

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO. 18 OF 2009

Shri Mantosh Bhowmik

S/o. Late Ramesh Chandra Bhowmik,
Resident of Dhaleswar Road No.1,
P.S. East Agartala, Agartala,
District- West Tripura.

..... Claimant Appellant.

- V e r s u s -

1. Shri Santosh Kumar Debnath,

S/o. Shri Atul Chandra Debnath,
Resident of Jirania, P.S. Jirania,
District-West Tripura.
(Owner of TR-01-2411, Commander Jeep)

2. Shri Haripada Saha,

S/o. Shri Tripura Mohan Saha,
Resident of Jogendranagar, P.S. East Agartala,
District- West Tripura.
(Driver of TR-01-2411, Commander Jeep).

3. The New India Assurance Company Limited,

Agartala Branch, Agartala, West Tripura (Insurer of
TR-01-2411, Commander Jeep).

..... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. T.K. Deb, Advocate

For
respondent Nos.1 & 2 : Mr. P. Dutta, Advocate
respondent No. 3 : Mr. Kushal Deb, Advocate

Date of judgment : 14.8.2015

Whether fit for reporting : **NO**

JUDGMENT & ORDER(ORAL)

This appeal is directed against the award, dated 31.10.2008, passed by the learned Motor Accident Claims Tribunal (Court No.3), West Tripura, Agartala, in Case No. TS(MAC)714/2002 whereby the learned Tribunal dismissed the claim petition holding that since the owner of the vehicle Sankar Deb and Sri Ratan Kumar Debnath the persons named in the insurance policy were not made parties, the claim petition was not competent.

2. To say the least, the order shows total lack of knowledge of the provisions of the Motor Vehicles Act,1988 and the Code of Civil Procedure. Even a civil suit filed under the provision of the Code of Civil Procedure can not be dismissed on the ground of non joinder of parties unless an opportunity is given to the plaintiff to amend the pleadings to array the said necessary parties as respondents. It would also be pertinent to mention herein that as far as the present case is concerned, the appellant-petitioner filed a petition under Section 166 of the Motor Vehicles Act,1988 claiming that he was injured due to motor vehicle accident caused by vehicle No.TR-01-2411, a commander jeep.

3. According to the appellant-petitioner, Santosh Kumar Debnath, respondent No.1, was the owner of the jeep and one Sri Haripada Saha was the driver of the jeep and the vehicle was

insured with the New India Insurance Company. Reply was filed by respondents 1 and 2 and in their reply they stated that in fact the vehicle was being driven by one Sri Mihir Deb, son of Sri Chitta Ranjan Deb, who had a valid driving licence. The respondent No.3 took up the plea that the petition was bad for non joinder of parties because the registered owner of the vehicle and the person in whose name policy was issued were not made parties to the claim petition. It was contended on behalf of the insurance company that it could not be held liable to pay the compensation since it had not issued any policy of insurance in favour of the respondents 1 and 2. The learned Tribunal has not decided any of these questions but has only dismissed the petition on the ground of non joinder of parties without giving an opportunity to the appellant-petitioner to rectify the defect.

4. The Apex Court has clearly held that the registered owner continues to be the owner for all intents and purposes and cannot avoid his liability in case of an accident. The learned trial Court was right that the registered owner was a necessary party. In this case there is also another aspect of the matter. Though the registered owner is somebody else, the policy of insurance was issued in favour of somebody else and both the persons have not been made parties to the petition. Therefore, though I disagree with the final order passed by the learned Tribunal in dismissing the

claim petition, I am clearly of the view that the learned Tribunal was right in holding that both these persons were necessary parties to the suit being the registered owner and the person in whose name the insurance policy was issued. However, an opportunity should have been given to the appellant petitioner to take necessary steps to implead all the necessary parties in the suit. Therefore, the award of the learned Tribunal dismissing the claim petition is totally erroneous. While taking this view, this Court is also taking into note the provisions of Section 158 of the Motor Vehicles Act, 1988 which provide that even an FIR which is brought to the notice of the Tribunal can be treated as a claim petition and the Tribunal has the power to *suo moto* initiate proceedings under Section 166 of the Act.

5. However, the presence of these parties is essential to decide as to whether the insurance company is actually liable or not liable to pay the compensation. It is true that respondents 1 and 2 have stated that they are the owners but in the registration certificate which has been filed on record by them it is clear that the owner is Sankar Deb and not them. In case they have entered into some agreement whereby Sankar Deb has transferred the ownership to them, as far as the third parties are concerned, they can even claim against the registered owner. The law is very clear in this regard. In this case there is another important aspect.

According to the complainant, the vehicle was being driven by the respondent No.2 but now the respondent No.2 states that it was not he but somebody else who was driving the vehicle. All these aspects have to be decided on the basis of evidence and I leave it to the wisdom of the appellant-petitioner to decide whether he wants to implead the person now named as the driver in the claim petition or not.

6. In this view of the matter, the award of the Tribunal is set aside and one opportunity is given to the appellant-petitioner to implead the necessary parties in the claim petition. Accordingly, the case is remanded back to the learned Motor Accident Claims Tribunal(Court No.2), West Tripura, Agartala. The parties are directed to appear before the learned Tribunal on 5th October, 2015 and on or before the said date, the appellant-petitioner must move appropriate application for impleading the registered owner and the person shown as the owner in the policy of insurance as parties to the petition. In case he fails to file such application then the learned Tribunal shall again dismiss the claim petition. In case such application is filed then notice shall be issued to the aforesaid persons and the insurance company shall be at liberty to file a fresh written statement. It is made clear that this Court has not expressed any opinion on the issue whether the insurance

company can be held liable in case the vehicle has been transferred without notice to the insurance company.

The appeal is disposed of in the aforesaid terms.

CHIEF JUSTICE

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