

HIGH COURT OF TRIPURA
AGARTALA
MAC App. No. 26/2021

The Oriental Insurance Company Ltd.

Represented by the Divisional Manager,
Agartala Division Office, H.G.B. Road,
(Near Sarkar Nursing Home)
Agartala, West Tripura.

..... **Appellant.**

Versus

1. Smt. Sudhipa Das @ Sudipa Das,
Daughter of Sri Niranjan Das of village
Jagaharimura, Near Kalibari, P.S- East Agartala,
District : West Tripura.

..... **Claimant-Respondent.**

2. Sri Suman Das,
Son of Sri Niranjan Das of village
Jagaharimura, Near Kalibari, P.S- East Agartala,
District : West Tripura.
(Owner of the vehicle No. TR-010J-9364, Bajaj Pulser)

..... **Respondent.**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Appellant(s) : Mr. Biswanath Majumder, Adv.

For Respondent(s) : Mr. Alik Das, Adv.

Date of hearing : 31st August, 2021.

Date of Judgment & Order : **29th September, 2021.**

Whether fit for reporting : NO.

JUDGMENT AND ORDER

By means of filing this appeal under Section 173(1) of the Motor Vehicles Act, 1988 the appellant Insurance Company has challenged the award dated 27.01.2021 passed by the Motor Accident Claims Tribunal (Court No.2), West Tripura, Agartala awarding compensation of a sum of Rs. 10,00,000/- (Rupees ten lakhs) with 9%

annual interest to Smti Sudipa Das (respondent No.1 herein) for the injury and loss suffered by her in a road traffic accident which occurred on 19.08.2014 at Agartala. Said compensation was awarded by the Tribunal under the following heads:

Sl. No.	Heads	Amount
1.	For cost of treatment	Rs. 5,00,000/-
2.	For transportation Charges	Rs. 1,00,000/-
3.	For pain and suffering	Rs. 2,00,000/-
4.	For mental shock and agony	Rs. 2,00,000/-
Total :		Rs.10,00,000/-

Tribunal also awarded 9% annual interest on the said amount from the date of presentation of claim petition before the Tribunal till disbursement of compensation.

[2] Appeal has been filed by the insurance company mainly on the following grounds:

(i) Tribunal did not take care of the settled principles for determination of compensation payable to claimant respondent No.1.

(ii) Tribunal did not appreciate the evidence particularly cross examination of the claimant and thereby arrived at an erroneous finding with regard to the liability of the appellant insurance company.

(iii) The Tribunal erroneously allowed the claim only on the basis of a G.D Entry.

(iv) No FIR was lodged after the accident and no police investigation was done. Tribunal's award is thus grossly erroneous and liable to be set aside.

(v) The Tribunal did not consider the fact that the claimant respondent was a pillion rider on the motor bike of his brother and the accident occurred due to rash and negligent driving of the said motor bike. It being a case of contributory negligence owner of the motor bike is liable to pay compensation.

(vi) Tribunal did not scrutinize the medical reports, bills and prescriptions while granting an exorbitant amount of Rs.5,00,000/- towards the cost of treatment of the claimant and the Tribunal did not also consider the fact that some of those bills related to treatment prior to the accident.

[3] Heard Mr. Biswanath Majumder, learned advocate appearing for the appellant insurance company and also heard Mr. Alik Das, learned advocate appearing for the claimant respondent. Counsel have made detailed submissions with regard to their respective claims.

[4] The bare facts which are essential to appreciate the challenge are as under:

Claimant, Ms. Sudipa Das was going to Tripura University at Surjya Mani Nagar from her home at Jagaharimura on 19/08/2014, morning on a Bajaj Pulser motorbike bearing registration No.TR-01-J-9364 driven by her brother. The bike was being driven by her brother rashly and negligently. As a result, when a street dog appeared in front of

the bike, his brother could not control the speeding bike and as a result, both of them slipped from the bike and the claimant received fatal head injuries whereas her brother was saved who received some minor injuries. They were rescued and brought to IGM Hospital at Agartala by the local people. From there, the claimant was taken to AGMC and G.B.P Hospital. She was then brought to ILS Hospital on the same day. From ILS Hospital she was taken to a super speciality hospital in Kolkata where she received treatment as an indoor patient from 20.08.2014 to 13.09.2014. She had undergone a brain surgery in the said hospital at Kolkata. Two months after her discharge from the said hospital, she again fell ill and got admitted in the hospital on 23.11.2014. She was discharged on 27.11.2014. As a result of the accident, she developed speech disorder. She, therefore, filed a claim petition under Section 166 M.V Act at the Tribunal claiming compensation of a sum of Rs.79,40,000/-. She impleaded her brother, Suman Das, owner of the offending motor bike as respondent No.1 and the insurance company as respondent No. 2.

[5] The appellant insurance company filed written statement of defence at the Tribunal wherein the insurance company pleaded that it would not be liable to pay any compensation to the claimant unless the original insurance policy of the offending vehicle and a valid driving licence of respondent No.1 were produced by the claimant. It was further pleaded by the appellant insurance company that the amount of compensation claimed by the claimant petitioner was exorbitant and baseless.

[6] The owner of the motor bike (respondent No.1) in his written statement of defence admitted the accident and claimed that his motor bike skidded on the road when he tried to save a dog which suddenly appeared in front of his bike near Sarkar Nursing Home at Agartala. As a result, they slipped from the bike and his sister received fatal injuries in her head. He claimed that his vehicle was insured with the appellant insurance company and he had a valid driving licence and all other documents of his motor bike were also valid. He supported the claim of his sister.

[7] In the course of trial, Tribunal framed the following issues:

- (i) Whether the claimant received any injury from the road traffic accident which allegedly occurred on 19/08/2014 at about 9.30 am as a result of rash and negligent driving of motor bike bearing registration No. TR-01-J-9364?
- (ii) Whether the claimant was entitled to any compensation for the injury suffered by her and if so, what would be a fair amount of compensation?
- (iii) Whether the claimant was entitled to any other relief?

[8] In support of her claim, claimant respondent adduced her oral evidence as PW-1 and produced documentary evidence which were exhibited and marked as Exbts.1 – 10. The respondent owner also appeared as OPW-1 and produced the registration certificate of his motor bike, its insurance policy, his driving licence and tax token of his motor

bike which were marked and exhibited as Exhibits A,B,C and D respectively.

[9] On appreciation of evidence Tribunal held that the accident occurred as a result of rash and negligent driving of the motor bike in which the claimant received fatal injuries. She received treatment in various hospitals within and outside the State and incurred huge medical expenses which was supported by proper bills and receipts. The Tribunal also held that she suffered from enormous pain and sufferings as a result of the accident and she also received serious mental shock and agony due to brain surgery for which Tribunal granted compensation to her.

[10] In the course of his arguments Mr. Biswanath Majumder, learned counsel of the appellant has mainly contended that the Tribunal should not have granted compensation to the claimant only on the basis of a G.D. Entry made at the police station. Counsel contends that no FIR was lodged and no investigation was done to ascertain as to whether the accident occurred as a result of negligent driving of the offending vehicle. Therefore, Tribunal should not have passed an award of compensation in favour of the claimant respondent. Counsel for the appellant has relied on the decision dated 24.07.2018 of the Gauhati High Court in W.P(C) No.5328 of 2017 (**ICICI Lombard General Insurance Company Ltd. Vrs. The State of Assam and others**) when the High Court while considering a similar issue examined various decisions of the Apex Court and directed the Director General of Police, Assam to issue general instructions to all police stations in the State of Assam to register FIRs

after making GD Entry on receipt of information relating to road accident and thereafter submit Accident Information Report (AIR) to the jurisdictional Tribunal within 30(thirty) days of registration of FIR. With regard to the pending claim petition on the basis of a G.D entry, the Gauhati High Court observed as under:

"19. In so far the claim cases already pending before the Tribunals, which have been registered on the basis of GD Entries, Court is of the view that having regard to the beneficial nature of the legislation, i.e., the Act, it would be wholly inequitable to direct remand of those claim petitions to the concerned police stations. As discussed above, under Sections 168 and 169 of the Act, the Tribunal has got ample powers to verify the genuineness of the claims. That apart, insurance companies, like the petitioner in the present case, have also enough opportunities in such proceedings to point out before the Tribunals, in case there is any collusion or in case any false claim is made. It is the duty which is vested in the insurance companies and it is expected that having regard to the beneficial objective of the statute, insurance companies will discharge their duties in the true spirit of the Act, so that genuine claim petitions are not frustrated and are disposed of at the earliest, giving at least some solace to the victims of road accidents and family members of deceased."

[11] Mr. Biswanath Majumder, learned counsel of the appellant further submitted that apart from the facts that the claim petition was erroneously entertained and an unreasonable amount of compensation was granted, tribunal awarded an exorbitant rate of interest. Learned counsel under the premises aforesaid urges for setting aside the award of the Tribunal.

[12] Mr. Alik Das, learned counsel appearing for the claimant respondent opposes the contentions of the counsel of the appellant. Counsel submits that a motor accident claim case is in the nature of a civil suit and the standard of proof required in such case is the

preponderance of probability. Counsel has relied on the decision of this High Court in **Rampati Chakma Vrs. Sunil kumar Ram and Ors.** reported in **(2016)2TLR 975** wherein it was held by this High Court that motor accident claim case is in the nature of a civil suit and certainly not a criminal case. In paragraph-9 of the said judgment a decision of the Madhya Pradesh High Court in **R.P. Gautam Vrs. R.N. M Singh and Another:** reported in **AIR 2008 MP 68** was referred to wherein the Madhya Pradesh High Court has held as under:

"13. It is settled proposition of law that every civil case is decided on its own facts and evidence without influencing the papers and decision of the criminal case. In such premises registration of the offence and police investigation is not a condition precedent for awarding the claim. Besides this due to one reason or another if the first information report of vehicular accident is not lodged with the police or the same was given at later stage and police neither registered the offence nor investigated the same, it does not mean that right of the victim for compensation who suffered the vehicular accident is washed away. The victim remains entitled for compensation on proving the facts and circumstances regarding such accident and factum of injuries sustained by him, he could not be deprived from such right, provided by the Motor Vehicles Act, although such compensation may be awarded only on proving all relevant facts with all probabilities."

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[13] Counsel submits that in the given case also, the accident was reported to police immediately after the occurrence and the said information was recorded in the general diary of the police station vide West Agartala P.S G.D Entry No.887 dated 8.2.2015 (Exbt. 8). While lodging the information with the officer-in-charge of West Agartala P.S, claimant furnished the details of the occurrence and requested a police investigation in the matter. Counsel submits that for inaction of police,

her claim cannot be defeated. Counsel urges the Court to dismiss the appeal.

[14] I have carefully perused the submissions of the counsel made at the Bar. Perused the award of the Tribunal and the oral and documentary evidence on the basis of which said award has been passed by the Tribunal. With regard to the submission of the counsel of the appellant that Tribunal erred in entertaining the claim simply on the basis of a G.D. Entry, I find no merit in the said contention of the counsel of the appellant. It would appear from the factual narrative of the information furnished by the claimant at the police station that she gave full details of the occurrence. It would be apposite to reproduce the said information lodged by the claimant at the police station which is as under:

"To
The Officer-in-charge,
West Agartala P.S,
Agartala, West Tripura.

Sub : Prayer for enquiry regarding the Road Traffic Accident which took place on 19.8.2014 at about 09.00 a.m. in front of Sarkar Nursing Home on HGB Road, arising out of use of motor cycle bearing Regn.No.TR01-J-9364(Bajaj Pulsar).

Sir,

With reference to the above, I am to inform you that on 19.8.2014 in the morning I was on way to Battala by boarding in the motor cycle of my brother Sri Suman Das from our residence through the HGB Road at about 09.00 a.m. and reached in front of B. R. Sarkar Nursing Home, at that time all on a sudden , a street dog came in front of our bike. My brother tried to control the bike but due to speed he was not in a position to control the motor bike. Due to sudden pulling of break both of us fell down from the bike on the road. I received severe head injury and my brother received simple injury. I became senseless. The local people along with my brother shifted me to IGM Hospital and from there, to GBP Hospital and admitted there as an indoor patient on the same day.

Then I was shifted to ILS Hospital. Thereafter considering the gravity of the injury, I was shifted to Kolkata on 20.8.2014 and admitted in Medica Super Specialty Hospital till 13.9.2014. I came back to Agartala on 13.9.2014. I have again visited the Medica Super Specialty Hospital and admitted there as an indoor patient on and from 23.11.2014 to 27.11.2014. Till today my treatment is going on.

So, I am requesting you kindly make necessary investigation and oblige me thereby.

Dated, 08.02.2015.

Yours faithfully

*Sd/-
(Sudipa Das)
D/o Sri Niranjan Das,
Jagaharimura,
P.O. Agartala College,
Agartala, West Tripura."*

[15] It was the duty of the police to undertake investigation to verify the truth of her complaint and submit an Accident Information Report (AIR) at the Tribunal. She was not supposed to wait for an investigation report to lodge her claim at the Tribunal. Her claim cannot be defeated simply for the reason that there was no police investigation in the matter. It has been settled that once the functional fact, namely, the actual occurrence of the accident, has been established, role of the Tribunal is to calculate compensation if the accident had taken place due to negligence of the driver of the vehicle. In the present case driver of the motor bike was the brother of the claimant. In her examination-in-chief the claimant in paragraph-3 of her statement asserted as under:

"3. That the accident took place due to rash and negligent driving by rider of the motor bike bearing registration No. TR-01-J-9364 (Bajaj Pulsar). Regarding this, accident information was lodged with the west Agartala P.S vide West Agartala P.S G.D.E. No.887 dated 19/08/2014."

[16] She reiterated the fact in her cross-examination by the appellant insurance company wherein she stated as under:

"The accident occurred due to rash and negligent driving of rider of the motor bike."

[17] In the case of "**Sunita and Others Vrs. Rajasthan State Road Transport Corporation and others**:" reported in **(2020) 13 SCC 486** the Apex Court held as under:

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties." (emphasis supplied)

The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside."

[18] The judgment of the Gauhati High Court which has been relied upon by the counsel of the appellant does not bar a claim based on G.D. Entry. The Court held that Tribunal has got ample power to verify the genuineness of the claim pending before it and the insurance companies have also enough opportunities in such proceedings to point out the instance of collusion, if any, before the Tribunal. Genuine claims cannot be defeated only on the ground that it was entertained on the basis of G.D. Entry. In the given case, Tribunal verified the pleadings of

the parties and relying on the evidence adduced by them and by applying the standard of preponderance of probability, came to a conclusion that the claimant suffered from serious injuries from the said accident and awarded compensation to her. Therefore, in view of the materials available on record and the judgment cited to (supra) I am of the view that the claimant cannot be denied compensation simply because her claim petition was entertained by the Tribunal on the basis of GD entry and there was no police investigation in the case.

[19] With regard to quantum of compensation, it is apparent that Tribunal awarded an exorbitant amount of Rs.2,00,000/- for pain and sufferings and a further sum of Rs.2,00,000/- for shock and agony which according to me should be reduced to Rs.2,00,000/-(rupees two lakhs) in all for pain and sufferings. Separate compensation under the head of shock and agony would not be appropriate. Claimant had undergone brain surgery in hospital outside the State. Tribunal assessed treatment expenses and transportation charges on the basis of bills submitted by the claimant. Therefore, compensation awarded under the head of medical expenses and transportation charges is not interfered with. Award of 9% annual interest is exorbitant which should be reduced to 7.5%. In view of the above, the compensation payable to the victim is re-assessed as under:

Sl. No.	Heads	Amount
1.	For medical expenses	Rs. 5,00,000/-
2.	For transportation Charges	Rs. 1,00,000/-
3.	For pain and suffering	Rs. 2,00,000/-
Total :		Rs. 8,00,000/-

[20] The amount of interest at the rate of 7.5% per annum shall be paid by the appellant on the total amount of compensation from the date of presentation of the claim at the tribunal till disbursement. The appellant insurance company shall deposit the money with the Registry of this High Court within a period of six weeks from today and in turn the same shall be disbursed to the claimant by transferring the whole amount to her individual bank account. Amount already paid, if any, shall be adjusted.

[21] In terms of the above, the appeal stands disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the L.C record.

JUDGE

Dipankar