(2018) 01 TP CK 0005

TRIPURA HIGH COURT

Case No: 48 of 2016

The Chief Regional Manager		APPELLANT
	Vs	
Smti Fulan Deb & Ors		RESPONDENT

Date of Decision: Jan. 31, 2018

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Code of Civil Procedure, 1908, Section 114, Section 151

Hon'ble Judges: S. Talapatra

Bench: Single Bench

Advocate: P. Gautam, Ratan Datta, D.C. Roy

Final Decision: Dismissed

Judgement

1. This is a petition filed by Oriental Insurance Company Limited under Article 227 of the Constitution of India for interfering with the order dated

27.07.2015 passed in the review petition being Civil Misc (Review) 189 of 2011 by the Motor Accident Claims Tribunal, West Tripura, Agartala.

2. The said review petition had emerged from the judgment and award dated 13.01.2011 delivered in T.S (MAC) 513 of 2008. The respondents

No.1, 2 and 3, hereinafter referred to as the claimants raised the claim under Section 166 of the Motor Vehicle Act for death of one Tapan Deb,

son of the respondent No.1, husband of the respondent No.2 and father of the respondent No.3. The said victim died on 21.08.2008 out of an

accident involving the vehicle No.AS-01-BC-1484 which occurred on 21.08.2008 about 20.00 hours at Charilam near Ram Krishna Ashram on

Agartala-Bishalgarh road.

3. The petitioner herein was impleaded in the said claim petition as the insurer of the said vehicle having registration No.AS-01-BC-1484 [the

truck]. The petitioner, the insurer''s Chief Regional Manager filed a written statement denying the claim of those claimants. According to the Claims

Tribunal, as reflected in the judgment dated 13.01.2011, the petitioner herein ""did not specifically and clearly deny Insurance of the vehicle

covering the risk on the date of accident. It was stated that the Insurance Company was not informed about the accident immediately after the

occurrence and that the liability of the Insurance Company should be as per law and that the claimant petitioners and/or owner of the vehicle

should prove all the legal requirements in respect of the accident as well as the Insurance of the vehicle with all terms and conditions therefor.

4. The owner of the vehicle, the original opposite party No.3 in the claim petition filed a separate written statement denying the claim but asserting

that on the date of accident her vehicle was insured with the said insurer covering the risk on the date of accident. A copy of the insurance policy

was also filed before the tribunal. The tribunal after recording evidence of the claimants and the opposite parties observed that the said victim died

of road traffic accident involving the said vehicle and as such an award of Rs.7,11,000/- with 6% interest from the date of filing of the claim petition

i.e. 18.12.2008 was made. The insurer, the Oriental Insurance Company Limited was directed to pay the sum within a period of 45 days else, it

has been observed, the said awarded sum will carry interest @12% per annum with effect from 18.12.2008. The Oriental Insurance Company,

the petitioner herein filed a review petition under Order XLVII read with Section 114 and 151 of the CPC for review of the judgment and award

dated 13.01.2011. For purpose of reference, the grounds taken in the review petition may be noted in brief:

(i) On the date of accident i.e on 21.08.2008, the vehicle in question was not insured with Oriental Insurance Company Limited as

per record.

(ii) The purported copy of the insurance policy under No.322406/31/2009/1487 Exbt-A as submitted by the owner in the tribunal

without supplying a copy to the said insurer. Based on that copy of the purported insurance policy the judgment and award was

saddling sending the liability of the payment on the petitioner-insurance company.

(iii) According to the petitioner, it was never admitted in their written statement that the vehicle was insured with them. The owner had

suppressed the fact from the tribunal. The petitioner insurance company had subsequently collected a copy of the policy from Shillong

Branch, as the purported policy was not issued from its Agartala Divisional Office along with cheque payment receipt dated

25.08.2008. Thus the insurance cannot be effected to prior to 28.05.2008.

(iv) The owner and the claimants are in hands-in-glove in order to defraud the insurance company and that is the reason why a copy

of the said insurance policy was not supplied to the insurance company opposite party in the tribunal.

(v) The purported insurance policy which was shown to be effective from 15.01.2008 is a manufactured document and based

thereon no liability can be shifted on the petitionerinsurance company.

5. After the judgment and award was passed, the insurance company having gathered the policy details from the said judgment mined through its

records and found that Shillong Branch of the petitioner-insurance company issued an insurance policy on 25.08.2008, not by the divisional office

at Agartala. Since the said policy had come in force with effect from 25.08.2008, the petitioner-insurance company cannot be saddled with any

liability of paying the award as done by the tribunal. Against the said review petition, a written objection was filed by the substituted legal

representatives of the owner contending that the review application cannot be entertained for the jurisdictional limit. But the claimants did not file

any written objection against such prayer for review.

6. The tribunal allowed the petitioner-insurance company to submit their examination-in-chief and the copy of the policy bearing

No.322406/31/2009/1487 certified by one S.K. Saha, In-Charge, Divisional Officer, Oriental Insurance Company Limited, Agartala, opened in

the name of the original owner namely Smt. Dipti Das. In respect of that fact, the substituted legal representatives of the original owner also filed

their affidavit. After appreciating the respective evidence as adduced in the review proceeding and the copy of the insurance policy as submitted by

the petitioner-insurance company, the tribunal by the impugned order dated 27.07.2015 has observed as follows:

Now, coming to the proof of the allegation, having approached the Tribunal seeking review of the impugned award after a period of

152 days, it was incumbent upon the petitioners to prove the contention as per the requirement of law and not in a tentative way. The

Tribunal by the order dated 16.09.2014 required the Insurance Company to file the proposal form of the policy dated 25.08.2008

submitted by Dipti Das. The order further required Sri S.K. Saha, the then Divisional Manager who filed the review petition and

under whose signature the certified true copy of the policy was filed by Sri Dulal Das, Administrative Officer to appear before the

Tribunal for his examination. The Insurance Company failed on both the counts. It neither produced the proposal form nor examined

Sri S.K. Saha. The petitioners thus failed to discharge the onus of adducing proof that the policy relied upon by the Tribunal and

marked Exbt.A series in passing the award was forged.

Examining the matter further, it is being argued by Sri Kishore Bhattacharjee, learned counsel for the Insurance Company that arising

out of the same accident, T.S. (MAC) 430 of 2009 was filed by other claimants and in that case, the Tribunal no.3, Agartala came to

the findings that for non filing of the original Insurance Policy by the owner, the liability could not be shifted upon the Insurance

Company. A copy of the said judgment is filed.

This argument is countered by Sri Ratan Datta, learned counsel for O.P. nos. 4(a) to 4(c) that arising out of the same accident, yet

another application was filed before the Tribunal at Udaipur and the learned Tribunal fastened the liability on the Insurance Company

and the subsequent review application of the Insurance Company to exonerate it was rejected. Learned Counsel has referred to a

copy of the order of the Tribunal filed by him.

[Emphasis added]

7. After observing thus, on the issue of renewal of the insurance policy, the tribunal has further laid as follows:

It is also admitted that no document could be filed by him that the alleged cheque of Dipti Das was forwarded to the Bank for

collection. Further admission is that before accepting the proposal relating to a policy, the existence of the vehicle is verified and that

to continue a policy, premium is to be deposited before the time and date of expiry of the policy. It is again admitted that even if the

premium is paid 1 or 2 days before expiry of the policy, the new policy take effect on the expiry of the existing policy. Through this

admission, learned Counsel for the O.P. no.4 argued that the premium relating to the policy was in fact filed not on 15th August but

2/3 days before that date. It is noteworthy that even in the seizure list dated 09.09.2008 of the police case, relating to seizure of the

documents of the vehicle, the Policy no.322406/31/2009/1487 is shown valid till 14.08.2009. In the absence of sufficient proof, it

cannot be held that policy was forged at that stage itself. That apart, in case of allegation of forgery, the courts will insist for full proof,

more so when it is a case of changing the decision already taken.

[Emphasis added]

8. Being aggrieved by the said order, the present petition has been filed. For the legal representatives of the original owner an objection against this

petition has been filed by reiterating their position as they had exposited before the tribunal. In the said objection, the successors of the original

owner have stated that when the insurance policy had been admitted by the tribunal without any objection, now none of the parties can be allowed

to challenge the veracity of the said document, exercise of fraud is established with overwhelming discovery.

9. The accident took place on 21.08.2008 and on the very date, the police seized the alleged vehicle having registration No.AS-01-BC-1484

from the place of the accident and the vehicle was in the custody of the police till 11.09.2008. The vehicle was released on bail in favour of the

original owner by the Magistrate. It has been categorically contended that even for opening of the insurance policy the vehicle could not have been

produced to the insurance company as per the requirement of the rules on 25.08.2008 inasmuch as during that period the vehicle still remained in

the custody of the police. Further, they have relied on the observation of the tribunal while rejecting the prayer for review that despite provided

with ample opportunity to the petitioner insurance company they had failed to produce the proposal form for the insurance policy which has come

in force, according to them, with effect from 25.08.2008, but they could not produce the same. Even they could not produce any record from the

concerned branch in which the petitioner insurance company encashed the cheque produced by the owner of the said vehicle. On 03.08.2010, the

said vehicle was disposed of, after death of the original owner. According to the successors of the original owner they do not have any liability as

they had gained nothing by virtue of the said vehicle. The said successors of the original owner have filed one additional affidavit almost reiterating

the earlier averments, but they have added the fact that the original policy was seized by the police on the date of accident from the driver. Despite

their best endeavour they could not collect the original insurance policy either from the police or from the concerned court.

10. Having regard to that aspect of the matter, in the course of the review proceeding, the tribunal directed the petitioner insurance company to

produce the proposal form in respect of the insurance policy which had come in force with effect from 25.05.2008. It appears from the record that

one affidavit was filed by the petitioner insurance company in terms of the order dated 27.04.2017 passed by this court by the petitioner insurance

company and by the said order dated 27.04.2017 the petitioner was directed as follows:

By 01.05.2017 the petitioner shall furnish the documents as asked for by an affidavit simply stating that those documents are coming

from their custody.

11. By filing the said affidavit dated 02.05.2017 the petitioner insurance company has submitted the following records:

(a) Copy of the letter dated 20.04.2017 issued by Sr. Divisional Manager, to their engaged Counsel Annexure-A.

(b) A true copy of the Premium register extracted from the system on 18.11.2014 for the period from 25.08.2008 to 24.08.2009 by

the Shillong Office Annexure-B.

(c) Certified true copy of the Ins. Policy no.322406/31/2009/1487 having policy period from 25.08.2008 to 24.08.2009 Annexure-

C.

(d) Certified true copy of the compliance of Sec. 64VB of cheque collection dated 25.08.2008 Annexure-D.

12. They have further stated in furtherance of what they had stated in their earlier affidavit that they failed to locate the proposal form [see para-5

of the said affidavit dated 02.05.2017]. They have re-asserted that it transpires from the records that their Shillong Office never issued Policy

no.322406/31/2009/1487 having policy period from 15.08.2008 to 14.08.2009 as claimed by the owner of the said vehicle. It transpires further

from the records that the deposit of premium on 15.08.2008 as claimed by the owner is baseless and without any evidence and by producing the

forged document, the original owner was successful in shifting the liability on the petitioner insurance company.

13. Mr. P. Gautam, learned counsel appearing for the petitioner has referred to the order dated 15.06.2017 whereby this court had observed as

under:

.....that there is nothing wrong in the records but from the proposal receipt register it is seen that one cheque bearing a different

number is dated 25.08.2008 whereas in the policy that has been submitted by the Insurance Co. It shows a cheque of another

number on the same date.

In terms of the said order another affidavit has been filed by the petitioner insurance company clearly stating that against the cheque

No.048968 dated 25.08.2008 for Rs.17,510/- the said policy was issued. The cheque collection No.4061001967 dated

25.08.2008 was collected in respect of the said policy No.322406/31/2009/1487.

14. Mr. Gautam, learned counsel therefore, has submitted that when the cheque was received on 25.08.2008 how the policy can be issued from

15.08.2008. Thus on the face of the record it is clear that the said policy as submitted by the original owner was manufactured or interpolated. As

no original was submitted and no copy was supplied to the insurance company, the insurer could not verify the same at the time of inquiry made by

the tribunal under Section 168 of the Motor Vehicle Act. In the midst of the repeated affidavit, one of the successors of the original owner has filed

one additional affidavit on 07.06.2017 in respect of the affidavit filed by the petitionerinsurance company on 02.05.2017. In the said affidavit the

said successor of the original owner has stated that the petitioner insurance company has made varying statements at different points of time in

respect of the above referred Annexure-A and Annexures-B to D. The said successor of the original owner has stated that the original owner did

not have any account in the Bank of Baroda as stated by the insurer that the original owner drew the cheque on the Bank of Baroda. Moreover,

they have failed to produce any cheque or any document relating to the alleged payment made by the original owner on 25.08.2008, except their

so-called computer generated records, which can be altered. Thus, the said successor of the original owner had submitted that the insurance policy

that the original owner has submitted in the tribunal was genuine and valid at that time on the date of accident i.e 21.08.2008 as the said policy had

come in force from 15.08.2008.

15. Mr. Gautam, learned counsel appearing for the petitioner has strenuously argued that the tribunal while deciding the review petition has

committed serious illegality inasmuch as, whether there exists any contract of indemnity or not has to be primarily established by the person who

intends to take benefit of such contract. Mr. Gautam, learned counsel has however admitted a few facts. When the original owner admitted in the

evidence a copy of the said insurance policy, which the review petitioner called as forged document, the petitioner did not raise any objection even

though they participated there actively in the proceeding by filing the written statement and having been represented by the counsel. Later on, in the

review petition they raised a ground that no copy of the insurance policy was furnished to them for their verification. This submission defies the

natural course of knowledge.

16. It was not only the duty of the original owner to furnish the copy of the insurance policy, it was equally on the insurer to prove or disprove that

the vehicle was not insured with them. If we appreciate the written statement filed by the petitioner, it would be apparent that by an evasive

language they made their statement that, whether the vehicle was insured, has to be proved by the original owner. They did not make any statement

denying that the vehicle was not insured with them on the day of accident. There is no affirmative statement on that score. Further the petitioner has

stated that the said insurance policy was validly opened by them, but not with effect from 15.08.2008 but from 25.05.2008 and hence when the

accident took place the vehicle was not under valid insurance coverage. Therefore they cannot be saddled with the liability of payment.

17. This court is really surprised by such argument advanced from the petitioner. When the matter was inquired by the tribunal, the insurance

company did not take any stand on that aspect of the matter. But when the judgment and award was passed by the tribunal they made their own

search to find out whether the insurance policy which was admitted in the record as part of Exbt-A series was issued by them or not. After such

search by the insurer, they came with the plea that the insurance policy though was issued by the Shillong Branch, but it was not issued with effect

from 15.08.2008 as claimed by the original owner.

18. Mr. Gautam, learned counsel has made a reference to a judgment of this court in a case which arose from the same accident in Oriental

Insurance Company Limited vs. Shri Billal Miah and Others [judgment and order dated 28.05.2015 in CRP No.89 of 2013]. In that case when

ground of nonapplication of mind was pleaded and some more documents were produced in the proceeding under Article 227 of the Constitution

of India before this court, this court framing an additional issue remanded the matter to the tribunal [Motor Accident Claims Tribunal, Gomati

Judicial District, Udaipur] with the following observation:

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.

19. Mr. Gautam, learned counsel has stated that the said tribunal has decided the case by their judgment and order dated 02.08.2016 in T.S.

(MAC) 20/2010 holding inter alia as under:

11) As already indicated above, that in the connected Misc. Review 05 of 2011 despite order passed by this tribunal on 9.1.2013

to produce the original policy form, till date the O.P. No.3 did not produce the same. Ld. Counsel Mr. S.P. Chakraborty tries to give

an explanation that after expiry of any policy the proposal form is always destroyed by the Insurance Company and as such same

could not be produced. But said explanation is also not satisfactory, for, whenever any official document is destroyed as per rules or

procedure of that establishment, certainly some records are maintained regarding proof of such destruction. But no such supporting

proof was produced before this tribunal. Apart therefrom, whenever any policy issued, as a matter of office procedure and business,

certainly some file is/are maintained having proper administrative notes of the persons in different echelons giving approval of issuance

of policy and when the related policy was issued in connection with the present involved vehicle, certainly office file was duly

maintained, but the insurance company has neither produced the said file to show that the policy was issued w.e.f. 25.08.2008 and

from any earlier date thereto, nor say that the entire file was destroyed. Both the photocopies of the policy as submitted by both the

contending parties are computer generated copies, so certainly some documents relating thereto were maintained in the Computers of

the Insurance Company, thus the submission that the related papers were destroyed is also not convincing. The O.P. No.3 earlier on

11.10.10 examined one Sujit Kr. Saha, Branch Manager of O.P. No.3, and exhibited one photo copy of insurance policy (Ext.A)

wherein said Sujit Kr. Saha, signed to give a show that it was a genuine copy of the original policy. Said Ext. A shows that the vehicle

was under insurance coverage from 25.08.08 to 24.08.09. It further appears that it was not a photo copy of a original policy, rather

a photo copy from true copy of one purported insurance policy, as photocopy of one initial signature of one person purported to be

authorized signatory of said insurance company is found there with a certificate the same to be ''certified to be true copy'' and said

certificate is also in Photostat form found available in the said document. No date beneath the said initial signature is also mentioned

therein. And thereafter at the time of production of the said photocopy before this tribunal, said witness Sujit Kr. Saha had given his

initial on the said photo copy without any date. The plain interpretation regarding object behind giving such initial given by Mr. Sujit

Kr. Saha is just to create the impression that said photocopy was copy of original policy issued by the Insurance Company. But, just

giving by a signature on a photocopy of policy by any branch official does not necessarily signifies that it is a genuine document and

also it does not dispense with further prove of genuineness of that document, especially when there are two contradictory

photocopies of such policy are available on the record. Further question comes up- if the policy documents was destroyed after the

expiry of insurance policy, then how that photo copy was made by the insurance company and how it was certified to be true and as

to why no date was given beneath the signatures of the official of Insurance Company who certified it. All these create a suspicious

circumstance regarding authenticity of said Ext. A and as such adverse inference is also drawn against O.P. No. 3 for non submission

of other important and material documents to justify that the photo copy under Ext. A was a genuine copy and to show that actually

policy commenced from 25.08.2008.

11) In the instant case, Hon''ble High Court has been pleased to direct this tribunal to ascertain as to from which date the insurance

policy actually commenced but due to non submission of sufficient materials and documents by either side, despite sufficient

opportunities given to them, it has become hard to decide the said point with specific finding asto which policy was actually genuine.

As it appears, both the parties are taking to take fishy defence and are not coming before the Tribunal in clean hand and are also not

producing all the relevant documents to prove their respective cases. However, as per Section 101 of the Indian Evidence Act, 1872,

whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts, must

prove that those facts exists. As per Section 102 of said Act the burden of prove in a suit or proceeding lies on that person who

would fail if no evidence at all were given on either side. In the instant case, as already discussed above that both O.P. No.1(a) to

1(C) have failed to prove satisfactorily that the policy coverage was from 15.08.08 and the O.P. No.3 has also failed to prove

satisfactorily that the policy coverage was from 25.8.08 and for that reason ultimately liability of payment of compensation is fixed

upon O.P. No.1(a) to 1(C), for, if no evidence is adduced from either side, as per law ultimately they become liable to pay the

compensation. The issue is accordingly decided against the O.P. No. 1(a) to 1(c). The amount of compensation was decided earlier

to the tune of Rs.8,71,095/- along with interest @ 6% per annum thereupon from the filing of claim petition i.e from 17.3.10 till actual

payment which has been remained unaltered as per judgment of the Hon''ble High Court.

[Extracted from the certified copy as produced in the course of hearing]

Mr. Gautam, learned counsel appearing for the petitioner has emphatically contended that the way one tribunal has decided the case,

that may not be disturbed.

20. Mr. R. Datta, learned counsel appearing for the respondents has responded by saying that the said decision has been challenged by the

successor of the original owner, inasmuch as the said finding is not based on any solid foundation of evidence. Some records, which are peripheral

in nature and not in original were taken into consideration by the said tribunal. Thus, the said judgment since has been challenged cannot be

considered at this stage as the further inquiry would expectedly be made by this court.

21. Mr. Datta, learned counsel has further submitted that the petitioner has failed to produce the proposal form and they had taken a new plea

before the other tribunal, which is quite different from the plea that has been taken in their review petition. In the review proceeding, the petitioner

had simply avoided production of the proposal form or the documents and adducing the officer who certified these copies of the document. Thus

the tribunal had clearly observed by the impugned judgment and order that the petitioner failed to discharge the onus of adducing proof that the

policy relied by the tribunal and marked Exbt-A series in passing the award was forged. Mr. Datta, learned counsel has further submitted that from

Exbt-A series, it would be apparent that the premium was paid by cheque No.4061001967 dated 15.08.2008 by the original owner for a sum of

Rs.15,584/- and on the basis of that the said policy was issued showing that the policy would be effective from 15.08.2008 to midnight of

14.08.2009. The petitioner-insurance company did not produce any bank records from the bank with which they usually carried on their usual

transaction to show that no such cheque was deposited by them and as such there was no question of issuing the said policy [Exbt-A series].

However, Mr. Datta, learned counsel has reiterated that on the very day of accident the police seized the said insurance policy showing that the

policy was valid from 15.08.2008 and hence hardly there was any space for subsequent manipulation for having the coverage. Mr. Datta, learned

counsel has also submitted that that aspect was of paramount importance.

22. Mr. Datta, learned counsel appearing for the respondents has relied on a decision in Rakesh Kumar and Others vs. United India Insurance

Company Limited and Others reported in (2016) 14 SCC 219, where the apex court has held as under:

18. In our considered opinion, the Tribunal was right in holding that the driver of the offending vehicle possessed a valid driving

license at the time of accident and that the Insurance Company failed to adduce any evidence to prove otherwise. This finding of the

Tribunal, in our view, should not have been set aside by the High Court for the following reasons:

18.1 First, the driver of the offending vehicle (N.A.-2) proved his driving license (Exhibit-R1) in his evidence.

18.2 Second, when the license was proved, the Insurance Company did not raise any objection about its admissibility or manner of

proving.

18.3 Third, even if any objection had been raised, it would have had no merit because it has come on record that the original driving

license was filed by the driver in the Court of Judicial Magistrate First class, Naraingarh in a criminal case arising out of the same

accident.

18.4 Fourth, in any event, once the license was proved by the driver and marked in evidence and without there being any objection

by the Insurance Company, the Insurance Company had no right to raise any objection about the admissibility and manner of proving

of the license at a later stage (See Oriental Insurance Company Ltd. Vs. Premlata Shukla & Ors.: (2007) 13 SCC 476).

18.5 Lastly, the Insurance Company failed to adduce any evidence to prove that the driving license (Ex.R1) was either fake or invalid

for some reason.

19. In the light of foregoing reasons, we are of the considered opinion that the High court was not right in reversing the finding of the

Tribunal. Indeed, the High Court should have taken note of these reasons which, in our view, were germane for deciding the issue of

liability of the Insurance Company arising out of the accident.

20. We, therefore, find no good ground to concur with the finding of the High Court. Thus while reversing the finding, we hold that

the driver of the offending vehicle was holding a valid driving license (Exhibit-R1) at the time of accident and since the Insurance

Company failed to prove otherwise, it was liable to pay the compensation awarded by the Tribunal and enhanced by the High Court.

21. In view of foregoing discussion, the appeals filed by the insured (owner of the offending vehicle) succeed and are allowed.

Impugned order in so far as it relates to exonerating of the Insurance Company from the liability to pay the compensation is set aside

and the Insurance Company (Respondent No.1) is held liable to pay the compensation awarded by the Tribunal and enhanced by the

High Court jointly and severally along with the driver and owner of the offending vehicle.

[Emphasis added]

23. Having appreciated the submissions made by the learned counsel for the parties and scrutinised the records as placed, this court is of the view

that the petitioner rose to the circumstances much later. Even if they had any case of collusive manipulation of the insurance policy, they would have

placed the relevant documents from their custody. In favour of the original owner, there are strong circumstances pursuading any prudent person to

believe that the insurance policy that was seized from the place of occurrence was the valid policy. In the seizure list, it has been reflected that the

policy was in force since 15.08.2008 to 14.08.2009. Later on, the insurance company has produced some papers those have no doubt created

some confusion. But what has been stated as the forged document, its transactional details could not be established by the petitioner to hold the

same as fake even though they had all the opportunities to prove that the cheque which was referred in the said insurance policy, effective from

15.08.2008, was never encashed by them or no such policy was therefore issued by them. In that event, it would have been a different story. This

court is also aware that the ultimate victim of the callous attitude of the petitioner would be the dependents who lost sole earning person in the said

accident.

24. In view of the decision of the apex court in Rakesh Kumar (supra), this court finds no scope of interfering with the finding of the tribunal,

whereby the petitioner or the insurer has been obligated to pay the awarded sum within the stipulated period, inasmuch as when the insurance

policy was admitted the petitioner-insurance company did not raise any objection about its admissibility or manner of proving or about its

correctness. Even if, any objection had been raised it would might led to production of the original insurance policy which was seized by the police

in connection with the criminal case, which arose from the said accident. The reference to the seizure list was made and nobody questioned the

recording in the seizure list in respect of seizure of the said insurance policy effective from 15.08.2008. Now the insurance company cannot be

allowed to raise any objection. They raised different pleas in the different tribunals. In the present case, they had never stated that the original

proposal forms were destroyed after some years. It is really surprising, how a paper relating to the insurance can be destroyed when admittedly

against the said vehicle a claim was raised in the tribunal. This appears a pretext, without any substance. As such, this court does not find any basis

to interfere with the finding as returned by the tribunal while disposing the review petition filed by the petitioner and hence this petition stands

dismissed.

It is made clear that this court could not be persuaded even by the decision of the Motor Accident Claims Tribunal, Gomati Judicial District,

Udaipur as reflected in the judgment and order dated 02.08.2016 in T.S. (MAC) 20/2010 for the reasons as above.

There shall no order as to costs.