

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.93 OF 2011

Sri Dipak Sutradhar,
S/O. Lt. Sudhan Sutradhar,
Resident of Indranagar,
P.S.-East Agartala, District-West Tripura.
(Owner of TR-01-D-7963 (BAJAJ
MOTOR CYCLE).

..... **Appellant.**

- V e r s u s -

1. Smti. Parbati Das Gupta (Dhar),
W/O. Lt. Ranu Ranjan Das Gupta,
Of Bhati Abhaynagar, District-West Tripura.
P.O. Agartala.
2. Smti. Mistu Das Gupta,
W/O. Sri Biswajit Paul,
Resident of Jagaharimura,
P.S.-East Agartala, West Tripura.
P.O. Agartala.
3. Smti. Manti Dasgupta (Roy),
W/O. Sri Tanmoy Roy,
Resident of Dimsagar,
P.S.-East Agartala, West Tripura.
P.O. Agartala.
4. The Divisional Manager,
The Oriental Insurance Company Limited,
Agartala Branch, P.O. Agartala,
Agartala, Tripura.
(Insurer of the vehicle bearing
No.TR-01-D-7963 (Bajaj Motor Cycle).

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Ms. S. Deb Gupta, Advocate.

For the respondent No.4 : Mr. P. Gautam, Advocate.

Date of hearing and : 03.07.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

The short question involved in this appeal is whether the Insurance Company is liable to pay the awarded amount or not.

The learned Motor Accident Claims Tribunal held that the Insurance Company was not liable because of the following reasons:-

“Copy of the insurance policy has not been produced. There is nothing in the certificate that premium was paid covering the risk of owner and pillion rider. There is also nothing as to what is the extent of the “Package Policy”. Under the circumstances, in view of the law laid down by the hon’ble Apex Court as stated above the Insurance Co. cannot be held responsible for making payment of compensation.”

2. With due respect, I am not unable to agree with this reasoning of the learned Motor Accident Claims Tribunal. The Motor Accident Claims Tribunal cannot be a silent spectator and it could have directed the Insurance Company to produce the original policy of insurance. Now certain guidelines have been given by the tariff advisory committee which have been considered and approved by the Apex Court also. The question is what were the terms of the policy. That can only be decided after going through the policy.

3. 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.

4. 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.

5. 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."

6. 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.

7. 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.

8. The parties are directed to appear before the learned Motor Accident Claims Tribunal on 26th August, 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 and the learned Tribunal shall decide the matter of liability after considering all these factors.

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

10. Send down the lower court records forthwith.

CHIEF JUSTICE