THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.34 of 2011

Md. Mithu Miah,
son of Md. Ramij Miah,
Vill. & P.O. Samrurpar,
P.S. Kailashahar,
District-North Tripura

...........Petitioner

– Vs –

1. The Manager,
Reliance General Insurance Company Ltd.,
Anil Dhirubhai Ambani Group,
Divisional Office at AD Dihang Arcade,
4th Floor, ABC, G.S. Road,
Guwahati, Assam – 781 005

2. Sri Tarab Ali,
son of Michir Ali,

3. Smti. Monowara Begum,
wife of Tarab Ali,

- Both are residents of
Vill. & P.O. Samrurpar,
P.S. Kailashahar,
District-North Tripura

4. The Reliance General Insurance Company Ltd.,
Having its registered office at 19, Reliance Centre,
Walchand Hirachand Marg,
Ballard Estate, Mumbai -400 001

.... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Ms. M. Roy, Advocate

For the respondent Nos.1 & 4: Mr. H. Deb, Advocate

For the respondent Nos.2 & 3: None

Date of hearing and delivery of Judgment and order : **17.04.2015**

Whether fit for reporting : **NO**

Judgment and Order (Oral)

Heard Ms. M. Roy, learned counsel appearing for the petitioner as well as Mr. H. Deb, learned counsel appearing for the respondent No.1. None appears for the respondents No.2 and 3, despite due notice from this Court.

02. In terms of the order dated 06.02.2015, the Reliance General Insurance Company Limited has produced the policy bearing No.1505782336001949 corresponding to the proposal/cover note No.108000861128 which is in the name of the petitioner, Md. Mithu Miah and the period of coverage is from 10.30 hrs on 16.02.2009 to midnight of 15.02.2010.

03. Admittedly the road traffic accident occurred on 19.03.2009 at Samrurpar under Kailashahar PS involving the vehicle of the petitioner bearing registration No.TR-01-(C)-1227 (auto van).

04. On culmination of inquiry, the Motor Accident Claims Tribunal, North Tripura, Kailashahar by the judgment and order dated 05.08.2010 awarded a sum of Rs.1,17,000 (Rupees one lakh seventeen thousand) to the petitioner for death of their five year old son, Rashel Ali. The petitioner has however been made liable to make payment of the said award with interest @ 6% per annum from 02.07.2009, the date of institution of the claim petition till the date of payment as he could not prove that the vehicle at the relevant point of time was under any valid insurance coverage. It has been further provided that if the amount with interest is not paid within a period of two months, the petitioner shall have to bear the penal interest @ 9% per annum on expiry of the two months.

05. What appears from the judgment and order dated 05.08.2010 that the Manager, Reliance General Insurance Company Limited has been made party in the claim petition and despite the petitioner claimed to have insurance coverage by them, they did not produce the insurance policy. Later on, a petition for review of the judgment and order dated 05.08.2010 has been preferred by the petitioner in the Motor Accident Claims Tribunal, North Tripura, Kailashahar being Civil Misc.(Rev) No.18 of 2010. Along with that petition, a cover note of the policy which is available at Annexure-1 to this petition was filed in the tribunal. But the said review petition was rejected by the Motor Accident Claims Tribunal holding that:

> ***"As the petitioner failed to produce the document showing valid coverage of the offending vehicle bearing No.TR-01-(C)-1227 (Auto Van) by the insurance policy the entire liability to pay the compensation award amounting to Rs.1,17,000/- will have to be borne by the petitioners i.e. the owner and driver of the offending vehicle. The review petition, therefore, has no merit and stands dismissed."***

06. Being aggrieved by that order dated 09.02.2010 passed in the review petition, this petition under section 227 of the Constitution of India has been filed by the petitioner, the owner of the offending vehicle. Having scrutinised the records produced with this petition, on 06.02.2015 this Court passed the following order directing *inter alia:*

> ***"Having regard to the nature of this case, the Reliance General Insurance Company Ltd. is impleaded as the respondent No.4, with the following descriptions:***

Reliance General Insurance Company Ltd., having its registered office at 19, Reliance Centre, Walchand Hirachabd Marg, Ballard Estate, Mumbai-400001.

The Registry is directed to incorporate the Reliance General Insurance Company Ltd. as the respondent No.4 and send notice with a copy of this petition with all its enclosures to them forthwith.

The notice is made returnable on 26.03.2015.

The Reliance General Insurance Company Ltd. is directed to submit a verification statement as regard their policy, bearing No. *108000861128*, having agency code NO.519509. Such verification statement shall be made by the returnable date."

07. After taking several accommodations from this Court, today the Reliance General Insurance Company Limited has filed a policy certificate bearing No.1505782336001949 in respect of the offending vehicle and the certificate has been issued in the name of the petitioner. It has been observed that the period of insurance is from 10.30 hrs. on 16.02.2009 to midnight of 15.02.2010. Therefore, the insurance policy covers the day of the accident. Since this policy is in the nature of contract of indemnity under Section 125 of the Indian Contract Act, the liability that arises from the accident has to be borne by the insurer. The insurer has not taken any step in the inquiry proceeding and as such they cannot also claim any further immunity from this Court, as this Court is of the considered opinion that the said policy entirely covers the offending vehicle for its liability that may arise from the road traffic accident unless otherwise pleaded by the Insurance Company. But in this case there is no such pleading at all. The liability of paying the entire compensation with interest as directed by the Tribunal has to be borne by the insurer, the respondents No.1 and 4.

08. Having held so, the respondent No.4 in particular, is directed to pay the entire amount of compensation with interest to the claimants, the respondent Nos. 2 and 3 within a period of two months from today in the Motor Accident Claims Tribunal. Thereafter, the respondent Nos. 2 and 3 shall be at liberty to withdraw the said amount from the Tribunal.

The copy of the policy certificate as produced from the respondent No.4 is made part of this record, as Exbt.-X on admission.

Accordingly, this petition stands allowed to the extent as indicated above. However, there shall be no order as to costs.

A copy of this order be furnished to Mr. H. Deb, learned counsel appearing for the respondent Nos.1 and 4.

JUDGE

MB