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

FIRST APPEAL NO. 333 OF 2009

New India Assurance Company Ltd.,
Aurangabad, Through its
Divisional Manager, Adalat Road,
Aurangabad. ... **APPELLANT**
(Original Respondent No.2 & 4)

V E R S U S

1. Padmini W/o Ashok Kendre,
Age: 36 years, Occu : Labour,
R/o Mulgaon Patoda, Post Kajali Hipparga,
Taluka Ahmedpur, District Latur.
At present C/o Madhav Pandharinath Rakh,
R/o CIDCO, M.A.C.P. No.-2, 21/5 Ramnagar,
Mukundwadi (Tanhaji Nagar), Aurangabad.

2. Shital D/o Ashok Kendre,
Age : 19 years, Occu : Household,
R/o As above.

3. Sandhya D/o Ashok Kendre,
Age : 17 years, Occu : Education,
R/o As above.

4. Alesh S/o Ashok Kendre,
Age : 14 years, Occu : Education,
R/o As above.

5. Balrishna S/o Ashok Kendre,
Age : 11 years, Occu : Education,
R/o As above.

6. Smt. Vithabai W/o Vyankatrao Kendre,
Age : 62 years, Occu : Labour,
R/o As above.

7.	Shobha Dnyanoba Rachmate, Age : Major, Occu : Business, R/o Waygaon, Taluka Ahmedpur, District Latur.	R/7 is dismissed as per Court order dt. 27/4/2010.
8.	Jamalajah Ingina Narasaiah, Age : Major, Occu : Business, R/o 16-4-6, RTC Colony, Ina Vigaya Wada State Andhara Pradesh.	R/8 dismissed as per order dt. 1/2/10. ... **RESPONDENTS**

(Resp Nos.1 to 6 Org. Claimants)
(Resp Nos.7 & 8 – Org. Resp Nos.1 & 3)

...
Mr. S. G. Chapalgaonkar, Advocate for Appellant.
Mr. P. S. Tandase, Advocate for Respondent Nos.1 to 6.
...

CORAM : **V. K. JADHAV, J.**
DATE : 10th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Aurangabad dated 22nd September, 2008 in MACP No.425 of 2004, original Respondent No.2 / Insurer has preferred this appeal.

2 The learned counsel for the Appellant / Insurer has challenged the judgment and award passed by the Tribunal mainly on the ground that the policy covers the risk of the occupant of a private jeep involved in the accident to the extent of limit of Rs.1,00,000/-.

3 On 8th January, 2004, deceased Ashok was travelling in a Tata Sumo Jeep bearing registration No.MH-24/C-3142 from Matunga Mumbai to his village Patoda. On Pune-Solapur highway, near village Maladgaon, one truck came from the opposite direction and there was a head on collision between the truck and the said Tata Sumo jeep. Deceased Ashok sustained severe injuries and died on the spot. The Claimants approached to the Motor Accident Claims Tribunal, Aurangabad by filing MACP No.425 of 2004 for grant of compensation under the various heads. The Appellant / Insurer has strongly resisted the claim on the ground that the policy covers the risk of the occupant of a private car to the limit of Rs.1,00,000/- only and beyond that the Appellant / Insurer is not liable to pay the compensation. The Appellant / Insurer has also challenged the judgment and award passed by the Tribunal on other grounds, however, the same are not relevant for the purpose of deciding this appeal.

4 The learned Member of the Tribunal has directed the Respondents jointly and severally to pay the compensation of Rs.4,04,000/- to the Claimants. The learned counsel for the Respondents / original Claimants submits that in view of the

authoritative pronouncement of the Supreme Court in the case of ***National Insurance Company Ltd. Vs Balakrishnan and another***, reported in, ***AIR 2013 Supreme Court 473***, that the Act Policy is distinct from the comprehensive / package policy.

5 In the case of *National Insurance Company Ltd. Vs Balakrishnan and another* (supra), in paras 21, 22 and 23 of the judgment, the Supreme Court has made the following observations:

> “**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 from 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 (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.

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 In the instant case, the insurance policy is placed on record and the same is marked as Exhibit – 76. On perusal of the same, it appears that the said policy is a private car package policy. So, in view of the aforesaid judgment of the Supreme Court, the Appellant / Insurer is liable to satisfy the award under the package policy if passed against the insured under the contract of insurance. In the instant case, the risk is covered under the package policy and as such, the Appellant / Insurer is liable to pay the entire compensation. The learned Member of the Tribunal accordingly held the Appellant / Insurer liable to pay the compensation. There is no substance in the appeal and the appeal is thus, liable to be dismissed. In view of this, I do no find any fault in the impugned judgment and award passed by the Tribunal. Hence, the following order:

<u>O R D E R</u>

I. The appeal, is hereby dismissed with costs.

II. Needless to say that if any amount is deposited before this Court, the Respondents / Claimants are permitted to withdraw the same.

III. The appeal is accordingly disposed of.

IV. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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