THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.02 of 2009

Smti. Namita Das,
wife of late Vim Chandra Das,
of Village-Bholamura (Rangamatia),
PS - Sonamura,
District – West Tripura

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

– Vs –

1. Shri Makhan Rabi Das,
son of late Naresh Rabi Das,
of Village – East Melaghar, PS - Melaghar,
District – West Tripura

2. The Divisional Manager,
Oriental Insurance Company Limited,
Kaman Chowmuhani, PO – Agartala,
PS – East Agartala, District – West Tripura

3. The Divisional Manager,
United India Assurance Company Limited,
Ganaraj Chowmuhani, PO – Agartala,
PS – East Agartala, District – West Tripura

4. Shri Sudip Saha,
son of Shri Amalesh Saha,
of Village – Ramthakur Para, Belonia Town,
PS - Belonia, District – South Tripura.

...........Respondents

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

For the petitioner	**:**	Mr. B. Das, Senior Advocate Mr. D. Chakraborty, Advocate
For the respondent No.1	**:**	Mr. K. K. Pal, Advocate
For the respondent No.2	**:**	Mr. P. Gautam, Advocate
For the respondent No.3	**:**	Mr. S. D. Choudhury, Advocate
Date of hearing and delivery of Judgment and order	**:**	**06.01.2015**
Whether fit for reporting	**:**	**NO**

Judgment and Order (Oral)

Heard Mr. B. Das, learned senior counsel appearing for the petitioner as well as Mr. S. D. Choudhury, learned counsel appearing for the respondent No.3, Mr. P. Gautam, learned counsel appearing for the respondent No.2 and Mr. K. K. Pal, learned counsel appearing for the respondent No.1.

02. This petition under Article 227 of the Constitution of India has been filed by one of the owners of the offending vehicles against the judgment and award dated 13.09.2005 delivered in TS(MAC) No.92 of 2002 by the Motor Accident Claims Tribunal, West Tripura, Sonamura.

03. The grievance of the petitioner falls within a short compass as the liability of paying 50% of the awarded amount has been saddled on her as the owner of the vehicle No.TR-01-A-2565. The other vehicle which was also involved in the said accident is owned by the respondent No.4. When the matter was taken up for consideration, no representation is found available for the respondent No.4 despite due notice from this Court. However, the said vehicle owned by the respondent No.4 is insured by the Oriental Insurance Co. Ltd., respondent No.2 herein. The respondent No.2 is represented by Mr. Gautam, learned counsel.

04. Mr. Das, learned senior counsel appearing for the petitioner has submitted that the petitioner has not given any instruction whatsoever and as such he is not in a position to make any submission, but he has come to know that the insurer has deposited the amount as awarded by the Motor Accident Claims Tribunal and he has no objection if this Court directs payment of the said amount as deposited by the insurer to the claimant. The liability that is under challenge in this petition has been fixed by the Tribunal on the basis of the observation which is as under:

> ***"Now the question arises as to who shall pay the compensation. Generally an injured is to be compensated by the owners of the vehicles involved in a vehicular accident. But if the vehicles are insured on the date of the accident the liability to pay the compensation automatically shifts to the insurers. In the instant case the owners of the offending vehicles categorically stated in their written statements that the offending vehicles were insured with the Oriental Insurance Company Limited and the United India Insurance Co. Limited. The O.P. No.1 Sri Sudip Saha (owner of the vehicle No.TR-01-4151) produced the certificate of insurance in respect of the said vehicle and O.P. No.2 Smt. Namita Das produced a Money receipt in connection with the insurance of vehicle No.TR-01-A-2565. Upon going through the certificate of Insurance in respect of the vehicle No.TR-01-4151 it is revealed that the said vehicle was insured with the Oriental Insurance Company Limited from 19.8.2000 to 18.8.2001. On the other hand the receipt voucher produced by the owner of the vehicle No.TR-01-A-2565 revealed that an amount of Rs.6363/- was received by the United India Insurance Company Limited from the husband of the O.P. No.2 but nowhere in the said voucher it has been mentioned that the amount was received towards the insurance of the vehicle No.TR-01-A-2565. Therefore, though evidently the vehicle No.TR-01-4151 was insured with the Oriental Insurance Company Limited on the date of the accident, it cannot be definitely opined that the vehicle No.TR-01-A-2565 was insured with the United India Insurance Company Limited. Since the O.P. No.1 could establish with documentary proof that the vehicle No.TR-01-4151 was insured with the Oriental Insurance Company Ltd. on the date of the accident the compensation to be paid by him is now to be paid by the Insurance company (O.P. No.3). However since the O.P. No.2 could not establish with documentary proof that the vehicle No.TR-01-A-2565 was duly insured with the United India Insurance Company Limited, she is liable to pay her share of the compensation to the claimant.***
>
> ***This issue is decided accordingly."***

[Emphasis added)

05. On scrutiny of the petition and the records so available before this Court, it appears that the voucher as referred by the petitioner was issued by the United India Insurance Co. Ltd., the respondent No.3 in this petition and it has been observed by the Tribunal that nowhere in the said voucher it has been mentioned that the amount was received towards the insurance of the vehicle No.TR-01-A-2565. In this petition the petitioner has herself admitted in para-8 as under:

> ***"That, subsequently the petitioner could collect the number of the insurance policy and she requested the insurer in writing to supply a copy of the policy after the award, but it was contended by the insurer that there was no such policy, while the number was collected by the petitioner from the Motor Vehicle Department and the said insurance policy was having No.130820/31/40/11/1202 covering the period from 11.02.2000 to 10.02.2001. During the subsistence of the insurance the alleged accident took place."***

06. What appears from the record that the petitioner has not taken any step either to compel the insurer to produce the papers relating to the said policy or to bring the records from the Transport Department which issued the relevant registration certificate and the route permit. Hence, the petitioner has failed miserably to discharge her onus as to the existence of any valid insurance policy covering the day of the accident and as such this Court does not find any merit in this petition. Accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

MB