

GAHC010005622014



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

Case No. : MACApp./46/2014

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

VERSUS

SHRI MANTU KR. DAIMARY and ANR,
S/O LT. MATIRAM DAIMARY, R/O VILL. MATIKHUNDA GAON, PS.
DHEKIAJULI, DIST. SONITPUR, ASSAM.

2:BIPIN DAIMARY

S/O LT. M. DAIMARY
R/O MATIKHUNDA PAHAR
GARMARA
PS. DHEKIAJULI
DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. K K BHATTACHARYYA

Advocate for the Respondent : MS. J GOSWAMI

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT

Date : 11-01-2024

The insurance company is on appeal against the judgment and order, dated 27.08.2013 passed by the learned Member, MACT No.2 Kamrup, Guwahati in MAC Case No.

800/2009.

2. The case of the claimant is that on 03.09.2005, the claimant was travelling in a motorcycle bearing No. AS-12B-0396 from Tezpur side towards Dhekiajuli as a pillion rider. When the said vehicle reached Gotonga over NH -52, the driver lost his control and as a result of which the motorcycle knocked a lamb. Due to the alleged accident, the motorcycle fell down and the claimant sustained grievous injuries on his person. The allegation of the claimant is that the accident occurred due to rash and negligent driving by the driver of the offending motorcycle. After the accident, the injured was shifted to Kanaklata Civil Hospital, Tezpur for treatment and thereafter he had undergone treatment in different hospitals of Assam and Patna.

3. The learned tribunal after recording evidence of witnesses and considering other documents available in the records, awarded compensation to the claimant/ respondent No. 1 amounting to Rs.1,16,000/-.

4. Learned counsel for the appellant has argued that admittedly the claimant had traveled as a pillion rider in a motorcycle and policy of the said motorcycle was an Act policy and no additional premium was paid by the owner /insured for the coverage of a pillion rider and as such the award is bad in law and is liable to be set aside.

5. It is also the submission of learned counsel for the appellant that insurance company has proved the insurance policy vide Exhibit –A before the tribunal which is an Act policy and there is no liability on the part of the insurance company towards the claim of the pillion rider. The Act policy does not cover the risk of death or bodily injuries to the gratuitous passengers. The liability of the insurance company can be determined only on the basis of the premium collected and in the absence of additional premium, the insurance company is not liable to pay compensation. |The tribunal erred in holding that respondent No.1 i.e. the clamant is the third party and failed to note that the occupant of the vehicle cannot be treated as third party.

6. Learned counsel for the appellant also submitted that the learned Member, MACT did not consider the evidence of Tarun Azad Narzary who was examined as DW-1 before the Tribunal and who categorically stated that the insurance policy of the motorcycle was an Act

policy and in the said policy, there was no coverage for the pillion rider.

7. Learned counsel for the appellant also submitted that the learned tribunal proceeded to hold the appellant insurer responsible to pay the compensation merely because as the policy was issued and the same was in force on the date of the accident, by completely overlooking that the claimant was nothing but a gratuitous passenger and he was not covered under the policy.

8. In support of his submission, learned counsel relied on the following case laws:

1. *United India Insurance Company Ltd., Shimla-vs- Tilak Singh & Ors, reported in 2006 (4) SCC 404.*
2. *New India Assurance Company Ltd. -vs- Manasha Barman & Ors reported in MAC Appeal No. 274/2006, of this court, dated 28.09.2012.*

9. None appears for the respondent No.1/ claimant. As the matter is pending in this court since 2014, after hearing the learned counsel for the appellant, the case was fixed for delivery of judgment without further allowing time to the respondent's side to argue in the case.

10. The only question involved in this appeal is that whether the claimant is entitled for compensation though he was travelling as pillion rider and the policy of the vehicle was an Act policy!

11. In *New India Assurance Company Ltd. -vs- Asha Rani 2003 ACJ 1 (SC)*, it has been noted as follows:-

“ Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person'

must also be attributed having regard to the context in which they have been used, i.e., 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of [Section 147](#) speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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."

12. In the judgment of the Supreme Court in 2006 ACJ 1441, it has been held as follows:-

"In our view, although the observations made in Asha Rani's case, 2003 ACJ 1 (SC), 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 gratuitous passenger.

The dictum laid down therein applies to the facts of the present case, as the policy marked on the side of the appellant shows that it is only an Act policy, the Tribunal ought to have exonerated the Insurance Company from paying the compensation, but the Tribunal has erroneously come to the conclusion that since the proposal form is not filed along with the insurance policy copy, the insurance company is liable to pay the compensation. The said finding is not legally sustainable and the same is liable to be set aside. Accordingly, the said finding is set aside and consequently, the appellant is exonerated from paying the compensation amount."

13. In another case, *Oriental Insurance Company Pvt. Ltd.-VS- Surendra Nath Loomba & Ors* reported in 2012 (2) TN MAC 650 (SC) , it has been held as follows:

"13. Recently this Bench in [National Insurance Company Ltd. v. Balakrishnan &](#)

Another[10], after referring to various decisions and copiously to the decision in *Bhagyalakshmi (supra)*, held that there is a distinction between "Act Policy" and "Comprehensive/Package Policy". Thereafter, the Bench took note of a decision rendered by Delhi High Court in Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another wherein the High Court had referred to the circulars issued by the Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA). This Court referred to the portion of circulars dated 16.11.2009 and 3.12.2009 which had been reproduced by the High Court and eventually held as follows: -

"19. It is extremely important to note here that till 31st December, 2006 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. He 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 and 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 than 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."

14. In view of the aforesaid legal proposition, 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 occupant and where the vehicle is covered under the comprehensive/ package policy there is no need for motor accident claims tribunal to go into the question when the insurance company is liable to compensation for the death of a pillion rider on a two wheeler or occupant of a private car.

15. In *National Insurance Company Limited –vs- Srinivasa & Ors.* reported in CDJ 2017 Karnataka, 1513 it was held as under:

"16. If the risk of an occupant of a car, inmate of a vehicle or passenger in a private car, is to be covered, additional premium has to be paid. If no additional premium is paid, their risk is not covered. The statutory liability under Sections 146 and 147 of the Act has to be read with the terms of the insurance policy issued under Section 146 of the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute, whereby the risk to gratuitous passengers could also be covered. A third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. The liability is restricted to the liability arising out of the statutory requirements under Section 14 only."

16. In the Oriental Insurance company –vs- K.V. Sudhakaran & Ors reported in CDA 2008 SC 1040, it has been held as follows:-

"19. 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 in vehicle."

17. In Tilak Singh and Ors. (supra), it has been noted as follows:

"In our view, although the observations made in Asha Rani's case (supra) 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."

18. In the case of *United India Insurance Co.Ltd.-vs- M.V.Rajendran and another*, reported in CDA 2017 MHC 430, it was observed as follows:

"5. Considering the facts and circumstances of the case and the submissions made on either side, this Court is of the view that Act policy covers the losses arising out of the persons stipulated in Section 147 of the Motor Vehicles Act, 1988 and the said provision of the Motor Vehicles Act will not cover a pillion rider in a Motor Cycle and therefore, the Insurance Company is not liable to pay compensation and the Civil Miscellaneous Appeal is to be allowed."

19. From the judgments relied on by the learned counsel appearing for the appellant as well as the aforesaid legal proposition, the following principles emerged;

(i).The policy which the owner of the vehicle takes under Section 147 of the Motor Vehicles Act is 'Statutory Policy', also known as 'the Act Policy'.

(ii)It covers the liability of the owner in respect of third party only. After amendment of the Section in the year 1994 by Act 54 of 1994 which came into force with effect from 14.11.1994, it covers owner of the goods or his authorized representative carried in the goods vehicle.

(iii).The owner of the vehicle can pay extra premium to increase the liability of the insurer in respect of third party.

(iv).The rider, pillion rider of a two-wheeler and occupant of a four-wheeler are not third parties and they are not covered by Act Policy issued by the Insurance Company.

(v).The owner of the vehicle can pay extra premium to cover personal accident claim, the rider, pillion rider and occupant of a four-wheeler. The policy issued by the Insurance Company after receiving extra premium to cover rider and pillion rider of a two-wheeler and occupants of a four-wheeler is called 'Comprehensive Policy'.

(vi).Only when the owner of the vehicle takes Comprehensive Policy by paying extra premium, the pillion rider in a two-wheeler can claim compensation from the Insurance Company. If the policy is Act only Policy, the rider, the pillion rider in a two-wheeler and occupant of a four-wheeler are not third parties as per Section 147 of the Motor Vehicles Act and they are not entitled to claim compensation from the Insurance Company.

20. In the present case, the respondent No.1/claimant was travelling in the motorcycle as a pillion rider driven by the respondent No.2. According to the respondent No.1/ claimant, due to rash and negligent driving by the respondent No.2, respondent No.1 fell down from the motorcycle and sustained multiple injuries.

21. The contention of the appellant is that the policy in question is only an Act policy and it covers the risk and liability in respect of the third parties only and it does not cover the rider and pillion rider of the motorcycle. The respondent No. 1 has not disputed that the policy issued by the appellant is only Act policy. It is not the case of the Respondent No.1 that policy issued by the appellant is comprehensive policy covering both the rider and pillion rider of the motorcycle. The Tribunal fastened the liability of the appellant on the ground that as the insurer of the vehicle had issued the policy, they had to pay the compensation. Such finding is erroneous. It is well settled that in an Act policy the rider and the pillion rider of the two wheeler are not covered and the insurance company is not liable to pay compensation for the bodily injuries or death. Whether the pillion rider is covered under the Act policy or not was considered by the Hon'ble Apex Court in the case of Tilak Singh (*supra*) wherein the Hon'ble Apex Court has held that the pillion rider is not covered in Act policy and the insurance company is not liable to pay the compensation to the pillion rider.

22. As per the judgments referred to above, in an Act policy, the pillion rider in two wheeler is a gratuitous passenger and the appellant is not liable to pay compensation to the respondent No.1/ claimant.

23. In the result, appeal is allowed. The award of the tribunal passed in MAC Case No. 800/2009 dated 27.08.2013 is hereby set aside.

24. The appellant insurance company is permitted to withdraw the amount if deposited in

connection with claim petition by filing necessary application before the tribunal.

25. No costs.

Send back the LCR.

The statutory amount in deposit be refunded accordingly.

JUDGE

Comparing Assistant