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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 24.02.2023
Pronounced on: 16.05.2023

+ **MAC.APP. 619/2013****SANJAY SHARMA****..... Appellant**

Through: Mr. S.N. Parashar, Advocate.

Versus

M/S NEW INDIA ASS CO LTD & ORS**..... Respondents**

Through: Mr. Pankaj Seth, Advocate.

+ **MAC.APP. 624/2013****SANJAY SHARMA****..... Appellant**

Through: Mr. S.N. Parashar, Advocate.

Versus

**M/S. NEW INDIA ASSURANCE CO. LTD
& ORS.****..... Respondents**

Through: Mr. Pankaj Seth, Advocate.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J**

1. The present appeals have been filed against the order dated 02.04.2008 ("*Impugned order-I*") passed by the M.A.C.T., Karkardooma Courts, Delhi and order dated 19.02.2013 ("*Impugned order-II*") passed by the ADJ, Karkardooma Courts, Delhi. The Impugned order-I and Impugned order-II would be collectively referred as 'impugned orders', wherever required.

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The appellant, who is the owner of the insured vehicle is impugning the legality of impugned orders and has prayed for setting aside of the impugned orders passed by the learned Claims Tribunal and the lower court respectively.

FACTS RELEVANT FOR ADJUDICATION OF THE APPEALS

2. Succinctly stated, on an unfortunate day of 21.01.2005, the deceased/Mr. Rajiv Kumar Chauhan and Master Vishal along with their family while travelling to Delhi in Jeep bearing no. DL5C-B-7800 (*"the vehicle"*) met with a fatal accident. The said vehicle was insured *vide* **policy number 310701/31/04/01/00001285** by the insurer/Respondent no.1, The New India Assurance Co. Ltd. The vehicle was alleged to be driven negligently and recklessly by the Respondent no.2 (driver of the vehicle) when it lost the control and hit the trolley which was parked on the kaccha portion of the road. Deceased/Mr. Rajiv Kumar Chauhan and Master Vishal tragically lost their lives in the said accident. A claim *vide* **MACT no. 129/05** was filed by the claimant towards the death of Mr. Rajiv Kumar Chauhan, while **MACT no. 130/05** was filed for claiming compensation towards death of Master Vishal due to road accident involving the insured vehicle.
3. The appellant (owner) and the driver of the vehicle, in their common written statement, averred that the accident occurred due to a vehicle coming from the opposite side of the road with a high beam light that blinded the driver's vision. The driver, for safety



reasons, moved the vehicle towards his left and was unable to see the stationary trolley on the left side of the road, resulting in a collision. Therefore, the allegation of negligence on the part of the driver is false and baseless. Respondent no.1, in its written statement, admitted that the policy was issued in the name of the appellant, covering the date of the accident. However, it is submitted that since there is no privity of contract between the claimants, owner, and the insurance company, the insurance company is not liable to pay any compensation to the claimants.

4. The claimant examined the 3 witnesses namely Smt. Geeta as PW-1 who tendered her affidavit at **Ex. P-1**, Sh. Nigam Pal Singh as PW-2 who tendered his affidavit at **Ex. P-2**, Sh. S K Mishra as PW-3 who produced documents marked at **Ex. PW 3/A**; on the other hand, Respondent no.1 produced Sh. Rakesh Kumar Mehrotra as R3W1 who produced insurance policy marked at **Ex. R3W1/A**.
5. The learned Claims Tribunal *vide* the Impugned order-I passed the common award in MACT no. 129/05 and MACT no. 130/05. Relevant portion of the order has been reproduced herein below:

“5- In view of the above, I pass the following common award

COMMON AWARD

The petitions are partly allowed.

The respondents 1 & 2 are jointly and severally liable to pay the following compensation to the petitioners as noted in the cause title. They are hereby directed to pay the compensation amounts detailed below; along with the interest @ 7.5 % p.a., from the date of petition till realisation within one month from today.

MACT No. AWARD (Am.)

129/05 10,10,000/- (RUPEES TEN LAC TEN THOUSAND ONLY)



130/05 3,00,000/- (RUPEES THREE LAC ONLY)

Out of the award amounts in both the cases, the R-3 Ins. Co. shall indemnify to the extent of Rs. 2,00,000/- in both the awards along with the corresponding interests which be deposited within one month from today.

The balance amount be deposited by the respondent number 2 who is the owner of the vehicle under the doctrine of vicarious liability. The order on apportionment shall follow while releasing the shares. Original judgment be kept in MACT No. 129/05 and a copy in other file. Let a copy of the award part be given to the parties...”

6. Being dissatisfied with the abovesaid order passed by the learned Claims Tribunal, the appellant herein preferred an application under the Section 114, 151, 152 of the Code of Civil Procedure, 1908 and under Section 169(1) of the Motor Vehicles Act, 1988 (*‘the Act’*) for modification in the Impugned order-I. The ground taken by the appellant for filing the application is that the insurance obtained by him is a package policy, covering unlimited liability of occupants of the car. It is also stated that the insurance company has nowhere taken the plea of limited liability in its written statement. *Vide* its order dated 19.02.2013, the learned lower court dismissed the application with the observation that the application is devoid of any merit and the impugned order-I cannot be reviewed or modified.
7. Presently, through **MAC. Appeal no. 619/2013** and **MAC. Appeal no. 624/2013**, the appellant is impugning the legality of the Impugned order-I dated 02.04.08 and Impugned order-II dated 19.02.13. The appellant is seeking an order/direction from this court directing the insurance company to pay the entire compensation amount to the



claimants with no recovery rights to recover the compensation from the appellant.

8. This court *vide* its order dated 16.07.2013 stayed the recovery *qua* appellant in both MAC Appeal no. 619/2013 and MAC Appeal no. 624/2013, upon the appellant depositing Rs. 5,00,000/- with the Registrar General. The court further directed release of Rs. 3,00,000/- from the deposited amount in favour of the claimants in both the cases.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT

9. Mr. S.N. Parashar, the learned counsel appearing on behalf of the appellant, i.e., the owner of the vehicle bearing no. DL5C-B-7800, has submitted that the impugned orders suffer from perversity. The counsel has averred that the learned Claims Tribunal grossly erred in limiting the liability of the insurance company to the extent of Rs. 2,00,000/-. It is further contended that the learned Claims Tribunal wrongly interpreted the 'Package/Comprehensive Policy' as an 'Act Only' policy and erroneously gave recovery rights to the insurance company against the appellant.
10. Learned counsel, while shedding light upon the nature of the package policy, has submitted that the appellant had obtained a package insurance policy that covered the unlimited liability of the occupants of the vehicle. It is further submitted that at the time of obtaining the insurance policy, the insurance company informed the appellant that the liability of the insurance *qua* passenger is unlimited. It is also submitted that since the insurance company failed to take a plea of



limited liability in its written statement filed before the learned Claims Tribunal, it can be inferred that the liability of the insurance company is unlimited. Additionally, the official of the insurance company who was produced as R3W1 before the learned Claims Tribunal did not specify the limited liability of the company to the extent of Rs. 2,00,000/- only.

11. Reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in *Jagtar Singh v. Sanjeev Kumar*, reported as *(2018) 15 SCC 189*; and by co-ordinate bench of this Court in *Yashpal Luthra v. United India Insurance Co. Ltd.*, reported as *2009 SCC OnLine Del 4291* wherein the court discussed about liability of the insurance company in case of a package/comprehensive insurance policy.
12. With these submissions, learned counsel for the appellants prayed for setting aside the impugned Orders Nos. I and II.

SUBMISSIONS MADE ON BEHALF OF THE INSURANCE COMPANY/RESPONDENT NO.1

13. Learned counsel for Respondent no.1, Mr. Pankaj Seth, has fervently opposed the present appeals preferred by the appellant. The counsel denies that the liability of the insurance company is unlimited under the insurance policy obtained by the appellant. It is submitted that the terms and conditions of the insurance policy purchased by the appellant explicitly contain a provision that specifies that the maximum risk coverage with regards to occupants/passengers of the vehicle is Rs. 2,00,000/- per person. Given this special contract between the parties with the terms and conditions, it cannot be now



pleaded that the liability of the company is unlimited with respect to risk coverage. Since the premium paid by the appellant covered the risk up to the extent of Rs.2,00,000/- per person, Respondent no.1 cannot be held liable for full coverage of the risk.

14. Furthermore, learned counsel contends that the appellant failed to cross-examine Respondent no.1's witness before the learned Claims Tribunal or step into the witness box to prove their case. The counsel submitted that the learned Claims Tribunal rightly made a finding based on the evidence brought before it, and therefore there is no infirmity in the Impugned order-I. In the absence of any evidence to support the contentions of the appellant, the present appeals are liable to be dismissed.

15. With these submissions, learned counsel for the Respondent/Insurance Company prays for the dismissal of the present Appeal.

LEGAL ANALYSIS BASED ON FACTS AND LAW

16. This Court had heard the rival contentions of the parties and have perused the relevant documents with the assistance of the learned counsels. This Court also examined the Judgments relied upon by the parties.

17. After giving anxious consideration to the averments made by the respective counsels, it has come to the surface that the pivotal issue that requires this court's attention is '*Whether the quantum of the liability of an insurance company can be limited to a maximum amount in case of a package insurance policy?*'.



18. It is apposite to examine the motor insurance policies before expressing any opinion regarding the extent of the liability of the insurance company. There are two types of motor vehicle insurance that are available.

(i) Liability only policy

This covers Third Party Liability for bodily injury and/or death and property damages. Personal accident cover for the owner & driver is also included. This policy is also known as Act only policy.

(ii) Package policy (Comprehensive policy)

A package policy is an insurance cover which along with covering third party liabilities, offers to indemnify any damages caused to their own vehicle such as accidental damage, fire, vandalism, acts of God, natural calamities, etc. This covers loss or damage to the vehicle insured in addition to bodily injury and/ or death and property damage.

19. Section 147 of the Act deals with 'Requirements of policies and limits of liability', which reads as follows:

"Requirement of policies and limits of liability. -- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.



Explanation.--For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third-party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.”

From the perusal of Section 147 of the Act reveals that it deals with the requirements of policies and limits of liability of the insurer. Section 147(1) of the Act provides that in order to comply with the requirements of Chapter XI, which deals with insurance of motor vehicles against third party risks, a policy of insurance must, *inter alia*, cover persons or classes of persons specified in the policy in respect of death or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place. The extent of liability is, however, made subject to Section 147 (2) of the Act. Section 147(2) of the Act provides that subject to provisions of Section 147(1) of the Act, the policy of insurance shall cover any liability incurred in respect of any accident. Under Clause 147(2)(a) of the Act, the amount of liability incurred should be paid by the insurer subject to sub-Clause (b) thereof. Section 147 (2)(b) of the Act deals with the damage to any property of a third party, in respect of which a limit of Rs. 6,000/- is fixed. Hence from the above discussed statutory

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provisions, it is evident that if death or bodily injury takes place when a motor vehicle which is insured by an insurer was put to use, the liability of the insurer is unlimited. However, the statute placed limit on the liability of the insurer in respect of damage caused to the property of a third party at Rs. 6,000/- irrespective of the extent of damage caused to the third party's property.

20. The liability of the Insurance Company in respect of a pillion rider on a two-wheeler as well as that of a passenger in a private car was always a subject matter of dispute. The Hon'ble Supreme Court and various High Courts examined the issue and were of the opinion that the liability of insurance companies is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (*United India Insurance Company Ltd Vs Tilak Singh* reported as **2006(4) SCC 404**, *Oriental Insurance Company Ltd Vs Jhuma Saha* reported as **2007(9) SCC 263 etc**). The Hon'ble Supreme Court in *Bhagyalakshmi & Ors Vs United Insurance Company Ltd* reported as **2009 (7) SCC 148** noted that the nature of policies came up for consideration before the Hon'ble Apex Court were all 'Act only policies'. Hence, the Hon'ble Supreme Court deems it appropriate to refer the impact of comprehensive policies on a pillion rider/ passenger of a car to larger bench of the Hon'ble Apex Court and the same is still under consideration.

21. In the meanwhile, the issue was considered by the Insurance Regulatory & Development Authority (IRDA), who is the competent authority to consider the issues with regard to fixation of tariff and terms and conditions of policy from 01.01.2007 (prior to which it was vested with



the Tariff Advisory Committee till 31.12.2006). Fixation of quantum of premium to be satisfied, so as to provide coverage in the case of ‘comprehensive policy’ (which came to be subsequently renamed as “Standard Motor Package Policy”) also came to be considered by the IRDA. The earlier Circulars issued by the IRDA were also considered. Based on the said reconsideration, IRDA clarified the position vide Circular dated 16.11.2009, holding that Insurer's liability under Section (II)1(i) of “Standard Motor Package Policy” (also called Comprehensive Policy) for Private Car and Two-Wheeler under the erstwhile India Motor Tariff very much included coverage to pillion rider on the motor cycle and occupant in a Private Car as well, so far as they are carried in the vehicle not for hire or reward. The Insurance Companies were also alerted that they were not permitted to abridge the scope of standard covers available under the erstwhile tariffs, beyond the options permitted in the erstwhile tariffs; also making it clear that any non-compliance in this regard would be viewed seriously by the IRDA.

22. Subsequently this Court in ***Yash Pal Luthra Vs United India Insurance Company Ltd, Mac Appeal No. 176/2009***, decided on 17.12.2009 issued notice to Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant of a private car under the comprehensive policy. The competent authority of IRDA had stated that on 02.06.1986, 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. While disposing of the said Appeal, this Court observed, *inter alia*, as follows:

“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.”

23. The Hon’ble Supreme Court in ***National Insurance Company Ltd Vs Balakrishnan & Anr*** reported as **2013 (1) SCC 731** considered the Judgment of this Court in ***Yash Pal Luthra (Supra)*** and held as follows:

“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 (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.”



24. Hence in view of the IRDA Circular dated 16.11.2009 (which was considered by this Court in *Yash Pal Luthra (Supra)* and Hon'ble Supreme Court in *Balakrishnan (supra)*), it is clear that the Insurance Companies were not permitted to abridge the scope of standard covers available under the comprehensive policies.
25. In view of the settled legal position as emerged from the discussion herein above, this Court now proceeds to examine the facts of the present case.
26. There exists no dispute with regard to the fact that the offending vehicle bearing no. DL-5CB-7800 was duly insured with Respondent no.1. It is also not disputed by Respondent no.1 that insurance policy obtained by the appellant was a 'Package' policy also known as 'comprehensive' policy. However, the bone of contention is the quantum/share of compensation which is required to be paid by the respective parties i.e., Respondent no.1 and the appellant (owner of the vehicle) under the said insurance policy to the claimants/Respondents.
27. Upon perusal of the Impugned order-I dated 02.04.2008, it is observed that the learned Claims Tribunal awarded a compensation of Rs.10,10,000/- and Rs. 3,00,000/- in MAC No. 129/05 and MAC No.130/05 respectively to the claimants. Learned Claims Tribunal directed Respondent no.1 to indemnify to the extent of Rs. 2,00,000/- in both the cases, which appears to be the main cause of grievance for the appellant in this matter. It is the case of the appellant that the insurance policy being a package policy, covers the unlimited liability of the appellant/owner with regard to the occupants of the vehicle. In



such a scenario, the appellant is not liable to pay anything to the claimants as the entire liability is covered by the insurance policy.

28. On a bare perusal of the insurance policy certificate, it is clearly noticeable that the appellant obtained a 'Package policy' from Respondent no.1, valid for a period from 03.06.2004 to 02.06.2005. An examination of the schedule of the premium paid for the policy conveys that the policy covers the liability of 9 passengers to the limit of Rs. 2,00,000/- per person. Now the question herein is whether an insurance company can legally limit its liability by incorporating certain terms and condition in insurance contract if the insurance is in nature of a package policy.

29. As discussed herein above, seventeen insurance companies, including Respondent No. 1, unanimously agreed to Circular No. IRDA/NL/CIR/F&U/073/11/2009 dated 16.11.2009, issued by the IRDA. They admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under a comprehensive/package policy. It is an admitted position that all insurance companies shall be liable to compensate the occupant of an insured vehicle under a package/comprehensive policy, irrespective of the terms and conditions contained in the policy. There is no provision in the aforementioned circular regarding the limit/cap of liability that can be fastened upon the insurance company under a package policy. Further as per Section 147 of the Act also there is no such restriction. In such a situation, a safe inference can be drawn that the regulatory body, i.e. IRDAI, made it obligatory for an insurance



company to duly compensate the insured vehicle and occupants of the vehicle without any upper limit on the compensation amount.

30. In a catena of judgments, including one passed by the co-ordinate Bench of this Court in ***Oriental Insurance Company Ltd. v. Deepak Rao***, reported as 2012 SCC OnLine Del 6225, the Courts have time and again held that passengers are covered under a package policy and have imposed liability on the insurer to compensate the insured in case of any loss or death. As discussed herein above, in ***Balakrishnan (supra)***, the Apex Court observed that the regulatory body has mandated that a 'package/comprehensive' insurance policy shall cover the liability of the insurer for the payment of compensation for occupants in a vehicle.
31. In a similar fashion, the Apex Court in ***Jagtar Singh (Supra)*** followed the ruling given in ***Yashpal Luthra (Supra)*** and ***Balakrishnan (Supra)***. It set aside the judgment of the High Court via which the High Court made the owner of the vehicle liable for payment of the compensation and absolved the insurer on the ground that the appellant was a gratuitous passenger in the insured vehicle.
32. The judgment delivered by the Hon'ble Gauhati High Court in ***Bipul Bhuyan v. Lakhi Goswami***, reported as 2022 SCC OnLine Gau 2038 carries some relevancy in the present case. The Hon'ble High court recognized the liability of the insurance company to pay the compensation under a package insurance policy. The Hon'ble Court modified the order of the learned Claims Tribunal by observing that it erred in directing the owner of the insured vehicle to pay Rs.1,40,500/- out of the total compensation amount of Rs. 3,40,500/-.



Hence, the Court directed the insurance company to pay the entire compensation of Rs. 3,40,500/- along with the prescribed interest. Similarly, the Hon'ble Bombay High Court in the case of *Popat Kacharu Kedar Vs Jyoti* reported as **2011 SCC Online Bombay 1100**, considered the issue in case of a comprehensive policy, whether the liability of the Insurance Company can be restricted to Rs. 50,000/- as per the insurance policy. The Hon'ble Bombay High Court, relying upon the circulars dated 16.11.2009 & 29.11.2009 issued by IRDA concluded that the risk in respect of occupants in a private car is unlimited under the Standard Motor Package Policy.

33. Moreover, as rightly contended by the appellant, Respondent no.1 failed to take a plea of limited liability to the extent of Rs.2,00,000/- in their written statement filed before the learned Claims Tribunal. Instead, Respondent no.1 chose to aver that they were not liable at all due to no privity of contract between the parties. The statement of R3W1 also does not suggest that Respondent no.1 is liable to the extent of Rs.2,00,000/- in accordance with the terms and conditions of the insurance policy.

34. In view of the above discussion, this Court is of the considerate view that it would be injudicious and against the principle of 'just compensation' to limit the liability of Respondent no.1 to Rs.2,00,000/- per passenger/occupant of the vehicle. The learned Claims Tribunal overlooked the Circular dated 16.11.2009, and deviated from the settled position of law that an insurance company is liable to duly compensate the insured for the payment of compensation to the occupant of the insured vehicle under a Package



policy, irrespective of the terms and conditions of the policy. Limiting liability in this manner would defeat the purpose of securing oneself and valuables with an insurance policy, as well as the overall purpose of the Motor Vehicle Act, 1988, which is to provide relief to motor accident victims by way of just compensation.

35. Accordingly, the Impugned order-I dated 02.04.08 passed by the M.A.C.T, Karkardooma Courts, Delhi deserves to be modified. The Impugned order-II dated 19.02.13 passed by the ADJ, Karkardooma Courts, Delhi is hereby set aside.

36. Respondent no.1, in MAC Appeal No. 619/2013, is directed to pay the entire compensation of Rs. 10,10,000/- along with the interest of 7.5% per annum to Respondent nos. 3 to 5 cumulatively. Also, the compensation of Rs.3,00,000/- shall be duly paid by Respondent no.1 to Respondent no.3 in MAC Appeal no. 624/2013.

37. Hence, the appeals are disposed of in the above terms, and all the pending applications stands disposed of. Statutory deposit, if any may be released to the Appellant. No order as to costs.

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GAURANG KANTH, J.

MAY 16, 2023

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