

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.89 of 2013

The Oriental Insurance Company Ltd.,
represented by its Divisional Manager,
Agartala Divisional Office, Central Road,
P.S. East Agartala, District- West Tripura
(Insurer of the vehicle bearing No. AS-01-
BC-1484 (Truck))

..... **Petitioner**

- V e r s u s -

- 1. Shri Billal Miah,**
son of Shri Ful Miah, resident of Village-
Rajdharnagar, P.S. Kakraban, P.O.
Kakraban, Udaipur, South Tripura, now
Gomati District
- 2. ******
- (a) Shri Bidhu Bhushan Das,**
son of late Birendra Das, husband of late
Dipti Das, resident of Village- South
Nayapara, P.O. & P.S. Dharmanagar,
North Tripura District, PIN- 799250
- (b) Shri Mihir Lal Das,**
son of Shri Bidhu Bhushan Das, resident
of Village- South Nayapara, P.O. & P.S.
Dharmanagar, North Tripura District, PIN-
799250
- (c) Smti Jyotsna Das,**
wife of Shri Mihir Lal Das, resident of Vill-
South Nayapara, P.O. & P.S.
Dharmanagar, North Tripura District, PIN-
799250
- (d) Shri Bikram Das(minor),**
son of Shri Mihir Lal Das, resident of
Village- South Nayapara, P.O. & P.S.

Dharmanagar, North Tripura District, PIN-799250

(e) **Shri Bijit Das(minor),**
son of Shri Mihir Lal Das, resident of Village- South Nayapara, P.O. & P.S. Dharmanagar, North Tripura District, PIN-799250

(f) **Shri Manik Lal Das,**
son of late Birendra das, husband of late Dipti Das, resident of Village- South Nayapara, P.O. & P.S. Dharmanagar, North Tripura District, PIN- 799250

3. **Shri Pradip Sarkar,**
son of Promode Sarkar, resident of Bagabasa, P.S. Dharmanagar, District- North Tripura (Driver of vehicle bearing No. AS-01-BC-1484 Truck)

****** As per order dated 03.05.2014 passed in CM. Appl. No.37 of 2014, the legal heirs of the respondent No.2 have been substituted.**

..... Respondents

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

For the petitioner : Mr. P. Gautam, Advocate.

For the respondents : Ms. R. Purakayastha, Advocate

Date of hearing and delivery : **28.05.2015**
of Judgment and order

Whether fit for reporting :

YES	NO
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Gautam, learned counsel appearing for the petitioner as well as Ms. R. Purakayastha, learned counsel appearing for the respondent Nos. 2(a) to 2(f), the legal heirs of the deceased owner of the vehicle bearing registration No. AS-01-BC-1484

(Truck). None appears for the other respondents when the petition has been taken up for hearing.

[2] This is a petition filed under Article 227 of the Constitution of India questioning the legality of the order dated 19.04.2013 delivered in Civil Misc.(Review) 05 of 2011 by the Motor Accident Claims Tribunal, South Tripura, Udiapur, now Gomati Judicial District. The review petition filed under Order XLVII Rule 1 of the C.P.C being Civil Misc.(Review) 05 of 2011 questioned the judgment and award dated 12.11.2010 delivered in T.S.(MAC) No.200 of 2010, limiting the challenge to that the petitioner, the Oriental Insurance Company was in no way liable to indemnify the damages of the original respondent No.2, who was the owner at the time of accident of the offending vehicle inasmuch as there had been no insurance coverage for the said vehicle on the day of the accident i.e. 21.08.2008. According to them, the insurance policy was opened by them w.e.f.25.08.2008 to be alive till 24.08.2009. As the accident had taken place on 21.08.2008, by dint of the said policy, the respondent No.2, the owner of the offending vehicle could not have enjoyed indemnity.

[3] Having referred to the judgment and award dated 12.11.2010, Mr. P. Gautam, learned counsel appearing for the petitioner has pointed out that the insurance policy has been introduced in the evidence as Exbt. A but without reading that policy, Exbt. A, and on reading a different paper which was not even

introduced in the evidence, the liability of making payment of the award was fixed on the petitioner. Since it was a patent error on the face of the records, the petitioner preferred the petition under Order XLVII Rule 1 of the C.P.C seeking review of that part of the judgment but by the impugned order dated 19.04.2013, the said review petition was dismissed holding *inter alia* that:

"To consider the review petition, the petitioner is to prove that after due diligence some documents could not be filed. Photocopy of insurance policy was considered while passing the judgment. In paragraph 11 of the judgment it is reflected that the vehicle was insured with the Oriental Insurance company Ltd. Such finding cannot be recalled. While considering the review petition, nothing new discovered in the review petition. As per judgment earlier it is clearly affirmed that the offending vehicle was covered with the insurance policy. So, this court while considering the submission of learned counsel, cannot recall the order passed earlier. This review petition, therefore, has no merit".

[4] Mr. P. Gautam, learned counsel appearing for the petitioner has referred in the course of his submission to the petition filed by the legal heirs of the respondent No.2 for bringing the additional evidence, whereby the certified copy of the judgment dated 13.01.2011 delivered in T.S.(MAC) 513 of 2008 which has arisen out of the same accident involving the same offending vehicle and the certified copy of the insurance policy under No. 322406/31/2009/1478 have been sought to be made part of the evidence. Mr. Gautam, learned counsel has submitted that omission to challenge some wrong decisions cannot eternally keep the person at bay from challenging legality of the decision in the subsequent

legal proceeding. He has further contended that the insurance policy that has been sought to be introduced for the owner of the offending vehicle is a fake document. To support such contention, he has referred to a communication dated 21.11.2014, part of the objection filed by the petitioner against the petition filed under Order XLI Rule 27 of the C.P.C by the respondent Nos. 2(a) to 2(f). In the said communication it has been stated that:

"Now we have received a reply from our Divisional Office, Shillong, the controlling Division of our Shilong Branch (policy issuing office) vide their mail dated 18.11.2014 confirming that they had only issued policy No. 322406/31/2009/1487 having the policy period from 25.08.2008 to 24.08.2009 and not the policy having the policy period from 15.08.2008 from 14.08.2009 which in their opinion is a fake one. A copy of our Shillong Office mail dt.18.11.2014 alongwith a copy of their premium collection report/register for the period from 15.08.2008 to 25.08.2008 is enclosed for your perusal."

[Emphasis added]

The communication dated 21.11.2014 has been written to Mr. Gautam, learned counsel appearing for the petitioner.

[5] While scrutinizing the records, this Court has scrutinized the premium register which is a print of the electronic document and enclosed with the objection as aforesaid as Annexure-2. On the basis of all these documents, Mr. P. Gautam, learned counsel has submitted that a clear fraud has been exercised by the respondent No.2 by producing the insurance policy at Annexure-B to the petition filed under Order XLI Rule 27 of the C.P.C. In support of his contention, Mr. Gautam, learned counsel has relied on a decision of

the apex court in **United India Insurance Co. Ltd. vs. Rajendra Singh and others**, reported in **2000 SCC (Cri) 726**, where the apex court has observed that:

3. 'Fraud and justice never dwell together (*fraud et just nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that 'no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (*Lazarus Estates Ltd. v. Beasley*).

[6] Having placed reliance on the said principle, as approved by the apex court in **United India Insurance Co. Ltd. vs. Rajendra Singh and others**, Mr. P. Gautam, learned counsel has closed his submissions, by making a statement that since the fraud has been unravelled on the face of record, both the impugned order and the judgment and award passed by the tribunal be interfered with.

[7] While resisting such submission of Mr. P. Gautam, learned counsel, Ms. R. Purakayastha, learned counsel has submitted that the records so produced in the evidence, this court cannot ascertain with certitude who issued the insurance certificate and for what period. From the insurance policy which has been sought to be introduced as an additional evidence at Annexure-B to the petition being CM. Application No.94 of 2014, it appears that there is no interpolation. When such conflicting situations have emerged, this Court cannot arrive at a decision that the respondent No.2, the deceased owner of the offending vehicle has or has not

exercised any fraud. Apart that, Ms. R. Purakayasta, learned counsel has referred to the judgment and award dated 13.01.2011, Annexure-A to the petition filed for accepting additional evidence under Order XLI Rule 27 of the C.P.C being CM. Application No. 94 of 2014 arising from this petition and submitted that in that case the insurance company, the petitioner herein, has not challenged the decision of the tribunal saddling the liability of payment of the compensation with them. Further, she has pointed out that from para 4.1 of the said judgment and award dated delivered in T.S.(MAC) No.513 of 2008, it would be apparent that on admission the insurance policy, Exbt. B to the petition being CM. Application No. 94 of 2012, was introduced in the evidence. The petitioner after making such admission of the said policy, whether can now question the veracity of that policy or not.

[8] This Court finds that it would not be proper for this court to decide that issue as the issue is attended by so many other relevant aspects. Whether the policy which had been given effect from 15.08.2008 to 14.08.2009 had been issued by the petitioner or the policy that had been given effect from 25.08.2008 to be alive till 24.08.2009 is the genuine and it was the only policy that was issued by the petitioner or not? But on overall consideration of all the materials placed before this Court, this Court is of the considered view that this issue bears serious ramification. The tribunal by not considering Exbt.A, while passing the judgment and award dated 12.11.2010 delivered in T.S. (MAC) 20 of 2010 has committed a

serious illegality inasmuch as the tribunal at that point of time had considered one paper which was not even introduced in the record of evidence. Apart that, the reason for rejecting the review petition is entirely unacceptable in the circumstances as the point that was raised in the review petition was not at all answered. The point that was raised by the petitioner is that whether from the reading of the Exbt.A can it be ascertained that whether there was the policy coverage of the vehicle on the day of accident or not? The petitioner has categorically asserted that the policy that had been issued by them had only coverage from 25.08.2008 and it was alive till 24.08.2009. Without probing that aspect of the matter, which according to the court is well within the jurisdiction under Order XLI Rule 27 of the C.P.C., the tribunal has committed illegality. But at the same time, Ms. Purakayasta, learned counsel is quite correct while she has contended that it may not be expedient for this Court to come to a decision whether the policy which has been shown to be given effect from 15.08.2008 was issued by the insurance company or not. Merely for someone is stating that it was not issued or fake is not enough. For that purpose, a fresh enquiry is required. Thus, this Court is of the considered opinion that both the impugned order dated 19.04.2013 and the judgment and award dated 12.11.2010 are liable to be set aside and accordingly, those are set aside to reverse the finding on liability of payment. Since there is no controversy as regards the other issues, this Court would not interfere in respect of those findings including the computation of

the compensation. Hence, the claim petition shall be reheard by the Motor Accident Claims Tribunal, Gomati Judicial District, Udaipur for deciding the following issue and passing the judgment and award keeping the other findings intact.

Whether the policy No. 322406/31/2009/1478 was alive from 15.08.2008 or was it alive from 25.08.2008?

[9] For purpose of adjudicating that issue, the parties will be at liberty to file all necessary documents in the tribunal including those documents sought to be introduced by way of the petition under Order XLI Rule 27 of the CPC being Misc. Application 94 of 2014 arising from this petition. The petitioner shall also be entitled to file all the documents, they have so filed with their objection in CM. Application No.94 of 2014. They would also be entitled to file any other document in support of their respective contention. The tribunal is directed to complete the proceeding within a period of 6(six) months from the date of receipt of the records from this Court.

Accordingly, this petition stands allowed to the extent as indicated above.

Send down the LCR forthwith.

JUDGE

Sujay