THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 38 of 2010

Sri Ajit Debnath
S/O. Late Khagen Chandra Debnath,
6/1, Guhikhan Sama Lane (Madhupur),
Behorampore, Murshidabad, West Bengal.

……..…. *Appellant*

- Vs. –

1. Smt. Laxmi Debnath,
   W/O Sri Sunil Chandra Debnath,
   Resident of Mohanpur, P.S. – Ranirbazar,
   Distt. – West Tripura.

2. ICICI Lombard General Insurance Company Ltd.,
   Kolkata Branch,
   A.P.J. House, 15, Park Street,
   Kolkata-16, West Bengal.

3. ICICI Lombard General Insurance Company Ltd.,
   ICICI Bank Towers,
   Bandra, Kurla Complex,
   Mumbai-400051.

……..…. *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	:	Mr. S. Lodh, Advocate.
For the respondent No.1.	:	Mr. D.P. Ghosh, Advocate.
For the respondent Nos.2 & 3.	:	Mr. P. Gautam, Advocate.
Date of hearing & delivery of Judgment & order	:	02.02.2015.
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

The main dispute in the case is whether the appellant, who is admittedly the owner of the vehicle which met with an accident, is entitled to claim that the insurance company should satisfy the claim.

2. Both the parties admit that the insurance policy with regard to the vehicle which met with an accident was issued on 27.12.2006 and was cancelled thereafter. The accident took place on 14.08.2007 and according to the insurance company, the policy in question being 3003/50929824/00/001 was cancelled and intimation sent by registered post to the petitioner that his policy has been cancelled due to the Cheque No.853445 for which Rs.31,271/- in favour of the insurance company was being dishonoured.

3. The main point raised on behalf of the owner is that whereas the policy which has been cancelled has the three last digits 001 and the policy which was actually issued in favour of the petitioner had the figures 000. The main question is how many trucks did the appellant own. How many trucks did he get insured on 27.12.2006 and for how many trucks he paid a premium of Rs.31,271/-. There is no denying the fact that registered post intimation was sent to the owner on 26th February, 2007 that his policy number ending with the figures 001 is cancelled. It may be

true that where the owner has many trucks and where there are many insurance policies taken out that he may be in doubt as to which of the insurance policies has been cancelled.

4. Before the Tribunal, the owner had not stepped into support his case. May be at that time, the owner had thought that the insurance company would be held liable and had not appeared. As far as the claimant is concerned, the award is final. The only issue is whether the insurance company should be held liable or not. The finding as given by the learned Tribunal cannot be said to be wholly wrong, but the issue raised by Mr. Lodh, learned counsel is whether the cancellation of the policy related to the truck in question or some other policy and trucks. This is a matter which will require evidence to be led by both the parties and therefore, for this limited purpose, the matter is remanded to the learned Motor Accident Claims Tribunal.

5. However, it is clarified that merely because a number is wrongly mentioned will not by itself *ipso facto* mean that the cancellation is not in respect of policy in question. It will be for the insured to show that he had more than one insurance policies issued by this company and then only he can claim that he was misled into believe him that which was the policy which was cancelled. If there is only one policy then even if the number is wrongly mentioned in the communication the owner of the truck knows fully well that it is truck which he is plying has without any

insurance and he cannot take of some typographical error in the communication whereby the cancellation of the policy was conveyed. The Tribunal shall decide on merits whether this letter of cancellation is in respect of the policy issued by the insurance company relating to the truck in question or with regard to some other truck. Therefore, the owner of the vehicle shall also produce before the Trial Court the documents such as registration certificate which carry the chassis number and engine number of the truck showing how many trucks he owned and with whom they were insured at the relevant time.

6. The matter is remanded to the learned Tribunal. The parties are directed to appear before the learned Tribunal on 19th March, 2015. Since the only issue is involved is whether the insurance company is liable or not the Tribunal shall not reopen the issue of compensation because that has become final between the parties and the Tribunal shall on or before 30th June, 2015 decide whether it is the insurance company or the appellant-owner, who is liable to pay the compensation. He shall only give two opportunities to the appellant to produce all the evidence which he wants to do in the month of April, 2015 and thereafter, he will give two opportunities to the insurance company in the month of May/June, 2015.

7. The amount deposited by the appellant shall be released in favour of the claimant by remitting it to his personal bank accounts details whereof along with photocopies of the first page of the passbook be submitted in the Registry of this Court within one week from today and in case, the appellant herein succeeds he can claim the refund thereof from the insurance company.

8. The appeal is disposed of in the aforesaid terms.

9. Send down the L.C.Rs forthwith.

CHIEF JUSTICE

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