

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.66 OF 2011

1. Smt. Milan Saha,
W/O. Late Prafulla Mohan Saha,
Resident of Indranagar,
P.S.-East Agartala, District-West Tripura.
2. Shri Sandip Das,
S/O. Shri Sujit Kumar Das.
3. Smt. Susmita Das,
D/O. Shri Sujit Kumar Das.

Sl. Nos.2 and 3 are residents of
Kumarghat, P.S. Kumarghat,
District-North Tripura.
[Sl. Nos.2 and 3 being minor they are
represented by their grandmother i.e.
Claimant Petitioner No.1]

..... **Claimant Petitioner Appellants.**

- V e r s u s -

1. Shri Sujit Kumar Das,
S/O. Late Sanat Kumar Das,
Resident of Village-Rabindra Palli,
P.S.-Kumarghat,
District-North Tripura.
(Owner of the vehicle No.TR-03-5883, Scooter).
2. The Oriental Insurance Company Ltd.,
Divisional Office,
Central Road, Agartala,
West Tripura.
Represented by its Divisional Manager.

..... **Opposite Party Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. S.K. Dutta, Advocate.

For the respondent No.2 : Mr. K. Bhattacharji, Advocate.

Date of hearing and
delivery of judgment
and order. : 30.07.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimants is directed against the award dated 28-05-2011 passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 367 of 2008 whereby he rejected the claim petition filed by the claimants.

2. The claimants are the mother and minor son and daughter of the deceased Late Smt. Sova Saha (Das), wife of Shri Sujit Kumar Das, the owner of the vehicle. The admitted case of the parties is that Sujit Kumar Das is the owner of scooter bearing registration No.TR-03-5883. This vehicle was insured with the Oriental Insurance Company Limited. It is alleged that Late Smt. Sova Saha (Das), wife of Sujit Kumar Das was travelling with her husband on this scooter on 12.5.2008 when the scooter met with an accident due to the rash and negligent driving of Sri Sujit Kumar Das and, therefore, the claimants are entitled to compensation.

3. The learned Tribunal dismissed the claim petition holding that since the petitioner Nos. 2 and 3 are the children (son and daughter) of the respondent-owner and the petitioner No.1 is the mother-in-law of the respondent-owner, they are co-owners of the scooter and, therefore, they cannot file the claim petition. He further went on to hold that the claim petition was collusive.

4. I am clearly of the view that this finding of the learned Tribunal is totally perverse. The children were not the co-owners of

the scooter. Even the deceased Sova Saha (Das), wife of Shri Sujit Kumar Das was not the co-owner of the scooter. She may have been the wife of Sujit Kumar Das, the owner, but that does not make her the co-owner. The person who has died is not the owner of the scooter but the wife of the owner of the scooter. In case, the owner of the vehicle dies, then obviously a claim petition cannot be filed by his heirs but where one of the relatives of the owner of the vehicle dies a claim petition by the remaining heirs can definitely be filed.

5. The deceased is alleged to be doing tailoring business and she was aged about 40 years. The accident took place in the year 2008 and even if I were to take the contribution of the lady for running the household itself, the same would not be less than Rs.3,000/- per month or Rs.36,000/- per year towards the minor children alone. Applying the multiplier of 15, the compensation, therefore, works out to Rs.5,40,000/-. The claimant-children are also held entitled to Rs.60,000/- for loss of their mother and the total compensation works out to Rs.(5,40,000 + 60,000)= Rs.6,00,000/- (rupees six lakhs).

6. In view of above discussion, the appeal is allowed. The award of the learned Tribunal is set aside and the claimants are awarded compensation of Rs.6,00,000/- along with interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

7. The question that now arises is as to who is liable to pay the compensation. According to Sri K. Bhattacharji, learned

counsel for the Insurance Company, since the deceased was a pillion rider, the Insurance Company is not liable. Unfortunately, this aspect of the matter has not been discussed by the learned Tribunal at all. On the other hand, Sri S.K. Dutta, learned counsel for the claimant-appellants, urged that in view of the IRDA guidelines and the judgment of the Delhi High Court in ***Yashpal Luthra and another vs. United India Insurance Co. Ltd. and another, 2011 ACJ 1415*** as well as the judgment of a learned Single Judge of the Gauhati High Court in ***MAC APP 14 of 2009 (The United India Insurance Company Limited vs. Smt. Uma Kalai (Debbarma) & ors.***, the insurance company in the case of a package/comprehensive policy must pay the entire amount.

8. Reference may be made to the judgment of the Apex Court in ***National Insurance Co. Ltd. vs. Balakrishnan and another, 2013 ACJ 199***, wherein though the Supreme Court approved the law laid down in the Delhi High Court judgment, but went on to hold that merely because the policy is termed as a package or comprehensive policy is not sufficient to hold that it is such a policy but the terms and conditions of the policy will have to consider.

9. Reference may also be made to Paras 22 and 23 of the judgment of the Apex Court in ***Balakrishnan's (supra)*** case, which reads as follows:-

“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."

10. Similar view has been taken by the Supreme Court in ***Oriental Insurance Co. Ltd. vs. Surendra Nath Loomba and others, 2013 ACJ 321***, wherein also the matter was remitted to the Tribunal to decide the question as to who is liable in terms of the policy and the IRDA. As far as the present case is concerned before the Tribunal neither the claimant nor the owner nor the insurance company led any evidence as to the terms of the policy.

11. Therefore, in view of the above discussion, I feel that following the judgment in ***Balakrishnan's (supra)*** case it would

be proper to remit the case back to the Tribunal only for the purpose of fixing the liability.

12. The parties are directed to appear before the learned Motor Accident Claims Tribunal on 16th November, 2015 and thereafter, the learned Tribunal after giving opportunity to both sides to produce the policy of insurance shall also give an opportunity to both sides to produce evidence. The Tribunal shall direct the owner to produce the original certificate of insurance but if the owner fails to produce the original certificate, then the Insurance Company shall be directed to produce the certified copy of the policy of insurance as well as the decision of the tariff advisory committee of IRDA and the learned Tribunal shall decide the matter of liability after considering all these factors. As far as the quantum is concerned that shall not be gone into by the Tribunal.

13. The appeal is disposed of in the aforesaid terms.

14. Send down the lower court records forthwith.

CHIEF JUSTICE