

**HIGH COURT OF TRIPURA
AGARTALA**

M.A.C. App. No.92 of 2024

Iffco Tokio General Insurance Company Ltd.

Corporate address Iffco Tower

Plot No.3

Sector – 29, Gurgaon

Haryana – 122001

(Insurer of the vehicle bearing Registration

Number – TR-01M-5186 Motor Bike)

.....Appellant(s)

Versus

- 1. Sri Sudip Kumar Das,**
S/O-Sri Sudhan Ch. Das
Of Shyamaprasad Colony
PO- Anandanagar, PIN- 799004
PS- Srinagar, Dist.- West Tripura

.....Claimant-Respondent(s)

- 2. Sri Koushik Roy,**
S/o. Lt. Kusum Roy
Of Suryamaninagar, PIN-799130
PS- Amtali, Dist.- West Tripura
(Owner of the vehicle bearing Registration
No.TR-01M-5186 Motor Bike)

- 3. The National Insurance Company Ltd.**
Akhaura Road, Agartala,
PS-West Agartala
Dist.- West Tripura.
PIN-799001,
(Insurer of Vehicle Registration
No.TR-01 M-5186 Motor Bike)

.....Respondent(s)

For Appellant(s) : Mr. Karnajit De, Addl. G.A.

For Respondent(s) : Mr. Asim Kumar Deb, Adv.

Date of Hearing &
Delivery of
Judgment and
Order : **11.07.2025**

Whether fit for
Reporting : **NO**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal is preferred challenging the judgment and award dated 13.07.2021 delivered by Learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala (Tribunal No.2) in connection with T.S. (MAC) 164 of 2017.

2. Heard Learned Addl. G.A., Mr. K. De appeared on behalf of the appellant-Insurance Company. Also heard Learned Counsel, Mr. A. Kr. Deb appeared on behalf of the respondent-National Insurance Company. But none appeared on behalf of the respondent-claimant petitioner and also none appeared on behalf of the owner of the offending Motor Bike bearing No.TR-01M-5186.

3. At the time of hearing, Learned Counsel for the appellant first of all drawn the attention of the Court that in this case no insurance certificate could be produced and proved before the Tribunal either by the claimant-petitioner or by the owner of the offending motor bike but the Tribunal below in absence of policy document of the vehicle allowed the claim petition and fastened the liability of payment of compensation upon the Insurance Company. Learned Counsel for the appellant further drawn the attention of the Court referring Para No.15 of the written statement filed before the Tribunal, wherein the appellant Insurance Company specifically denied that no such vehicle (TR-01M-

5186 Motor Bike) was ever insured with the appellant-Insurance Company at any point of time and furthermore, the claimant-petitioner before the Tribunal did not produce any policy document of the vehicle at the time of accident nor the OP owner produced any policy document of the vehicle. Situated thus, in absence of policy document the judgment and award delivered by Learned Tribunal below cannot be sustained in the eye of law and accordingly, Learned Counsel urged for allowing this appeal by setting aside the judgment and award of the Learned Tribunal below.

4. Learned Counsel, Mr. A. Kr. Deb appearing on behalf of the National-Insurance Company Limited submitted that the Insurance Company Limited has nothing to say in this regard as the said Insurance Company has no role in this appeal and urged for passing appropriate order. In this case, the respondent-claimant Sudip Kumar Das filed one claim petition before the Tribunal alleging *inter alia* that on 15.04.2015 in between 4.30 PM to 5 PM when the claimant petitioner along with his wife were proceeding towards his in-law's house at Dukli by riding a motor bike bearing No.TR-01M-5186 (Yamaha YBR 125), that time on the way when they reached near bypass road at Roypara Rabindranagar that time one offending Motor Bike bearing Registration No.TR-01Q-5171 (TVS Apache M/C) being driven by OP No.1

came from the opposite direction with excessive speed and due to rash and negligent driving suddenly dashed against the motor bike of the claimant-petitioner resulting which the claimant-petitioner fell down on the road and received severe injuries. Immediately thereafter the claimant-petitioner and his wife was shifted to AGMC and GBP Hospital and undergone treatment as an indoor patient. The claimant-petitioner has undergone surgery of his right leg at Ortho Care & Related Centre, Kalyani, Agartala under Dr. J. K. Nag and was admitted therein from 04.05.2015 to 12.05.2015. This is the subject matter of the claim-petition and in this regard East Agartala, P.S. Case No.08 of 2016 under Section 279/338 was registered.

5. It was further submitted that, the claimant-petitioner was a businessman and his monthly income was Rs.30,000/- (Rupees Thirty Thousand) per month. Hence he filed the claim petition. In obedience to the notice issued the OP No.1, i.e. the owner of the offending motor bike bearing No.TR-01Q-5171 (TVS Apache M/C) did not appear before the Tribunal. So the case preceded *ex-parte* against him. The OP No.2 i.e. the Insurance Company that is the present appellant herein appeared and also denied the assertions of the claimant-petitioner and submitted that the claim petition was subjected to strict proof. No written statement was submitted by OP No.3 i.e. the National Insurance Company

Limited. Upon the pleadings of the parties following issues were framed:-

ISSUES

- I. Is the claim maintainable in its present form and nature?**
- II. Had the claimant petitioner suffered grievous injury in any road traffic accident? If so, has there been any rash and negligent driving on the part of the driver of offending vehicle?**
- III. Is the Claimant petitioner entitled to get compensation as prayed for? If so, who shall be liable to pay the compensation?**
- IV. To what other relief or reliefs the claimant petitioner is entitled?**

6. To substantiate the issue the claimant-petitioner was examined as PW-1 and relied upon the following documents:-

- 1) Certified copy of FIR, ejahar, charge sheet in connection with East Agartala PS Case No.86 of 2015 in 14 sheets-Ext.1(i) to 1(xiv);**
- 2) Original copy of Discharge certificate dated 12.05.2015-Ext.2;**
- 3) Original copy of bill for Rs.40,000/- - Ext.3;**
- 4) Cash memo towards cost of CT scan/MRI for Rs.800/-- Ext.4;**
- 5) Money receipt dated 04.05.2015 for Rs.3210/-- Ext.5;**
- 6) Cash memo and money receipt in 13 sheets- Ext.6(i) to 6 (xiii);**
- 7) 4 nos. of money receipt towards consultation fees of Rs.1200/- - Ext.7(i) to 7(iv);**
- 8) Original prescriptions in two sheets- Ext.8(i) to 8(ii);**
- 9) Photocopy of driving license in one sheet-Ext.9 respectively.**

OP Nos.1 and 2 did not produce any oral/documentary evidence on record.

7. Finally, Learned Tribunal below by the judgment and award dated 13.07.2021 allowed the claim petition. The operative portion of the order runs as follows:-

ORDER

"In the result, claim is awarded in following terms:-

Claimant petitioner is entitled to get the award of Rs.1,15,000/- (Rupees one lac fifteen thousand) only with 6% Simple interest per annum from the date of registration of claim i.e., w.e.f. 06.09.2017 till the date of realization thereof.

The OP No.2, Iffco Tokio General Insurance Co. Ltd. shall, within 30 days of the date of this award, deposit the entire amount as awarded, in favour of the Motor Accident Claims Tribunal, West Tripura, Agartala.

OP No.2, shall be at liberty to recover the amount from the OP No.1 in accordance with law.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award."

8. Challenging that judgment, the appellant Insurance Company has preferred this appeal. I have heard Learned Counsel for the appellant Insurance Company and perused the record and the judgment delivered by Learned Tribunal below. In Para 7 of the Judgment, the Learned Tribunal below observed that the OP No.1 being the owner of the offending motor bike did not appear to contest the case.

As such the Learned Tribunal below came to the observation that there was no evidence from the side of the said OP that the vehicle was duly insured with OP No.2.

9. Learned Tribunal came to the observation that since the said Insurance Company i.e. the appellant did not take the plea that the offending bike was not insured with the appellant Insurance Company. So, the Learned Tribunal below came to the observation that the offending bike was duly insured with the appellant Insurance Company and fastened the liability of payment of compensation upon the appellant which in my considered opinion was totally misconceived and without any legal basis because until and unless the insurance certificate is proved then there is no scope on the part of the Tribunal to fasten the liability of payment of compensation to any Insurance Company.

10. Here in the case at hand neither the petitioner proved the policy document of the offending bike nor the owner of the offending bike produced or proved the policy document of the vehicle to substantiate his defence. Even from the side of the claimant-petitioner, there was no request or query to the appellant Insurance Company to furnish the certified copy of the policy document. Even in the claim petition also there was no assertion in regard to the policy number of the offending bike on the day of alleged accident. Situated thus, it appears that without application of

proper mind, the Learned Tribunal fastened the liability of payment of compensation upon the Insurance Company. In this appeal, neither the respondent claimant petitioner nor the owner of the offending motor bike bearing No.TR-01Q-5171 appeared after receipt of notice to the High Court.

11. Hon'ble the High Court of Madras in ***New India Assurance Co. Ltd., Arcot Woodlands Building, No.1, Bharathi Road, Cuddalore-1 Vs. S. Sivapathi and Others*** reported in ***C.M.A. No.415 of 2024*** wherein in Para Nos.17 and 18 observed as under:-

"17. In the case on hand, admittedly, the Claimants/Respondents 1-7 have not furnished any particulars of the Insurance Policy and it is bereft of details. As rightly contended by the learned Counsel for the Appellant-Insurance Company, it is the duty of the Claimants to furnish correct registration number of the vehicle, full Insurance particulars as furnished by the Police Officer/Investigation Officer. Though it is contended by the learned Counsel for the Claimants/Respondents 1-7 that they were ignorant of the details required to be furnished in the Application, no steps have been taken by them to verify the Insurance particulars and when the Insurance Company after due search in their office at Cuddalore has positively denied that the offending vehicle was not insured with them at the relevant point, they should have taken steps to get the particulars to prove that the vehicle was insured with the Appellant-Company. As rightly contended by the learned Counsel for the Appellant-Insurance Company, at that relevant time, it may not be possible for the Insurance Company to ascertain from all the branches in the State of Tamil Nadu to verify as to whether the vehicle was insured with their branch or not. If some particulars had been furnished in the Claim Petition, the Insurance Company could have made efforts to ascertain the necessary particulars from the Police Officer/Investigation officer concerned or from the office of the Motor Vehicles Inspector. In the case on hand, as rightly contended by the learned Counsel for the Appellant Insurance

Company, it is bereft of details and therefore, to expect the Appellant-Insurance Company to ascertain the details, is not proper.

18. On the facts of this case, this Court is of the considered view that merely because the Appellant-Insurance Company had taken out an Application under Section 170 of the Motor Vehicles Act, 1986, to contest the Claim Petition and raise all the defences that are open to them under the statute and when the owner of the vehicle had remained ex parte, it cannot be construed that it is the burden of the Insurance Company to prove the negative, i.e., that the vehicle was not insured with them at the time of accident. The Claimants have failed to establish that there was valid Insurance Policy, on the date of accident and in such circumstances, the Insurance Company is not statutorily liable to pay compensation to the Victims. In view of the above, the liability fastened on the Appellant-Insurance Company, to pay the compensation is set aside."

Relying upon the aforesaid citation, it appears that the respondent claimant petitioner before the Tribunal has failed to establish that there was valid insurance policy of the offending motor bike on the day of accident and as such, the present appellant Insurance Company is not statutorily be liable to pay compensation to the respondent claimant petitioner. Thus, it appears that the judgment and award delivered by Learned Tribunal below was perverse and not based on any sound reasoning.

12. In the result, the appeal filed by the appellant is hereby allowed. The judgment and award delivered by Learned Member, Motor Accidents Claims Tribunal, West Tripura, Agartala (Tribunal No.2) dated 13.07.2021 in connection with Case No.TS (MAC) 164 of 2017 is hereby set aside.

The matter is remanded back to the Tribunal below to issue notice upon the claimant petitioner and upon the owner of the offending bike to appear and to produce the policy document. The appellant Insurance Company is also asked to appear before the Learned Tribunal on 31.07.2025. In the event of availability of valid insurance policy document the same be duly marked by the Learned Tribunal below and thereafter shall deliver a fresh judgment in accordance with law at an earliest convenience.

With this observation, this present appeal stands disposed of.

Send down the record to the Learned Tribunal below along with a copy of this judgment.

Supply a copy of this judgment/order to Learned Counsel for the appellant Insurance Company.

Pending application(s), if any, is accordingly stands disposed of.

JUDGE

Amrita

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DEB**

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