



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 838 OF 2009

The New India Assurance Co. Limited,
through its Divisional Manager,
Divisional Office, Akola, presently through
It's the Chief Regional Manager, Regional
Office, 4th Floor, Dr. Ambedkar Bhawan,
M.E.C.L. Premises, Seminary Hills, Nagpur.

.... **APPELLANT**

VERSUS

- 1) Shashikala wd/o Gopichand Aade,
Age 39 years, Occupation – Household,
- 2) Biyani s/o Gopichand Aade,
Age 21 years, Occupation – Education,
- 3) Bharat s/o Gopichand Aade,
Age 21 years, Occupation – Education,
- 4) Bhikha Meram Aade,
Age 68 years, Occupation – Nil,
- 5) Drupadabai Bhikha Aade,
Age 63 years, Occupation – Household,
All residents of at Post Sirsala,
Taluka and District Washim.
(Original Applicants 1 to 5)

- 6) Amirkha Riyazkha Pathan
Age – Major, Occupation – Business,
Resident of Sultanpur, Taluka – Lonar,
District - Buldhana.
(original Non-applicant No.1)

- (Appeal dismissed vide
order dated 30-11-2009)

.... **RESPONDENTS**

Ms. Anita Mategaonkar, Advocate for the appellant,
Mr. P.R. Agrawal, Advocate for respondent Nos. 1 to 5.

CORAM : ABHAY J. MANTRI, J.

DATE : 27-06-2025

ORAL JUDGMENT :

Heard.

2. The appellant/Original respondent No.2 being aggrieved by the Judgment and order dated 20-03-2009 passed by the learned Member, Motor Accident Claims Tribunal, Washim, (hereinafter referred to as the “*Tribunal*”) in M.A.C.P. No.278/2005, whereby the Tribunal has partly allowed the application and directed the appellant and respondent No. 6 to jointly and severally pay the compensation amount to respondent Nos. 1 to 5. It was further clarified that the appellant's liability to pay compensation was quantified to Rs. One lakh only. Furthermore, the appellant is at liberty to recover the excess amount paid by it as compensation from Respondent No. 6, has preferred this appeal.

3. It is the case of respondent Nos. 1 to 5/original applicants/petitioners that on 20-07-2005, deceased Gopichand Bhikha Aade was travelling in Minidor bearing registration No.MH-28/C-7610 (hereinafter referred to as “*Minidor*”) from Washim to Pangri owned by original respondent No.1/respondent No.6 and insured with non-applicant No.2, i.e. the appellant. On the way, i.e. Washim Raja Kini Road, the driver of the vehicle drove the Minidor at high speed in a

rash and negligent manner and lost his control over the said vehicle; therefore, the Minidor turned turtle on the side of the road, wherein the deceased suffered injuries and succumbed to them. Biyani Gopichand Aade lodged a report about the accident with the Washim Police Station. Based on the said report, an offence was registered vide Crime No.266/2005 for the offence punishable under Sections 279 and 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

4. The deceased was serving as a Salesman in 'Jivnani Traders' and was receiving Rs. 125 to Rs. 150 per day as a commission. In addition to that, he was selling 40 to 50 litres of milk per day. His annual income was Rs. 25,000/- per year from agriculture and Rs. 10,000/- per month from other sources. Original applicant No. 1 is the widow; applicants Nos. 2 and 3 are the sons; and applicants Nos. 4 and 5 are the parents of the deceased. Accordingly, they have filed a claim petition for the grant of compensation to the tune of Rs. 8,00,000/-.

5. Despite service of the summons, no one appeared on behalf of respondent No. 6/original respondent No. 1, and the matter was proceeded with *ex parte* against him.

6. Appellant/Respondent No. 2 herein resisted the claim, contending that the Minidor was not involved in the accident. The driver of the Minidor was not at fault. The accident was caused by a mechanical fault. The insurance policy does not cover the risk of the occupants in the vehicle. The Minidor in question was used for commercial purposes, and therefore, the owner of the Minidor has committed a breach of the terms and conditions of the insurance policy. It has also denied the income of the deceased. However, *the appellant admitted that respondent No. 1 was the owner of the Minidor and that it was insured with them*; therefore, it urged the dismissal of the claim.

7. Based on the rival pleadings, issues were framed. Pursuant to the issues, the applicants led the evidence and examined applicant No. 1 in support of their claim and produced and proved the relevant documents. However, the appellant has not led any evidence in support of its defence to rebut the claim of the applicants.

8. After appreciating the evidence, the learned Tribunal held that appellant and respondent No. 6 shall pay jointly and severally the compensation of Rs. 3,24,000/- together with future interest at the rate of 7% per annum from the date of filing of the application till realisation of the amount and also directed to distribute the said

amount. It was also clarified that the appellant's liability to pay compensation was quantified to Rs. One lakh only. Furthermore, the appellant is at liberty to recover the excess amount paid by it as compensation from Respondent No. 6.

Aggrieved by the said judgment and order, the appellant has preferred this appeal.

9. Heard Ms. Anita Mategaonkar, learned Advocate for the appellant and Mr. P.R. Agrawal, learned Advocate for respondent Nos. 1 to 5. Perused the original record and the judgment relied on by the learned Advocates for the respondent Nos. 1 to 5.

10. Having considered the same, the following points arise for determination :

Whether any interference is required in the impugned judgment and award ?

11. Ms. Anita Mategaonkar, learned Advocate for the appellant, vehemently contended that although the Tribunal held that respondent No. 6 had committed breach of the terms and conditions of the insurance policy; however, erred in directing to pay the compensation beyond its liability of Rs.1,00,000/- to the applicants and recover the

same from the owner. The said order is without jurisdiction and null and void; therefore, it cannot be sustained.

12. She further canvassed that the Tribunal failed to appreciate the evidence on record in its proper perspective, as it has come on record that the deceased was an unauthorised passenger in a private car and was travelling with goods for his own purpose for hire or reward. The insurance policy does not cover such a passenger. Hence, the finding of the Tribunal appears contrary to the settled position of law and cannot be sustained in the eyes of the law.

13. During the argument, she has taken me through the said findings as well as the insurance policy on record. Accordingly, she urged that the appeal be allowed.

14. As against, Mr. P.R. Agrawal, learned Advocate for the respondents, strenuously argued that though the appellant has taken the ground in the written statement that the owner of the Minidor has committed breach of terms and conditions of the insurance policy, it has failed to adduce any evidence in that regard. Nobody on behalf of the appellant entered the witness box to demonstrate that the owner has committed a breach of the terms and conditions of the insurance

policy. Similarly, the appellant or its advocate does not dispute that the insurance policy in question was a comprehensive/package policy, which covers the liability of the occupants of the vehicle in question. Therefore, the findings recorded by the Tribunal are just and proper. He has drawn my attention to the insurance policy (Exhibit 29) and pointed out that the said policy was package/comprehensive policy and owner had also paid the premium towards the four number of unnamed passengers to the extent of liability of Rs.1,00,000/- per person, which itself shows that the said package policy covered the occupant of the vehicle.

15. To buttress his submissions, he has relied on the judgment of the Hon'ble Apex Court in *National Insurance Company v. Balakrishnan and Another, (2013) 1 SCC 731* and pointed out paragraph Nos. 24, 25 ad 26; and the judgment of Karnataka High Court in *New India Assurance Co. Ltd. v. Vibhuti and Others, 2003 (7) KantLJ 524*, particularly paragraph Nos.11 and 12 thereof. He further submitted that in view of the mandate in the above judgments, under the comprehensive/package policy, irrespective of the terms and conditions contained in the policy, the insurance companies are bound to pay the compensation in respect of the liability to the occupant in a car under the said policy. Also, the question of whether the person was a gratuitous passenger or had paid

the fare for the journey being performed by him did not exonerate the company from the liability to pay the compensation to the legal heirs of the deceased. Therefore, he argued that the judgment passed by the Tribunal is just and proper and no interference is required in it, hence urged for dismissal of the appeal.

16. At the outset, it appears that the learned Advocate for the appellant challenged the impugned judgment and order only on the ground that the owner of the Minidor has committed a breach of the terms and conditions of the insurance policy; therefore, the appellant is not liable to pay the compensation. It is to be noted that the appellant has not challenged the other findings in the judgment. During the argument, Mr. P.R. Agrawal, learned Advocate for respondent Nos. 1 to 5, submitted that in the absence of a cross-appeal or objection, the claimants are entitled to claim just and fair compensation. He drew support from the judgment in *Surekha w/o Rajendra Nakhate and others v. Santosh s/o Namdeo Jadhav and others*, (2021) 16 SCC 467.

17. It is pertinent to note that during the pendency of the appeal, on 30-11-2009, *the appeal was dismissed against respondent No.6, i.e., the owner of the Minidor*. Moreover, the owner of the Minidor has not challenged the impugned judgment; therefore, it attained finality against the owner of the Minidor. In such circumstances, in the absence

of the owner of the Minidor in appeal, an order cannot be passed against him by imposing liability to pay the compensation.

18. It is worth noting that the appellant admitted that respondent No. 6 is the owner of the Minidor and said Minidor was insured with it for the period from 12-02-2005 to 11-02-2006. Also, it does not dispute that the nature of the policy was 'B package/comprehensive', and the Minidor was a private vehicle for carrying four passengers. *Moreover*, it does not dispute that respondent No.6 paid a premium for four unnamed passengers, and it covered the liability of the insurance company to the extent of Rs. 1,00,000/- per person. In addition to this, the insurance company has not adduced any evidence in support of its defence to prove that the owner of the Minidor has committed a breach of the terms and conditions of the insurance policy.

19. In the written statement, it was not the defence of the appellant that the deceased was travelling in the said Minidor by paying the hire or reward. Therefore, in absence of the pleadings and evidence the appellant is not entitled to raise the said ground based on the evidence of P.W. 1 who does not know whether her husband paid the fare or not while travelling in the said Minidor, in such an eventuality, her

admission in that regard is not helpful to the appellant in support its contention.

20. Perused the insurance policy (Exhibit 29). It indicates that the same is a private car “**package/comprehensive**” policy. It further denotes that the owner had paid a premium for covering the risk of four unnamed passengers to the extent of the sum assured of Rs. 1,00,000/- per person. The fact itself demonstrates that the said package policy covered the risk of the passengers. I would like to reproduce clause No.16 of the said package policy as under :

**“16. PERSONAL ACCIDENT TO UNNAMED PASSENGERS
OTHER THAN INSURED AND THE PAID DRIVER AND
CLEANER**

*(for vehicles rated as Private cars and motorised two-wheelers
(not for hire or reward) with or without sidecar)*

In consideration of the payment of an additional premium it is hereby understood and agreed that that the insurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the insured and/or the paid driver attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen’s Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or travelling in but not driving the insured motor car and caused by violent, accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in :-

Details of Injury

- i) **Death***
- ii) Loss of two limbs or sight of two eyes
or one limb and the sight of one eye*
- iii) Loss of one limb or sight of one eye*
- iv) Permanent Total Disablement from Injuries other than those named above*

Provided always that :-

- (1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and **total liability of the insurer shall not in the aggregate exceed the sum of Rs.1 lac per person*** during any one period of insurance in respect of any such person.*
- (2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.*
- (3) Such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s), whose receipt shall be a full discharge in respect of the injury of such person.*
- (4) not more than 4 ** persons/passengers are in the vehicle of the insured at the time of occurrence of such injury. Subject otherwise to the terms, exceptions, conditions, and limitations of this policy.”*

21. The appellant did not adduce any evidence in support of its defence nor proved that the deceased was travelling in the Minidor by paying the fare to the driver of the Minidor. *On the other hand*, the appellant is not disputing the accident in question, and the deceased was travelling in the said Minidor and sustained the fatal injury. When the appellant has raised the defence about breach of terms and conditions of the policy, in those circumstances, it would be incumbent on it to prove the same by adducing cogent evidence, but the appellant failed to prove the same; therefore, adverse inference can be drawn against it in that regard.

22. While dealing with the above controversy, it would be proper to reproduce the mandate of the Hon'ble Apex Court in ***Balakrishnan*** (*supra*), which reads thus:

*“24. It is extremely important to note here that, till 31.12.2006, the Tariff Advisory Committee and, thereafter, from 01-01-2007, 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 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. 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 02-06-1986 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, which stated that the circulars dated 18-03-1978 and 02-06-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 01 07- 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 03-12-2009, which have been reproduced hereinabove, were issued.*

25. It is also worth noting 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."

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 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."*

23. The Karnataka High Court in ***Vibhuti*** (supra) has observed as under :

"11. It was then contended on behalf of the insurance company that if the vehicle in question was being used for a private purpose, the occupants must be treated as gratuitous passengers, the liability qua whom may not be covered by the policy. We have no hesitation in rejecting that contention, keeping in view the fact that the policy in question is a comprehensive policy and covers the liability of all those being carried in or upon or entering or mounting or alighting from the motor vehicle. IMT 12, contained in the policy, which specifies the legal liability of the company towards the passengers, reads as under:

"IMT 12. Legal liability to passengers, excluding liability for accidents to employees of the insured arising out of and in the course of their employment:

In consideration of an additional premium of ..., and notwithstanding anything to the contrary contained in Section II-1 (c) but subject otherwise to the terms exceptions, conditions and limitations of this policy the company will indemnify the insured against liability at law for compensation (including legal costs of any claimant) for death of or bodily injury to any person other than a person excluded under Section II-1 (b) being carried in or upon or entering or mounting or alighting from the motor vehicle but such indemnity is as stipulated in the [Motor Vehicles Act, 1988](#), in respect of any number of claims in connection with the motor vehicle arising out of one cause:

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than the number of persons mentioned in the schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor if any then the insured shall repay to the company rateable proportion of the total amount which would be payable by the company by reason of this endorsement not more than the said number of persons were carried in the motor vehicle."

12. It is evident from a plain reading of the above that the liability of the insurance company to pay compensation on account of death or bodily injury to any person who was travelling by the vehicle in question did not depend upon whether the person concerned was a gratuitous passenger or had paid fare for the journey being performed by him. Since the policy is comprehensive in nature, it covered the liability qua any person travelling in the vehicle. What is important is whether the person was killed or injured while travelling in or upon or entering or mounting or alighting from the motor vehicle, and not whether he had or had not paid any fare for such travel. In the totality of the above circumstances, therefore, we do not see any reason to interfere with the finding recorded by the Tribunal as regards the liability of the insurance company is concerned."

24. A bare perusal of the above mandate, it appears that the Hon'ble Apex Court in the case of **Balakrishnan** (*supra*) has categorically held that "if the policy is comprehensive/package policy, the liability of the

occupant of the vehicle is covered irrespective of the terms and conditions of the insurance policy and all the insurance companies are bound to pay the compensation in respect of the liability towards occupant in a vehicle under the package policy.”

25. The Karnataka High Court in **Vibhuti** (supra), after considering the IMT—12 of the insurance policy, which is *pari materia* to IMT 16 in the policy of the present case, held that “*if the policy is comprehensive in nature, it covered the liability qua any person travelling in the vehicle. It does not matter whether the person concerned was a gratuitous passenger or had paid fare for a journey and, therefore, did not interfere with the reasoning of the Tribunal.*”

26. In the present case, admittedly, the appellant has not adduced any evidence in support of its defence. For the sake of argument, even if the deceased were travelling in the vehicle by paying the fare, it would not absolve them from the liability to pay compensation. However, as per the mandate in **Vibhuti** (supra) and **Balakrishnan** (supra), the insurance company is liable to pay the insurance to the legal heirs of the occupants covered under the package/comprehensive policy.

27. The learned Advocate for the appellant, during argument, does not dispute the appellant's liability to pay Rs.1,00,000/- under the policy as a compensation; however, she only emphasis on the point that the Tribunal though held that the appellant is liable to pay Rs.1,00,000/-, however, directed it to pay the compensation to the claimants and recover it from respondent No.6 owner of the Minidor and to that extent she urged for setting aside the impugned judgment and award. However, in view of the mandate in **Balakrishnan** (*supra*), as well as the fact that the insurance policy was package policy and as per the terms and conditions of the insurance policy, the liability of the occupants were covered to the extent of Rs.1,00,000/-; it does not mean that the liability was restricted, but being the beneficial legislation and the fact that vehicle was insured with the appellant company as well as under the policy document, limit of amount of company's liability under Section 2.1(ii) of the Motor Vehicles Act, 1988, the incumbents' liability is shown upto Rs.7,50,000/-. That being so, as per the policy, the present case is covered under Section 2.1(i) and not 2.1(ii). Considering all these aspects and the mandate in **Balakrishnan** (*supra*), I do not find any substance in the contention of the learned Advocate for the appellant in that regard to cause interference with the findings recorded by the Tribunal as regards the pay and recover it. It is further noted that in the present case, the

original claimants have not preferred any appeal for enhancement or cross-objection against the findings recorded by the Tribunal.

28. The next point was argued by learned Advocate for respondent Nos. 1 to 5 that though the claimants have not filed an appeal or cross-objection, in that case also, they are entitled to enhancement of the compensation amount. It would not be proper to refuse their claim on the ground that they failed to file a cross-appeal/objection. In support of his submission, he relied on the judgment of the Hon'ble Apex Court in *Surekha w/o Rajendra Nakhate (supra)*. Accordingly, he urged the granting of enhanced compensation.

29. As against, learned Advocate for the appellant submitted that the original claimants have not filed a cross-appeal or cross-objection for enhancement of the compensation, which itself shows that they are satisfied with the judgment and award passed by the Tribunal. The conduct of the claimants, as stated, denotes that they waive their right to claim further enhancement of the compensation; hence, she urged for the rejection of the learned Counsel's contention.

30. I have gone through the judgment of *Surekha w/o Rajendra Nakhate and others (supra)* as well as *Order XLI Rule 33* of the Civil Procedure Code. It appears that the appellate Court shall have power

to pass any decree to make any order, which would have been passed or made by the trial Court, which itself shows that in view of the mandate of the judgment as well as above provision, in my opinion, in absence of the cross-appeal/objection, the appellate Court can pass the award or modify the judgment for which ought to have been passed by the Tribunal.

31. It is pertinent to note that in the present case, respondent No.6 who is the owner of the Minidor against whom the appeal is dismissed, at present is not a party to the appeal and, therefore, in absence of owner of the vehicle, it would not be proper to hold the insurance company responsible for the enhanced payment. The owner of the vehicle is a necessary party to pass the order of enhancement. In the absence of the owner, it would not be proper to hold the insurance company liable to pay the enhanced compensation to the claimants, as the insurer is liable to indemnify the insured; therefore, I am not inclined to accept the submissions made by respondent Nos. 1 to 5 in that regard. That being so, the observations made in the above judgment are hardly of any assistance to respondent Nos. 1 to 5 in support of their claim for the grant of enhancement of compensation.

32. On perusal of the judgment, it appears that the learned Tribunal has considered the evidence on record and rightly appreciated the same in its proper perspective. Thus, the findings recorded by the Tribunal are just and proper. No illegality or perversity appears in the judgment to call for interference in the appeal. Hence, I answer this point in the negative.

33. As a result, the appeal lacks merit, needs to be dismissed, and it is dismissed accordingly. The parties are to bear their own costs.

(ABHAY J. MANTRI, J.)