

(2017) 03 TP CK 0001
In the Tripura High Court
Case No : MAC. APP. No.38 of 2016

Sri Jitendra Debbarma

APPELLANT

Vs

Sri Jitendra Debnath

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) AAC 1036

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : R. Pal, A. Das, B. Chakraborty, M. Dey

Final Decision : Dismissed

Judgement

S. Talapatra, J.—This appeal under Section 173 of the Motor Vehicles Act is directed against the judgment and order dated 18.02.2016 delivered in T.S. (MAC) No.14 of 2013 by the Motor Accident Claims Tribunal, Unakoti Judicial District, Kamalpur by denying the compensation.

2. The appellant by filing a claim petition under Section 166 of the Motor Vehicles Act had asserted that on 26.10.2012 at about 8 pm. on Ambassa-Kamalpur road near the Tripura Gramin Bank under Salema police station, he suffered injuries from a road traffic accident involving the vehicles bearing registration No.TR- 01-A-3177 [Commander Jeep] and the motorbike bearing registration No.TR-04-3678. It has been further asserted that the appellant who is a Government servant was travelling in the pillion of the motorbike bearing registration No.TR-04-3678 which was being driven by one Tanuj Debbarma. According to the appellant, the said commander jeep suddenly overtook their bike and stopped on the middle of the road without giving any signal. As a result, the motorbike dashed the commander jeep from behind. The appellant had fallen down on the street failing to absorb the thrust that was created for the said collusion. He suffered multiple injuries over his person. He has stated that in the accident one Kanak Debbarma was hit by the bike and died later on. According to

the claimant, the rash and negligence driving of the commander jeep by its driver was responsible for the said accident.

3. It is not in dispute that the owner and the driver of the commander jeep by filing the written statement have unambiguously denied any accident involving the said commander jeep. Even the respondent No.3, the Oriental Insurance Company Ltd. denied any accident involving the said commander jeep on adding that "by suppression of facts fraudulently representing things created cloud and confusion in the mind of the tribunal".

4. The tribunal in the midst of inquiry recorded the statement of two witnesses from the claimant-appellant. The appellant (PW-1) has stated that one of his relatives, namely Tanuj Debbarma was riding his motorbike bearing registration No.TR-04-3678 and he was in the pillion. When the said motorbike reached near Tripura Gramin Bank at Kamalpur-Ambassa road, the commander jeep suddenly overtook the bike in an excessive speed and pulled the breaks on the ridge of the road. The motorbike dashed the commander jeep from the backside and he fell down. As a result, he received multiple injuries. His face was disfigured. He received injuries on his head, spinal cord and on other parts of the body. According to him, the father of one Kanak Debbarma, who died in the said accident, filed the complaint to Salema P.S. which was registered as Salema P.S. case No.41 of 2012 under Sections 279/338/304-A of the IPC but the appellant was not examined by the investigating officer. He has given the account of expenses for his treatment. In the examination in the court, he had admitted in the evidence the final police report [Exbt.5] in connection with the said police station case along with other documents. Despite rigorous cross examination, he did not falter or resile from the statement he made in the examination-in-chief.

The other witness, PW-2, namely Denton Debbarma has corroborated the statement of the appellant [PW-1] by stating that at the relevant point of time, he was talking with his friends standing by the roadside and he saw one motorbike was coming towards Kamalpur from Ambassa and on the said motorbike, he saw Tanuj Debbarma and Jitendra Debbarma. Tanuj Debbarma was riding the motorbike when Jitendra Debbarma (the appellant) was in the pillion. The alleged commander jeep overtook the motorbike and after crossing them, suddenly stopped on the middle of the road without giving any signal or without leaving any space for the bike behind it. No sooner had the motorbike dashed the commander jeep from the backside and it jumped up for the thrust, when the appellant was thrown out from the motorbike. His body did dash the commander jeep. According to him, as stated in the inquiry, the driver of the said commander jeep had fled away from the jeep and the motorbike after dashing the commander jeep from the back dashed one Kanak Debbarma. Kanak Debbarma had also received bleeding injuries on his person. They were taken to the BSF Hospital, Kamalpur. Though the owner of the commander jeep namely, Jitendra Debnath examined himself as DW-1 but his statements are relating to the various documents including the insurance policy etc.

5. The tribunal on the face of such evidence dismissed the claim petition by disbelieving both PWs-1 and 2 and placing reliance on the final police report [Exbt.5]. It has been observed in the Para-15 of the said judgment and order dated 18.02.2016 as under:

"15. In view of the above report filed by the police it becomes impossible to fasten negligence on the driver of the commander jeep namely Ajit Debnath. It would also appear that the claimant petitioner have filed wrong information. Somewhere in the claim petition they have written that one Tanuj Debbarma was driving the bike. Somewhere they had written one Manoj Debbarma was driving the bike and that Kanak Debbarma who died was a bystander. It would appear that all three persons including the claimant petitioner were from the same locality. It is therefore unlikely that Kanak Debbarma of the same locality was a bystander in a different area where this accident took place. The police report appears to be the true story of this accident and situated thus a case of negligence against the driver of the vehicle bearing No.TR-01-A- 3177 is not made out."

Being aggrieved by the said judgment and order dated 18.02.2016, this appeal has been filed.

6. Mr. R. Pal, learned counsel appearing for the appellant has submitted that the police report [Exbt.5] would not have been relied by the tribunal. The statement of two eye witnesses i.e. PWs- 1 & 2 cannot be just brushed aside when their testimonies carry probative value of unimpeachable nature but the tribunal has been swept by the police report [Exbt.5] without assigning any reason and such exercise is not tenable in the eye of law. He has relied on a decision of the apex court in National Insurance Company Ltd. v. Swaran Singh and others, reported in (2004) 3 SCC 297, where the apex court has held that a person who was driving the vehicle without any license, the burden is with the insurer unless such burden is discharged, the court would not decide against the claimant. The relevant passages from Swaran Singh (supra) are extracted below:

"68. In Rukmani and Others v. New India Assurance Co. Ltd. and Others : (1998) 9 SCC 160, this Court while upholding the defences available to the insurer to the effect that the vehicle in question was not being driven by a person holding a licence, held that the burden of the insurer would not be discharged when the evidence which was brought on record was that the Inspector of Police in his examination in chief merely stated:

"My enquiry revealed that the 1st respondent did not produce the licence to drive the above said scooter. The 1st respondent even after my demand did not submit the licence since he was not having it."

69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the

part of the insured, the insurance company cannot be absolved of its liability.

70. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance. Each case may pose different problem which must be resolved having regard to a large number of factors governing the case including conduct of parties as regards duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard and fast rule can, therefore, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of the contract of insurance on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the materials available on records."

7. From the other side Mr. B. Chakraborty, learned counsel appearing for the respondent No.3 has stated that the police report has been introduced in the evidence by the appellant to prove that there had been an accident. The tribunal has correctly based on the finding as recorded in the said final police report to arrive at an inference that the commander jeep was not involved in the accident. The final report is incisive in nature. Moreover, Mr. Chakraborty, learned counsel has shown how the appellant has polluted the stream of justice by floating a concocted story of the accident to garner unlawful gain through the process of the court. He has pointed out that in the claim petition, the appellant has asserted that "the motorbike which was jumped off and dashed one Kanak Debbarma and Manoj Debbarma, rider of the motorbike saved himself. He only received some lacerated injuries on his person." But later on, the name of Manoj Debbarma has been omitted by the appellant when he made the statement before the inquiry in the tribunal.

8. Mr. A. Das, learned counsel appearing for the respondents No.1 and 2 have very categorically submitted that the commander jeep was not involved in the said accident and the police after due inquiry filed the police report clearly observing as under:

"Thus, from the statement of eye witnesses, other circumstantial and documentary evidences, it is prima-facie established that on 26.10.2012 at about 2000 hrs. the involved motorcycle dashed with the commander jeep (TR-01-A-3177) which was parked in the left side of the road near TGB Salema Branch. Due to rash and negligent driving by the rider of the motorcycle namely Kanak Debbarma (25), S/O-Sri Sukhendra Debbarma of Mandi died on the spot and two others sustained grievous injuries. As consequent of the accident the accused rider Kanak Debbarma died on the spot. So, prima-facie charge u/s 279/338/304-

A IPC could not be framed against the accused driver (deceased)."

It has been further observed in the said police report that the driver of the commander jeep namely, Ajit Debnath was illegally parked his vehicle on Ambassa-Kamalpur road and violated the provisions of Section 180 of the Motor Vehicles Act.

9. The charge-sheet was filed terminating the investigation as the person who perpetrated the offence had died in the accident, however the permission of the court was sought for starting proceeding against the appellant and the driver of the commander jeep namely, Ajit Debnath respectively for violating the provisions of Sections 180 and 177 of the Motor Vehicles Act. The police report is elaborate one. If the said report is summarised, it would appear that Kanak Debbarma was riding the vehicle in an inebriated condition. After post-mortem, "ethanol" was found in his stomach. The commander jeep was in a stationary condition and for an uncontrollable speed, after seeing the commander jeep, the motorbike could not be controlled by its driver and finally, it hit at the backside of the commander jeep. As a result, the accident took place. The father of said Kanak Debbarma, namely Sukhendra Debbarma has clearly stated in the First Information Report dated 26.10.2012 [Page No.78 of the paper book] that at around 8 O'clock at night his son, Kanak Debbarma, Manoj Debbarma, son of Panchalal Debbarma and Jitendra Debbarma, son of Sukh Debbarma were returning home from Ambassa by riding a numberless Pulsar bike as the commander jeep bearing registration No.TR-01-A-3177 was in a stationary condition by the side of the road and the said bike dashed the commander jeep with extreme velocity, the accident took place. In the said accident, his son died at this spot. The remaining two persons had sustained injuries and Jitendra Debbarma was referred to the GBP hospital in a critical condition. He could not reveal who was the owner of the said motor bike at that relevant point of time. He knew the incident from one Ramani Das over telephone. But it appears that the appellant has implanted a new story stating that one Tanuj Debbarma who has holding the valid driving license [Exbt.10] was driving the bike. The complaint that was lodged in the police station without any delay has revealed the story that Tanuj Debbarma was not in the motor bike which met the accident. Even said Tanuj Debbarma was not brought before the tribunal for making his statement about how the accident took place, rather one driving license of Tanuj Debbarma was filed by the appellant. It cannot be denied from the records that the appellant, Manoj Debbarma and Kanak Debbarma were of the same village, namely Mendi. Kanak Debbarma's being in the place of occurrence at that night is improbable whereas the probable story that surfaced is that of what has been reflected in the police report [Exbt.5]. The police report including the written complaint filed by Sukhendra Debbarma has been brought in the evidence by the appellant. Therefore, regarding admissibility of the police report, the appellant had waived his right. Moreover, by applying the principles of *res ipsa loquitur*, the burden of proof in view of the written complaint filed by the father of Kanak Debbarma shifted heavily on the appellant who raised the claim for his injuries in

the said accident but he failed to discharge that duty rather it has clearly revealed that he had tried to practise fraud on this court by implanting a false story.

10. The way the accident has been described by the appellant cannot happen in the real life. The so called rider of the motorbike, namely Tanuj Debbarma, according to the claimant appellant, did not receive any injury but the appellant being in the pillion received serious injuries from the accident. The things speak for themselves. On the other hand, the story as revealed in the police report speaks of an accident which is probable and reliable. It says that Kanak Debbarma who was in an inebriated condition was driving the motorbike in an uncontrollable speed and dashed the commander jeep which was in a stationary condition in the road side and thus, he suffered fatal injuries and succumbed to those on the spot. The other two persons who were riding the motorbike viz. the appellant and one Manoj Debbarma had also received serious injuries. When these two probable stories are weighed to reach the truth, this Court finds that at the first and closer point of time, the complaint that was filed by one Sukhendra Debbarma is more reliable inasmuch as there was no scope of consultation for achieving an oblique purpose. It was the first and straight story that was broken immediately after the accident. The death of Kanak Debbarma speaks for itself how the accident took place. It appears to this court that Kanak Debbarma even did not have any driving license. That is the reason why Tanuj Debbarma was introduced as the rider of the vehicle and his driving license was adduced but said Tanuj Debbarma was not introduced as the witness to rebut the contents of the first information report as stated. Thus, this court finds that by allowing Kanak Debbarma who did not have any driving license and was not in a fit condition to drive the vehicle for his being drunk at the relevant point of time, the appellant himself has committed negligence as it was his foremost duty as the owner of the vehicle not to allow anyone who did not have the driving license and who being in an inebriated condition was not fit to drive the vehicle.

11. Having appreciated the submissions of the learned counsel appearing for the parties and scrutinized the records keenly for purpose of revisiting the evidence as a whole, this court is of the view that there is no infirmity in the impugned judgment and hence, this appeal stands dismissed. However, there shall be no order as to costs.

12. Send down the LCRs forthwith.