interfered with.

[04] He further drawn the attention of the Court referring para-9 of the said judgment and submitted that all though, the petition was filed under Section 166 of M.V. Act by the respondent-claimant petitioners but the Learned Tribunal below at the time of deciding issue Nos.1,2 & 3 came to the observation that the petition filed was not maintainable under Section 166 of M.V. Act rather the same was maintainable under Section 163 of M.V. Act.

[05] Learned counsel further submitted that in para No.12 of the judgment it was specifically mentioned by the Learned Tribunal that there was a quarrel at Purba Aralia and getting information the police personnel went there by boarding vehicle bearing registration No.TR-01-B-1149(Zipsy) to control over the situation and while the police personnel were discharging their duties, that time suddenly some unruly mobs attacked them with dao, lathi, bricks etc. and started pelting stones upon them. Considering the situation, while the driver tried to leave the spot with the vehicle, the driver of the police van suddenly lost control over the vehicle and the vehicle fallen to a nearest ditch and as a result of which all the person boarded in that vehicle sustained injuries on their person and the deceased Nikhil Chowdhury sustained fatal injuries. Referring the

same contention, Learned counsel for the appellant submitted that the Learned Tribunal below in course of delivery of judgment came to the observation that there was no rash and negligent act on the part of the driver but surprisingly the Learned Tribunal without appreciating the evidence on record allowed the claim petition. Furthermore, according to Learned counsel from the charge-sheet also it is clear that there was no rash and negligent act on the part of the driver of the vehicle and as such, the claim petition was not maintainable but the Learned Tribunal below allowed the claim petition.

[06] Thereafter, Learned counsel for the appellants further drawn the attention of the Court referring para Nos.3,4,5,7,8 & 9 of the written statement filed by the appellants which are as follows :

"3. That, it is fact that when police personnel of Garjee OP having vehicle bearing No.TR-01B-1149(Gpysy) on 10.08.2019 at about 1920 hours went for performing office duty regarding the issue causing high tension among local people at Purba Aralia under the jurisdiction of R.K. Pur PS. On arrival at the spot the miscreants of that locality attacked on the police personnel with intention to kill them. Finding no other alternatives the driver of the vehicle bearing Reg. No.TR-01B-1149(Gpysy) tried to leave the spot for protecting the police personnel from the miscreants. At that time the vehicle while returning from the spot suddenly fell into a ditch resultantly causing injuries to the staff who were inside the vehicle.

4. That, it is fact that after the said accident a case was registered under R.K. Pur PS vide No.2019/RKP/0117 U/S 353/333/338/307/332/427 IPC and added section 304 of IPC.

5. That, it is fact that the vehicle bearing No.TR-01B-1149(Gpysy) met an accident at Holakhet and had fallen into ditch when driver of the vehicle tried to leave the spot for protecting the police personnel from physical assault of the local people.

7. That, it is submitted that the driver of the vehicle bearing No.TR-01B-1149(Gpysy) was not driven the vehicle rash and negligently when the vehicle met an accident. There was no fault on the part of the driver who had driven the

police vehicle bearing No. TR-01B-1149(Gpysy).

8. That, the accident took place due to fall of the vehicle into the ditch and for that reason driver of the vehicle lost control over the vehicle.

9. That, the various particulars relating to the accident, age of the victim and occupation of the victim are not admitted and the petitioners are strictly put to substantiate their claim by adducing evidence with original supporting documents."

[07] Learned counsel also tried to draw the attention of the Court referring the statement of witnesses [Exbt.2 series] and submitted that from the statement of those witnesses it is clear that there was no rash and negligent act on the part of the driver but the Learned Tribunal below did not consider the same and allowed the claim petition which is not permissible in the eye of law and does not come under the purview of the M.V. Act for seeking claim. Finally, Learned counsel referring the charge-sheet submitted that since there was no evidence of rash and negligent act, so, the claim petition was not maintainable and the judgment and award delivered by Learned Tribunal needs to be interfered with and be set aside.

[08] On the other hand, Learned counsel for the respondent-claimant petitioners fairly submitted that in the charge-sheet it was clearly referred by the IO that the driver of the vehicle due to fear lost his control on the vehicle and fallen in a ditch which prima facie shows that he was negligent in discharging his duties properly and the accident occurred and due to accident, the victim Nikhil Chowdhury sustained fatal injuries and other police personnel also sustained fatal injuries due to that accident and finally submitted that the appellants before the Learned Tribunal could not adduce any oral/documentary evidence on record to substantiate that there was no rash and negligent act on the part of the driver of the

offending vehicle and as such, the Learned Tribunal based upon the evidence on record of the parties allowed the claim petition and there was no infirmity in the judgment and award delivered by Learned Tribunal below and urged for dismissal of the appeal.

[09] The respondent-claimant petitioners submitted one claim petition before the Tribunal alleging inter alia that on 10.08.2019 at about 7.30 p.m. Nikhil Chowdhury, being a constable of Police Department, Government of Tripura went to Holakhet along with other staff by riding a vehicle bearing registration No. TR-01-B-1149(Zipsy) to arrest one accused. When they were returning towards Garji Out Post and reached at Holakhet, that time the vehicle met with an accident due to negligent driving by the driver. As a result, Nikhil Chowdhury sustained multiple grievous injuries on his person and immediately he was shifted to Gomati District Hospital, Udaipur from where he was referred to AGMC & GBP Hospital, Agartala and on 12.08.2019 injured Nikhil Chowdhury was sent to Peerless Hospital, Kolkata for better treatment but on 17.09.2019, the victim succumbed to his injury in the hospital. It was also submitted that at the time of accident, the deceased was 56 years old and as a constable of police department and he used to draw salary of Rs.45,000/- per month.

[10] The case was contested by appellant OPs denying the assertions of the claimant petitioners and upon the pleadings of the parties Learned Tribunal below framed the following issues:

“(1) Is the claim application filed by the claimant petitioners U/S 166 of M.V. Act, 1988 claiming compensation for the death of late Nikhil Chowdhury, S/o late Harendra Choudhury of Paschim Gakulnagar, P.S- Bishalgarh, Sepahijala District maintainable in its present form and nature ?

(2) Had Nikhil Chowdhury (now deceased), a constable of police, Govt. of Tripura, died out of a road traffic accident occurred on 10.08.2019 at about 7.30 p.m. near Holakhet under Garjee Police Out Post ?

(3) Was the accident occurred due to rash and negligent driving of the vehicle bearing registration No.TR-01-B-1149(Zypsy) by its driver ?

(4) Are the claimant petitioners entitled to get compensation as prayed for and if yes, then to what extent ?

(5) What other relief/reliefs the parties to this case are entitled to get ?”

To substantiate the issues both the parties have adduced oral/documentary evidence on record :

“The petitioners examined petitioner No.1 Smt.Mamata Chowdhury as PW-1 in this case. PW-1 also proved certain documents into evidence such as certified copy of printed form of FIR in connection with R.K. Pur P.S. Case No.117 of 2019 dated 11.08.2019U/Ss.353/333/338/307/323/427 of IPC (Exbt.1), certified copies of statements of the witnesses namely; Jibson Marak, Maran Chandra Das and Nandan Bhowmik recorded U/S 161 of Cr.P.C. by the Investigating Police Officer of R.K. Pur P.S. Case No.117 of 2019 (Exbt.2 series), certified copy of forwarding letter issued by the Deputy Commissioner of Police, East Division, Kolkata to the Superintendent of Police, Gomati District Udaipur regarding post mortem examination report of Nikhil Chowdhury (Exbt.3), certified copy of charge sheet submitted by police in connection with R.K. Pur P.S. Case No.2019RKP117 dated 11.08.2019 (Exbt.4), original bills issued from GBP Hospital, Agartala dated 10.08.2019 and 11.08.2019 (Exbt.5 series), original certificate issued by Dr. Prasad Krishan, National Neuro Sciences Center, Calcutta dated 17.09.2019 (Exbt.6), final bill amounting to Rs.4,54,562/- issued by the Peerless Hospital and Research Centre Limited (Exbt.7 series), Final bill amounting to Rs.6,81,420/- issued by National Neuro Sciences Center, Calcutta (Exbt.8 series), Air-tickets, boarding passes and Bills issued by Hindustan Tour and Travels, Agartala (Exbt.9 series), original school certificate of Nikhil Chowdhury issued by the Head-Master, Ishanchandra Nagar Pargana H.S. (+2) Stage School dated 04.10.1985 (Exbt.10) and original salary certificate of T/3786 Nikhil Chowdhury of Gomati District Police Organization for the month of September, 2019 issued by Bikash Debbarma, Inspector of Police, Gomati District, Udaipur (DDO) (Exbt.11). On the other hand, the O.Ps i.e. the custodian of the vehicle in support of their pleadings examined one witness namely Samir Roy

as OPW-1. However, they did not prove any document in support of their pleadings.”

Finally by judgment and award dated 30.08.2024 allowed the claim petition filed by the respondent claimant petitioners. The operative portion runs as follows :

“It is, therefore, held that the claimant petitioners are entitled to get compensation of Rs.51,05,100/-(Rupees Fifty One Lakh Five Thousand and One Hundred) only with interest @ 7.5 % per annum with effect from 08.07.2020 i.e. the date of filing of the claim petition till the date of actual payment. O.P. No.2 i.e. the Superintendent of Police, Gomati District, Tripura being the immediate controlling officer of the offending vehicle shall pay the amount of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988.

The awarded amount of compensation with interest shall be divided equally among the claimant petitioners. Out of the share of claimant petitioner Nos.1 and 2 namely, Smt. Mamata Chowdhury and Smt. Piyali Chowdhury, 75% each of their share shall be kept in fixed deposit scheme in their respective name with any Nationalized Bank for a period of five years each and remaining 25% of their respective share shall be paid to them through their respective bank accounts. However, the claimant petitioner nos.1 and 2 may withdraw the monthly interest from their fixed deposit accounts to utilize the same for their day to day expenses. No loan or withdrawal shall be permitted from/against any of the fixed deposit certificates without prior permission of this Tribunal.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Enter the result in the relevant Register as well as in the CIS.”

Challenging that award, the appeal is before this Court.

[11] I have detailed arguments of both the sides at length and also perused the record of the Learned Tribunal below. The respondent claimant petitioners adduced only one witness before the Tribunal and also relied upon some documents which were marked as Exhibits. PW-1, Smt. Mamata

Choudhury being the wife of the deceased submitted in her examination-in-chief in affidavit and she relied upon the documents which were marked as Exhibits but during cross-examination save and except denial no afford was taken by the respondent OPs to create any doubt or cloud regarding the alleged plea of absence of rash and negligent driving by the driver at that relevant point of time. Even, the present appellant OPs before the Tribunal adduced one witness as OPW-1, Sri Samir Roy who during cross-examination specifically stated that he did not see the alleged traffic accident in his own eyes and he was not available at the time of accident. From his evidence there is no scope to place any reliance upon the defence theory and furthermore, the present appellants also did not take any afford to disbelieve the record of evidence of the claimant petitioners. Learned counsel for the appellant petitioners although submitted that the respondent-claimant petitioners could not prove the fact of rash and negligent driving by the driver and the charge-sheet of IO was also silent in this regard but on bare perusal of the evidence on record of PW-1 and the charge-sheet it appears that on the relevant date and time at the time of proceeding towards Garji when the police vehicle being driven by the driver along with some other staff reached at Holakhet that time some unknown mob attacked upon their vehicle for which the driver lost control over the vehicle and fell down into a Lunga which shows negligence on the part of the driver. So, the story projected by Learned counsel for the appellants cannot be accepted as a valid one and furthermore, to substantiate the defence theory the appellants also failed to adduce any oral/documentary evidence on record before the Learned Tribunal below. Situated thus, it appears that the

appellants have failed to make out any case to allow the appeal and to set aside the judgment and award of the Learned Tribunal below.

[12] In this regard, Hon'ble Supreme Court of India in **National Insurance Company Limited versus Chamundeswari and Others** reported in **(2021) 18 SCC 596** wherein in para No.8 Hon'ble the Apex Court observed as under :

"8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report."

In view of the aforesaid citation of law, it appears that since the initial FIR and consequential charge-sheet is found contrary to the evidence laid by the respondent claimant petitioners in that case, then, the evidence recorded before the Tribunal has to be given weightage over the contents of the FIR. In this case, since the evidence of the respondents claimant remain un-rebutted by the appellant respondents both by oral or documentary evidence on record, so, the contention of Learned counsel for the appellants that there was no rash and negligent driving on the part of the driver cannot be accepted.

[13] In the result, the appeal filed by the appellants is dismissed being devoid of merit. The judgment and award dated

30.08.2024 delivered by Learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC)101 of 2020 is hereby upheld and accordingly, the same is affirmed. It appears that as per order of this High Court dated 22.01.2025 in I.A.No.01/2024 arising out of this appeal the appellants deposited 40% of the amount inclusive of interest before the Registry of the High Court. So, the appellants be asked to deposit the balance amount along with interest as awarded by Learned Tribunal below to the Registry of the High Court within a period of 2(two) months from the date of the judgment/order passed by this Court. Since the case is disposed of. So, the Registry be asked to release the deposited amount of Rs.27,66,824/-(Rupees Twenty Seven Lakhs Sixty Six Thousand Eight Hundred and Twenty Four) only to the respondent-claimant petitioners after observing all formalities, as no objection was raised by the appellants in course of hearing. The I.A.No.02/2025 accordingly stands disposed of and the present appeal also stands disposed of accordingly.

Send down the record of the Learned Tribunal below along with a copy of the judgment/order. A copy of the judgment/order be furnished to Learned counsel for the appellants for information and necessary action and also a copy of this judgment/order be supplied to Learned counsel for the respondent-claimant petitioners for information.

JUDGE