

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 28th NOVEMBER, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.02 of 2024

Appellants : The Branch Manager,
National Insurance Company Limited and Another**versus****Respondents** : Diku Maya Sharma and Another


Appeal under Section 173 of the Motor Vehicles Act, 1988

AppearanceMr. Madan Kumar Sundas and Mr. Sushant Subba, Advocates for
the Appellants.Mr. Umesh Ranpal, Advocate with Ms. Rubusha Gurung, Advocates
for the Respondents.

JUDGMENTMeenakshi Madan Rai, J.

1. The instant Appeal arises from MACT Case No.13 of 2013, dated 21-11-2023, of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, "MACT"), vide which compensation computed at ₹ 43,78,080/- (Rupees forty-three lakhs, seventy-eight thousand and eighty) only, was granted to the Claimants-Respondents No.1 and 2 herein, being the mother and brother, respectively, of the deceased.


2. The facts that led to the filing of the Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter, "MV Act"), was that the deceased, Bhanu Sharma, aged about thirty-four years, an employee of the Rural Development Department, Government of Sikkim, with a monthly consolidated salary of ₹ 29,570/- (Rupees twenty nine thousand, five hundred



and seventy) only, was travelling in a private Maruti Alto 800, owned and driven by his brother Indra Mani Sharma. The vehicle insured with the Appellant Company, met with an accident on 20-01-2023, at a place called "Gokul Dara" when the siblings were travelling from Gerethang to Jorethang. The cause of the accident was due to the rash and negligent driving on the part of Indra Mani Sharma, who held a valid driving licence at the time of the accident. The insurance policy, Exhibit 16 was valid from 17-06-2022 to the midnight of 16-06-2023, covering 20-01-2023, the date of the accident.

3. The Claimants-Petitioners contested the Claim Petition on grounds that, there was no evidence to indicate rash and negligent driving as the cause of the accident. They averred *inter alia* in their written statement that the vehicle "*insurance policy was only liability policy i.e. third party policy and the owner of the said vehicle had paid total premium of ₹ 2,353/- (Rupees two thousand, three hundred and fifty three) only, for the year 17/06/2022 to 16/06/2023*". The deceased as the co-occupant and natural brother of the deceased owner, being a gratuitous passenger was not covered by the policy.

4. The Learned MACT settled a singular issue for determination, "Whether the Petitioners/Claimants are entitled to the compensation claimed? If so, who is liable to compensate for the same?" The Learned MACT then observed that when a Petition under Section 166 of the MV Act is instituted, it becomes incumbent upon the Claimants to establish rash and negligent driving. Evidently, the Petitioner No.2/Claimant No.2 was examined as a witness for the Petitioners to establish their case. The lone




issue was determined in favour of the Claimants/Respondents taking notice of the FIR Exhibit 2 (in three pages) filed before the Nayabazar Police Station, on 20-01-2023 under Sections 279, 337 and 338 of the Indian Penal Code, 1860, to reach a finding of rash and negligent driving, apart from the evidence of the Claimants. While computing the compensation the MACT held that, although the Respondents contended that the said policy was a liability only policy, the contents would indicate that it covers a third party risk. That, the deceased being a passenger in the accident vehicle was a third party as has been succinctly explained in the case of **National Insurance Co. Ltd. vs. Faqir Chand and Others**¹ and in the case of this Court in **The Branch Manager, National Insurance Company Limited vs. Master Suraj Subba and Another**², accordingly it was held that the Insurance Company could not be absolved from paying compensation to the family of the deceased.

5. Before this Court, it was argued by Learned Counsel for the Appellants Insurance Company that the policy is a liability only policy. The deceased being the brother of the vehicle owner, he is not a third party and consequently not covered by the insurance policy. That, in fact the insurance covers only property damage of third party and not any other damage, therefore, the Insurance Company was not liable to pay any compensation

6. On the other hand, it was asserted by Learned Counsel for the Respondents-Claimants that the deceased being the brother of the vehicle owner fell within the ambit of a third party, as he was neither the insurer nor the insured. While contending that the deceased was a third party, the decision of this Court in **Passi Lamu**

¹ AIR 1995 J&K 91

² MAC App. No.01 of 2023 decided on 02-08-2013



Sherpa and Another vs. ***The Branch Manager, New India Assurance Co. Ltd.***³ was relied upon. Secondly, it was contended that the only ground urged before the Learned MACT by the Appellant was that of the deceased not being a gratuitous passenger and the issue of the deceased not falling within the ambit of a third party was never raised therein. Thus, as held by this Court in ***The Branch Manager, National Insurance Company Limited*** vs. ***Yoel Subba and Others***⁴ new grounds cannot be raised in Appeal. Besides, the insurance policy is revelatory of the fact that a third party premium was paid by the insured, thereby covering the deceased, who fell within the ambit of third party and accordingly the Judgment and Award of the Learned MACT be upheld and the Appeal dismissed.

7. Having given due consideration to the submissions advanced, this Court is to determine, whether the Claimants are entitled to the compensation as granted by the MACT.

8. Before embarking on determining this question, it is essential to look into the exposition of the Supreme Court in ***National Insurance Company Limited*** vs. ***Balakrishnan and Another***⁵, where it was considering whether the Appellant Insurance Company was liable to make good the compensation determined by the Tribunal to the victim Respondent No.1, who sustained injuries in a motor vehicle accident, considering that he was the Managing Director of the Respondent No.2. He sought to be compensated by the Respondent No.2 and the Appellant. The vehicle was insured with the Appellant. The Appellant Insurance Company resisted the claim on the ground that the Claimant had

³ MAC App. No.07 2023 decided on 14-05-2024

⁴ MAC App. No.09 of 2023 decided on 21-05-2024

⁵ (2013) 1 SCC 731

suppressed the fact that he was the Managing Director of the Company and was thereby not tenable. Besides, the Respondent No.1 himself was the owner of the vehicle and could not therefore be treated as a third party. The policy taken by the Company did not cover an occupant in the vehicle but only the owner for a limited quantum. The Supreme Court delved into detailed references in a litany of cases concerning compensation in MACT cases and the parameters and categories under which compensation was sustainable. The Supreme Court went on to consider as follows;

"21. The High Court of Delhi in *Yashpal Luthra v. United India Insurance Co. Ltd.* [2011 ACJ 1415 (Del)], after recording the evidence of the competent authority of the Tariff Advisory Committee (TAC) and the Insurance Regulatory and Development Authority (IRDA), **reproduced a Circular dated 16-11-2009 issued by IRDA to CEOs of all the insurance companies restating the factual position relating to the liability of insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy.**

22. The relevant portion of the circular which has been reproduced by the High Court is as follows: (*Yaspal Luthra case* [2011 ACJ 1415 (Del)], ACJ pp. 1419-20, para 20)

INSURANCE REGULATORY AND DEVELOPMENT
AUTHORITY

Ref.: IRDA/NL/CIR/F&U/073/11/2009

Dated: 16-11-2009

To,

CEOs of all general insurance companies

Re: Liability of insurance companies in respect of occupants of a private car and pillion rider on a two-wheeler under the Standard Motor Package Policy (also called 'the Comprehensive Policy').

Insurers' attention is drawn to wordings of Section II(1)(ii) of Standard Motor Package Policy (also called 'the Comprehensive Policy') for private car and two-wheeler under the (erstwhile) India Motor Tariff (IMT). For convenience the relevant provisions are reproduced hereunder:

'Section II—Liability to Third Parties

(1) Subject to the limits of liabilities 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—

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of the 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.'

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 dated 18-3-1978 (regarding occupants carried in private car) effective from 25-3-1977.

(ii) MOT/GEN/10 dated 2-6-1986 (regarding pillion riders on a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured's liability in respect of occupant(s) carried in a private car and pillion rider carried on a two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide Circular No. 066/IRDA/F&U/Mar-08 dated 26-3-2008 issued under File and Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. ***Further the Authority, vide Circular No. 019/IRDA/NL/F&U/Oct-08 dated 6-11-2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the aforementioned circulars and any non-compliance with the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.***

sd/-

(Prabodh Chander)
Executive Director."
(emphasis supplied)

.....

24. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. **The High Court had issued notice to the Tariff Advisory**



Committee and 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".

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated [2011 ACJ 1415 (Del)] thus: (*Yashpal Luthra case* [2011 ACJ 1415 (Del)], ACJ p. 1424, para 27)


"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 the Motor Accidents 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."

.....

27. In view of the aforesaid legal position, the question that emerges for consideration is: whether in the case at hand, the policy is an "Act policy" or "comprehensive/package policy"? There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

[emphasis supplied]

9. On the anvil of what has been expounded hereinabove and considering that the accident pertains to a private car and that it is mentioned in Exhibit 16 that the insurance policy is a "private car liability only policy", it transpires that there has been no discussion before the Learned MACT by production of any witness as to whether it is an "Act Policy" or "Comprehensive/Package Policy". Sans reasoning or evidence led by the Insurance Company, it would a travesty of justice to either party to reach a finding, without an explanation pertaining to the nature of the



policy. In such circumstances, I am inclined to observe that the entire policy needs to be explained to arrive at a conclusion as to whether it is a Comprehensive/Package Policy or an Act Policy.

10. The finding of the Learned MACT in the impugned Judgment is accordingly set aside.

11. The matter is remitted to the Learned MACT to examine and assess the policy in its proper perspective and to consider whether Exhibit 16 is a "Comprehensive/Package Policy" or an "Act Policy" by recording necessary evidence of a witness of the Insurance Company. Based on such evidence the Learned MACT may compute the compensation or otherwise.

12. The MACT Case be restored to its original number in the Register of the Learned MACT. All efforts be made to complete the entire exercise within a period of four weeks from today considering that the compensation claimed is under a benevolent legislation for the benefit of the legal heirs of the victim who are now deprived of the income of their loved one.

13. The MAC App. No.02 of 2024 stands disposed of accordingly.

14. Parties shall appear before the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, on 03-12-2024.

15. Copy of this Judgment be sent to the Learned MACT forthwith for information and compliance, along with its records.

(Meenakshi Madan Rai)
Judge

28-11-2024

Approved for reporting : **Yes**