

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.541 of 2010

National Insurance Company Ltd.
through Officer-in-Charge (Legal Cell) Appellant

Mr. P.K. Mahali, Advocate

-versus-

Sahina Parveen and Others Respondents

Mr. P.K. Nayak, counsel for Respondents 1,2,3,9,10 and 11
Mr. Subrat Satpathy, counsel for Respondent No.8

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
30.8.2022

Order No.

14. 1. The matter is taken up through hybrid mode.
2. Heard Mr. P.K. Mahali, learned counsel for the insurer – Appellant, Mr. P.K. Nayak, learned counsel for claimant – Respondents 1, 2, 3, 9, 10 and 11 and Mr. Subrat Satpathy, learned counsel for Respondent No.8.
3. The consolidated cause title filed by the Appellant is ignored.
4. Present appeal by the insurer is against the impugned judgment dated 17th September, 2009 of the learned 2nd MACT, Northern Division, Sambalpur passed in Misc. (A) Case No.51 of 2001(S) wherein compensation to the tune of Rs.1,80,000/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 27th February, 2001 has been granted on account of death of deceased Afsar Allam in the motor vehicular accident dated 2nd February, 2001.

5. It is submitted on behalf of the Appellant that the deceased was admittedly an occupant of the offending vehicle which is a private car and the policy in respect of the said vehicle was 'Act Only' policy. It is thus submitted that since the policy is for limited liability only, the deceased being an occupant of a private vehicle is not covered as third party and as such no liability can be fastened on the insurer.

6. The status of the deceased as an occupant of the offending vehicle is not disputed. It further remains undisputed by the parties that the offending Ambassador car bearing registration number OAS 515 is a private car and the insurance policy is 'Act Only' policy.

7. The tribunal while discussing on the question of liability, has held all such facts as undisputed. But the tribunal in the end has directed for payment of compensation by the insurance company granting the right of recovery of the same from the owner placing reliance on the decision of Hon'ble Supreme Court in the case of *M/s. National Insurance Company v. Baljit Kaur, AIR 2004 SC. 1340*.

8. The law has been well settled in several decisions of Hon'ble Supreme Court thereafter. The Supreme Court in the case of *Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors., AIR 2008 SC 2729* while considering the question that whether an 'Act only' policy would cover the risk of the pillion rider of a scooter, proceeded to hold that such a contract of insurance covered the risk of a third party and not that of the owner or pillion rider of a two wheeler. The Supreme Court held as follows:

“The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”

9. The Supreme Court in the case of *New India Assurance Company Ltd. vs. Sadanand Mukhi and others*, 2009 (2) SCC 417 held as under:

“Contract of insurance of motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of premium payable for insuring the vehicle in question depends not only upon MACA No.315 of 2007 Page 6 of 8 the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking and ‘act policy’, the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be

covered, additional premium has to be paid. If the contention of the learned Counsel is to be accepted, then to a large extent, the provisions of the Insurance Act becomes otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the Court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.”

10. The Supreme Court also in the case of ***National Insurance Company Limited vs. Balakrishnan and another, (2013) 1 SCC 731*** taking note of various other decisions of the Supreme Court have held thus:

“26. 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 IRDA, which is presently the statutory authority, has commanded the insurance

companies stating that a “comprehensive/package policy” covers the liability, MACA No.315 of 2007 Page 7 of 8 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 *Bhagyalakshmi v. United Insurance Co. Ltd.*, (2009) 7 SCC 148 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 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.”

11. In view of the above discussions and the law settled on the issue, the direction of the tribunal to the insurance company to pay and recover from the owner is not found justified and accordingly set aside. Considering the nature of policy, no liability can be fastened on the insurer and accordingly the Appellant – insurer is exempted from the liability. However the claimant – Respondents are at liberty to realize the amount from the owner.

12. With the aforesaid observation and direction the appeal is disposed of.

13. The statutory deposit made by the appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application.

14. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

