

HIGH COURT OF TRIPURA
AGARTALA
MAC. APP.No.34 of 2023

The Oriental Insurance Company Limited,
represented by the Divisional Manager,
Agartala, Division Office,
H.G.B. Road (Near Sarkar Nursing Home),
Agartala, West Tripura

---- Appellant(s)

Versus

Md. Abdul Alim,
son of Abdul Karim,
resident of Baldakhal Champamura,
P.S. East Agartala, District- West Tripura

----Claimant-Respondent(s)

Sri Susanta Das,
son of Binod Das,
resident of Vivekananda Lane,
Joynagar, P.S., West Agartala,
District- West Tripura, P.O. Agartala,
Pin-799001
(Owner of the vehicle bearing No.TR-01-V-1649, MAX)

----Respondent(s)

For Appellant(s)	:	Mr. Biswanath Majumder, Adv.
For Respondent(s)	:	Mr. Samar Das, Adv.
Date of Hearing	:	21.02.2024
Date of Judgment & Order	:	23.02.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. Biswanath Majumder, Learned counsel appearing
for the appellant-Oriental Insurance Company Limited as well as Mr.
Samar Das, Learned counsel appearing for the claimant-respondents.

None appeared on behalf of the respondent owner of the vehicle bearing No.TR-01-V-1649, MAX.

2. This is an appeal preferred by the appellant-Oriental Insurance Company Limited challenging the order dated 22.03.2022 passed by the Learned Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in connection with case No.Civil Misc.60 of 2021 arising out of case No.T.S.(MAC)349 of 2013.

3. For the sake of convenience, I would like to refer hereinbelow the relevant portion of the award dated 07.04.2016 passed by the Motor Accident Claims Tribunal No.1, West Tripura, Agartala in Case No.T.S.(MAC)349 of 2013 :

"The Oriental Insurance Company Ltd., Agartala shall pay a sum of Rs.52,500/- (Rupees Fifty Two Thousand Five Hundred) only to the claimant Md. Abdul Alim as compensation with interest @ 9% per annum from 06.09.2013 i.e. from the date of filing of the case till the date of actual payment. The amount of compensation with interest shall be released in favour of the claimant by transmitting the same to his bank account. The case thus stands disposed of."

4. After that, the present appellant filed an application under Section 151 of CPC before the said tribunal for setting aside the award passed in connection with case No.T.S.(MAC) 349 of 2013 and to saddle the award on National Insurance Company Limited as the said Company was the Insurer of the offending vehicle at the time of alleged accident but that application was not considered by the Learned tribunal. For the sake of convenience, the operative portion of the order dated 22.03.2022 of the Learned MACT No.1 runs as follows :

"On perusal of the copy of judgment annexed with the petition it appears that this Tribunal after full trial disposed of the aforesaid TS(MAC)349 of 2013 and passed the award fixing liability upon the Oriental Insurance Company to make payment of the awarded amount of compensation and as such this Tribunal has become functus officio and is not able to set aside its own award by way of review and the petitioner may file the present petition in appropriate forum by way of appeal for setting aside the aforesaid award."

In view of aforesaid fact I am of the opinion the instant case is not maintainable in this Tribunal.

Accordingly, the petition filed by the petitioner stands rejected being not maintainable."

5. At the time of hearing of appeal, Mr. Biswanath Majumder, Learned counsel appearing for the appellant-Oriental Insurance Company submitted that although the Learned tribunal below awarded a very meager amount allowing the claim petition of the claimant-petitioner but through bonafide mistake fastened the liability of payment of compensation to the present appellant treating as the Insurer of the offending vehicle on the alleged day of accident but factually, the present appellant was not the Insurer of the offending vehicle on the day of alleged accident, rather, National Insurance Company Limited was the Insurer of the offending vehicle and urged for setting aside the award with a further prayer for remanding back the case record to the Learned tribunal for passing a fresh award in accordance with law.

6. On the other hand, Mr. Samar Das, Learned counsel appearing for the claimant-respondents fairly submitted that the owner of the offending vehicle before the Learned tribunal in para-7 of the written objection/statement specifically submitted that the National Insurance Company Limited was the Insurer of the offending vehicle on the day of alleged accident and the policy No.203000/31/12/630000805 which was valid from 15:55 O clock of 01/11/2012 to Midnight on 31/10/2013 and the alleged accident took place on 03.08.2013 i.e. within the period of policy coverage but the Learned tribunal below at the time of delivery of judgment/award through bonafide mistake wrongly fastened the liability upon the present appellant in place of National Insurance Company Limited for which the award passed by the Learned tribunal below has become infructuous and cannot be executable as per

law and prayed before the Court to pass appropriate order for the sake of justice.

Heard both sides.

Considered and perused the record of the Learned Court below.

7. It is an admitted position that the Learned tribunal below at the time of delivery of the award directed the present appellant to pay the awarded money to the claimant-petitioners but in para-7 of the written statement filed by the owner of the offending vehicle bearing registration No. No.TR-01-V-1649, MAX it was specifically mentioned that on the alleged day of accident the National Insurance Company Limited was the Insurer of the aforesaid offending vehicle and the policy No. 203000/31/12/630000805 which was valid from 15:55 O clock of 01/11/2012 to Midnight on 31/10/2013 and the alleged accident took place on 03.08.2013. Thus, it appears that on the day of alleged accident, the National Insurance Company Limited was the actual Insurer of the offending vehicle. Situated thus, the award passed by the Learned tribunal below has become infructuous and it cannot be executed against the present appellant.

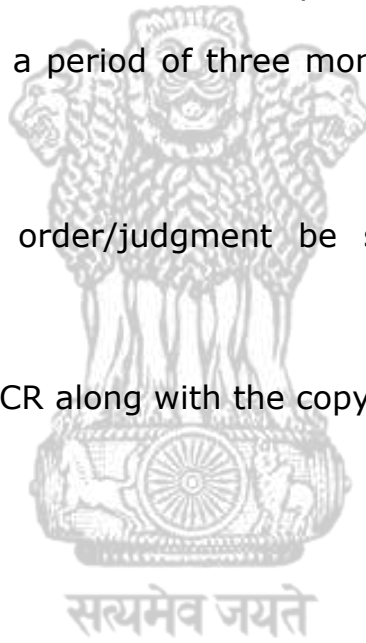
8. So, after hearing both the sides it appears to the Court that the award passed by the Learned tribunal below be set aside with a direction to the tribunal to strike out the name of the present appellant as the Insurer of the offending vehicle from the award. After due enquiry if it is found that the National Insurance Company Limited was the Insurer of the offending vehicle on the day of alleged accident, then the appropriate order may be passed in accordance with law by the tribunal.

9. In the result, the appeal filed by the appellant is hereby allowed. The award dated 07.04.2016 passed by Learned Motor Accident

Claims Tribunal No.1, West Tripura, Agartala in connection with case No.T.S.(MAC)349 of 2013 is hereby set aside. The case be remanded back to the Learned tribunal below to strike out the name of the present appellant Oriental Insurance Company Limited as noticee from the award. The respondent-claimant petitioners be asked to take appropriate step within a period of seven days from the date of passing of the judgment to incorporate the name of the National Insurance Company Limited in their claim petition and to arrange service of notice upon the National Insurance Company Limited to take proper defence and the Learned tribunal below be asked to give reasonable opportunity to the noticee to take proper recourse of law and to pass a fresh award after considering all aspects within a period of three months from the date of passing of the judgment.

A copy of this order/judgment be supplied to Learned counsels of both the parties.

Send down the LCR along with the copy of the judgment.



JUDGE