# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH AT NAGPUR

## CROSS-OBJECTION NO.25 OF 2010
## IN
## FIRST APPEAL NO.253 OF 2010 [D]

United India Insurance Company Limited,
through its Branch Manager, United India
Insurance Company Limited,
R/o. Mahajanwadi Chawk, Yavatmal,
Tahsil and District-Yavatmal.
[Insurer of Tata Sumo No.MH-29/C-304
insured vide cover note no.937173 valid
from 13.5.2000 to 12.5.2001] .. Appellant
(Ori. Non-Applicant No.3)

..Versus ..

1] Lalitkumar s/o Gulrajji Golecha (now deceased)
Through L.R's.

1-A] Smt. Leelabai wd/o Lalitkumar Golechha,
aged about 60,
Occupation-Housewife.

1-B] Shri Mahendrakumar s/o Lalitkumar Golechha,
Aged about 40, Occ. Business.

Both R/o. Kariappa Street, Purasawalkam,
Chennai-7.

1-C] Smt. Gunwati w/o Sanjay Tatiya,
Aged 38 years, Occ. Housewife,
R/o. 1111, Shukrawarpeth,
Opp. Indian Bank, Koimbtore-641001.

1-D] Smt. Manju w/o Santosh Kochar,
Aged 38 years, Occ. Housewife,
R/o. Shakar Badan Street 1st Floor,
Ramalingumpuram, Chennai-600112.

1-E] Smt. Jyoti w/o Mukesh Sancheti,
Aged 36 years, Occ. Housewife,
R/o. 37, Arni Malu Street, New Taj
Kalyan Mandapam Sullai,
Chennai-600112.

2] Shahinali Kifayattali Kazi,
Aged about 28 years,
Occupation-Driver,
R/o. Sharda Chawk, Yavatmal,
Tah. & Distt. Yavatmal.
(Driver of Tata Sumo No.MH-29/C-304
involved in accident) .. Respondents

Rameshchandra Mahadeolal Jaiswal,
Sharda Chawk, Yavatmal,
Tahsil and District-Yavatmal,
(Owner of Tata Sumo No.MH-29/C-304
involved in the accident) .. Cross-Objector

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Shri A.V. Bhide, Advocate for Appellant,
Shri Amit Chaube, Advocate for Respondent.

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**CORAM : SMT. M.S. JAWALKAR, J.**
**RESERVED ON : 12.08.2022**
**PRONOUNCED ON : 20.08.2022**

**JUDGMENT**

Present Cross-Objection is filed in First Appeal No.253/2010 which was filed by Insurance Company, who is respondent no.3 in original Claim Petition, challenging the judgment and award dated 25.09.2008 passed by the Motor Accident's Claims Tribunal, Yavatmal in Claim Petition No.111/2001, wherein compensation is claimed for injury sustained by claimant in vehicular accident dated 20.06.2000.

2. By this judgment, the learned Tribunal held appellant-Insurance Company and respondent nos.2 and 3 jointly and severally liable to pay compensation of Rs.5,46,770/- to the respondent no.1. However, liability of Insurance Company held restricted to Rs.1,00,000/- only. It is contended that the learned Tribunal erred in holding that the driver of the vehicle was rash and negligent and, therefore, the appellant-insurance company is vicariously liable to pay the compensation to the claimant. The said appeal filed by Insurance Company came to be dismissed vide order dated 12.08.2014. There are cross-objection filed by the owner of the vehicle Rameshchandra Mahadeolal Jaiswal. In cross-objection, the order of M.A.C.T. Yavatmal is challenged as the amount awarded to the extent of Rs.1,00,000/- only payable by Insurance Company and rest of the amount of compensation was directed to be paid by owner of the vehicle. The contention of the owner of the vehicle is that the policy is comprehensive policy, in view thereof, there cannot be any limited liability. He relied on

citation of **National Insurance Company Limited .vs. Balakrishnan and another, reported in (2013) 1 SCC 731**.

3. I have heard both the parties. Perused the record, so also cover note is at Exh.52, which is duly proved, whereas policy was not proved by the company. It is clearly mentioned that the policy is "comprehensive" policy. There are various amounts received by the company towards premium. On perusal of the evidence, the policy of the vehicle is not proved by the company. Therefore, what is written in the policy is not binding on the claimant or the owner of the vehicle. As per cover note the policy is comprehensive policy. This issue was concluded by the Hon'ble Apex Court in **National Insurance Company Limited vs.. Balkrishna and another** (supra). In this judgment the Hon'ble Apex court discussed all judgments on this issue including **Tilak singh** (supra) and **Asharani** (Supra). The Hon'ble Apex Court also considered **Insurance Regulatory and Development Authority** (for short 'IRDA), circular issued by IRDA and also had instruction issued by Tariff Advisory Committee. The Apex Court in paragraph No.24 and 25 of the judgment elaborately discussed this issue which reads as under :

*24. It is extremely important to note here that till 31.12.2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2.6.1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18.03.1978 and 2.6.1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the Circulars dated 18.03.1978 and 2.6.1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1.7.2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16.11.2009 and 3.12.2009, that have been reproduced hereinabove, were issued.*

*25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-*

*"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private*

> *car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."*

4. In view of this principle laid down in the above referred matters by the Hon'ble Apex Court, the comprehensive policy covers damage to the third party as well as the pillion rider and occupant of the four wheeler vehicle. As such the learned Tribunal erred in relying on the policy placed on record by the insurance company which was not proved. It is nowhere mentioned in the cover note that the liability of the insurance company is limited to Rs.1,00,000/- only. Thus, the order passed by the learned M.A.C.T. making liable insurance company to the extent of Rs.1,00,000/- is patently erroneous and is liable to be quashed and set aside. Claimants are entitled for the compensation calculated by the Tribunal from from the appellant-Insurance Company. Accordingly, the judgment and order passed by the learned M.A.C.T. Yavatmal needs to be modified as under :

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

(1) Cross-objection is partly allowed.

(2) The judgment and order passed in Claim Petition No.111/2001 is hereby modified as under :

(i) Claim Petition is partly allowed with proportionate cost.

(ii) Non-Applicant Nos.1 to 3 do pay jointly and severally compensation amount of Rs.5,46,770/- (Rs. Five lacs forty six thousand seven hundred seventy only) to the applicant together with interest at the rate of 8% per annum from the date of petition till the date of payment.

(iii) The above amount is inclusive of the amount of payment under Section 140 of the M.V. Act.

(iv) Award be drawn up accordingly.

(3) In above terms, Cross-Objection is allowed and disposed of.

**[SMT. M.S. JAWALKAR, J.]**

Gulande