IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 56 of 2015

New India Assurance Company Ltd., Aurangabad, Through its Divisional Manager, Adalat Road, Aurangabad.	.. Appellant (Original respondent no.2)

versus

1. Sunita Wd/o. Uttam Waghmare,
   Age : 29 years,
   Occupation : Household,
   R/o. Salgara (M),
   Taluka : Tuljapur,
   District : Osmanabad.

2. Panchashila Uttam Waghmare,
   Age : Minor,
   Occupation : Education.

3. Pragati Uttam Waghmare,
   Age : Minor,
   Occupation : Education.

   Nos.2 & 3 are minors, U/G of
   Their Mother, Claimant No.1,
   Sunita Uttam Waghmare.

4. Mudrikabai Masa Waghmare,
   Age : 59 years,
   Occupation : Household,
   R/o. As above. .. Respondent no.4 deleted.

5. Udhav Babu Kadam,
   Age : Major,
   Occupation : Business,
   R/o. Jalkot, Taluka : Tuljapur,
   District : Osmanabad.

.. Respondents
(Nos.1 to 4 - Original claimants
&
No.5 - Original respondent no.1)

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Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

Mr. S.P. Urgunde, Advocate, for respondent nos.1 to 3.

Respondent no.4 deleted as per Court's order dated 10-3-2015.

Mr. S.N. Patne, Advocate, for respondent no.5.

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CORAM : A.M. BADAR, J.

DATE : 2ND DECEMBER 2015

ORAL JUDGMENT :

1. Admit. By consent of the learned Counsel appearing for the parties, heard finally.

2. Brief facts leading to the institution of the present proceedings can be summarized thus :-

(a) Claimants / respondent nos.1 to 3 herein lodged claim for compensation resorting to the provisions of Section 166 of the Motor Vehicles Act, 1988 **[For short, hereinafter referred to as "MV Act"]** against respondent no.5 (owner of jeep bearing registration no. MH-24/C-0852) / original respondent no.1 and its insurer / present appellant (original respondent no.2). For the sake of convenience, parties shall be referred to in their original capacity.

(b) Claimants are the legal representatives of deceased Uttam Masa Waghmare. It is their case that on 27-2-2010, deceased Uttam and other claimants were travelling in the said jeep from Jalkot to Salgara (M). Because of high speed of the said jeep near village Borgaon, deceased Uttam was thrown out of the jeep. He sustained head injury and was declared dead at the hospital. This accident, according to case of claimants, has resulted in registration of crime against driver of the said jeep. Claimants contended that at the time of his death, deceased Uttam was 34 years of age and was serving as Peon in the school with monthly earning of Rs. 10,254/-. He was also doing some part time service. Accordingly, compensation of Rs. 25,00,000/- was claimed from respondents.

(c) Respondent - owner opposed the claim by filing written statement at Exhibit 26 and contended that deceased Uttam alighted from the jeep. However, suddenly he turned back and proceeded towards the jeep which was already in motion. Deceased Uttam in that course came in contact with the rear portion of the jeep and suffered a fall causing the injuries. Thus, in other words, it was case of owner that deceased died because of his own rash and negligent act in proceeding towards the running jeep.

(d) Respondent - Insurance Corporation opposed the claim by contending that at the time of the accident, jeep was used for carrying passengers on hire basis. It was further averred that the policy of insurance was an act only policy. This policy was not covering the risk of occupants of the jeep as no separate premium was paid for covering their risk. Other averments made by claimants were also denied by the respondent - Insurance Company.

3. On the basis of rival pleadings, the learned Tribunal framed issues and the parties went for trial. After hearing the parties, by the impugned judgment and award, the learned Tribunal came to the conclusion that deceased Uttam died because of rash and negligent driving of the jeep bearing registration No. MH-24/C-0852. The Tribunal then proceeded to examine liability of the parties and concluded that the policy of insurance of the said jeep was an act only policy. The learned Tribunal then directed that liability to pay compensation to claimants needs to be borne by owner and insurer jointly as well as severally. For making the insurer liable, the learned Tribunal has given a reasoning that claimants as well as the deceased were travelling in the offending jeep as passengers not for hire or reward. Insurance policy provides that six passengers excluding driver can travel in the said jeep with prohibition of its use for hire or reward, organized racing and speed testing. Therefore, the learned Tribunal held that passengers in the said jeep were third party to the contract of insurance. As such the Insurance Company was made liable to indemnify the insurer.

4. This is an appeal impugning the finding of the learned Tribunal to the effect that passengers in the said jeep, which is a private motor vehicle insured with Act only policy are third parties to the contract of insurance.

5. Heard Shri Chapalgaonkar, the learned Counsel appearing for appellant - Insurance Company. By taking me through catena of

judgments rendered by the Hon'ble Apex Court as well as this Court, he strenuously urged that in the case in hand, undisputedly policy of insurance was an Act only policy not covering the risk of its occupants. Therefore, in his submission, the learned Tribunal erred in making the Insurance Company liable to pay compensation to claimants.

6. As against this, Shri Urgunde, the learned Counsel appearing for respondent nos.1 to 3 - original claimants, took me through the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. Vs. Balakrishnan and another***, reported in ***AIR 2013 SC 473.*** By referring to para 17 of that judgment, he argued that as per directions of Insurance Regulatory and Development Authority (IRDA), the Insurance Company is liable to pay compensation on account of death or bodily injury to any person including occupant carried in the vehicle. He relied on observations and findings of the learned Tribunal in para 30 as well as para 36 of the judgment and contended that risk of the occupants of the vehicle was covered by the policy of insurance of the said jeep. In submission of the learned Counsel for respondents / original claimants, the insurance policy is making it clear that six passengers excluding the driver are allowed to be travelled in the jeep with prohibition regarding its for some purposes. He argued that there is no evidence on record to show that such prohibition for use of the jeep was contravened by the owner thereof. He further relied upon judgment of the learned Single Judge of Andhra Pradesh High Court in the case of ***United India Insurance Co. Ltd. Vs. Ahmadi Begum & others***, reported in ***2011(4) ALL MR (Journal) 31***, to urge that in private vehicle, any person other than the owner or the driver needs to be held as third party to the contract of insurance. As such, in his

submission, occupants of the private vehicle are third party to the contract of insurance.

7. Shri Patne, the learned Counsel appearing for respondent no.5 - owner of the jeep, argued that the deceased was not travelling in the said jeep. In fact he haad alighted from the said jeep and thereafter when the jeep was in motion, he dashed the jeep causing the accident because of his own negligence.

8. With the assistance of the learned Counsel appearing for the parties, I have carefully gone through the record and proceedings including evidence of claimant and that of respondents.

9. This is an appeal at the instance of Insurance Company and as such one cannot go to the findings which have attained finality and which are not challenged in the instant appeal. Even otherwise perusal of the impugned judgment and particularly recorded in para 17 thereof to the effect that the deceased was occupant of the said jeep and he suffered a fall therefrom because of rash and negligent driving of the said jeep are perfectly in consonance with the evidence on record. The learned Tribunal has categorically held that entire papers of investigation along with evidence of claimant no.1 who was a co-passenger in the said jeep, makes it clear that the deceased was occupant of the jeep at the time of the accident and he died because he suffered a fall from the said jeep. Hence, no substance can be found in the argument of the learned Counsel appearing for respondent no.5, that the deceased died because of his own fault after alighting from the jeep in question.

10. Now, let us examine whether the learned Tribunal committed error in law in holding that insurer of the said jeep is liable to pay compensation even though it recorded the finding that the policy of insurance of the said jeep is an Act only policy. The insurance policy is at Exhibit 41. It is a standard private care liability policy and as per the finding recorded by the learned Tribunal itself, it is an Act only policy. Schedule of premium mentioned in the said policy covers basic third party risk apart from covering the liability in respect of the paid driver of that jeep. While describing the type of body and nature of vehicle, the policy mentions that number of passengers allowed to be travelled in that jeep as six. Insurance policy at Exhibit 41 nowhere states that liability of six passengers travelling in the jeep shall be covered under umbrella of insurance. Limitation as to use of private jeep are for the purpose of ascertaining whether the owner thereof commits breach of the condition regarding use of that jeep. As per this policy at Exhibit 41, use of the insured jeep for the purpose of hire or reward, organized racing or speed testing shall amount to breach of terms and conditions of contract of insurance. The Insurance Company makes it clear that insured jeep shall not be put to such uses. The clause regarding limit of liability nowhere mentions that the contract of insurance shall cover risk of occupants of the private jeep.

11. Now, let us put on record the relevant provisions found in the MV Act in this regard. Section 146 thereof makes insurance of the motor vehicle compulsory. The provisions regarding requirements of policies and limits of liability can be found in Section 147 which reads thus :-

" **Requirements of policies and limits of liability.** – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) 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 :

Provided that a policy shall not be required –

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the kpolicy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee –

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. – For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :–

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. ”

The provisions of this Section thus makes it clear that when the policy of insurance is in respect of goods vehicle, then the policy of insurance must cover risk of owner of goods or its authorized representative carried in such goods vehicle. In case of public service vehicle, it is mandatory to cover risk of passengers thereof. Provisions of Section 147 does not require to cover risk of occupants of the private motor vehicle statutorily. No doubt, by entry in contract in that regard by payment of additional premium, owner thereof at his own choice can cover the risk of occupants of such private motor vehicle.

12. The point as to whether occupants of private motor vehicle can be termed as third party to the contract of insurance is no more *res integra*. Several judgments on this aspect are quoted by Shri Chapalgaonkar, the learned Counsel appearing for the appellant. Let us have a brief resume thereof.

(i) In the case of ***Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and others***, reported in ***AIR 2013 SC 483***, after quoting with approval the ratio of judgment of Delhi High Court in the case of ***Yashpal Luthra & another Vs. United India Insurance Co. Ltd. & another (2011 ACJ 1415)***, the Hon'ble Apex Court has held that it is only the comprehensive package policy of the motor vehicle which covers risk of occupants of a private motor car. It is further held therein that "Act Policy" stands on different footing. It is apposite to re-produce para 21 from the judgment in the case of ***Surendra Nath Loomba and others (supra)***. It reads thus :-

> " 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 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 (2009 AIR SCW 5325) (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. "

(ii) Next judgment on this issue is ***Dr. T.V. Jose Vs. Chacko P.M. alias Thankachan and others***, reported in ***AIR 2001 SC 3939(1).*** In para 16 of this judgment, while interpreting similar provision of old MV Act, the Hon'ble Apex Court has held that occupants of the private car cannot be said to be the third party. Para 16 from this report reads thus :-

> " Mr. Vishnu Mehra relied upon the Judgment in the case of ***P.P. Udeshi Vs. Ranjit Ginning and Pressing Co.***, reported in ***(1977) 2 SCC 745***. In that case the question was the identical, i.e. whether a Third Party Policy would cover risk to a

passenger. This Court has held as follows :

> "19. As Section 95 of the Motor Vehicles Act, 1939 as manded by Act 56 of 1969 is based on the English Act it is useful to refer to that. Neither the Road Traffic Act, 1960, or the earlier 1939 Act required users of motor vehicles to be insured in respect of liability for death or bodily injury to passengers in the vehicle being used except a vehicle in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. In fact, sub-section 203(4) of the 1960 Act provided that the policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon, or entering or getting on to or alighting from, the vehicle at the time of the occurrence of the event out of which the claims arise. The provisions of the English Act being explicit the risk to passengers is not covered by the insurance policy. The provisions under the English Road Traffic Act, 1960, were introduced by the amendment of Section 95 of the Indian Motor Vehicle Act. The law as regards general exclusion of passengers is stated in Halsbury's Laws of England, Third Edition, Vol. 22 at p. 368 para 755 as follows :
>
> Subject to certain exceptions a policy is not required to cover liability in respect of the death of, or bodily injury to, a person being carried in or upon, or entering or getting into or alighting from, the vehicle at the time of the occurrence of the event out of which the claim arises.
>
> It is necessary to refer to the subsequent development of the English law and as the subsequent changes have not been adopted in the Indian statute, suffice it to say that the Motor Vehicle (Passenger Insurance) Act, 1971, made insurance cover for passenger liability compulsory by repealing paragraph (a) and the proviso of sub-section 203(4). But this Act was repealed by Road Traffic Act, 1972 though under Section 145 of 1972 Act the coming into force of the provisions of Act 1971 covering passenger liability was delayed under December

1, 1972. (vide Bingham's Motor Claims Cases. 7th Ed., p. 704).

20. Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the Insurance Company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to sub-section which provides that a policy shall not be required :

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95, the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

21. The insurer can always take policies covering risks which are not covered by the requirements of Section 95. In this case the insurer had insured with the Insurance Company the risk to the passengers. By an endorsement to the policy the Insurance Company had insured the liability regarding the accidents to passengers in the following terms :

In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger.....

The scale of compensation is fixed at Rs. 15,000. The Insurance Company is ready and willing to pay compensation to the extent of Rs. 15,000 according to this endorsement but the learned Counsel for the insured submitted that the liability of theInsurance Company is unlimited with regard to risk to the passengers. The counsel relied on Section II of the Policy which relates to liability to third parties. The clause relied on is extracted in full :

Section II - Liability to Third Parties.

1. The company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of employment of such persons by the insured.

It was submitted that the wording of clause 1 is wide enough to cover all risks including injuries to passengers. The clause provides that the Company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable. This according to the learned Counsel would include legal liability to pay for risk to passengers. The legal liability is restricted to clause 1(a) which states that the indemnify is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of

Section 95 of the Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clauses 1 and 1(a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939" would indicate that the liability is restricted to the liability arising out of the statutory requirements under Section 95. The second part of clause 1(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are not covered under Section 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under clauses 1 and 1(a) is the risk required to be covered under Section 95 of the Motor Vehicles Act."

(iii) In yet another case i.e. ***United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others***, reported in ***AIR 2006 SC 1576(1)***, the Hon'ble Apex Court in paras 18 to 21 of the judgment has observed thus :-

"18. Thus, even under the 1939 Act the established legal position was that unless there was a specific coverage of the risk pertaining to a gratuitous passenger in the policy, the insurer was not liable. We find that clause (ii) of the proviso to Section 95(1) has been eliminated while drafting Section 147 of the 1988 Act. Under sub-section (1)(b) under the 1988 Act, compulsory policy of insurance required under the statute must now provide against any liability which may be incurred by the owner of the vehicle "in respect of the death of or bodily injury to any person including owner of the goods or authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

19. The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in New India Assurance Company Vs. Satpal Singh and others (2000) 1 SCC 237 where after contrasting the language of Section 95(1) of the 1939 Act with the provisions of Section 147(1) of the 1988 Act this court held :

"The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

20. The view expressed in Satpal Singh's case (supra) however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Company v. Asha Rani and others (2003) 2 SCC 223. In the case the discussion arose in connection with carrying passengers in a goods vehicle. this Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in Satpal Singh's case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J., after contrasting the language used in 1939 Act with that of the 1988 Act, it has been observed (vide paras 25 and 27) :

> "25. 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 'good carriage'.

27. Furthermore, sub-clauses (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. "

21. 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 gratuitous passengers. "

Thus, the Hon'ble Apex Court has reiterated that insurance company does not owe any liability towards injury suffered by a pillion rider as the insurance policy was a statutory policy and as it does not cover the risk of death or bodily injury to gratuitous passenger.

(iv) This Court in the case of ***New India Assurance Company Ltd. Vs. Lilabai Shrimant Missal & others***, reported in ***2015(1) Mh.L.J. 827***, had an occasion to examine whether occupants of a private car can be treated as third party to the contract of insurance. After examining several judgments on this point, in para 16 of the judgment, this Court has concluded thus :

> " From the aforesaid discussion it can be said that it is settled law that if no premium is paid in respect of passenger of a private car, there will not be coverage to the risk to them. When there is no coverage of risk, no premium is paid, liability cannot be fastened on the Insurance Company to pay compensation. "

(v) Yet another Hon'ble Single Judge of this Court has examined the aspect as to whether occupant of a private car would be described as third party, in the case of ***National Insurance Co. Ltd. Vs. Anand Sawant and others***, reported in ***2009 ACJ 216***. Para 18 of the said report reads thus :-

> " Admittedly, in the case at hand, the policy obtained by the owner of the vehicle was Third Party Policy and the occupants who died in the said accident and whose legal representatives have filed applications, could not be described as third parties, in the light of various judgments of the Apex Court beginning with Asha Rani MANU/SC/1105/2002 : 2003 ACJ 1 (SC) (a decision by three learned Judges) and thereafter followed in Baljit Kaur MANU/SC/0009/2004 : 2004 ACJ 428 (SC) (again a 3-Judge Bench decision) including in the case of Sudhakaran K.V. MANU/SC/7736/2008 : 2008

ACJ 2045 (SC). In other words, the liability of the insurer to indemnify the insured would be confined only as regards third parties to accident. *The insurer would be certainly liable to meet other contractual liability incurred by virtue of additional premiums paid and that matter can be examined at the appropriate stage since additional premium was paid only in respect of 4 unnamed passengers and 5 such passengers had died in the said accident. Since the policy covered third party risk, it was only the insured who was liable to pay the compensation under no fault liability. The question to indemnify the insured would have been there only in case any third parties were involved in the accident and not otherwise. This is a case where the liability of the insurer to indemnify the insured is nil.* "

13. The consistent position of law crystallized in foregoing judgments makes it clear that occupant of a private car cannot be treated as third party to the contract of insurance. The guideline of IRDA referred to in the judgment of the Hon'ble Apex Court in the case of ***Balakrishnan and another (supra)*** and relied upon by the learned Counsel for respondents / claimants are in respect of *'Standard Motor Package Policy'* and not in respect of *'Act only Policy'*.

14. As such it needs to be held that though the learned Tribunal has rightly came to the conclusion that the insurance policy in respect of jeep bearing registration No. MH-24/C-0852 was an *'Act only Policy'*, it committed error of law in making the Insurance Company liable to cover risk of the occupant of the said vehicle.

15. In the result, the appeal is partly allowed.

(a) The judgment and award dated 30-12-2013, passed by the learned Chairman of the Motor Accident Claims Tribunal, Osmanabad, in M.A.C.P. No. 166 of 2010, against the appellant - Insurance Company making it liable to pay compensation jointly and severally, is hereby set aside. The claim petition as against Insurance Company stands dismissed.

(b) Amount, if any, deposited by appellant - Insurance Company be refunded to it.

16. The Appeal is accordingly disposed of with no order as to costs.

(A.M. BADAR)
JUDGE

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