**THE HON'BLE SMT. JUSTICE T.RAJANI**

**MACMA. No.236 of 2012**

**JUDGMENT:**

This appeal is preferred by the appellant, New India Assurance Company Limited, assailing the judgment dated 24.04.2007 passed in O.P. No.973 of 2005 by the Motor Accidents Claims Tribunal (District Judge) at Karimnagar, on the grounds that the Court below ought to have dismissed the claim petition against the Insurance Company; it failed to see that the injured was a pillion rider on motor cycle bearing No.AP 15G 9669 and that the policy issued was a policy A1 liability only and under the policy, the risk of pillion rider is not covered and in such circumstances, the Court below ought to have dismissed the claim petition as against the appellant; it failed to see that the appellant, by examining RW1 and marking Ex.B1 policy, has discharged its legal burden in proving that the risk of pillion rider is not covered under Ex.B1 policy; the Court below erred in awarding a lumpsum amount of Rs.45,000/- for the injuries without following the method and procedure in assessing compensation in injury cases; it also erred in awarding Rs.24,979/- towards loss of earnings for a period of 63 days, without there being any evidence placed on record.

Heard the learned counsel on either side and perused the material on record.

At the time of hearing, the learned counsel for the appellant restricted his arguments only to the aspect of liability and contended that the Court below has fixed the liability on the appellant also in spite of noting that the policy issued in respect of the vehicle is an Act policy, but in the judgment, in the succeeding paragraph, it is observed that the policy is comprehensive policy, including the risk of third party also.

A perusal of Ex.B1, policy, does not show that it is a comprehensive package policy. It is a policy A liability policy. Hence, observation of the Court below that the policy is comprehensive policy is found to be erroneous.

On the other hand, the learned counsel for the appellant relies on the ruling of the Apex Court reported in ***ORIENTAL INSURANCE COMPANY LIMITED Vs. SUDHAKARAN K.V. AND OTHERS***[1] wherein the Supreme Court held that the insurer is not liable to pay compensation in respect of a pillion rider in terms of the statutory cover mandated by Section 147, when the accident has taken place owing to rash and negligent driving of the motor vehicle carrying the pillion rider concerned, such a pillion rider is not to be treated as a "third party" under Section 147, such a pillion rider would be covered only in case additional cover is purchased under the contract of insurance.

In answer to the said contention, the counsel for the claimants relies on another ruling rendered by the Apex Court reported in **BHAGYALAKSHMI AND OTHERS Vs. UNITED INSURANCE COMPANY LIMITED AND ANOTHER**[2]. In the case dealt with by the Apex Court the policy in question is a package policy. It was held that the contract of insurance, if given its face value, covers the risk not only of a third party but also of persons traveling in the car, including the owner thereof. The Court at paragraph 26 observed as follows:

> 26. We may notice that the effect of package policy in relation to three-wheelers, came up before the Delhi High Court in United India Insurance Company, (MAC App. No.980/2006 etc. decided on 31st May, 2007) wherein it has been opined :-
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> "33. Tilak Singh's case (Supra) holds that the proposition of law in Asha Rani's Case (Supra) in relation to goods vehicle shall apply with equal force to 'gratuitous passenger' in any other vehicle also. As noted herein above Tilak Singh's case (supra)

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[1] 2008 (7) SCC 428
[2] (2009) 7 Supreme Court Cases 148

> related to a statutory policy. It would be pertinent to mention here that Tilak Singh's case (supra) related to the death of a pillion rider on a two wheeler scooter and his legal representatives had claimed compensation against the registered owner of the scooter and the insurer. The two wheeler scooter was insured for third party risk for the period 07/03/1989 to 06/03/1990 and the accident had taken place on 31.10.1989. The Court found that the Insurance Policy covering the risks did not contain an endorsement of IMT 70 covering liability to pillion riders and, therefore, in that context held that the Insurer Company was not liable to indemnify the insured and pay compensation to the legal representatives of the deceased. I may indicate here that IMT-70 is no longer in operation and as per Section 3 of the present tariffs even a pillion rider is covered by Third Party risks unless he happens to be an employee of the insured for which extra premium is to be required to be paid.
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> 34. To summarize, where the policy is a statutory policy or an act only policy, a gratuitous passenger in a private vehicle would not be covered for a bodily injury or death under the policy of 18 insurance. But, nothing prevents the insurance company from issuing a wider coverage i.e. assuming a greater risk liability. As in the instant case, where the policy is a Package Policy for Private Cars, terms of the policy and the applicable conditions as notified by the Tariff Advisory Committee would have to be looked into to determine the risk liability assumed by the insurer."

The matter was however, referred to larger bench for consideration. Whether the ruling would have a binding effect when it is referred to a larger bench is another question that came up for consideration. In that regard, the learned counsel for the claimants takes the help of ruling of the Apex Court rendered in **MANUARA KHATUN AND OTHERS Vs. RAJESH KUMAR SINGH AND OTHERS**[3] wherein there was a submission made by the counsel therein that since the question involved is referred to a larger bench the Court should not give direction as prayed by the appellants against the Insurance Company. Meeting the said submission, the Court held as follows at para 19 as under:

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[3] (2017) 4 Supreme Court Cases 796

> "19. We find no merit in any of the submissions, Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P.Paul ((2013) 2 SCC 41) case. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul case, it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from para 26 of the judgment in Saju P.Paul case. That part, the learned counsel for the appellants stated at the Bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more."

The Apex Court in the said ruling ordered the Insurance Company to pay the compensation to the claimants and later recover the same from the insured, by considering that the policy is only an Act policy. Hence, the said ruling applies to the facts of this case also. The judgment of the Court below, to the extent of fixing liability on the appellant, insurance company, is set aside. But, however, the appellant shall satisfy the award first and later recover the same from the insured.

In the result, the appeal is allowed in part. Consequently, miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

**JUSTICE T. RAJANI**

**Date: 24.07.2018**
**LSK**