

GAHC010106422010



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : MACApp./145/2010

M/S NEW INDIA ASSURANCE CO. LTD.,
HAVING ITS REGISTERED OFFICE AT NEW ASSURANCE BUILDING 87,
MAHATMA GANDHI ROAD, MUMBAI AND ONE OF THE REGIONAL OFFICE
AT G.S. ROAD, BHANGAGARH, GUWAHATI, ASSAM.

VERSUS

TUFANI RIKIASON and 2 ORS,
S/O LATE RAJA MOHAN RIKIASON, ARCUTTIPORE TEA ESTATE, P.O.
ARCUTTIPORE, P.S. UDARBOND, DIST. CACHAR, ASSAM.

2:BADRUL ISLAM LASKAR

S/O LATE HABIBUL RAHMAN LASKAR
BAGHPUR PART-I
P.O. BAGHPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM.

3:MUZAKKIR HUSSAIN LASKAR

S/O JALAL UDDIN LASKAR
GOSSAIPUR PT-II
P.O. GOSSAIPUR
P.S. UDHBOND
DIST. CACHAR
ASSAM

Advocate for the Petitioner : MS.L SARMA

Advocate for the Respondent : MS.S THAKURIA

Linked Case : MACApp./196/2010

M/S NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT NEW ASSURANCE BUILDING 87
MAHATMA GANDHI ROAD
MUMBAI and ONE OF THE REGIONAL OFFICE AT G.S.ROAD
BHANGAGARH
GUWAHATI
ASSAM.

VERSUS

RAJIB AYNE @ RAJAB and 2 ORS

S/O AMIYO AYNE @ RAVI KUMBHA TEA ESTATE
P.O. KUMBHA
P.S. UDHBOND
DIST. CACHAR
ASSAM.

2:BADRUL ISLAM LASKAR

S/O LATE HABIBUL RAHMAN LASKAR
BAGHPUR PART-I
P.O. BAGHPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM.

3:MUZAKKIR HUSSAIN LASKAR

S/O JALAL UDDIN LASKAR
GOSSAIPUR PT-II
P.O. GOSSAIPUR
P.S. UDHBOND
DIST. CACHAR
ASSAM.

Advocate for : MR.S S SHARMA

Advocate for : MR.S C KEYAL appearing for RAJIB AYNE @ RAJAB and 2 ORS

Linked Case : MACApp./146/2010

M/S NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT NEW ASSURANCE BUILDING 87
MAHATMA GANDHI ROAD
MUMBAI AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM.

VERSUS

ANITA GOUR and 2 ORS

W/O SRI KUSHAL GOUR @ KUSHAN
AINACHERRA TEA ESTATE
P.O. KUMBHA
P.S. UDHBOND
DIST. CACHAR
ASSAM.

2:BADRUL ISLAM LASKAR

S/O LATE HABIBUL RAHMAN LASKAR
BAGHPUR PART-I
P.O. BAGHPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM.

3:MUZAKKIR HUSSAIN LASKAR

S/O JALAL UDDIN LASKAR
GOSSAIPUR PT-II
P.O. GOSSAIPUR
P.S. UDHBOND
DIST. CACHAR
ASSAM.

Advocate for : MR.R K BHATRA

Advocate for : MS.S THAKURIA appearing for ANITA GOUR and 2 ORS

Linked Case : MACApp./147/2010

M/S NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT NEW ASSURANCE BUILDING 87
MAHATMA GANDHI ROAD
MUMBAI AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM.

VERSUS

KUSHAL GOUR @ KUSHAN and 2 ORS

S/O HIRA GOUR @ BIRO
AINACHERRA TEA ESTATE
P.O. KUMBHA
P.S. UDHBOND
DIST. CACHAR
ASSAM.

2:BADRUL ISLAM LASKAR

S/O LATE HABIBUL RAHMAN LASKAR
BAGHPUR PART-I
P.O. BAGHPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM.

3:MUZAKKIR HUSSAIN LASKAR

S/O JALAL UDDIN LASKAR
GOSSAIPUR PT-II
P.O. GOSSAIPUR
P.S. UDHBOND
DIST. CACHAR
ASSAM.

Advocate for : MR.S S SHARMA

Advocate for : MS.S THAKURIA appearing for KUSHAL GOUR @ KUSHAN and 2
ORS

Linked Case : MACApp./198/2010

M/S NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT NEW ASSURANCE BUILDING 87
MAHATMA GANDHI ROAD
MUMBAI AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM.

VERSUS

MD JAINUL UDDIN BARBUIYA @ JAIMUL and 2 ORS
S/O MD. MOFASSIL ALI BARBUIYA
VILL. GOSSAIPUR
PART-II
P.O. GOSSAIPUR
P.S. UDARBAND
DIST. CACAHAR
ASSAM.

2:BADRUL ISLAM LASKAR

S/O LATE HABIBUL RAHMAN LASKAR
BAGHPUR PART-I
P.O. BAGHPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM.

3:MUZAKKIR HUSSAIN LASKAR

S/O JALAL UDDIN LASKAR
GOSSAIPUR PT-II
P.O. GOSSAIPUR
P.S. UDHBOND
DIST. CACHAR
ASSAM.

Advocate for : MR.S S SHARMA

Advocate for : MR.S C KEYAL appearing for MD JAINUL UDDIN BARBUIYA @
JAIMUL and 2 ORS

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER

Date : 13-03-2024

Heard Mr. K. K. Bhatta, learned Counsel for the Appellants. Also heard Ms. P. Baruah, learned Counsel for the Respondents.

2. These appeals have been preferred by the insurance company being aggrieved by the award of the MACT, Cachar, Silchar in connection with MAC Case No. 1716/2004 passed by the learned Addl. District Judge, FTC, Cachar, Silchar to compensate the claimants who travelled as gratuitous passenger and sustained injuries when the accident occurred.

3. The case of the claimants in brief is that on 08.04.2004 at around 1:40 A.M, the claimants were travelling in a vehicle bearing No. As-11A-7732(Ambassador Car). The said vehicle was being driven by the driver in a rash and negligent manner. When the vehicle reached near Arunabond Tea State, the driver lost control over the vehicle as a result of which, the vehicle dashed against the road side tree. The claimants i.e., the occupants of the said vehicle sustained injuries on their person due to the alleged accident. Immediately, after the accident, all the injured were shifted to Silchar Medical College and Hospital for their treatment. Hence, the claimants filed their respective claim cases seeking compensation for the bodily injuries sustained by them in the said accident.

4. The claim petitions were resisted by the Insurance Company on the ground that the car was insured under the Act only policy. No additional premium was paid for the risk of the passengers. The vehicle being a private passenger car, the liability to pay the occupants is not vested with the insurer.

However, the tribunal did not consider the defence raised by the insurer and awarded compensation accordingly in favour of the claimant/respondent.

5. It was urged by the learned counsel for the appellant that the injured/claimants travelled in the vehicle bearing Regd. No. As-11A-7732, as gratuitous passengers in a private vehicle (Ambassador Car). As the policy cover did not extend to any liability arising on accident of injury or death of any gratuitous passenger being carried in the vehicle, the appellant insurance company is not liable to pay any compensation to the claimant for his injuries in the accident. Hence, the impugned order making the appellant liable and responsible to satisfy the award is not sustainable in law and is liable to be set aside.

In support of his submission, the learned counsel for the appellant has relied on the following case law-

- (i) 2006 LegalEgale (SC) 267 (United India Insurance Company Ltd. Shimla vs. Tilak Singh and Ors.)
- (ii) 2012 LegalEgale (Gau) 987 (New India Assurance Company. Ltd. Vs. Manasha Barman & Ors.)

6. On the other hand, learned counsel for the claimant has argued that on the date of accident, the alleged vehicle was duly insured with the appellant Insurance company. The learned tribunal has rightly passed the judgment holding the insurance company to pay the said amount as the passengers travelled in the vehicle are third parties.

7. I have considered the submissions of learned counsel for the parties. Perused the trial court record and the documents available thereon and the judgment of the learned Tribunal.

8. The accident occurred while the claimants/ respondents were travelling in the said car which capsized, when the driver lost control over the vehicle. The perusal of the insurance policy indicates that no additional premium was collected to cover the risk of the passengers occupying the car. The premium paid is to cover the third party claim and limited liability for the car owner/driver. Therefore, it is to be tested whether the occupant in a private car is a third party or not.

9. The copy of the insurance policy is available in the record which indicates that the vehicle was duly insured at the relevant time of accident. The owner of the vehicle has paid the premium of Rs.600/- for basic third party cover and Rs.100/- under personal accident cover for the owner/driver with additional premium of Rs.25/- towards limited liability for paid driver. No additional premium for the passenger paid. The policy shows that it is a private car liability only policy which is also called Act policy.

10. Under the current dispensation of the Motor Vehicle Act, the owner of the vehicle is at liberty to opt for comprehensive (package policy) or Act only policy (liability policy). Under the comprehensive policy, apart from basic premium to cover third party risk, the additional premium for the risk of occupants and own damages collected. In such case, the insurer is responsible to indemnify the insured against the third party claim and to the extent the terms of the contract limits the claims of the passengers and own damages. Under the Act only policy, only basic premium is collected to cover third party claim. In such case, the insurer is liable to indemnify the owner/insured only the third party claim and to the limited extent the terms of the contract specify for the personal accident cover, if any.

11. In the case of National Insurance Company Ltd. Vs. Balakrishnan and Anr.

reported in 2013 ACJ 199, the Hon'ble Supreme Court has clarified the above position more vividly after referring the clarification circular issued by Insurance Regulatory and Development Authority (IRDA) to the CEOs of all the insurance companies restating the factual position relating to the liability of the insurance companies in respect of a pillion rider on a two wheeler and/occupants in a private car under the comprehensive/package policy in following terms -

12. "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 "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 & Ors. Vs. United India Insurance Company Ltd. and another and therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessary 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."

13. Earlier in Dr. T.V. Jose vs. Chacko P.M. @ Thankachan & Ors. reported in 2001 (8) SCC 748, the court held that in an Act policy, the occupants of the car

are not covered as they do not fall within the ambit of Section 147 of Motor Vehicles Act. The Apex Court has again emphasized similar view in the judgment rendered in Oriental Insurance Company Ltd. Vs. Meena Variyal & Ors. reported in 2007 ACJ 1284. The Constitutional Bench of Hon'ble Supreme Court in New India Assurance Company Ltd. vs. C.M. Jaya & ors. reported in 2002 (1) ACC 299, has held that insurance company may not be made liable outside the scope of statute or terms of contract. If it is so done, it amounts to rewriting the statute of the contract of the insurance, which is not permissible.

14. Admittedly, in the instant case, the car in which the claimants travelled had insurance coverage only against third party claim under Act only policy. The Tribunal had erred in holding that the claimants are third parties, though they were the occupants in the car. The third party means the person unconnected to the insurer or the insured. An occupant in the car not for hire or reward is a gratuitous passenger. He is offered accommodation to travel in the car by the owner of the car explicitly. In the private passenger car which has no insurance coverage for the risk of the occupants except the Personal Accidental cover for the owner/driver, the insurer cannot be held liable to indemnify the other occupants for whom no premium paid by the owner to cover the risk. As per terms of the contract, the insurer had not agreed to cover the said risk. Hence, the appellant herein is exonerated from the liability to indemnify the owner of the vehicle against the claim of the passengers. Therefore, the award of the tribunal holding the appellant to pay the awarded amount is set aside.

15. In the result, the appeals are allowed. The appellant is at liberty to recover the awarded amount if paid earlier in accordance with law. Accordingly, the judgment and award dated 26.10.2009 passed by the learned Addl. District Judge, FTC, Cachar, Silchar in connection with MAC Case No. 1716/2004 is

hereby set aside. No order as to cost.

16. Refund the statutory amount in deposit, if any, to the Insurance Company.

17. Send back the trial court record.

JUDGE

Comparing Assistant