

**(2014) 11 TP CK 0006**  
**In the Tripura High Court**  
**Case No : MAC App. No. 115 of 2008**

**The United India Insurance Company Ltd. VsMustafa**

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**Date of Decision :** 03-11-2014

**Acts Referred:**

**Citation :** (2014) 11 TP CK 0006

**Hon'ble Judges :** Deepak Gupta, C.J

**Bench :** Single Bench

**Advocate :** P. Gautam, Advocate for the Appellant; Y. Taneja Bhattacharji, Koninoor N. Bhattacharjee and P. Chakraborty, Advocate for the Respondent

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### **Judgement**

Deepak Gupta, C.J.—This appeal by the United India Insurance Company is directed against the award, dated 5th July, 2007 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura, in Case No. TS(MAC) 18 of 2006 whereby the learned Tribunal awarded compensation of Rs. 1,73,800/- along with interest in favour of the claimant and apportioned the amount equally between the appellant insurance company and respondent No. 4, the New India Assurance Company Ltd.

2. The undisputed facts are that the claimant injured was travelling as a pillion rider on motorcycle No. TR-01-C-8849 insured with the appellant insurance company. This motorcycle met with a head on collision with commander jeep bearing registration No. TR-01-2723 insured with the New India Assurance company.

3. Before the learned Tribunal the issues framed are as follows:

"(1) Did the claimant petitioner sustain any injury in a road traffic accident on 24.9.05 at about 7 a.m. at Matabari on the sonamura to Agartala road involving the commander jeep bearing No. TR-01-2723 because of its rash or negligent driving.

(2) Is the claimant petitioner entitled to get any compensation under the provisions of the Motor Vehicles Act, 1988? If so, to what extent and who shall be liable to pay compensation?"

While deciding issue No. 1 which is the issue relating to the negligence of the drivers of the two vehicles the learned Tribunal held as follows:

"There being no other contrary evidence on the point, it is proved that the accident took place due to rash and negligent driving of the commander jeep in question. The issue is thus decided in the affirmative."

Therefore, the clear cut finding of the Tribunal was that the accident had occurred due to rash and negligent driving of the driver of the commander jeep. After that, issue No. 2 was decided and the compensation was assessed at Rs. 1,73,800/-.

4. Thereafter, the Tribunal again took up the issue by raising a question as to who was to pay the compensation and then held as follows:

"12. So, considering the evidence on record, I hold that the rider of the motor cycle also contributed in the accident. So, it is decided that both the insurance companies are liable to bear the burden of paying the compensations in equal shares."

While holding so, the Tribunal stated that the claimant had only mentioned that the commander jeep came at a high speed and knocked down the motorcycle and according to the Tribunal, the driver of the motorcycle could have avoided the accident if he was on the left side. I am afraid that after having given his finding on issue No. 1 clearly holding that the driver of the commander jeep was responsible for the accident, the Tribunal in the later part of the award could not have taken a totally contradictory stand.

5. Even otherwise I have gone through the statement of the claimant and the relevant portion of the statement reads as follows :

"On reaching Matabari a commander jeep bearing No. TR-01-2733 came at a high speed from the opposite direction and coming to its right side knocked down the motor cycle. As a result I fell down and sustained fracture of my right leg."

The claimant has clearly stated that not only was the commander jeep being driven at a high speed but it also came on the right side and knocked down the motorcycle. The claimant has virtually not been cross-examined and only a general suggestion has been put to him that the accident occurred due to the high speed of the motorcycle. The driver of the commander jeep did not step into the witness box and, therefore, adverse inference had to be drawn against him. In this view of the matter, I am clearly of the view that the negligence, if any, was only of the driver of the commander jeep bearing registration No. TR-01-2733.

6. Therefore, it is not necessary for me to decide the question as to whether the appellant insurance company is liable in respect of a pillion rider or not. Accordingly the appeal filed by the appellant insurance company is allowed and it is held that the accident occurred due to the rash and negligent driving of the

driver of the commander jeep only and therefore, the respondents 2 and 3 owners of the commander jeep along with the insurance company are held jointly and severally liable to pay the compensation. Since it is not disputed that the vehicle is duly insured, it shall be the liability of the insurance company to satisfy the entire award. Since the New India Assurance company has already satisfied half of the award it is directed to deposit remaining half along with interest in the Registry of this Court within 4 (four) months from today.

The appeal is disposed of in the aforesaid terms.

Send down the LCRs forthwith.