

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA Nos.921, 922 & 923 of 2009

(From the judgments dated 31st August, 2009 passed by Sri C.K. Kar, learned M.A.C.T. IV, Bhadrak in M.A.C. Nos.70/2000, 68/2000 & 67/2000.)

In MACA No.921 of 2009

Divisional Manager, New India Assurance Co. Ltd., Balasore *Appellant*

-versus-

Gayadhar Mallick and another *Respondents*

In MACA No.922 of 2009

Divisional Manager, New India Assurance Co. Ltd., Balasore *Appellant*

-versus-

Smt. Kanakalata @Kamini Mallick and another *Respondents*

In MACA No.923 of 2009

Divisional Manager, New India Assurance Co. Ltd., Balasore *Appellant*

-versus-

Bhagyadhar Mallick and another *Respondents*

Advocate(s) appeared in this case:-

For Appellant	: Mr. M. Sinha, Advocate (In all the appeals)
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For Respondents	: Mr. B.N. Rath, Advocate For Respondent No.1 (In all the appeals)
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	Mr. P.K. Das, Advocate For Respondent No.2 (In all the appeals)
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CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. All these three appeals are inter-related being against the claims granted in respect of the same accident that took place on 11.4.2000.

2. The common case of the Appellant in all the appeals is that, the claimants while were travelling as occupants of the Ambassador Car bearing Registration No.ORO-2662 on 11.4.2000, the said vehicle dashed against the road side wall thereby causing injuries to them. The claimants are the friend and relations of the owner of the said Ambassador Car and were travelling in the vehicle in question as non-fare paying passengers.

3. MACA Nos.921, 922 and 923 of 2009 are against the respective judgments dated 31.08.2009 of the learned M.A.C.T. – IV, Bhadrak passed in M.A.C. No.70, 68 and 67 of 2000. The insurer is the Appellant in all those three appeals.

4. Learned Tribunal upon adjudication of the dispute has granted compensation of Rs.32,000/-, Rs.24,500/- and Rs.45,000/- along with 6% interest per annum to the respective claimants, namely, Gayadhar Mallick, Smt. Kanaklata@Kamini Mallick and Bhagyadhar Mallick, who are Respondent No.1 in all those three appeals respectively.

5. The entire contention of the insurer is that, the policy in respect of the offending Ambassador Car being “Act only policy” and the claimants being the occupants of the same, the limits of liability in the policy do not cover the risk of their bodily injury.

6. The claimants do not dispute their status as the occupants of the Ambassador Car being the friend and relatives of the owner of the Car. It is only contended that the insurer should be directed for payment of the amount of compensation with right of recovery of the same from the owner.

7. The nature of the policy for “Act liability only” is not disputed. It also remains undisputed that no extra premium has been paid to cover the risk in respect of the occupants of the vehicle. It is seen from the impugned judgment that the learned Tribunal while admitting such facts has come to the conclusion that the Insurance Company is liable to pay the compensation even if the claimants were travelling in the private car of the owner as non-fare paying passengers being the friends of the owner.

8. Law is no more *res integra* in respect of “Act only policy”. The Supreme Court in the case of ***Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors., AIR 2008 SC 2729*** while considering the question 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 only 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 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 an ‘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, 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. The factual aspects with regard to the status of the claimants as non-fare paying passengers in the offending vehicle being not disputed and admittedly no extra premium being paid in respect of such occupants, and keeping in view the admitted limits of the insurance policy which is for act liability only, the obvious result would be that the insurer cannot be held liable to indemnify the compensation on behalf of the owner. As such, the finding of the learned Tribunal to direct the insurer for payment of compensation ignoring all such facts is thus set aside. It is held that the insurer is not liable to pay the compensation as the risk is beyond the limits of the policy.

12. In the result, the appeals are allowed and the Appellant-insurer is exonerated from its liability to pay the compensation amount. It is open for the claimants to seek for recovery of the compensation amount from the owner in accordance with law.

13. The statutory deposit made before this Court in MACA No.921 of 2009, MACA No.922 of 2009 and MACA No.923 of 2009 with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

(B.P. Routray)
Judge

B.K. Barik/Secretary