



2024:EMC:8337



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

% **Judgment reserved on : 14 March 2024**
Judgment pronounced on : 30 April 2024

+ **MAC.APP. 208/2022 and CM APPL. 32387/2022 (Stay)**
IFFCO TOKIO GENERAL INSURANCE CO. LTD

..... Appellant
Through: **Mr. Pankaj Gupta, Adv. for Ms.**
Suman Bagga, Adv.

versus

ANJU DEVI@ANJU & ORS. Respondents
Through: **Mr. Yogendra Kumar Verma**
and Mr. Manoj Goel, Adv. for
R-1 to R-7/Claimants

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. The instant appeal has been preferred by the appellant/Insurance Company in terms of Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 14.02.2022 passed by the learned Presiding Officer, Motor Accident Claims Tribunal², Patiala House Courts, New Delhi, agitating that the liability to pay compensation or indemnify the insured/registered owner of the offending vehicle i.e. respondent No.9 cannot be invoked against it for the insurance policy of the motor vehicle being “Act Only Policy”.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, suffice to state that one Sher Singh, who was seated as a pillion rider on the offending vehicle i.e.

¹ M.V. Act



Scooty bearing registration No. DL-8S-BH-0813, being driven by respondent No.8, Rajan Singh Negi @ Raju Singh Negi, met with an accident on 17.06.2016, resulting in bodily injuries to the pillion rider Sher Singh, who tragically succumbed to his injuries, on the way to the hospital. An FIR³ bearing No. 458/2016 was lodged under Section 279/338/304-A of the Indian Penal Code, 1860, at PS Vasant Kunj (South), New Delhi. The Detailed Accident Report⁴ was filed on 06.10.2016 by the Investigating Officer⁵. Respondent Nos. 1 to 7 are the wife, minor children and parents of the deceased, who sought compensation in terms of Sections 166 & 140 of the M.V. Act. The plea of the appellant/Insurance Company before the learned Tribunal was that although the offending vehicle was insured with them under “Act Only Policy”, it was not liable to pay any compensation for any damage or risk to the appellant, rider/occupant of the vehicle, as no additional premium had been paid by the registered owner of the offending vehicle, i.e., respondent No.9.

3. It is pertinent to mention here that the learned Tribunal has awarded a total compensation of Rs. 26,83,995/- to the respondents No. 1 to 7/claimants with the interest @ 6% p.a. from the date of filing of DAR, i.e., 06.10.2016 till realization. The appellant/Insurance Company has not assailed the findings rendered by the learned Tribunal, holding that the respondent No.8/ driver was guilty of rash

² Tribunal

³ First Information Report

⁴ DAR

⁵ IO



and negligent driving of the offending vehicle, resulting in the death of the victim, namely, pillion rider Sher Singh.

4. Mr. Pankaj Gupta, learned counsel for the appellant/Insurance Company, referred to the true copy of the insurance policy (Annexure A4) and submitted that the policy was valid from 25.03.2016 to 27.03.2017, with only a basic premium of Rs. 538/- paid, in addition to P.A.⁶ /owner/driver coverage, with a total compensation limit of Rs. 1 lakh on payment of Rs. 50. It was urged that no premium was paid for legal liability to the driver, employee or personal assurance to the passenger.

5. In his submission, learned counsel for the appellant/Insurance Company relied on decision in **The General Manager, United Insurance Company Ltd. v. M. Laxmi**⁷; decision of the Gujarat High Court in **Oriental Insurance Company v. Ramjibhai Govindbhai Patel**⁸; the decision of the learned Single Judge of this Court in **National Insurance Co. Ltd. v. Ravi Prakash Mishra**⁹; **Yash Pal Luthra v. United India Insurance Company Ltd.**¹⁰ and **Oriental Insurance Company Ltd. v. Surendra Nath Loomba**¹¹ decided by the Supreme Court.

6. *Per contra*, learned counsel for the respondents/claimants urged that the facts and circumstances in the case laws cited by the learned counsel for appellant/Insurance Company are clearly distinguishable.

⁶ Personal Assurance

⁷ Civil Appeal No. 6659/2008 dated 14.11.2008

⁸ Regular First Appeal No. 5321/2006 dated 08.07.2022

⁹ MACT.APP. 576/2018 decided on 02.11.2023

¹⁰ MAC APP. No. 176/2009 dated 09.12.2009

¹¹ Civil Appeal No. 1345-1346/2009 dated 20.11.2012



Alluding to the relevant observations made by the learned Tribunal while dismissing the objections of the appellant/Insurance Company regarding the policy of insurance not being a ‘comprehensive’ one and the pillion rider was not covered under third party insurance, it was submitted that the policy in the present question is a deceptive one. There was no exclusion clause in the insurance policy stating that the pillion rider would be excluded from the ambit of the insurance policy. He invited reference to two decisions by the Telangana High Court in **United India Insurance Company v. Smt. S. Vanitha, Nizamabad District**¹² and **General Manager, United India Insurance Company Ltd. v. Maragathamani**¹³.

ANALYSIS & DECISION:

7. Having heard learned counsels for the parties and on perusal of the record, it would be relevant to extract the reasons that prevailed in mind of the learned Tribunal in holding the appellant/Insurance Company liable to pay compensation to the claimants with liberty to seek recovery rights against the registered owner and driver jointly and severally, read as under: -

“35. The witness R3W1 on behalf of Insurance Company had only exhibited the policy No. 97229273. He has not deposed anything about the premium collected by the Insurance Company inasmuch as he had not explained for what all the premium has been collected. More specifically there is no explanation as to why there is an additional premium of Rs. 50/ for PA owner driver CSI Rs. 1,00,000 under the head third party premium. If this was a purely act only policy such premium could not have been charged. Further, the very terms and conditions exhibited by the said witness being Ex. R3W1/2 (colly) reads as under:-

¹² 2021 Latest Caselaw 4378 Tel

¹³ 2021 LawS uit(MAD) 3735



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LIABILITY TO THIRD PARTIES

"1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of:-

(a) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

36. It cannot be disputed that the insurance is a contract and the rights and liabilities of parties are covered by the expressed language of terms and conditions contained therein.

37. Now the words death of or bodily injury to any person or occupants carried in the insured vehicle cannot be ignored. More specifically, when they are written under the head liability to third party. **The Insurance Company has consciously stated that any person including occupants carried in the insured vehicle provided that such occupants are not carried for hire and reward and therefore, a pillion rider on the insured vehicle would fall under the category of such person/occupants carried in the insured vehicle.** It is settled proposition of law that standard form of contract itself have to be read against the interest of makers if there is ambiguity in the terms of the contract.

38. Therefore, it is for the Insurance Company to prove its terms and conditions mentioned in the contract. I may further note that the heading of document is **"Two Wheeler Policy Certificate of insurance cum schedule"**. The heading immediately above the terms and conditions is also relevant and reads as "Policy wording for Two Wheelers". The expression @ "including occupants carried in the insured vehicle" in clause I(a) reproduced herein above can be construed accordingly as referring to two wheelers and since the language is slightly ambiguous, it has to be read against the Insurance Company. It can not be understood that reference is only with regard to four wheelers. This interpretation is also supported by the admission by the witness in the cross examination that "it is correct that nowhere it has been mentioned in the policy as well as terms and conditions filed today that pillion rider will not be covered under the said policy." The expression "Act only Policy" is not mentioned on the document Ex.R3W1/I, but the expression "Liability only" is mentioned. There is no reference to the statute. Further, what the law has provided is the



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minimum coverage to be provided under the law by the Insurance Company. Nothing stops the Insurance Company from offering more on the basis of premium collected or at least no evidence to that effect has been placed on record. Therefore, the language of policy is militating against the arguments addressed by Ld. Counsel for Insurance Company that the pillion rider is not covered by the policy. If this was the intention, then the Insurance company ought to have modified and corrected the language of the policy as words used in the contract cannot be ignored. This is the only possible interpretation when we consider the case of a two wheeler as it can only have two riders, i.e. driver and pillion rider. There is another way of looking at things, inasmuch as, Ld. Counsel for petitioner had alternatively asked that even in such cases, pay and recover principle is applicable as held in cases **Imam Khan & Anr. Vs. Akram & Ors., 2018 (4) T.A.C. 407 (Raj.); Cholamandalam MS General Insurance Co. Ltd. V s. Kulwinder Kaur & Ors., 2020 (4) T.A.C. 518 (P&H) & National Insurance Co. Ltd. Vs. Shiv Ram & Ors., 2017 (4) T.A.C. 201 (J & K).**

39. However, unfortunately, the insured has not taken any such defence in the present matter and therefore, it is a fit case to apply pay and recover principle. Therefore, R-3/Insurance Company is only held entitled to a right of recovery of the awarded amount from R-2, i.e. owner of the offending vehicle, as per the contract of insurance executed between them. Therefore, R-3 is first liable to deposit the awarded amount with UCO Bank, Patiala House Court Branch, along with interest @ 6% per annum from the date of filing of the DAR either by way of crossed cheques/DDs in name of the petitioners or by way of deposit in any e-form in bank account being maintained in the above said bank in name of this tribunal within 30 days from today. In case even after passage of 90 days from today, R-3 fails to deposit this compensation with interest, in that event R-3 shall be liable to pay interest at the rate of 9% per annum for the period of delay beyond 90 days from today and in light of judgment of the Hon'ble High Court in the case of New India Assurance Company Limited Vs. Kashmiri Lal2007 ACJ 688, this compensation shall be recovered by attaching the bank account of R-3 with a cost of Rs.5,000/-."

8. A careful perusal of the aforesaid reasoning rendered by the learned Tribunal show that the policy of insurance in question **Ex.R3W1/1** was evidently not an "Act only policy". The coverage of



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risks in the policy were not restricted to third party liability, but it was by all means a ‘comprehensive policy’ covering insurance to owner, driver of the insured vehicle as well. The learned Tribunal has rightly observed that there was no stipulation in the policy of insurance or condition that the pillion driver on the insured two wheeler shall be out of the purview of the insurance policy. The learned Tribunal has very rightly observed that a two wheeler is meant for two persons/riders i.e., driver and pillion rider and it is nobody’s case that the deceased pillion rider was being transported or travelling on the ill-fated scooter by virtue of hire or for any other reward.

9. In so far as the case law relied upon by learned counsel for the appellant/insurance company is concerned, the decision in the case of **Yashpal Luthra v. United India Insurance Co. Ltd.**¹⁴ passed by this Court, referring to the clarification issued by the Insurance Regulatory and Development Authority (IRDA) w.e.f. 01.01.2007, and, subsequent circulars issued in this regard regarding applicable tariffs, it was held that unless the contrary is shown a ‘comprehensive policy’ of insurance shall cover the pillion rider in case of two wheeler. I do not see how the aforesaid case substantiates the submissions of learned counsel for the appellant.

10. In so far, the decision in ***Oriental Insurance Co. Ltd. v. Surendra Nath Loomba (supra)***, it was a case where the nature of the policy of insurance was held to be “Act Policy Only” and hence compensation was denied to the occupants of the ill-fated car which had dashed into a tree. At the cost of repetition, the insurance policy



in question besides providing of basis premium of Rs.538/-, also provided premium for personal insurance of owner driver on payment of further charges of Rs.50/- to the extent of Rs.1,00,000/-. The policy of insurance specifically provides that insurance was applicable for driver of the insured vehicle for social, domestic and pleasure purpose, and for the insured business or profession. It excludes coverage of policy for use in nature of hire or reward, tuition, racing, pace making, reliability trials, speed testing, carriage goods etc. At the cost of repetition, there was no stipulation that the pillion rider would not be covered under the insurance policy. Needless to say, it was the duty of the insurance company to mention the particulars, as to who all are covered under the policy and who are not covered.

11. In view of the foregoing discussions, the impugned judgment-award dated 14.02.2022 passed by the learned Tribunal does not suffer from any patent illegality, perversity or incorrect approach in law. Hence, the present appeal is dismissed.

12. Before parting with this appeal, it may be stated that as per the interim order dated 25.07.2022 passed by this Court, the appellant/insurance company was directed to deposit the entire amount of compensation with accrued interest within four weeks thereof with the Registrar General of this Court and the operation of the impugned judgment and award was stayed. The said order stands vacated. The entire amount of compensation be released to the claimant Nos. 1 to 7/respondents No. 1 to 7 forthwith with accrued interest as per the direction of the learned Tribunal.

¹⁴ MAC APP. No. 176/2009 dated 09.12.2009



13. The amount of Rs.25,000/- towards statutory deposit is hereby forfeited to the State.

14. The present appeal along with the pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 30, 2024
SSC