

**Order No: 14**  
**dated: 22.09.23**

Petitioner and O.P no.2 filed their respective hazira.

Today is fixed for hearing petition dt. 30.08.2023 filed on the behalf of the petitioner u/o 6 R 17 of C.P.C.

Ld. Advocate for O.P no.2 files written objection against the instant petition.

Heard Ld. advocates for both sides.

Perused the petition and written objection thereto and considered.

It is submitted by the Ld. advocate for the petitioner that at the time of filing of the claim application the name of the owner of the offending motorcycle was wrongfully mentioned in column no.16 due to inadvertence but actually the said owner expired on 9.4.2016. By filing the instant petition the petitioner wants to incorporate the name of the legal heirs of the deceased owner in column no.16 of the claim application.

In the written objection it is specifically contended that the petitioners were aware of the facts of death of the owner of the motorcycle but in order to mislead the tribunal his name was incorporated in column no. 16 of the claim application. It was further contended that after lapse of statutory period of 90 days from the date of death of the deceased owner , present petition has been filed . So the instant petition should be rejected and the claim application be dismissed being abated. Moreover, there is no document to show that the persons mentioned in the petition are the legal heirs of the deceased owner.

At the time of hearing Ld. advocate for the petitioner admitted that it was their mistake to insert the name of the deceased owner in the claim application at the time of filing of this case but when it came to their knowledge they immediately took steps by filing the instant petition. By referring the provision of section 157 of M.V Act he submitted that legal liability has already been shifted automatically upon the legal heirs of the deceased owner who was the party to the policy agreement at the time of the accident. So, the insurer of the offending vehicle can not shift his liability on the ground demise of the owner of the offending vehicle and the petitioners being the 3rd party are covered by the policy which is a package policy and entitled to get compensation from the insurer.

Ld. advocate for the insurance company submitted before the court that prior to proceed further in the instant case the tribunal has to determine who is the party to the policy agreement as because the owner who was the party to the policy agreement has already expired and his legal heirs made no application before the competent authority for recording their name in place of the deceased. It was also submitted that prescribed period of limitation for recording the name of the legal heirs of the deceased before the competent authority as mentioned in Section 157 of M.V Act has already been expired . So at this stage the instant case has no merit and liable to be dismissed.

It is the undisputed fact that the owner of the offending vehicle expired on 9.04.2016 due to the accident for which instant case has been filed . The applicants of the instant case are the legal heirs of Anil Chandra Roy who was the pillion rider of the offending motorcycle and the owner of the motorcycle Rajesh Singh was riding the motorcycle at the relevant time. It appears from the record that the name of Rajesh Singh has been mentioned as owner of the offending motorcycle in column no.16 of the claim application and notice was issued in his name. Ld. advocate for the insurance company was kept silent on that issue and said fact has not been agitated in the written objection filed on

behalf of the insurance company against the claim application. During evidence above anomaly came to light for the first time and Ld. advocate for the petitioner filed the instant petition seeking amendment of the claim application by inserting the name of the legal heirs of Rajesh Singh.

Section 157 of M.V Act deals with the issue regarding transfer of certificate of insurance in case of transfer of ownership of vehicle to another person wherein it is mentioned a specific time within which the transferrer has to report the insurer about such transfer of ownership and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the vehicle was transferred with effect from the date of its transfer. For the removal of doubts it is also declared in the said provision that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance policy.

From the above provision it is very much clear that the offending vehicle was under valid insurance coverage and from the date of death of the owner of the offending vehicle, rights and liabilities of the said policy has been transferred upon his legal heirs. The insurance company can not discharge its liability to compensate the third party on the plea that owner of the vehicle with whom policy agreement was made, has expired.

Having regard to the facts and circumstances of the instant case and considering the rival contention made before the tribunal, it can safely be concluded that the prayer for amendment has merit and it should be allowed for proper adjudication of the disputes involved in the instant case.

Hence, it is ,

**ORDERED**

that the petition u/o 6 R 17 of C.P Code filed by the petitioners on 30.8.2023 stands allowed on contest without cost.

Amend the claim application.

Petitioners are directed to file amended claim application on the next date .

O.P no.2 files additional written statement today. Copy served.

Let it be kept with the record.

Fix 12.12.23 for filing amended claim application and evidence.

Dict. & corrct. by me.

M.A.C.T Judge,  
4th Court , Jalpaiguri.