



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 28th APRIL, 2016

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.24 of 2014

Appellant : Shri Tenzing Wangdi Lepcha,
S/o Tshering Wangdi Lepcha,
Singhik, Sentam,
Mangan,
P.O. & P.S. Singhik Mangan,
North Sikkim.

versus

Respondent : The Branch Manager,
United Insurance India Insurance Company Ltd.,
having its Branch Office at
Deorali Bazar,
NH 31A,
Gangtok,
East Sikkim.

Appeal under Section 173
of the Motor Vehicles Act, 1988

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for the Appellant.

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



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J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal assails the Judgment dated 30-09-2014 of the Learned Member, Motor Accidents Claims Tribunal, North Sikkim at Mangan, (for short "the Claims Tribunal"), in MACT Case No.06 of 2014, wherein the Claims Tribunal, *inter alia*, came to a finding that the Appellant, owner of the vehicle, who was injured in the accident was not a third party (as envisaged under Section 147 of the Motor Vehicles Act, 1988) and hence, the Respondent-Insurance Company was not liable to pay compensation to him, other than the liability mentioned in Exhibit 5, i.e., Insurance Certificate Policy, and thereby dismissed the Claim Petition.

2. Before this Court, Learned Counsel for the Appellant, contended that the Claims Tribunal was in error in dismissing the Claim Petition although it reached the finding that the liability of the Opposite Party extended to the amount mentioned in the Insurance Policy. That, the Claims Tribunal was also in error in arriving at the finding that the Claimant did not come under the category of "third party". That as the Insurance Policy was a Private Car "Package Policy", i.e., a Comprehensive Insurance Policy, it covered the Appellant as well, towards which reliance was placed on the decisions of *The Branch Manager, New India Assurance*



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*Company Ltd. vs. Smt. Jasu Subba and Others*¹; *Senior Branch Manager, National Insurance Co. Ltd. vs. Smt. Namita Dixit and Others*² and *National Insurance Company Limited vs. Balakrishnan and Another*³. That the Respondent was not able to prove that the accident took place due to the rash and negligent act of the victim and hence, the Appellant is entitled to an Award of Rs.13,37,636/- (Rupees thirteen lakhs thirty seven thousand six hundred and thirty six) only, as put forth in the Claim Petition. It was canvassed that the Claims Tribunal is to hand out a 'just' compensation for which reliance was placed on *Rajesh and Others vs. Rajbir Singh and Others*⁴ and hence, the Judgment of the Claims Tribunal be set aside and compensation be granted to the Appellant as prayed in the Claim Petition.

3. *Per contra*, the stand taken by the Respondent was that in the first instance the Claim Petition was dismissed as there was no necessity for the Claimant to have approached the Tribunal as the liability to the extent of Rs.2,00,000/- (Rupees two lakhs) only, was admitted by the Respondent. That the facts in *National Insurance Company Limited vs. Balakrishnan and Another*³ are different from the facts and circumstances in the instant case. It was also contended that in *The Branch Manager, New India Assurance*

1. AIR 2011 Sikkim 37

2. AIR 2010 Sikkim 50

3. (2013) 1 SCC 731

4. (2013) 9 SCC 54



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Company Ltd. vs. *Smt. Jasu Subba and Others*¹ relied on by the Appellant, the matter pertained to an accident of a commercial vehicle as opposed to a private vehicle which is in question here, while in *Senior Branch Manager, National Insurance Co. Ltd.* vs. *Smt. Namita Dixit and Others*² the matter dealt with a gratuitous passenger and hence, are to be differentiated from the facts of this case. That Section 147 of the Motor Vehicles Act, 1988 (for short "the Act") contemplates compensation to a third party and not to the owner who does not come within such ambit, his Claim being confined to the limits indicated in the Insurance Policy. To fortify his submissions, Counsel has placed reliance on *New India Assurance Company Limited* vs. *Prabha Devi and Others*⁵ and *Oriental Insurance Company Limited* vs. *Sudhakaran K. V. and Others*⁶.

4. The rival contentions of both Counsel have been heard at length and duly considered. Consideration has also been given to documents relied on by the Appellant before the Claims Tribunal. I have also perused the impugned Judgment.

5. What falls for consideration before this Court is whether the Appellant, the insured, being the owner of the vehicle is a third party as envisaged under Section 147 of the Act and entitled to the amount of Rs.13,37,636/- (Rupees thirteen lakhs thirty seven

5. (2013) 14 SCC 719

6. (2008) 7 SCC 428



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thousand six hundred and thirty six) only, or whether he is entitled to Rs.2,00,000/- (Rupees two lakhs) only, the limit prescribed in the Insurance Policy, as personal accident cover for the owner?

6. In order to deal with the merits of the arguments, it would be necessary to briefly narrate the facts of the case;

On 26-02-2014 the Appellant/victim, the owner of the vehicle which he was driving at the relevant time was returning to his house in Singhik, North Sikkim at around 1.40 a.m. along with his friends, after attending a marriage at Mangan, North Sikkim. The vehicle went off the road approximately 1000 feet below at "Sungrung Bhir" near Singhik. Out of the five persons travelling in the vehicle, one died on the spot, while others sustained injuries including the victim who was taken to Mangan Hospital, then referred to Manipal Hospital, 5th Mile, Tadong at Gangtok, thereafter taken to BLK Super Speciality Hospital, Delhi. He underwent an emergency major surgery of his right thigh due to fractured femur. A Mangan P.S. Case was registered under Sections 279/337/338/304A of the Indian Penal Code, 1860. The victim by filing the Claim Petition sought medical expenses including doctor and hospital charges and future medical expenses, calculated at Rs.13,37,636/- (Rupees thirteen lakhs thirty seven thousand six hundred and thirty six) only.

7. Before the Tribunal, the Respondent resisted the Claim of the Appellant, *inter alia*, on grounds that he was not a third party



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and consequently not covered by the Insurance, apart from a sum of Rs.2,00,000/- (Rupees two lakhs) only, for which premium had been paid on account of personal accident insurance.

8. While considering the arguments placed by Learned Counsel, it would be essential in the first instance to appreciate that Section 147 of the Act lays down the requirements of the policies and limits of liability in respect of the passengers and persons other than passengers in relation to passenger vehicles and goods carriages. It may be clarified here that a contract of insurance is a contract of indemnity, the insurer is an indemnifier and the insured is an indemnity holder. The essence of a contract of Insurance thus is to indemnify the insured against the Claim of a third party. The expression "third party" means a person who is not a party to the Contract but is a beneficiary of the Contract and has the right to enforce the terms thereof against the insurer and the insured.

9. Coming to Section 163A of the Act this provision commences with a non-obstante clause and provides for payment of compensation on "no fault" basis. While addressing the argument of the Appellant that the Respondent was not able to prove that the accident took place due to the rash and negligent act of the victim, in ***Oriental Insurance Co. Ltd. vs. Meena Variyal and Others***⁷, while discussing this aspect it was held in Paragraph 27 as follows:-

⁷. (2007) 5 SCC 428



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"27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* [(1977) 2 SCC 441] was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under Sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle." [emphasis supplied]

10. Hence, Section 163A of the Act was incorporated by the Legislature in the Statute under a Welfare Scheme to provide benefits to the family of the victim and/or injured person falling within the income group to the extent of Rs.40,000/- (Rupees forty thousand) only, per annum. An exception clause is manifest in the Section vide which the Claimant is not required to prove rash and negligent driving of the offending vehicle as the cause of accident. In other words, to quell the argument of Learned Counsel for the



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Appellant, it is clarified here that the question of the Respondent or for that matter the Appellant having to prove rash and negligent driving under Section 163A of the Act does not arise at all since the provision of Law does not contemplate so.

11. Dealing further with the matter under Section 163A of the Act, the Hon'ble Apex Court in *Oriental Insurance Company Limited* vs. *Rajni Devi and Others*⁸ was of the view that 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. It further opined that the said provisions cannot be said to have any application in regard to an accident wherein the owner of the vehicle himself is involved. The Hon'ble Apex Court in the said Judgment also referred to a plethora of Judgments being as follows;

- (i) *Oriental Insurance Co. Ltd.* vs. *Smt. Jhuma Saha*⁹ wherein it was held as hereunder;

"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

8. (2008) 5 SCC 736

9. (2007) 9 SCC 263



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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 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."

- (ii) In ***Dhanraj vs. New India Assurance Co. Ltd. and Another***¹⁰ it is stated 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 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.

9.

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 4989 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."

- (iii) In ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut***¹¹, it has been held that -

10. (2004) 8 SCC 553

11. (2007) 3 SCC 700



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“21. Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by another forum i.e. forum created under the Consumer Protection Act, 1985 (in short ‘the ‘CP Act’). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved.

The said principle has been reiterated recently in Prem Kumari v. Prahlad Dev [(2008) 3 SCC 193] and Oriental Insurance Co. Ltd. v. Prithvi Raj [(2008) 2 SCC 338].

11. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to.”

12. In *New India Assurance Company Limited* vs. *Prabha Devi and Others*⁶ relied on by the Insurance Company, the question dealt with was extension of statutory benefits of insurance of third parties to the owner of the vehicle when he is injured/dies in an accident involving the insured vehicle. While discussing the matter the Hon’ble Apex Court referred to the Judgment of *Dhanraj* vs. *New India Assurance Co. Ltd. and Another*¹⁰ and based on its ratio, opined in *New India Assurance Company Limited* vs. *Prabha Devi and Others*⁶ that where the vehicle had overturned resulting in the death of the owner, the legal heirs were not entitled to the compensation as the third party claim could not be granted to the legal representatives of the deceased the owner.



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13. In *Oriental Insurance Company Limited* vs. *Sudhakaran K. V. and Others*⁶ the deceased was travelling as a pillion-rider on a scooter from which she fell off and succumbed to injuries sustained by her. The Motor Accident Claims Tribunal while deciding the Claim Petition found that the accident had taken place due to rash and negligent riding of the scooter by the Respondent No.1 to the Claim Petition. As regards the liability of the Appellant Insurer it was held that as the existence of the Insurance Policy in respect of the offending scooter was admitted it was also liable. The High Court dismissed the Appeal of the Insurance Company, hence the matter reached the Hon'ble Apex Court. The question that arose before the said Court was whether a pillion-rider on a scooter would be a third party within the meaning of Section 147 of the Act. This question was answered in the negative. It was held, *inter alia*, as follows:-

"13. In terms of Section 147 of the Act only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.

14. The liability of the insurer to reimburse the owner in respect of a claim made by the third party, thus, is statutory whereas other claims are not."

14. The Hon'ble Apex Court while discussing a catena of decisions in the said matter opined in Paragraph 25 of *Oriental*



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Insurance Company Limited vs. *Sudhakaran K. V. and Others*⁶ that “The law which emerges from the said decisions, is that the liability of the insurance company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; the pillion-rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”

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.

16. Later in time, however, in the judgment of *National Insurance Company Limited* vs. *Balakrishnan and Another*³, the Apex Court has taken into consideration a decision of the Hon’ble Delhi High Court being *Yashpal Luthra* vs. *United India Insurance Co. Ltd. and Another*¹². The Apex Court referring to the said decision, *inter alia*, held that –

12. MAC Appeal No.176 of 2009, Order dated 26-11-2009



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"24. 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.

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus: (Yashpal Luthra case [2011 ACJ 1415 (Del)], ACJ p. 1424, para 27)

"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

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 the circulars



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have made the position very clear and the 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 [(2009) 7 SCC 148] 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 the 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."

[emphasis supplied]

17. There is no further necessity to elucidate what has been clarified above with regard to Comprehensive Policy/Package Policy, pillion-rider and occupant, in a private vehicle. Suffice it to say that a Comprehensive Package Policy, *inter alia*, covers the occupants of a Private Car who are, therefore, to be indemnified.

18. Bearing the decisions *supra* in mind, in conclusion, a perusal of Exhibit 5, the Insurance Policy, indicates that it is a Private Car Package Policy but the liability of the Insurance Company to the "owner" driver who is the insured, extends to a sum of Rs.2,00,000/- (Rupees two lakhs) only. The question of the owner being a third party is not tenable in view of the provisions of Section 147 of the Act and the plethora of Judgments cited above.



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19. Consequently, I do not find any reason to interfere with the findings of the Learned Claims Tribunal except to the extent that the Respondent is liable to pay the Appellant the amount of Rs.2,00,000/- (Rupees two lakhs) only, in terms laid out in Exhibit 5, with simple interest @ 9% per annum, from the date of filing of the Claim Petition, till full and final settlement. The impugned Judgment of the Claims Tribunal stands modified accordingly.

20. In the result, the Appeal is allowed in part.

21. No order as to costs.

22. Copy of this Judgment be sent to the Claims Tribunal for information.

23. Records of the Claims Tribunal be remitted forthwith.

Sd/-
(Meenakshi Madan Rai)
Judge
28-04-2016

Approved for reporting : **Yes**

Internet : **Yes**