HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. K. AGNIHOTRI, JUDGE

MAC. App. No.15 of 2015

Appellant : The Branch Manager,
United India Insurance Company Limited,
Registered Office at,
Office No.7, GF, 150 BBC Complex,
Kilokri Ring Road, Opposite Maharani Bagh,
New Delhi-110014.

Versus

Respondents :
1. Mr. Jit Man Rai,
Son of Late Lak Man Rai,
Aged about 53 years,

2. Mrs. Bimla Rai,
Wife of Mr. Jit Man Rai,
Aged about 44 years,
Both are residents of
Sudunglakha,
Rhenock P.O. & P.S. Rhenock,
East Sikkim.

Appeal under Section 173 of the Motor Vehicle Act, 1988.

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. J. K. Kharka and Ms. Malati Sharma, Advocates for the Respondents.

J U D G M E N T

(27th June 2016)

S. K. Agnihotri. J

1. The present appeal, under Section 173 of the Motor Vehicle's Act, 1988 (for short "MVA"), is directed against the judgment and order dated 27th February, 2015 rendered by the Motor Accident Claims Tribunal (for short "MACT") East Sikkim, Gangtok.

2. The indisputable facts leading to filing of the instant appeal are that one Mr. yogesh Rai, aged about 25 years, working in the Indian Air Force as a Airman, while driving a Motor Cycle bearing registration No.DL-3SCA-8971, owned by him, met with an accident on 01.06.2014. It is stated that one Sishir Rai was also riding pillion, when the accident took place at Mandi House, Gole Chakker, New Delhi at about 4.30 pm. Mr. Yogesh Rai, sustained head injuries and succumbed to it, later in the day.

3. The claimants (the respondents herein,) parents of the deceased, filed a claim petition under Section 166 of MVA, seeking compensation to the tune of

Rs.60,99,444/- (Rupees sixty lakhs ninety nine thousand, four hundred forty four) only.

4. The Learned Member, MACT, East Sikkim at Gangtok, by the impugned award determined the total compensation to the tune of Rs.45,33,958/- (Rupees forty five lakhs thirty three thousand nine hundred fifty eight) only. However, having regard to the contributory negligence of the deceased, the above amount was slashed to the extent of 50% which comes to Rs.22,66,979/- (Rupees twenty two lakhs sixty six thousand nine hundred seventy nine) only and it was directed to be paid, accordingly.

5. Feeling aggrieved, the appellant/Insurance Company has come up with the instant appeal, on the grounds, *inter-alia,* that the claim of the petitioner cannot be more than the liability of the Insurance Company as limited to the extent of Rs.1,00,000/- (Rupees one lakh), specifically provided in the policy itself.

6. Mr. Thupden G. Bhutia, Learned Counsel appearing for the Appellant/Insurance Company would contend that deceased was insured/owner of the vehicle and as such the claimants, being legal heirs, are not

entitled to any claim under provisions of Section 165 of MVA. Thus, the awarded compensation deserves to be set aside. It is further urged, that the accident had taken place on account of negligence of the driver of the vehicle and as such his legal heirs are not entitled to any relief under provisions of Section 166 of MVA. The principle of multiplier on the basis of the age of deceased was wrongly applied, when legal heirs are the parents of the deceased. The deceased was a bachelor and the age of the deceased's mother is 42 years and as such on the basis of the age of the parents only, multiplier can be applied. The Learned Counsel would further contend that the insurer is liable to indemnify the insured in respect of a third party. In the case on hand, the insured himself was the owner and driving the Motor Cycle. It is also contended that the ratio laid down in ***National Insurance Company Limited vs. Balakrishnan and Another***[1] is applicable in case of gratuitous occupant of the vehicle in case of "comprehensive/package policy". The deceased cannot be held an occupant of the vehicle. The policy provided for personal accident cover (PAC), on the basis of payment of premium, fixing the liability to a sum of

1. (2013) 1 SCC 731

Rs.1,00,000/- (Rupees one lakh) only, as above submitted.

7. Opposing the submission of the appellant, Mr. N. Rai, Learned Senior Counsel, appearing for the respondents/claimants would contend, in support of the impugned award, submitting that the policy being package policy, the driver is equally entitled to the compensation as awarded by the Tribunal. Referring to a decision of the Supreme Court in ***Ningamma & Anr. Vs. United India Insurance Co. Ltd.***[2]**,** and a decision of this Court in ***The Branch Manager, New India Assurance Company Ltd., Gangtok Vs. Smt. Jasu Subba & Ors.***[3]**,** Mr. Rai, would further contend that in case of package policy, taken by the deceased, who is the owner of the vehicle irrespective of the limited liability as provided in the policy, the insurance company is liable to pay the full compensation as determined by MACT. It is lastly urged by him that the compensation awarded by the MACT is just and proper. The appeal deserves to be dismissed, accordingly.

2. AIR 2009 SC 3056
3. AIR 2011 SIKKIM 37

8. I have given my anxious consideration to the submissions advanced by the Learned Counsels, appearing for the parties, perused pleadings, impugned award and also documents, appended thereto.

9. There is no dispute on the facts of the case as the accident of Late Yogesh Rai, son of the respondents claimants, driving a Motor Cycle, owned by him, met with an accident and he succumbed to injuries sustained thereon, on the same day i.e., 01.06.2014 at Mandi House, Gole Chakker, New Delhi.

10. The Learned Member, MACT, East Sikkim, at Gangtok, relying on a decision of the Supreme Court in ***Balakrishnan's case***[1] ***(supra)*** came to the conclusion that the policy, being a package policy, covers the deceased owner-cum-driver and as such calculating the compensation under several headings, loss of earnings, funeral expenses, loss of estate, loss of love affection and future prospects, etc. determined the awarded amount. Further holding that there was a contributory negligence on the part of the deceased, referring to a decision of this Court in ***Branch Manager, National Insurance Company Limited vs. Master Suraj Subba and Another,*** **2013(4)**

TAC 32 (Sikkim), awarded 50% of the total determined compensation hereinabove to the tune of Rs.22,66,979/- (Rupees twenty two lakhs, sixty six thousand nine hundred and seventy nine) only.

11. In the aforestated factual matrix, it is apt as this stage to refer to certain judicial pronouncements, laid down by the Supreme Court.

12. In ***Dhanraj vs. New India Assurance Co. Ltd. and Anr.***[4]**,** cited by the Learned Counsel for the Appellant/Insurance Company, the appellant along with some other persons travelling in his own jeep, met with an accident wherein the appellant as well as the other passenger received injuries, examining the scope of Section 147 of the MVA, 1988 it was held as under:-

> **"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 authorised 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.
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> **9**. In the case of *Oriental Insurance Co. Ltd. V. Sunita Rathi* it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to

4. (2004) 8 SCC 553

> property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also**."**

13. In yet another case, ***Oriental Insurance Co. Ltd. vs. Meena Variyal and others***[5] wherein a Regional Manager in a Company was provided with a car by the employer. The said vehicle driven by him met with an accident resulting into death of the Regional Manager. The widow and daughter of the Manager filed a claim petition under Section 166 of the Act, against the employer and also against the appellant/Insurance Company, the Supreme Court held as under:-

> **"12**. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third-party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an insurance to be take out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for insurance against third-party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With

5. (2007) 5 SCC 428

effect from 14-11-1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy."

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22. In *New India Assurance Co. Ltd. v. Rula* this Court postulated that the contract of insurance in respect of motor vehicles has to be construed in the light of Sections 146(1), 147(5) and 149(1) of the Motor Vehicles Act, 1988. The manifest object of Section 146(1), which contains a prohibition on the use of motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Act is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. That this was the object was reiterated in *New India Assurance Co. v. Kamla* wherein it was stated that the raison d'etre for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by policy or insurance is to protect the

> members of the community who become sufferers on account of accidents arising from the use of motor vehicles. The object of Chapter XI has thus always been recognized as one intended to protect third parties as understood in the context of the Act unless of course there is a special contract in respect of protection to others**."**

14. In other case ***Oriental Insurance Co. Ltd. vs. Jhuma Saha (SMT) And Others***[6], wherein the deceased was the owner of an insured vehicle, Maruti van, while driving the vehicle, he dashed it with a tree, causing injuries and later he succumbed thereto. The question as to whether under provisions of Section 147(1)(b) & 166 of the MVA, 1988 the jurisdiction of the Tribunal is confined to a third-party only, the Supreme Court held as under:-

> **"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.
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> **11.** Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an 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 the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.

6. (2007) 9 SCC 263

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> **13**. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case**"**.

15. In ***Oriental Insurance Company Limited vs. Rajni Devi and Others,***[7] the identical issue came up for consideration, wherein, it was held as under:-

> **"7.** It is now a well-settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of motor vehicle.**"**

16. Recently in ***National Insurance Company Limited vs. Balakrishnan***[1] ***(supra)***, the supreme Court had an occasion to examine the difference between "Act policy" and "comprehensive/package policy", wherein a

7. (2008) 5 SCC 736

respondent/claimant being the Managing Director of the Respondent/Company met with an accident while travelling in a Motor vehicle belonging to a Company. It was contended before the Supreme Court by the appellant insurer that even assuming respondent not to be the owner and a non-fare paying passenger, he would not be covered under the policy, wherein the Supreme Court held that the owner of the insured vehicle is not entitled to compensation under provisions of Section 147 of MVA. The Supreme Court held as under:-

> **"24**. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1.2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. *The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date*. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the

> "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16-11-2009 and 3-12-2009, that have been reproduced hereinabove, were issued.
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> **(Emphasis Supplied)**
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> **26.** in view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "Comprehensive/package policy". As a circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in *Bhagyalakshmi* and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same**."**

17. Mr. Rai, had further referred to a decision of this Court in ***Shri Tenzing Wangdi Lepcha vs. The***

Branch Manager, United India Insurance Company Limited (MAC App. No. 24 of 2014) rendered on 28th April, 2016 wherein the Single Judge held that a comprehensive package policy covers the occupants of a private car, holding as under:-

> **"15**. From the discussions and decisions referred to above, it is clear that Section 147 of the Act covers only a third party and does not extend to the owner of the vehicle. Further, if the owner has covered himself from such risks the insured would be bound to reimburse the owner strictly in terms thereof**. "**

18. The provisions of Section 146 obligates the owner of the Motor vehicle to take insurance for use of the vehicle on the road. Section 147 of MVA requires an insurance company to cover 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 authorised representative) carried in the vehicle or any property, caused by the use of the vehicle. The purpose of the policy is to indemnify the insured against liabilities incurred towards other persons (a third party) in respect of the damages caused to him and the property. The Supreme Court held in ***Dhanraj***[4] ***(supra)*** that insurance policy covers the liability incurred by the owner of the vehicle to the third party, not to the death or bodily

injury to the owner of the vehicle. In the case on hand, the owner knowing fully well, has taken personal accident cover (PAC) by making a premium of Rs.50/- (Rupees fifty) annually. The accident led to death of the owner/insured in the policy. The policy which is a comprehensive/package policy, clearly indicates that there was personal accident cover limited to Rs.1,00,000/- (Rupees one lakh), it reads as under:-

SCHEDULE OF PREMIUM

OWN DAMAGE		**LIABILITY**	
A:OD-BASIC	1,093.47	B:T.P-BASIC	355.00
		"Compulsory PA to owner-Driver Amount 100000	50.00
GROSS (A): Rs.1,093.00		GROSS (B) : Rs. 405.00 Stamp Duty : 1.00 Gross OD & TP (A) + (B) : Rs.1,498.00	
PREMIUM IN WORDS: RUPEES ONE THOUSAND FOUR HUNDRED NINETY EIGHT ONLY.			

19. In ***Balakrishnan & Anr***[1] ***(Supra),*** the issue involved was as to whether insurance company is liable in respect of an occupant in a private car under the "comprehensive/package policy", wherein the Supreme Court, referring to the instructions of the Tariff Advisory Committee, issued to all the insurance companies, to

cover the pillion rider of a scooter/motorcycle under the "comprehensive/package policy", held that under "comprehensive/package policy", all the occupants namely, pillion driver of a scooter/motorcycle and/or an occupant of car, being a gratuitous passenger or a non-fare occupant are covered under the policy. In the case on hand, the deceased was the owner of the motor vehicle and pillion rider did not claim any damages or compensation against the insured . The compensation is claimed by the parents of the deceased/insured, who is the owner of the vehicle. In such a scenario, the ratio laid down in ***Balakrishnan's***[1] ***(supra)*** may not be applicable to the fact of the case.

In ***Smt. Jasu Subba & Ors.***[3] ***(supra)***, Learned Single Judge examined the case on the basis of submissions made by the parties, therein. Thus, I am not in respectful agreement with the same.

20. In Black's Law Dictionary (Tenth Edition) defines "Insurance" as under:-

> **"insurance**. (17c) **1**. A contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurence of some specified contingency.
> - An insured party usu. pays a premium to the insurer in exchange for the insurer's assumption of the insured's risk. Although indemnification provisions are most common

> in insurance policies, parties to any type of contract may agree on indemnification arrangements. 2. The amount for which someone or something is covered by such an agreement. – **insure**, *vb*.
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> > "Insurance, or as it is sometimes called, assurance, is a contract by which one party, for a consideration, which is usually paid in money either in one sum or at different times during the continuance of the risk , promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest. In fire insurance and in marine insurance the thing insured is property; in life or accident insurance it is the life or health of the person". 1 *George J. Couch, Couch on Insurance* 1.2, at 4-5 (2d ed. 1984)**"**.

21. As defined herein above, the insurance company/insurer indemnifies the insured against risk of loss, damage or liability arising from the occurrence of some specified contingency. The insured is indemnified against claims made by a third party, which suffers damage, injuries or loss on account of the running of the said motor cycle under the policy. The owner, under PAC is indemnified to the extent of Rs.1,00,000/- (Rupees one lakh) as specified in the policy. The Learned Counsel appearing for the Appellant/insurance company has fairly submitted to this extent.

22. The Learned Senior Counsel appearing for the respondents/claimants would refer to a decision of the High Court of Judicature at Madras in ***The National Insurance Co. Ltd., vs. Krishnan & Anr.,*** wherein the

Learned Single Judge had defined the "just compensation" in respect of the amount of Rs.3 lakhs awarded with interest @ 7.5% per annum, from the date of claim. In ***Ningamma & Anr.[2] (supra)***, the Supreme Court considered scope of "just compensation" as contemplated under Section 166 of MVA, which is of no assistance to the facts of the case.

23. "Just compensation" is not an absolute term, it cannot be defined in an abstract form. The "just compensation" is determinable in the facts and circumstances of the case depending on the nature of policy and injuries caused thereto. It cannot be made applicable without examining nature of the policy and other incidental relevant factors.

24. As a sequel, this Court is of considered view that the MACT has committed an error in awarding the compensation to the tune of Rs.22,66,979/- (Rupees twenty two lakhs sixty six thousand nine hundred and seventy nine), relying on the ratio laid down by the Supreme Court in ***Balakrishnan's case***[1] ***(supra)***. Accordingly, the award is set aside.

25. However, it is ordered that the respondents shall be entitled to a sum of Rs.1,00,000/- (Rupees one lakh) under personal accident cover (PAC), payable forthwith.

26. Resultantly, the appeal is allowed. No order as to costs.

(S.K. Agnihotri)
Judge
27-06-2016

Approved for reporting : Yes

Internet : Yes

to