THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 49 of 2010

1. Smti. Bakul Chanda, W/O. Lt. Paritiosh Chanda.

2. Smti. Bulti Chanda, D/O. Lt. Paritosh Chanda.

3. Miss. Chaiti Chanda, D/O. Lt. Paritosh Chanda.

4. Sri. Rahul Chanda, (minor), S/O. Lt. Paritosh Chanda
   (Petitioner No-4 being the minor is represented by
   Appellant No.1, the mother and natural guardian).
   All of them are residence of Vill & P.O. – Dhanpur
   (Bar Narayan), P.S. Sonamura, District – West Tripura.

………. *Appellants*

- Vs. –

1. The Divisional Branch Manager
   Oriental Insurance Company Ltd.
   Kaman Chowmuhani, P.O. Agartala,
   P.S. West Agartala, District – West Tripura.
   (Insurer of the offending vehicle bearing No. TR-01428 (Bus).

2. Sri Pranab Debnath, S/O. Nirod Debnath,
   Of Vill – Sibnagar. P.O. & P.S. Melaghar,
   District – West Tripura, (Driver of the offending
   Vehicle bearing No. TR-01-1428, Bus).

………. *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	:	Ms. P. Ghatak, Advocate.
For the respondent No.1.	:	Mr. P. Gautam, Advocate.
Date of hearing & delivery of Judgment & order	:	31.03.2015.
Whether fit for reporting	:	No.

<u>JUDGMENT & ORDER (ORAL)</u>

The short question involved in this appeal is whether the claim petition filed by the heirs of the owner of the vehicle was maintainable or not.

2. The learned Tribunal relying upon a judgment of the Gauhati High Court in the case of ***Sajal Ch. Das vrs. The State of Assam and others*** reported in ***AIR 2009 Gauhati 12*** wherein it was held as follows:-

> ***"The owner of a vehicle, not being a third party, is not entitled to be indemnified, by his insurer for the damage caused to his own vehicle in an accident irrespective of the fact as to whether the accident took place, because of his own fault or fault of some one else, particularly, when no special premium has been paid by such an owner for damage, which may be sustained by his vehicle in such an accident. Liability of insurer is limited to indemnifying the insured against liability which insured may incur towards third persons or in respect of damage to property of third party."***

3. It is not disputed that the claimant was the owner of the vehicle and was travelling in the vehicle when the occurrence took place. The question whether a claim can be filed by the owner or by his legal heirs when the owner who is the insured is maintainable or not is no longer *res integra.*

4. Under common law a person was entitled to damages only in case of injuries caused wrongfully to him by some other person. The Motor Vehicles Act has been basically enacted to

protect third parties. Even if there was any coverage of personal injuries the Forum for decision thereof would not be the Motor Vehicles Act. The reason for saying so is that under the Motor Vehicles Act the victim is either the injured or the heirs of the deceased. Who can they claim compensation from? Initially the liability is that of the person driving the vehicle because it is due to his wrongful act that an accident had taken place. The owner becomes liable only by applying the principle of vicarious liability which means that the master is responsible for the wrongful act of his servant. The Motor Vehicles Act makes insurance compulsory for all the motor vehicles. However, the act only provides that the compulsory insurance is in respect of third party liability and liability of damages to properties of third parties. Neither personal injuries nor own damage to the vehicle is covered under the policy which is compulsory and which in common parlance is referred to as an 'act policy'.

5. While taking this view, I am fortified by the judgment of the Apex Court in ***Dhanraj vs. New India Assurance Company Ltd. and Anr.*** reported in ***(2004) 8 SCC 553***, wherein the Apex Court held as follows:

> ***"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance***

Company to assume risk for death or bodily injury to the owner of the vehicle.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

6. The same view has been taken by the Apex Court in ***Oriental Insurance Company Ltd. vs. Smt. Jhuma Saha & ors***, reported in ***(2007) 9 SCC 263***, wherein the Apex Court held as follows:

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

7. In this view of the matter, I am of the considered opinion that the claim petition itself would not be maintainable. A party cannot be a claimant and a defendant at the same time. It is

the claimant who can claim compensation from the tortfeasor/the wrong doer.

8. Here the owner cum driver is claiming compensation from the insurance company. What is the role of the insurance company? The role of the insurance company is to indemnify the owner for the damages which the owner is liable to pay. This does not mean that the insurance company is to pay compensation to the owner. The owner may take out an accident insurance policy or any other policy in this regard but there can be no claim under the Motor Vehicles Act, by the owner cum driver against the insurance company.

9. Therefore, the appeal is dismissed.

10. Send down the LCRs forthwith.

CHIEF JUSTICE

sima