

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 5th June, 2024

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

MAC App. No.08 of 2023

Appellants : Jai Bahadur Subba and Others

versus

Respondent : SBI General Insurance Company Ltd.

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Umesh Ranpal, Ms. Rubusha Gurung and Ms. Laxmi Khawas,
Advocates for the Appellants.

Mr. Pawan Gurung, Advocate for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Claimants/Appellants were denied the compensation amounting to ₹ 99,21,020/- (Rupees ninety nine lakhs, twenty one thousand and twenty) only, claimed by them on account of the death of the son of Claimant No.1, the husband of the Claimant No.2 and the father of the Claimants No.3, 4 and 5. The Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, (hereinafter, the "MACT") vide its assailed Judgment, dated 17-07-2023, in MACT Case No.14 of 2022, *Jai Bahadur Subba and Others vs. SBI General Insurance Company Limited, inter alia* observed that the insurance policy of the vehicle in accident was an "Act Policy" and not a "Comprehensive Package Policy". That, the Claimants/Appellants would be entitled to the extent of compensation in terms of the insurance coverage i.e., "personal accident cover for unnamed passenger" as stipulated in the policy,

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Exhibit 16 and accordingly granted compensation of ₹ 50,000/- (Rupees fifty thousand) only, augmenting the amount with litigation costs of ₹ 1,00,000/-(Rupees one lakh) only.

2. Before this Court, Learned Counsel for the Appellants contended that, the deceased was travelling in the Alto vehicle, bearing registration No.SK-02-P-2766, of the deceased driver, late Jai Man Limboo. That, the vehicle was duly insured with the Respondent-Insurance Company. He was a third party as the occupant of the vehicle in accident and therefore fully covered by the insurance policy and not a gratuitous passenger as stated by the Respondent. The Respondent was liable to pay the entire compensation claimed which was erroneously denied by the Learned MACT. Referring to Section 147 of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), it was contended that the said section does not distinguish between an "Act Policy" and a "Comprehensive Policy" and the liability to pay compensation is based on the statutory provision. That, the question of third party rights have been considered by the Supreme Court in ***Guru Govekar vs. Miss Filomena F. Lobo and Others***¹, wherein it was *inter alia* observed that if a policy is taken in respect of motor vehicle from an insurer in compliance with the requirement of Chapter VIII of the Act, the insurer is under an obligation to pay the compensation payable to third party on account of any injury to his/her person or property or payable to the legal representative of third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. Reference was also made to the decision of the Supreme Court in ***Jameskutty Jacob vs. United India***

¹ AIR 1988 SC 1332

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Insurance Co. Ltd. and Others². It was urged by Learned Counsel that it has been observed therein that even in respect of an 'Act only' policy the insurance company would be liable for the statutory amount as payable under Section 95 of the Motor Vehicles Act, 1939. That, accordingly the compensation ought to be computed in terms of the law laid down by the Supreme Court, towards this reliance was placed on **National Insurance Company Limited vs. Pranay Sethi and Others**³ and **United India Insurance Company Limited vs. Satinder Kaur alias Satwinder Kaur and Others**⁴. That, this Court in **Passi Lamu Sherpa and Another vs. Branch Manager, New India Assurance Co. Ltd.**⁵ had observed that the facts and circumstances of every motor accident cases is different and an umbrella view cannot be applied to all the matters, hence the Award of the Learned MACT be set aside and compensation be enhanced as prayed.

3. *Per contra* the arguments raised by Learned Counsel for the Respondent was that in the first instance the policy was an "Act Policy" and the premium towards personal accident cover of unnamed passenger was paid amounting to ₹ 25/- (Rupees twenty five) only. The insurance cover thereby was limited to ₹ 50,000/- (Rupees fifty thousand) only, as reflected in Exhibit 16. As the deceased passenger was a gratuitous passenger in a private vehicle, he would be covered under the personal accident cover and no other claims made by the Appellants were maintainable. Relying on the Judgment of this Court in **Branch Manager, New India**

² (2003) 7 SCC 131

³ (2017) 16 SCC 680

⁴ (2021) 11 SCC 780

⁵ 2024 SCC OnLine Sikk 24

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Assurance Co. Ltd. vs. **Geeta Khatiwada and Others**⁶, it was contended that there is a difference between a "Comprehensive Policy" and an "Act Policy" and the insurer will not be liable to pay compensation when a private vehicle meets with an accident and a gratuitous passenger dies as a consequence of the accident. That, the limits of liability is the maximum amount that the insurance company would be liable to pay for each individual claim made during the policy period and the Respondent cannot be made liable to pay any compensation exceeding the coverage under the limits of the liability as reflected in the insurance policy for which an additional premium is required to be deposited, hence the Appeal be dismissed.

4. The facts in brief are that, the deceased an Assistant Sub-Inspector of Police (ASI) (Sikkim Armed Police), aged about fifty-two years, earning a monthly salary of ₹ 91,611/- (Rupees ninety one thousand, six hundred and eleven) only, was travelling from Hee Pechrek, West Sikkim to Pangthang, Gangtok, in the aforementioned vehicle, on 18-10-2021. At around 08.30 a.m., the vehicle met with an accident near "Akkar Bridge", Naya Bazar, Soreng District, resulting in the death of the deceased, the owner/driver and injuries to other occupants.

5. The Learned MACT on being seized of the facts and circumstances settled one issue for determination i.e., (1) Whether the claimants are entitled to the compensation claimed? If so, who is liable to pay the same? Having considered the evidence in its entirety and the submissions canvassed, the Learned MACT as

⁶ 2021 SCC OnLine Sikk 196

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aforestated, declined to grant compensation to the Claimants save as covered by the policy.

6. The same question as settled for determination by the Learned MACT arises for determination by this Court.

7. In **Geeta Khatiwada (supra)** this Court had delved into various pronouncements of the Supreme Court on payment of compensation to Claimants of gratuitous passengers where motor vehicle accident resulted in their fatalities viz., **United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Others**⁷, **New India Assurance Company vs. Satpal Singh and Others**⁸ and **New India Assurance Co. Ltd. vs. Asha Rani and Others**⁹.

8. The Supreme Court in **National Insurance Company Limited vs. Balakrishnan and Another**¹⁰ distinguished between "Comprehensive/Package Policy" and "Act Policy" and *inter alia* observed that;

"**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 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....."

It therefore concludes that a "Comprehensive/Package Policy" would cover the liability of the insurer to indemnify the occupant of a vehicle. Contrarily in an "Act Policy" the liability is confined to the limits set out in the Policy.

⁷ (2006) 4 SCC 404

⁸ (2000) 1 SCC 237

⁹ (2003) 2 SCC 223

¹⁰ (2013) 1 SCC 731

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9. In *Satpal Singh (supra)*, the Supreme Court held that the provision to Section 95 of the Motor Vehicles Act, 1939, when compared to Section 147 of the Motor Vehicles Act, 1988, reveals as follows;

"7. In fact the said ratio has been approved by the three-Judge Bench in *Mallawwa v. Oriental Insurance Co. Ltd.* [(1999) 1 SCC 403 : 1999 SCC (Cri) 58]. At the same time learned Judges pointed out that the old Act is now repealed by the new Act and Section 147 of the new Act corresponding to Section 95 of the old Act has been substantially altered and hence the above interpretation of Section 95 of the old Act will govern the cases which have arisen under the old Act."

This observation was disagreed to in *Asha Rani (supra)*, where the Supreme Court observed after discussing the provisions Section 95 of the Motor Vehicles Act, 1939, Section 147 of the Motor Vehicles Act, 1988, prior to its amendment in 1994 and after being amended, it was concluded that the Judgment of the Supreme Court in *Satpal Singh (supra)* must be held to have been incorrectly decided and the impugned Judgment of the Tribunal as well as that of the High Court were set aside. It was held that the insurer will not be liable to pay compensation to the owner of the goods or his authorized representatives on being carried in a vehicle that meets with an accident and the owner of the goods or his representative dies or suffers any bodily injuries.

(i) In *M/s. National Insurance Co. Ltd. vs. Baljit Kaur and Others*¹¹ the Supreme Court in a batch of appeals was considering whether an insurance policy in respect of goods vehicle would also cover gratuitous passenger in view of the legislative amendment in 1994 to Section 147 of the MV Act. It was concluded as follows;

"20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the

¹¹ AIR 2004 SC 1340

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owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.”

(ii) In ***Tilak Singh*** (*supra*) the pivotal issue was whether a statutory insurance policy under the MV Act, 1988 intended to cover risk to life or damage to properties of third parties would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle. It was held as hereunder;

“**21.** In our view, although the observations made in *Asha Rani case* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.”

10. Having carefully examined the facts and circumstances of the instant case although the Appellants sought to take shelter under the decision of this Court in ***Passi Lamu Sherpa*** (*supra*) the facts as emerge therein are different as the deceased wife was travelling in the private vehicle of her husband and could not be termed as a gratuitous passenger being the wife of the owner of the vehicle, in addition a third party premium had been paid for covering any liability that would accrue to the owner/driver on account of the involvement of a third party in an accident involving his vehicle. These circumstances were clarified by this Court in the Judgment (*supra*). In the instant case, it is seen that the vehicle in which the deceased was travelling was a private vehicle. The insurance policy is a “Motor Act Only—Private Car” Policy and not a

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Comprehensive Policy. A meticulous perusal of Exhibit 16 reveals that "PA Cover (Personal Accident Cover)—Unnamed Passengers", a sum insured was of ₹ 50,000/-(Rupees fifty thousand) only, for which a premium of ₹ 25/-(Rupees twenty five) only, had been deposited. No premium was paid to cover a gratuitous passenger which the deceased ASI indubitably was.

11. In light of the above findings, there is no reason whatsoever to interfere with the findings of the Learned MACT which is accordingly upheld.

12. It is admitted before this Court by the parties that a sum of ₹ 1,50,000/-(Rupees one lakh and fifty thousand) only, along with interest calculated at ₹ 18,123/-(Rupees eighteen thousand, one hundred and twenty three) only, amounting to ₹ 1,68,123/-(Rupees one lakh, sixty eight thousand, one hundred and twenty three) only, was deposited by the Respondent-Insurance Company and has been made over to and received by the Appellant/Claimants.

13. In the obtaining circumstances, nothing further thereby remains for adjudication in the matter.

14. Appeal dismissed and disposed of.

15. Pending applications, if any, also stand disposed of.

16. No order as to costs.

17. Copy of this Judgment be forwarded forthwith to the Learned MACT for information, along with its records.

(Meenakshi Madan Rai)

Judge

05-06-2024

Approved for reporting : **Yes**