National Ins.Co.Ltd vs Balakrishnan & Anr on 20 November, 2012

Equivalent citations: 2012 AIR SCW 6286, 2013 (1) SCC 731, 2013 AAC 305, 2013 (1) AJR 728, 2012 (11) SCALE 122, (2015) 2 LANDLR 538, 2013 (1) SCC (CRI) 677, (2013) 121 ALLINDCAS 73 (SC), (2013) 1 CLR 259 (SC), (2013) 3 UC 2345, (2013) 1 JCR 193 (SC), (2013) 3 UC 2130, 2013 (1) CLR 259, 2013 (121) ALLINDCAS 73, AIR 2013 SC (CIVIL) 436, (2013) 122 ALLINDCAS 823 (AP), 2012 (4) KER LT 139 SN, (2013) 3 CIVLJ 1, (2013) 2 PUN LR 1, (2012) 3 GUJ LH 748, (2012) 4 ACC 700, (2012) 11 SCALE 122, (2013) 1 TAC 1, (2013) 1 ALL WC 810, (2013) 1 MAD LW 539, (2013) 1 ANDHLD 106, (2013) 1 RECCIVR 762, (2013) 1 WLC(SC)CVL 1, (2013) 1 ACJ 199, (2013) 96 ALL LR 204, (2013) 4 CURCC 196, (2013) 116 CUT LT 156, AIR 2013 SUPREME COURT 473, 2012 AIR SCW 6286 2013 AAC 305 (SC), 2013 AAC 305 (SC)

Author: Dipak Misra

Bench: Dipak Misra, K. S. Radhakrishnan

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8163 OF 2012
(Arising out of S.L.P. (Civil) No. 1232 of 2012)

National Insurance Company Ltd. ... Appellants

Versus

Balakrishnan & Another ... Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The singular issue that arises for consideration in this appeal is whether the first respondent, the Managing Director of the respondent No. 2, a company registered under the Companies Act, 1956, is entitled to sustain a claim against the appellant-insurer for having sustained bodily injuries. Succinctly stated, the facts are that the respondent No. 1 met with an accident about 8.30 p.m. on 23.3.2001 while travelling in the Lancer car bearing registration No. TN 49 K 2750 belonging to the respondent No. 2, as it dashed against a bullock cart near Muthandipatti Pirivu Road-I. He knocked at the doors of the Motor Accident Claim Tribunal (for short "the the tribunal") in MACOP No. 357

of 2004 under Sections 140, 147 and 166 of the Motor Vehicles Act, 1988 (for brevity "the Act") claiming compensation of Rs.20,00,000/- jointly and severally from the appellant as well as the company on the foundation that the vehicle in question was insured with the appellant-company. Be it noted, the amount was calculated on the basis of pecuniary and non-pecuniary damages.

3. The insurer resisted the claim on the grounds that the claimant had suppressed the fact that he was the Managing Director of the company and hence, the application deserved to be thrown overboard; that even if the petition was entertained the insurance company could not be held liable to indemnify the respondent as the appellant was himself the owner being the Managing Director and under no circumstances he could be treated as a third party; that the policy taken by the company did not cover an occupant in the vehicle but only covered the owner for a limited quantum and hence, the claim was not allowable as sought for.

4. The tribunal, in its award dated 19.4.2007, addressed to the issues of rash and negligent driving of the driver, injuries sustained by the insured and the liability of the insurance company. On the basis of the material brought on record, it came to hold that the accident had occurred due to rash and negligent driving of the driver of the 1st respondent; that the claimant was injured in the accident; that regard being had to the injuries sustained he was entitled to get Rs.8,63,200/- as compensation with interest @ 7.5% per annum from the date of the petition till the date of deposit; and that the insurance company was liable to indemnify as the owner of the vehicle was the company, and the injured was travelling in the car as a third party.

5. Being dissatisfied with the award passed by the tribunal, the insurer preferred C.M.A. (M.D.) No. 1624 of 2008 before the Madurai Bench of Madras High Court and in appeal it was urged that the victim, the Managing Director, who was running the hospital in the name of his deceased father, was the legal owner of the car though the vehicle was insured in the name of the company and, therefore, the liability was to the limited extent as stipulated in the policy. It was also canvassed, in any case, he was a non- fare paying passenger in the car for which no extra premium was paid and hence, the liability could not be fastened on the insurer. The High Court treated the company to be the owner of the vehicle and repelled the stand that the Managing Director was the owner, and further held that as he was only an occupant of the car the insurance company was liable to indemnify the owner for the claim put forth by the victim. It is worthy to note that the High Court opined that if no premium is paid to cover the owner, the insurer is not liable to make good the loss but if another person travels with the owner and suffers injuries the insurer is liable to pay the compensation. Being of this view, the High Court dismissed the appeal. Hence, the present appeal by the insurer.

6. We have heard the learned counsel for the parties and perused the record. As has been indicated at the beginning, the seminal issue is whether the appellant-company is liable to make good the compensation determined by the tribunal to the victim in the accident. On a scrutiny of the award passed by the tribunal which has been given the stamp of approval by the High Court, it is manifest that the 1st respondent was the Managing Director of the respondent No. 2 and the vehicle was registered in the name of the company but the Managing Director had signed on behalf of the company in the R. C. book of the car that was involved in the accident. The High Court has returned a finding that the company and the Managing Director are two different legal entities and hence, the

Managing Director cannot be equated with the owner. On that foundation, the claimant has been treated as a passenger and, accordingly, liability has been fastened on the insurer. The learned counsel appearing for the insurer would contend that assuming he is the owner being a signatory in the R.C. book, the liability of the company is limited upto Rs.2,00,000/- and under no circumstances a non-fare paying passenger would be covered under the policy. In oppugnation, the learned counsel for the respondent-claimant has proponed that barring the insurer and the insured, all others are third parties and, therefore, he is covered by the policy. It is also urged by him that as he had travelled as an occupant in a private car he is a third party vis-à-vis the insurer and hence, it is bound to indemnify the owner as the risk of the third party is covered.

7. As per the command of Section 146 of the Act, the owner of a vehicle is obliged to obtain an insurance for the vehicle to cover the third party risk. Section 147 deals with the requirements of policies and limits of liability. Section 147 (1) which is relevant for the present purpose is reproduced below:-

> "147. Requirement of policies and limits of liability. – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
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> (a) is issued by a person who is an authorised insurer; and
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> (b) insurers the person or classes of persons specified in the policy to the extent specified in sub – section (2) –
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> (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including 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 in a public place ;
>
> (ii) against the 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;

Provided that a policy shall not be required –

(i) 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 (8 of 1923) in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

> Explanation. – For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have

arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place." On a scanning of the aforesaid provision, it is evident that the policy of insurance must be a policy which complies with the conditions enumerated under Section 147 (1) (a) & (b). It also provides where a policy is not required and also stipulates to cover any contractual liability.

8. In United India Insurance Co. Ltd., Shimla v. Tilak Singh and Others[1], this Court referred to the concurring opinion rendered in a three-Judge Bench decision in New India Assurance Co. Ltd. V. Asha Rani[2] and ruled thus:-

> "In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger." It is worthy to note that in the said case the controversy related to gratuitous passenger carried in private vehicle.

9. In Oriental Insurance Co. Ltd. v. Jhuma Saha (Smt) and Others[3], the controversy related to fastening of liability on the insurer for the death of the owner of a registered vehicle, Maruti van. The Court observed that the accident did not involve any other motor vehicle than the one which he was driving and as the 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, the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, and, therefore, the question of the insurer being liable to indemnify the insured does not arise. Thereafter, the Bench referred to the decision in Dhanraj v. New India Assurance co. Ltd.[4] and ruled thus:-

> "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."

10. In National Insurance Co. Ltd. v. Laxmi Narain Dhut[5], after elaborately referring to the analysis made in Asha Rani (supra), the Bench stated thus:-

> "Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third-Party Risks". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act." In the said case, it has been opined that although the statute is a beneficial one qua the third party, yet that benefit cannot be extended to the owner of the offending vehicle.

11. In Oriental Insurance Company Ltd. v. Meena Variyal and Others[6], the facts were that a Regional Manager of the company, which was the owner of the vehicle, was himself driving a vehicle of the company and met with an accident and eventually succumbed to the injuries. It was contended by the insurer before this Court that the policy did not cover the employee of the owner who was driving the vehicle while attending the business of the employer-company and the deceased was not a third party in terms of the policy or in terms of the Act. It was also urged that the same would be the position even if the deceased was only travelling in the car in his capacity as a Regional Manger of the owner-company and the vehicle was being driven by the driver. This Court observed that a contract of insurance is ordinarily a contract of indemnity and when a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurer. Dealing with the said liability, the Bench analysed the language employed under Section 147 (1) of the Act and observed as follows:-

> "The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand."

12. After so stating, the Bench adverted to the decisions in National Insurance Co. Ltd. v. Swaran Singh[7], Laxmi Narain Dhut (supra), Asha Rani (supra) and Tilak Singh (supra) and opined that a

policy in terms of Section 147 of the Act does not cover persons other than third parties. Eventually, it ruled thus:-

> "The victim was the Regional Manager of the Company that owned the car. He was using the car given to him by the Company for use. Whether he is treated as the owner of the vehicle or as an employee, he is not covered by the insurance policy taken in terms of the Act—without any special contract—since there is no award under the Workmen's Compensation Act that is required to be satisfied by the insurer. In these circumstances, we hold that the appellant Insurance Company is not liable to indemnify the insured and is also not obliged to satisfy the award of the Tribunal/Court and then have recourse to the insured, the owner of the vehicle."

13. In Oriental Insurance Company Ltd. v. Sudhakaran K. V. and Others[8], a two-Judge Bench, while dealing with the issue whether a pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act, after referring to number of authorities, stated thus:-

> "The contract of insurance did not cover the owner of the vehicle, certainly not the pillion-rider. The deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not (sic) be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger. In view of the terms of the contract of insurance, however, she would not be covered thereby.
>
> xxx xxx xxx xxx xxx The law which emerges from the said decisions, is: (i) 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; (ii) 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; (iii) 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."

14. In New India Assurance Company Limited v. Sadanand Mukhi and Others[9], the son of the owner of the insured while driving the motor cycle met with an accident and died. The accident allegedly took place as a stray dog came in front of the vehicle. The stand of the insurance company was that in view of the relationship between the deceased and the owner of the vehicle being father and son the deceased was not a third party. The Bench relied on the decisions in Tilak Singh (supra), Jhuma Saha (supra), Meena Variyal (supra), Laxmi Narain Dhut (supra) and United India Insurance Co. Ltd. v. Davinder Singh[10] and came to hold that the insurance company was not liable to indemnify the owner.

15. At this juncture, we may refer with profit to a two-Judge Bench decision in Bhagyalakshmi and others v. United Insurance Company Limited and another[11] wherein the learned Judges took note of the contention of the learned senior counsel for the claimant-appellant which was to the effect

that after the deletion of the second proviso appended to Section 95(1)(b) of the Motor Vehicles Act, 1939 in the 1988 Act, the liability of a passenger in a private vehicle must also be included in the policy in terms of the provisions of the 1988 Act. The Bench reproduced the policy, referred to Section 64-B of the Insurance Act, 1938, took note of the role of the Tariff Advisory Committee and referred to the decisions in Amrit Lal Sood and Another v. Kaushalya Devi Thapar and Others[12], Asha Rani (supra), Tilak Singh (supra), Jhuma Saha (supra) and Sudhakaran K. V. and Others (supra) and observed thus :-

> "Before this Court, however, the nature of policies which came up for consideration were Act policies. This Court did not deal with a package policy. If the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third-party risk which would include all persons including occupants of the vehicle and the insurer having entered into a contract of insurance in relation thereto, we are of the opinion that the matter may require a deeper scrutiny." On a perusal of the aforesaid paragraph, it is clear as crystal that the decisions that have been referred to in Bhagyalakshmi (supra) involved only "Act Policies". The Bench felt that the matter would be different if the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third party risk which would include an occupant in a vehicle. It is worth noting that the Bench referred to certain decisions of Delhi High Court and Madras High Court and thought it appropriate to refer the matter to a larger Bench. Be it noted, in the said case, the Court was dealing with comprehensive policy which is also called a package policy. In that context, in the earlier part of the judgment, the Bench had stated thus:-
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> "The policy in question is a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of persons travelling in the car including the owner thereof. The question is as to whether the policy in question is a comprehensive policy or only an Act policy."

16. Thus, it is quite vivid that the Bench had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance.

17. At this stage, it is apposite to note that when the decision in Bhagyalakshmi (supra) was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another[13], after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA to

CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. The relevant portion of the circular which has been reproduced by the High Court is as follows:-

> "IRDA Ref: IRDA/NL/CIR/F&U/073/11/2009 16.11.2009 To CEOs of all general insurance companies Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

> 'Section II - Liability to Third Parties
>
> 1. Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -
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> (i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.' It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:
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> (i) Circular M.V. No. l of 1978 - dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.
>
> (ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of

standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the afore-mentioned circulars and any non-compliance of the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

Sd/-

(Prabodh Chander) Executive Director" [emphasis supplied]

18. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same:-

> "IRDA IRDA/NL/CIR/F&U/078/12/2009 3.12.2009.

To All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo) Re: Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/2009 in the case of Yashpal Luthra v. United India and Ors., the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

> i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;
>
> ii) with respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or

the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;

iii) With respect to the appeals pending before the Hon'ble Apex Court, informing, within a period of 7 days, their respective advocates on record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/-

(Prabodh Chander) Executive Director" [emphasis added]

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 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 by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the 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 2nd June, 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 18th March, 1978 and 2nd June, 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 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

> "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."

21. 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 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 the case of Bhagyalakshmi (supra) 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.

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car.

23. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the tribunal as regards the liability of the insurer and remit the matter to the tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a "Comprehensive/Package Policy", the liability would be fastened on the insurer. As far as other findings recorded by the tribunal and affirmed by the High Court are concerned, they remain undisturbed.

24. Consequently, the appeal is allowed to the extent indicated above and the matter is remitted to the tribunal for the purpose of adjudication as directed hereinabove. There shall be no order as to costs.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

November 20, 2012.

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[1] (2006) 4 SCC 404
[2] (2003) 2 SCC 223
[3] (2007) 9 SCC 263
[4] (2004) 8 SCC 553
[5] (2007) 3 SCC 700

[6] (2007) 5 SCC 428
[7] (2004) 3 SCC 297
[8] (2008) 7 SCC 428
[9] (2009) 2 SCC 417
[10] (2007) 8 SCC 698
[11] (2009) 7 SCC 148
[12] (1998) 3 SCC 744
[13] 2011 ACJ 1415
