**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-3881-2023 (O&M)

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

..Appellant

Versus

KULDEEP KAUR AND ORS.

..Respondents

Reserved on: 01.05.2026
Pronounced on: 22.05.2026
Uploaded on: 27.05.2026

Whether only the operative part of the judgment is pronounced? *NO*
Whether full judgment is pronounced? *YES*

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. SanjeevKodan, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
Mr. Vipul Sharma, Advocate
for respondents No.1 and 2.

None for respondent No.3.

SUDEEPTI SHARMA, J.

1. The present appeal has been filed by the appellant-Insurance Company against the award dated 06.04.2023 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), wherein appellant/Insurance Company was fastened with the liability to pay the compensation of Rs.53,66,900/- to the respondents No.1 and 2/claimants along with interest @ 7 % per annum on account of death of Major Singh in a Motor Vehicular Accident, occurred on 26.05.2011.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 26.05.2021 at about 5.00 pm, Major Singh was going from Zirakpur to village Damanheri (Rajpura) while sitting on the pillion seat of a motorcycle bearing registration no.PB11-CV-5332 which was being driven by Varinder Singh @ Vrinder Singh respondent no.1 in the middle of the road at a fast speed and in a rash and negligent manner. When they reached infront of Lucky Furniture Zirakpur, a car was parked on the left side of the road. Without caring for the traffic coming from behind and without looking back, Varinder Singh @ Vrinder Singh instead of waiting for the clearance of the traffic coming from behind, started crossing the parked car coming almost in the middle of the road. Resultantly their motorcycle was struck by an unidentified petrol tanker which was coming from behind. Due to the impact, the motorcycle went out of control and struck against a railing installed on the left side of the road. As a result of hit Major Singh fell on the road and received serious head injury whereas Varinder Singh @ Vrinder Singh received minor injury. After causing the accident, the driver of the tanker sped away from the spot and its number could not be noted. They both were taken to J.P. Hospital, Zirakpur immediately where Varinder Singh @ Vrinder Singh was given first aid whereas due to serious life threatening injuries, Major Singh was referred to GMCH, Sector 32, Chandigarh where he was declared dead by the doctors on duty. The accident took place due to composite negligence of motorcycle bearing registration no.PB11-CV-5332 by respondent no.1 Varinder Singh @ Vrinder and driver of unknown tanker. The deceased was not at all at fault being pillion rider of the motorcycle. In respect of accident, a criminal case bearing FIR no.317 dated 26.05.2021 under Section 279,304-A,427 and 337

of IPC, Police Station Zirakpur, SAS Nagar was registered against driver of unknown tanker, on the statement of Varinder Singh @ Vrinder Singh. The accident was also witnessed by Kulwant Singh son of Sh. Mohinder Singh, resident of Village Chhat, District SAS Nagar. It has been further alleged that the deceased was running a shop in the name and style of M/s Snacks Bar at Village Damanheri, Tehsil Rajpura, District Patiala, from which he was earning a sum of Rs.50,000/- per month. Since, respondent no.1 was the driver-cum-owner the offending vehicle, which was insured with respondent no.2 Insurance Company, therefore, both the respondents were jointly and severally liable to pay compensation to the claimants to the tune of Rs.75,00,000/- alongwith interest @ 12% per annum.

3. Upon notice of the claim petition, respondents therein appeared and contested the claim petition by filing separate written statement denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *"1. Whether Major Singh has died in the accident on 26.05.2021 due to composite rash and negligent driving of motorcycle bearing registration no.PB11- CV-5332 by respondent no.1 and driver of unknown tanker?OPP.*
>
> *2. Whether claimants are entitled to compensation, if so to what amount and from whom? OPP*
>
> *3. Whether respondent no.1 was not having a valid and effective driving licence at the time of accident? OPR-2*
>
> *4. Relief."*

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to respondents No.1 and 2/claimants. However, the appellant/Insurance Company was held liable to pay compensation. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. The learned counsel for the appellant-Insurance Company contends that the deceased who was stated to be travelling on the pillon seat of ill-fated motorcycle is not to be considered as third party and even otherwise he is to be treated as gratuitous passenger and in the instant case it was an act policy and thus appellant-insurance company is not liable to any compensation to the dependents/LRs of pillion rider. In support of his contention, the counsel for the appellant has placed reliance upon ***The General Manager, United Insurance Co. Ltd. vs. M. Laxmi and Ors. 2009(1) RCR (Civil) 232***.

8. He further contends that the claim petition was filed under Section 166 of the Motor Vehicle Act, which requires that negligence is to be proved but in the instant case, claimants failed to prove the same as no FIR was registered against the person who was driving the alleged offending motorcycle and even on this sole account the claim petition deserves to be dismissed. He, therefore, prays that the present appeal be allowed.

9. Per contra, learned counsel for respondents No.1 and 2/claimants contends as under:-

i. That the learned Tribunal has rightly decided issue No.1.

ii. That accident in question occurred due to composite negligence and respondents No.1 and 2/claimants can claim compensation from any of the tortfeasor.

iii. That finding of learned Tribunal on liability to pay compensation is concerned, the same is rightly decided by learned Tribunal.

iv. That the insurance policy of motorcycle bearing No.PB-11CV-5332 was package policy.

v. That appellant/Insurance Company has not examined any witness regarding the coverage of policy and even in written statement filed by the appellant/Insurance Company no ground was taken regarding the coverage of policy.

vi. That appellant/Insurance Company never pleaded before learned Tribunal regarding Act policy. He, therefore, prays that the present appeal be dismissed.

10. I have heard learned counsel for the parties and perused the whole record of the case with their able assistance.

11. Before proceeding further, it is necessary to reproduce the relevant portion of the award, which reads as under:-

> ***"ISSUE NO.1***
>
> *10. The onus to prove this issue was upon the claimants. On this issue while opposing the case of claimants, it has been argued on behalf of the respondent no.2 that the present petition filed by the claimants is under Section 166 of the Act asking for grant of compensation on account of death of deceased Major Singh in a road accident caused by composite rash and negligent driving of the offending vehicle by its driver respondent no.1 and unknown tanker by its driver. In order to maintain their claim under Section 166 of the Act, alleging negligence of the driver of the offending vehicle, the claimants are required to bring forth proof of rashness and negligence*

causing accident. The learned has further argued that in fact respondent no.1 was not negligent in driving the vehicle in question and the FIR regarding the accident was registered against the driver of unknown tanker on the statement of respondent no.1 Varinder Singh and the claim petition was filed against the respondents with an ulterior motive to get compensation from the respondents. Learned counsel has also argued that accident in question took place due to rash and negligent driving of driver of unknown offending vehicle. PW2 Kulwant Singh is near relative/uncle of the deceased and his presence at the spot of accident was doubtful. Respondent no.1 was family member i.e. real brother of deceased and the conduct is to be seen while coming for the tort compensation.

11. This Tribunal however fails to agree with what has been argued above by the learned counsel for respondents. To prove this issue, the claimants examined Kulwant Singh, eye witness of the occurrence as PW2 who deposed by way of his affidavit Ex.PW2/A that on 26.05.2021 at about 5.00 pm, he was going from Grain Market, Sector 26, Chandigarh to Village Chhat while driving a motorcycle. Major Singh was going ahead of him while sitting on the pillion seat of a motorcycle bearing registration no.PB11-CV-5332 which was being driven by Varinder Singh @ Vrinder Singh respondent no.1 in the middle of the road at a fast speed and in a rash and negligent manner. When they reached infront of Lucky Furniture Zirakpur, a car was parked on the left side of the road. Without caring for the traffic coming from behind and without looking back, Varinder Singh @ Vrinder Singh instead of waiting for the clearance of the traffic coming from behind, started crossing the parked car while doing this they went in the middle of the road *and were struck by an unknown petrol tanker which was coming behind them. Due to the impact, the motorcycle went out of control and it struck against a railing installed on the left side of the road. As a result of which Major Singh fell on the road and received serious head injury whereas Varinder Singh @ Vrinder Singh received minor injury. After causing the accident, the driver of the tanker sped away from the spot and its number could not be noted. They both were taken to J.P. Hospital, Zirakpur immediately where Varinder Singh @ Vrinder Singh was given first aid whereas due to serious lie threatening injuries, Major Singh was referred to GMCH, Sector 32, Chandigarh where he was declared dead by the doctors on duty. The accident took place due to composite negligence of motorcycle bearing registration no.PB11-CV-5332 by respondent no.1 Varinder Singh @ Vrinder and drive of unknown tanker. The deceased Major Singh was not at all at fault being pillion rider of the motorcycle. In crossexamination PW2 Kulwant Singh stated that he did not know claimants personally. He was not a summoned witness. He had never visited the house of claimants.*

12. PW3 ASI Rajesh Chauhan, Police Station Zirakpur, SAS Nagar, Mohali has stated that he conducted investigation of FIR no.317 dated 26.05.2021 under Section 279,337,304-A and 427 of IPC, PS Zirakpur. During investigation, he prepared the route site plan of place of accident Ex.P17. PW3 ASI Rajesh Chauhan further stated that as per site plan, a car was parked on the left side of the road leading from Zirakur to Patiala which was stationed at point B. Point A shown n the site plan was point of impact. The accident had taken place in the middle of the road.

The motorcyclist was crossing the said car when said motorcyclist was struck from behind by an unknown canter. The complainant in the FIR was Varinder Singh brother of deceased. In cross-examination PW3 ASI Rajesh Chauhan stated that during investigation it was not known if there was any fault on the part of Varinder Singh, volunteered that he was driving in the centre of the road. The unknown canter was yet not recovered. The site plan Ex.P17 was prepared at the instance of complainant Varinder Singh. He has not witnessed the accident.

13. RW1 Varinder Singh, driver of motorcycle in question, deposed that he had got lodged FIR no.317 dated 26.05.2021 under Section 279,304-A,427 and 337 of IPC against unknown driver and unknown vehicle. He was real brother of deceased Major Singh. He knew Kulwant Singh, resident of Village Chhat, District Mohali and said village was of his Mamaji. Kulwant Singh lives nearby their home in Village Chhat. He was driving his motorcycle at a speed of 50-60 km per hour. PW2 Kulwant Singh never made any statement to the police regarding the accident. He did not know if PW2 Kulwant Singh had given evidence against him in this case. He had made statement to the police that he was at fault while driving his motorcycle no.PB11-CB-5332 on 26.02.2021. He received summons at the first instance in this case but he did not appear. He identified his signatures at point A on statement Ex.R1 which he had given to the investigator deputed by insurance company. He admits that there was no mention of his negligence in entire FIR which was lodged on his statement, he volunteered that he told the police officials that he was also at fault. In cross-examination RW1 Varinder Singh stated that he was crossing a stationery car, therefore, he turned his motorcycle towards his right side without *looking for the clearance of traffic and he was almost in the centre of the road when accident occurred. There was no side mirror on his motorcycle. He admitted that he was also at fault in causing the accident as he did not see clearance of traffic on his right side. He also told that police that he was crossing the stationery car when accident occurred. Ex.R1 was written by the investigator with his own hand. The contents of Ex.R1 were not read over to him while taking his signatures on the same.*

14. It was the case of the claimants that respondent no.1 Varinder Singh was in the process of overtaking the stationery car without caring for the traffic coming from behind and without looking back. While doing this they went almost in the middle of the road and were struck by an unknown petrol tanker coming from behind. In the facts and circumstances of the case in hand, the principle of res ipsa loquitur applies. The incident itself speaks of the negligence of respondent no.1 driver of motorcycle. The onus shifted upon respondent no.1 to prove that he was not negligent. Normally it is for the claimants to prove negligence but as in some cases considerable hardship is caused to the claimants as the true cause of the accident is not known to them but is solely within the knowledge of the respondent no.1 who caused it and the claimants can prove the accident but cannot prove how it happened to establish negligence on the part of the respondent no.1. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the claimants to prove the accident and nothing more. It will then be for the respondent no.1 to show that the accident happened due to some other cause than his own *negligence. Where the maxim is applied the burden is on the respondent no.1 to show either that in fact he was not negligent or that the accident more probably had happened in a manner which did not connote negligence on his part. For the application of the principle, it must be shown that the motorcycle was under the management of the respondent no.1 and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care. Moreover, the statement made on oath by PW2 Kulwant Singh before the Tribunal is reliable. Reliance in this regard may be placed on authorities **Basthi Kasim Saheb vs. Mysore State Road Transport Corporation 1991 (1) SCC 298, Pushpabai Purshotam Udeshi vs. Ranjit Ginning and Pressing Company Private Limited 1977 AIR (SC) 1735 and Mrs. Rosy Joshi and others vs. Joginder Singh and others 1005(2) RCR (Civil) 58**.*

*15. Learned counsel for the claimants placed reliance on the judgment rendered by our own Hon'ble High Court in case titled T**he Oriental Insurance Company Limited Vs. Smt. Indro @ Indro Devi and others, 2016(1) PLR 730**, wherein it has been held as under :-*

> *"In any accident involving two vehicles, as far as a person who was passenger or a pillion rider, the accident must always be understood as resulting from composite negligence of two vehicles. An accident simply does not happen with zero negligence on one side. It is the lack of attention for a split second that must be understood as the cause for many a debacle on roads. A careful motorcyclist going on the left side getting hit from behind, if tactful could still steer to a place of safety, though such skill might be extraordinarily rare. It is not as if the deceased died out of any*

injury by a direct impact of an unknown vehicle on any vital part of the body and the motorcyclist himself could take no part of the blame. It was, on the other hand, that the motorcyclist was fortunate to fall on the mud portion of the road and it was the fall on the concrete surface that caused the death of the deceased pillion rider. In such a situation, I will take surely that there was a modicum of negligence on the part of the insured motorcyclist. It will be wholly wrong to make an inference that the motorcyclist was careful in causing death of the pillion rider. Such an expression would be an oxymoron. Accident and alertness are antithetical. The existence of one rules out the other. A careful motorcyclist may never have involved even a pillion rider in the misfortune of a fatal injury. I will, therefore, decline the argument that the statement of the motorcyclist before the police attributing negligence only to the unknown driver must be taken at his face value and no part of negligence could be attributed to the motorcyclist to make possible a claim under Section 166.

Even without reference to evidence of guilt on the part of the motorcyclist, a package policy that covers the risk to a pillion rider is a hybrid policy of motor insurance with life insurance. It requires proof of the fact of use of a motor vehicle and a claim before the MACT as requiring negligence to be established under Section 166. The Motor Vehicles Act itself has gone through a seachange and the policies have also undergone changes to accommodate claims in situations where no negligence at all need to be proved. While Section 140 rules out a requirement of any *negligence, Section 163-A allows for a structured formula to be applied to a limited class of persons without having to prove the negligence of yet another person that had caused the accident. A strict liability under Section 163-A is a further extension of an accommodation under the Motor Vehicles Act-a new concept of making the insurer liable even without proof of negligence. A policy such as, a personal accident cover provides for liability for death or injury to a person that is akin to life insurance or accident insurance without any need to prove negligence. A package policy covering the risk to passenger or pillion rider is an innovation propelled by judicial interventions. In the strictness of application in the manner conceived under the Act, Insurance Company Act and the Motor Vehicles Act, a comprehensive policy so called did no more than enlarging the liability to not merely to third parties but allowed for claims for own damage to the vehicle. It was the judgment in Pushpabai Purshottam Udesh and others Versus Ranjit Ginning & Pressing Company (P) Limited and another-AIR 1977 SC 1735 that impelled the Insurance Regulatory Authority to issue circulars to comprehensively cover even persons who were not third parties. This extension of liability cannot actually be seen under the bare provisions of the terms of the policy themselves, but they have come through later instructions. (see particularly, IRDA/ CIR/ FFU/ 073/11/2009, dated 16.11.2009). The way the law of insurance has been understood, a package policy that covers the risk of a pillion rider in a motorcycle accident will be triggered for its applicability in every situation that the incident* *of death or injury takes place. No further proof is necessary for making a claim for the representatives of the deceased in such a situation. I will indeed hold to the next extreme situation of there being no requirement for proof of any negligence whatever when a claim is made by a repre composite sentative of a person, who was killed by the use of a motor vehicle. The two factors that are required to be established are: (i) that the death was on account of use of a motor vehicle and (ii) the vehicle in which he was travelling was insured under a package policy. The liability shall be attracted immediately in the claim before a Tribunal."*

16. In the present case also, it may be RW1 Varinder Singh @ Vrinder Singh while recording the FIR Ex.R2 attributed the entire negligence on the part of unknown tanker driver. It was admitted by RW1 Varinder Singh in his cross-examination that there was no side mirror in his motorcycle. RW1 Varinder Singh in his cross-examination also admitted that he was crossing a stationery car, therefore, he turned his motorcycle towards his right without looking for the clearance of traffic coming from his backside. While doing so he was almost in the centre of the road when accident occurred. Perusal of rough site plan Ex.P17 shows that driver of motorcycle no.PB11-CB-5332 was crossing the stationery car at point A when a oil tanker came from behind that after hitting the motorcycle fled away from the spot. It was duty of RW1 Varinder Singh while overtaking/cross stationery car, to ensure that no fast moving vehicle was coming from his backside whose passage he was blocking. In the present case, respondent no.1 Varinder Singh while the FIR recorded/registered attributed the entire negligence on *the part of unknown tanker driver but as per the above said law laid down by our own Hon'ble High Court, respondent no.1 cannot be held to be careful while driving the motorcycle in question and he could definitely avoid the accident, in case he had been driving the said motorcycle carefully. Moreover, as per Ex.P20 (also Ex.R4), the motorcycle in question was covered by package policy, therefore, the same fully covered the life risk of its pillion rider. The sworn testimony of PW2 Kulwant Singh is to be considered even if he had not been associated by the police in the course of the investigation of the criminal case registered on the statement of Varinder Singh driver of the motorcycle to escape his liability. It is well settled that MACT case is to be decided on the basis of the evidence led in the course of the proceedings of case.*

18. Even otherwise, the Tribunal, in terms of Section 166 of the Act, is not required to hold a regular trial but, according to scheme of Act, it holds an enquiry for adjudication of claims for award of compensation in respect of accidents involving the death or bodily injury to persons, arising out of use of motor vehicles. The adjudication of claim in those proceedings has to be made on the preponderance of probabilities. It was agitated on behalf of respondents that in order to prove the composite negligence of drivers of the vehicles involved in the accident in question, the claimants were required to implead the drivers of both the vehicles but in the case in hand the identity of the other vehicle and its driver was not known. The argument however is without merit because it has been settled by the authority ***Khenyei vs. New India Assurance Co. Ltd. And others AIR 2015 SC 2261*** *that in case of composite negligence, claimant is entitled to sue both or any of the joint tort feasors and to* *recover the entire compensation as liability of joint tort feasors is joint and several. Therefore, the claim petition against the respondents is maintainable even in the absence of associating the driver of other offending vehicle. It may be added that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied. As per copy of postmortem report of deceased Ex.P12, the deceased had died as a result of the accident in question due to injuries received in motor vehicular accident. Accordingly, it is held that Major Singh, deceased died due to composite negligence of respondent no.1-driver of motorcycle bearing registration no.PB11-CV-5332 and driver of unknown canter. Hence this issue is decided in favour of claimants and against the respondents.*

ISSUE NO.3

25. Onus to prove this issue was on the respondent no.2. Photocopy of driving licence of respondent no.1 was placed on record as Ex.P18, but no evidence was led by respondent no.2 to prove that it was invalid or ineffective at the time of the accident. More so, from the perusal of copy of driving license of respondent no.1 Vrinder Singh Ex.P18, it transpires that the driving license of respondent no.1 was issued on 02.08.2019 and was valid upto 27.03.2023 for LMV, Tractor and MCWG only. In the present case, accident took place on 26.05.2021, therefore, it stands proved that respondent no.1 was holding a valid and effective driving licence at the time of accident. No evidence has been brought on record that the offending vehicle was being plied without valid registration and fitness certificate. So, issue no.3 is *decided against respondent no.2 and in favour of respondent no.1."*

12. A perusal of the award reveals that the findings returned by the learned Tribunal on Issue No.1 are based upon proper appreciation of the evidence available on record and do not call for any interference by this Court. The Tribunal has rightly held that the accident in question occurred due to composite negligence of respondent No.3–Varinder Singh, driver of motorcycle bearing registration No.PB-11-CV-5332, and the driver of the unknown tanker vehicle.

13. The testimony of PW-2 Kulwant Singh, eye-witness, clearly establishes that respondent No.3, while attempting to cross a stationary car parked on the left side of the road, suddenly turned the motorcycle towards the middle of the road without ensuring clearance of traffic coming from behind. It was at that stage that the motorcycle was hit from behind by an unknown tanker, causing Major Singh, who was travelling as a pillion rider, to suffer fatal injuries. The statement of PW-2 remained consistent on material particulars and nothing substantial could be elicited in his cross-examination to discredit his presence at the spot or the manner of occurrence narrated by him.

14. The ocular version of PW-2 stands corroborated by PW-3 ASI Rajesh Chauhan, the Investigating Officer, who proved the site plan Ex.P17 and categorically stated that the point of impact was in the middle of the road where the motorcycle was crossing the stationary car. The site plan also supports the case of the claimants/respondents No.1 and 2 that the motorcycle had moved towards the centre of the road when it was struck by the tanker coming from behind.

15. Most significantly, respondent No.3 himself, while appearing as RW-1, admitted during cross-examination that there was no side mirror on his motorcycle and that while crossing the stationary vehicle, he had turned towards the right side without looking for clearance of traffic from behind. He further admitted that he was almost in the middle of the road at the time of the accident and conceded that he was also at fault in causing the occurrence. These admissions clearly establish lack of due care and negligence on the part of respondent No.3.

16. The ld. Tribunal has rightly invoked the principle of *res ipsa loquitur* in the facts and circumstances of the present case. Once the claimants/respondents No.1 and 2 established the occurrence of the accident and the attending circumstances showing want of due care on the part of respondent No.3, the burden shifted upon him to establish that the accident had occurred despite exercise of reasonable caution. No such evidence has been produced by the respondents to discharge the said burden.

17. The Tribunal has also correctly relied upon the settled proposition of law that in cases of composite negligence, liability of joint tortfeasors is joint and several and the claimant is entitled to recover compensation from any one of them. Merely because the unknown tanker and its driver could not be traced or impleaded would not defeat the claim petition. In this regard, reliance placed upon ***Khenyei v. New India Assurance Co. Ltd. AIR 2015 SC 2261*** and ***The Oriental Insurance Company Limited v. Smt. Indro @ Indro Devi and others 2016(1) PLR 730,*** is fully justified.

18. It is trite that proceedings under Section 166 of the Motor Vehicles Act are summary in nature and the claimants are only required to

prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt as required in criminal proceedings. The evidence led by the claimants sufficiently proves that the accident occurred due to composite negligence of respondent No.3 and the unknown tanker driver. The deceased Major Singh, being merely a pillion rider, had no role whatsoever in the occurrence.

19. In view of the above, this Court finds no perversity or illegality in the findings recorded by the learned Tribunal while deciding Issue No.1 in favour of the claimants. The same are accordingly affirmed.

20. So far as the contention raised by learned counsel for the appellant–insurance company that the deceased, being a pillion rider on the offending motorcycle, could neither be treated as a "third party" nor covered under the insurance policy as he was allegedly a gratuitous passenger, is concerned, the same deserves outright rejection.

21. A perusal of the insurance policy placed on record as Ex.P-20/Ex.R-4 unmistakably reveals that the policy in question was a "Package Policy" and not an "Act Only Policy" as is now sought to be contended by the appellant–insurance company. Significantly, no evidence whatsoever was led by the insurer before the learned Tribunal to establish that the policy was confined merely to statutory coverage under Section 147 of the Motor Vehicles Act excluding the risk of a pillion rider.

22. It is pertinent to note that no specific plea was raised by the insurance company in its written statement that the policy in question was an "Act Only Policy" or that the risk of the pillion rider was excluded from coverage. In absence of any foundational pleading, the insurer cannot be permitted to raise such a contention for the first time in appellate

proceedings. It is a settled principle of law that a party cannot travel beyond its pleadings, particularly when the defence sought to be raised pertains to exclusion of contractual liability under an insurance policy.

23. Even otherwise, the burden to establish a statutory or contractual defence squarely lies upon the insurer. The appellant/insurance company, having asserted exclusion of liability, was under a legal obligation to prove the same by leading cogent and affirmative evidence. However, except for tendering the copy of the policy, no witness from the insurance company was examined to prove that the policy was merely an Act Policy or that the terms and conditions thereof excluded the risk of a pillion rider. Neither the complete terms and conditions of the policy nor any supporting documentary material were produced on record. In such circumstances, an adverse inference is liable to be drawn against the insurer.

24. The Hon'ble Supreme Court in ***Lakhmi Chand v. Reliance General Insurance, AIR 2016 SUPREME COURT 315*** has categorically held that the burden to prove breach of policy conditions or exclusion of liability rests heavily upon the insurer. Mere pleading without proof is of no consequence. The insurer must not only raise a specific defence but also substantiate the same through reliable evidence demonstrating a fundamental breach or absence of coverage.

25. Furthermore, once it stands established from the policy itself that the vehicle was covered under a "Package Policy", the risk of the pillion rider would necessarily stand covered. The issue is no longer res integra. The Hon'ble Supreme Court in ***V. Saravanan v. G. Mohankumar, 2025 (1) TAC 371*** has reiterated that under a package/comprehensive policy, the insurer

remains liable in respect of death or bodily injury suffered by an occupant or pillion rider of the insured vehicle.

26. In the present case, the deceased was travelling as a pillion rider on the motorcycle insured under a valid package policy. Therefore, the risk pertaining to the deceased was fully covered under the policy in question. The appellant–insurance company having failed to establish either exclusion of coverage or breach of policy conditions, cannot escape its statutory and contractual liability.

27. Consequently, this Court finds no illegality or infirmity in the findings recorded by the learned Tribunal fastening liability upon the appellant–insurance company. The findings so recorded are affirmed.

28. Consequently, the present appeal is hereby ***dismissed.***

29. Pending miscellaneous applications, if any, are also disposed of.

22.05.2026 **(SUDEEPTI SHARMA)**
Ayub/Saahil **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No