

GAHC020003192022



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

Case No. : MACApp./5/2022

ORIENTAL INSURANCE CO.LTD
HEAD OFFICE AT ORIENTAL HOUSE A-25/27, ASAF ALI ROAD, NEW
DELHI-110002 AND REGIONAL AND DIVISIONAL OFFICES IN
SEVERAL PLACES INCLUDING A REGIONAL OFFICE AT GUWAHATI,
ASSAM AND A DIVISIONAL OFFICE AT DIMAPUR, NAGALAND

VERSUS

SHRI. GOBIN BHUYAN AND 3 ORS
PRESENTLY RESIDING AT TUENSANG TOWN, NAGALAND

2:SMTI. RANU BHUYAN
WIFE OF SHRI. GOBIN BHUYAN. TUENSANG TOWN
NAGALAND

3:SMTI. JOYSHREE BHUYAN
DAUGHTER OF SHRI. GOBIN BHUYAN
TUENSANG TOWN

4:SHRI. DIBYAJYOTI BORUAH
S/O SHRI. HEMA BORUAH
R/O PITHAGURI
MERAGAON
P.O. PITHAGURI
LAKHIMPUR
ASSAM

Advocate for the Petitioner : B. DEVNATH

Advocate for the Respondent : MOAJUNGLA R-4

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

Date : 23-07-2024

1. Heard Mr. V. Devnath, learned counsel for the appellant. Also heard Mr. B. N. Sarmah, learned Counsel for Respondent No. 1, 2 and 3 and Ms. Moajungla, learned counsel for Respondent No. 4.
2. This Motor Accident Claims Appeal has been preferred by the appellant, namely, the Oriental Insurance Company Limited under Section 173 of the Motor Vehicle Act, 1988 against the judgment and award dated 25.03.2022 passed by the Motor Accident Claims Tribunal, Tuensang, Nagaland in MAC Case No.07/2019, whereby the appellant Insurance Company was directed to pay the compensation amount of Rs. 15,81,922/- only along with an interest at the rate of 9% per annum from the date of filing of the claim petition until payment of the compensation amount to the claimants.
3. The facts relevant for adjudication of this appeal, in brief, are as follows:
 - i. The appellant is an Insurance Company subsidiary to the General Insurance Corporation of India and as such, a Government of India undertaking actively involved in the business of general insurance.
 - ii. On 20.01.2019, the deceased Ranjan Bhunya riding pillion on

the motorcycle bearing registration No. AS 07 A 8242, which was driven by the Respondent No. 4, while they were returning from Patholi Pahar Centre towards his residence met with an accident at Pithaguri Missing Gaon when a herd of cows running on the road blocked the road and a bull, one of the bulls suddenly created commotion in the herd. As the motorcycle was coming at a high speed, in order to avoid hitting to the aggressive herd the driver applied sharp brake and due to the heavy jerk, the pillion rider of the motor was thrown out of the said motorcycle a few feet apart on the road. The accident caused grievous injuries on his person, and consequently, the pillion rider succumbed to his injuries in the hospital, while taking treatment for the injuries sustained by him.

- iii. Respondent No. 1, 2 and 3 who are the father, mother and sister of the deceased Ranjan Bhuyan, filed a Motor Accident Claim Case under Section 166 read with Section 140 of the Motor Vehicles Act, 1988, claiming compensation for the death of late Ranjan Bhuyan in the aforementioned vehicular accident.
- iv. The said case was registered as MAC Case No. 07/2019 before the Motor Accident Claims Tribunal, Tuensang, Nagaland.
- v. The respondent No. 4 was made the opposite party No. 1 in

the said claim case. Whereas, the present appellants were made Respondent No. 2 and 3 in the said claim case. All the opposite parties filed their written statement in the said claim case.

- vi. It is pertinent to mention herein that the appellants, submitting their written statements as opposite party Nos. 2 and 3 have taken specific plea in paragraph No. 2 of their written statement that the deceased was a pillion rider and was not insured under the insurance policy, as same did not cover the pillion rider as it was only an "Act Only Policy". Therefore, the appellants denied their liability to pay compensation to the claimants.
4. Learned Member, Motor Accident Claims Tribunal, Tuensang, had framed four issues in the MAC Case No. 07/2019 and the claimants examined three witnesses in support of their claim. However, no evidence was adduced by the opposite parties. After completion of the inquiry, learned Member, Motor Accident Claims Tribunal, Tuensang, by the judgment and award impugned in this appeal had awarded a compensation amount of Rs. 15,81,922/- to the Respondent Nos. 1, 2 and 3 (claimants) along with an interest of 9% per annum from the day of filing of the claim petition till the date of realization. The appellant was directed to pay the awarded compensation within 30 days of the date of the impugned order.
 5. Mr. V. Devnath, learned counsel for the appellant has submitted

that the main ground on which the appellant has preferred this instant appeal is that in the instant case Though the insurance company had taken the plea in paragraph No.2 of the written statement filed before the Claims Tribunal in MAC Case No.07/2019 that the insurance policy in respect of the vehicle involved in the accident i.e., motorcycle bearing registration No. AS-07-A-8248 was not insured to cover the pillion rider and the Insurance Policy concerned is only "*Act Only Policy*" and therefore, the Insurance Company is not liable to pay compensation to the claimant for the death of the late Ranjan Bhuyan, who was pillion riding the said motorcycle at the time of the accident.

6. Learned counsel for the appellant has submitted that as the policy involved in the instant case is an "*Act Only Policy*" which does not cover the pillion rider, the Insurance Company is not liable to indemnify the owner in case of any death or injury caused to the pillion rider.
7. It is submitted by learned counsel for the appellant that the policy in question (policy number 322892/31/2019/2156) only covers the third party risk as well as an additional premium was paid for the coverage of the owner cum driver in the instant case. However, there was no extra premium paid for the pillion rider and it is submitted by learned counsel for the appellant that in a catena of judgment the Apex Court has held that the pillion rider or occupants of car would be covered under insurance policy only if

the said policy is a package policy or comprehensive policy.

8. It is submitted by the learned counsel for the appellant that in the instant case as the policy in question is only an "*Act Only Policy*" which covers the risk of third party and an additional premium was has been paid for covering the driver cum owner the pillion rider would not be covered by the said policy and therefore, the appellant is not liable to indemnify the owner for payment of compensation awarded to the claimant slash opposite party number respondent Nos. 1, 2 and 3.
9. Learned counsel for the appellant has also submitted that the Tariff Advisory Committee as well as IRDA which is functioning as the Statutory Regulatory Authority has issued individual circulars to various Insurance Company making it clear that in case of a comprehensive/package policy of two-wheeler vehicle a pillion rider is also covered.
10. In support of his submissions, learned counsel for the appellant has cited following rulings of the Apex Court:
 - i. New India Insurance Company Limited Vs. Asha Rani reported in (2003) 2 SCC 223 ;
 - ii. United India Insurance Company Limited Vs. Tilak Singh reported in (2006) 4 SCC 404;

- iii. Oriental Insurance Company Limited Vs. Sudhakaran KV and Others reported in (2008) 7 SCC 428;
 - iv. National Insurance Company Limited Vs. Bala Krishnan and Another reported in (2013) 1 SCC 731;
 - v. Oriental Insurance Company Limited Vs. Shri K. K. Harish Kumar reported in AIR Online 2020 KAR 1468.
11. On the other hand, Mr. B. N. Sarmah learned counsel for the respondent Nos. 1, 2 & 3 has submitted that the pillion rider, in the instant case, may be regarded as a third party, for the purpose of deciding the applicability of the insurance policy in this case. He submits that as the contract of insurance was between the owner of the vehicle which has been involved in the incident as well as the insurance company, any other party apart from those two, may be regarded as third party vis-à-vis the contract of insurance. In support of his submission learned counsel for respondent Nos. 1, 2 & 3 has cited a ruling of this Court in the case of "**National Insurance Company Limited Vs. Mrs. Sangeeta Sonowal and others**" (judgment dated 18.05.2023 in MAC Appeal No. 7/2021)
12. Learned counsel for the respondent has also submitted that though the appellant has taken the plea that even if the pillion rider may not be treated as a third party under the insurance policy involved in this case and that no insurance cover was there in respect of the

pillion rider, however, he submits that the appellant has not taken this plea or made this submission before the Motor Accident Claims Tribunal, Tuensang, during the pendency of the inquiry before the said Tribunal , therefore, the appellant is estopped for taking that plea at the stage of the appeal.

13. Learned counsel for the respondents has also submitted that the insurance company never produced the copy of the insurance policy and never brought the same on record during the pendency of the inquiry before the Motor Accident Claims Tribunal.
14. It is also submitted by learned counsel for the respondents, that the insurance company led no evidence to show that the insurance policy does not cover a pillion rider. He submits that as it is the insurance company which took the plea of non-applicability of the insurance policy in the case of a pillion rider, hence, it was incumbent upon the insurance company to exhibit the insurance policy to prove its contention which has not been done ,therefore, the insurance company cannot take this plea at the stage of appeal. In support of his submission learned counsel for the respondents has cited following rulings

- i. Saikou Jabbi Vs. State of Maharashtra reported in (2004) 2 SCC 186;
- ii. National Insurance Company Limited Vs. Swaran Singh and Another reported in (2004) 3 SCC 297;

- iii. New India Assurance Company Limited Vs. Smt. Shanti Devi and Others Reported in AIR 2010 Punjab and Haryana 156.

15. I have considered the rival submissions made by the learned counsel for both the parties and have perused the materials available on record carefully. I have also gone through the rulings cited by learned counsel for rival parties thoroughly.
16. The main issue to be decided in this appeal is as to whether the deceased Ranjan Bhuyan, who was the pillion rider of ill-fated motorcycle, which was involved in the accident, was covered by the insurance policy which was an "Act Only Policy" and whether such a pillion rider may be regarded as a third party in context of the said insurance policy or not.
17. It appears on perusal of the written statement filed by the present appellant in MAC Case No. 07/2019 before the Motor Accident Claims Tribunal, Tuensang that in paragraph No. 2 of the said statement, the appellants have categorically pleaded that the insurance policy in question does not cover the pillion rider as same as the "Act Only Policy". However, it appears that the Motor Accident Claims Tribunal, Tuensang, had not framed any specific issue regarding the plea of the deceased being not covered by the insurance policy.
18. It is pertinent to note here that the Motor Accident Claims Tribunal

had framed four issues out of which the issue no. 4 was as to “whether the claimants are entitled to any compensation, if so, what amount and payable by whom”. Though, the Tribunal has decided the Issue No. 4 in affirmative. However, while discussing the said issue, it has not discussed as to by whom the compensation amount is payable and instead of that, it has directly mentioned in the order that the appellants shall deposit the awarded amount within one month of the date of award. As to how and why the Insurance Company is liable to pay the compensation amount has not been discussed by the Tribunal while deciding the Issue No. 4.

19. The Supreme Court of India in the case of ***"Oriental Insurance Company Limited Vs. Sudhakaran K.V. And Others"*** (Supra) has discussed the issue of pillion rider vis-à-vis the “Act Only Policy” and has observed as follows:

16. Indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle.

17. This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the

vehicle in terms of Section 147 of the Act. (See New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493].)

18. A Division Bench of this Court in United India Insurance Co. Ltd. v. Tilak Singh [(2006) 4 SCC 404 : (2006) 2 SCC (Cri) 344] extended the said principle to all other categories of vehicles also, stating as under : (SCC p. 412, para 21)

"21. In our view, although the observations made in Asha Rani case [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] 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."

20. The Apex Court, in the aforesaid judgment, has also laid down the law regarding the pillion rider vis-à-vis the obligation arising under Section 147 of the said Act in following manner:

25. 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.

21. It appears that, in the instant case the policy in question is not a comprehensive /package policy rather it is an "Act Only Policy" covering the third-party risks as well as the insurance coverage of the owner/driver (on payment of additional premium). On perusal of the Exhibit P-12, which is the insurance policy bearing No. 322892/31/2019/2156, in respect of vehicle involved in the accident where the insured person's name is reflected as Shri Dibyajyoti Boruah i.e. the respondent No. 4 in this case, is only a "Liability Only Policy" as appears from the title portion of the said policy.
22. It also appears that as regards the liability of the insurer, the premium has been paid for third party cover as well as additional premium for owner/driver. However, no premium is paid against the pillion rider in the said insurance policy. "Liability Only Policy" which is also known as "Act Only Policy" is in respect of third party insurance coverage only which is mandatory under Section 147 of the Motor Vehicles Act, 1988.

23. In the instant case though specific plea has been taken in the written statement filed by the appellant before the Motor Accident Claims Tribunal in MAC Case No. 7/2019, however, the said Tribunal failed to frame any specific issue to that effect and while discussing the issue No. 4 also, it has not considered and discussed this aspect of as to whether the Insurance Company is liable to indemnify the amount fixed as compensation to be payable to the respondent No. 1, 2, and 3 for death of the pillion rider in absence of any contemplation regarding the same in the insurance policy.
24. Thus, we have seen hereinabove from the authoritative ruling of the Apex Court of India in the case of ***Oriental Insurance Company Limited Vs. Sudhakaran KV and Others (Supra)***, wherein the Apex Court has discussed its earlier rulings on the subject and came to a finding that the liability of the Insurance Company where no premium has been paid for the pillion rider does not extend to a pillion rider of the motor vehicle for covering his risk.
25. It has also observed that the legal obligation arising out of Section 147 of the M V Act cannot be extended to an injury or death of the pillion rider of the vehicle in absence of payment of additional premium for covering the said risk.
26. The Apex Court has also observed that the pillion rider in a two-wheeler vehicle may not be treated as a third party when the accident has taken place owing to the rash and negligent riding of the two-wheeler vehicle which the deceased was riding as a pillion

when not on the part of the of another vehicle in the instant case also there is no dispute to the fact that the deceased was the pillion rider of the vehicle involved in the accident at the time of the accident and no other vehicle was involved in the accident.

27. It appears from the insurance policy available on record that no extra premium has been paid for covering the risk of the pillion rider of the motorcycle which was insured. Hence, in view of the ruling of the Apex Court cited hereinabove, the pillion rider of a two-wheeler may not be treated as a third party and the Insurance Company i.e., the appellant, may not be burdened with the task of indemnifying the owner/driver for payment of the compensation awarded to the respondent No. 1, 2 and 3 by the Motor Accidents Claims Tribunal, Tuensang.
28. Thus, in view of the discussions made hereinabove, this Court is of considered opinion that the Motor Accident Claims Tribunal has failed to appreciate the facts involved in the MAC Case No. 07/2019 and had erroneously come to the conclusion that the Insurance Company is liable to pay the compensation amount for death of the pillion rider of the insured vehicle due to the motor vehicle accident.
29. In view of discussions made above, this appeal is allowed in part. The judgment and award passed in MAC Case No. 07/2019 on 25.03.2022 by the learned Member, Motor Accident Claims Tribunal, Tuensang, is interfered with in respect of the fastening of liability

on the Insurance Company (appellant) and same is modified to the extent that the respondent No.4 (owner/driver) is liable to pay the compensation awarded by the Motor Accident Claims Tribunal, Tuensang, to the respondent Nos. 1, 2 & 3.

30. It appears from the record of this case that in pursuant to the order of this Court, the appellant had deposited 50% of the amount that is Rs. 7,90,961/- which has already been received by the claimants. Hence, the said amount may be recovered by the Insurance Company from the owner of the vehicle, i.e., the Respondent No. 4.
31. The respondent No. 4, i.e., the owner/driver of the insured vehicle, which is involved in the accident, is hereby directed to pay the remaining amount of the awarded compensation to the respondent Nos. 1, 2 and 3/claimants.
32. The Registry shall return back the statutory deposit of Rs. 25,000/- to the Insurance Company/Appellants.
33. The Registry of the Principal Seat is directed to send back the record of MAC Case No. 07/2019 along with a copy of the judgement to the Kohima Bench of this Court immediately for transmitting the same to the Motor Accident Claims Tribunal, Tuensang, forthwith.

JUDGE

Comparing Assistant