

(2014) 12 TP CK 0008
In the Tripura High Court
Case No : MAC APP. 58 of 2009

The New India Assurance Co. Limited VsAswini Biswas

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2014) 12 TP CK 0008

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : A. Lodh, Advocate for the Appellant; H. Debnath, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—In this appeal filed by the New India Assurance Co. Limited, challenge is only with regard to the finding of the learned Tribunal that the accident occurred only due to the negligence of the driver of Canter Truck bearing registration No. TR-01-E-1549.

2. Mr. A. Lodh, learned counsel for the insurance company submits that the evidence of the claimant itself establishes that the negligence was of both the driver of the canter vehicle insured with the appellant-insurance company and Maruti Van No. TR-01-G-0754 in which, the injured was travelling.

3. Briefly stated the facts of the case are that the claimant filed a claim petition claiming that he was travelling in Maruti Van bearing registration No. TR-01-G-0754 and that on 28.05.2006 at about 8.30 a.m., there was a head on collision Maruti Van and Canter Truck bearing No. TR-01-E-1549. The claimant in his claim petition has clearly stated that the accident took place due to the rash and negligent driving of both the vehicles. The claimant stepped into the witness box and he filed an affidavit and in this affidavit it is stated "the accident took place due to the rash and negligent driving of both the aforesaid vehicles". There is no cross-examination on behalf of the New India Assurance Company and on behalf of the United India Insurance Company, in cross-examination, the claimant again reiterated that the accident took place due to head on collision between the Maruti vehicle and the Canter Truck vehicle. In cross-examination he stated that the bus was at higher speed and the Maruti was on normal speed. The learned

Tribunal relying upon only this has exonerated the United India Insurance Company.

4. No party can be permitted to lead evidence which is contrary to its pleadings. Both in the pleadings and in the examination-in-chief, the claimant had clearly stated that the accident took place due to the negligence of both the drivers. The cross-examination does not in any way manner indicate that the driver of the Maruti vehicle was not at fault. It may be mentioned that in the cross-examination on behalf of the New India Assurance Company, a suggestion was put to the claimant that the accident took place solely due to the rash and negligent driving of the Maruti vehicle and in reply to that question the claimant stated that it was not a fact that the accident took place only due to rash and negligent driving of the Maruti vehicle. This also clearly indicates that the according to the claimant the drivers of both the vehicles were responsible. The drivers of the two vehicles were not examined. No other evidence has been lead to show what is the extent of the liability of each insurance company and since it was a head on collision, both to be held equally liable.

5. Therefore, the appeal is partly allowed. Though there is no interference with the quantum and other findings given, the judgment of the learned Tribunal to the extent that it holds only the Truck vehicle liable to pay the compensation is set aside and it is held that the drivers of both the vehicles were equally negligent and therefore, all the respondents are jointly and separately liable to pay the compensation. Since the vehicles were insured and there is no dispute with regard to the liability of the insurance company. Both the insurance company i.e. the New India Assurance Co. Ltd. and the United India Insurance Co. Ltd. shall be liable to pay the awarded amount in equal shares.

6. The appeal is disposed of in the aforesaid terms.

7. Send down the L.C.Rs forthwith.