IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP No.12 of 2012

Md. Abdul Azid,
son of late Sona Miah, of village – N.C. Nagar, P.O. & P.S. Sonamura, District – West Tripura.

(Owner of the Vehicle bearing No.TR-01-A-3608)

...... Petitioner

– V e r s u s –

(1) Smt. Sabita Dhar,
wife of late Matilal Dhar, of village – Jumerdhepa, P.O. Nalchar, P.S. Melaghar, District – West Tripura.

(2) The Branch Manager,
United India Insurance Co. Ltd. Ganaraj Chowmuhani, East Thana Road, P.O. Agartala, P.S. East Agartala, District – West Tripura.

...... Respondents

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner	: Mr. D.C. Roy, Advocate
For the respondents	: None.
Date of hearing and delivery of judgment & order	: **05.03.2015**

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the petitioner. None appears for the respondents despite due notice from this Court.

[2] This a petition filed under Article 227 of the Constitution of India against the order dated 23.11.2011 delivered in Misc. (Review) 14 of 2010 arising from T.S. (MAC) No.806 of 2002.

[3] The petitioner herein, the owner of the vehicle bearing registration No.TR-01-3608 (Commander Jeep) has been subsequently added in the claim proceeding that was instituted under Section 166 of the Motor Vehicles Act, 1988 by one Matilal Dhar and Sabita Dhar for death of their son namely, Suman Dhar, who was aged about 11 years in the road traffic accident that occurred on 08.05.2002 at Padmabil on Bishramganj – Sonamura road. The said accident was investigated by the police in reference to the Bishalgarh P.S. Case No.39 of 2002 under Sections 279/338/304-A of the I.P.C. It is apparent that when the petition was filed, the petitioner was not added as the O.P., but later on by the order dated 14.01.2008, i.e. after 6(six) years of the institution of the claim petition, he was added as the O.P. No.2 and M/S. New United India Insurance Company Ltd. was added as the O.P. No.3.

[4] The petitioner filed the written objection in the proceeding stating that his vehicle (Commander Jeep bearing registration No.TR-01-A-3608) was not at all involved in the said accident. In the written objection, he did not disclose the details of insurance policy of the said vehicle. Thereafter, by the judgment and order dated 04.03.2009 delivered in T.S.(MAC)

No.806 of 2002 as instituted by the claimants, a sum of Rs.1,75,000/- (Rupees One lakh Seventy Five thousands) has been awarded to be paid by the petitioner herein. As directed, the said amount shall carry interest @9% from 10.12.2012 till realization.

[5] Subsequently, it has been contended by the petitioner that the vehicle of the petitioner is insured by the United India Insurance Company Ltd. and the insurance policy was valid when the accident had taken place. The petitioner filed an application under Section 114 of the C.P.C. for review of the judgment dated 04.03.2009 passed in TS(MAC) No.806 of 2002 on placing the insurance policy on records. United India Insurance Company Ltd. has raised serious objection on questioning the maintainability of the review petition as they were not duly notified to have their say in the matter and thus, on the ground of maintainability, the review petition was dismissed.

[6] Mr. D.C. Roy, learned counsel appearing for the petitioner has submitted that as the petitioner is indemnified in respect of the damages by the insurance policy under No.130802/31/40/11/2770 and the Certificate No.3208/002 which was valid for the period from 03.01.2002 to 02.01.2003, the United India Insurance Company cannot disown their liability.

[7] On the face of the records, this Court even though finds substantial force in the submission of Mr. Roy, learned counsel but the Motor Accident Claims Tribunal cannot embark on the review jurisdiction in such a matter. It is no denying fact that even in the written objection the petitioner did not disclose the existence of such policy. The petitioner has placed on records the insurance policy in a subsequent stage. Even the insurer has been made party. Even if they were not made party and the notice was issued by the Tribunal informing that a claim for damages has been instituted against the owner of the vehicle, which is insured by them, they could not be disown their liability of paying the damage as indemnified under a contract of insurance under Section 125 of the India Contract Act. The difficultly now the court finds is that in absence of pleading, whether the review petition can be maintained on discovery of the insurance policy? This Court is of the considered opinion that it is a case whether the petitioner ought to have preferred an appeal under Section 173 of the Motor Vehicles Act and have taken recourse to the other ancillary procedures for amending his objection by incorporating appropriate pleading if at all the insurance policy that has been placed in the review proceeding existed during the relevant period when the accident occurred and also would have asked for leave from that appellate court to adduce the additional evidence in support of the pleading. But the reasons for dismissal of the review petition at the same time cannot be acceptable. As this Court has already held that a fresh issue cannot be adjudicated under the review jurisdiction, the impugned order warrants no interference, but on considering the substantial ends of justice, this Court would observe that notwithstanding the said order dated 23.11.2002, the petitioner may file an appeal under Section 173 of the M.V. Act. The period that has been costed for the review vide Civil Misc. (Review) 17 of 2004 arising from T.S.(MAC) 806 of 2002 and for pursuing this proceeding, the petitioner may get benefit of Section 14 of the Limitation Act. If such appeal is preferred by the petitioner, the delay that has taken place for that account be discounted, even if the jurisdiction of this Court is not entirely inappropriate, but not fact-finding.

Having observed thus, this petition stands dismissed, subject to observation as recorded hereinabove.

No order as to costs.

JUDGE

Sujay