

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 12 of 2010

Oriental Insurance Company Ltd. Nizamat Huissain Road, P.O & P.S
Deoghar - 834001

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Appellant

Versus

1. Usha Devi Wife of Late Kapil Rai.
2. Ranjit Rai son of Late Kapil Rai.
3. Kajal Kumari Daughter of Kapil Rai
4. Ahilya Devi Wife of late Badri Rai.

All residents of Village Amrita , P.O Dhamni, P.S Madhupur , District- Deoghar.

5. Arbind Kumar Rai son of Kundeshwar Prasad Rai Resident Of Village & P.O Suggapahari Madupur, P.S Madhupur , District- Deoghar(Owner)
(Opp Party no 1)
6. Dilip Kumar Rai son of Satrughan Rai resident of Village ,P.O & P.S Sarawan District- Doeghar(Driver)

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Respondents

CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Alok Lal, Advocate

For the Respondents : Mr. Manish Kumar, Advocate

CAV ON 13.04.2022

PRONOUNCED ON 29.07.2022

1. The appeal has been preferred by the Insurance Company against the award of compensation, wherein it has been held liable to pay the compensation amount.
2. The factum of accident resulting in the death Kapil Rai who was on way from Giridih to Jagdishpur on commander jeep no. BR 36 – 8124 is not under challenge.
3. The main ground of appeal is that the offending vehicle was registered as a private vehicle and the insurance policy was act only policy and did not cover the death in the accident arising out of its commercial use. In breach of the term of insurance policy the vehicle in question was being used as commercial vehicle and was overloaded with 10 passengers at the time of accident. In this view of matter the Insurance Company was not liable to

indemnify the owner of the vehicle for the death being caused in the motor vehicle accident. Following authorities has been relied in support of its contention:

Jagtar Singh v. Sanjeev Kumar, (2018) 15 SCC 189 in which it has been reiterated that act only policy does not cover the risk of the occupants of vehicle. Their lordships followed *National Insurance Co. Ltd. v. Balakrishnan* [*National Insurance Co. Ltd. v. Balakrishnan, (2013) 1 SCC 731 : (2013) 1 SCC (Civ) 771 : (2013) 1 SCC (Cri) 677*] , wherein the Court has held thus: (SCC pp. 743-44, paras 24-26)

“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 the Motor Accidents 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 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 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.

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4. Main points for determination is whether the vehicle was being used for commercial purpose beyond the terms of coverage under the insurance policy?

5. On the question whether the vehicle was used for commercial purpose the Learned Tribunal has answered in the negative as no witness had stated that the vehicle was being used for commercial purposes. OP no. 3 Insurance Company also failed to adduce any evidence that the vehicle was used for commercial purposes. Under the circumstance there is no evidence in support of contention of the appellant that the vehicle was being used for commercial purpose.

6. Now on the question whether the insurance policy covered the deceased at the time of accident in the offending vehicle it will be necessary to consider the policy of insurance which has been adduced into evidence and marked as Exhibit 5. From the plain reading of this policy it is evident that it was a liability only policy for Zone B and the premium covered basic liability and legal liability for driver. From this it is evident that it was an act policy and therefore could not cover the risk to the occupants of the vehicle.

Under the circumstance the Insurance Company is not liable to indemnify the owner for liability to pay the compensation amount arising out of motor vehicle accident. The Insurance Company shall however pay the compensation amount to the claimants and have right of recovery of the compensation amount so paid from the owner of the vehicle.

The appeal is allowed as at above. The Insurance Company is permitted to withdraw the statutory amount deposited before the Court.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 29th July, 2022

AFR / Madhav