

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 10th December, 2024

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

MAC App. No.14 of 2024

Appellant : The New India Assurance Co. Ltd.

versus

Respondents : Hemlata Lucksom and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Dipayan Roy, Advocate for the Appellant.

Mr. S. S. Hamal, Senior Advocate with Mr. Varun Pradhan, Mr. Pradeep Sharma and Ms. Ram Devi Chettri, Advocates for the Respondent No.1.

Mr. Tashi Wongdi Bhutia, Mr. Mahesh Subba and Ms. Anjali Pradhan, Advocates for the Respondent No.2.

JUDGMENT

Meenakshi Madan Rai, J.

1. On 31-08-2005, at around 05.00 a.m., a car (Maruti 800) went off the road, into the river below, truncating the life of the Claimant's son, Junar Lucksom. He was travelling in the vehicle along with three of his neighbours. All the occupants of the vehicle perished in the accident and their bodies remained unrecovered. Although the vehicle was recovered, the documents pertaining to the vehicle remained untraced. The victim at the relevant time was aged about thirty-two years and said to have been earning ₹ 12,500/- (Rupees twelve thousand and five hundred) only. The Claimant (Respondent No.1 herein), filed a Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), seeking compensation of ₹ 20,15,000/- (Rupees twenty lakhs and fifteen thousand) only. The Appellant

who was arrayed as one of the two Respondents before the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), contested the Claim Petition on grounds that, as no other vehicle was involved in the accident thus rash and negligent driving could not be established. That, there was neither any statutory liability nor contractual obligation, on the part of the insurance company to pay compensation to the Claimant as the compensation, if any would be payable by the owner of the vehicle. That, the insurance policy was a "Private Car Liability Policy" which thereby covers only the Personal Accident Claim. The Respondent No.3, the owner of the vehicle, also contested the Claim Petition on grounds that all the documents of the accident vehicle were valid and effective at the time of the accident. The driver had a valid driving licence, hence the liability to pay compensation was on the insurance company.

2. On the basis of the pleadings of the parties, the Learned MACT settled the following issues for determination;

- (1) *Whether the claim petition/application is maintainable?;*
- (2) *Whether the deceased died as a result of injuries sustained by him in the accident that occurred on 31.08.2005 while he was travelling in the accident vehicle belonging to respondent no.3?;*
- (3) *Whether the said vehicle was duly insured with the respondents no.1 and 2 at the time of the accident?;*
- (4) *Whether the deceased driver Peter Rominsh Thapa was an authorized driver of the said vehicle holding valid and effective driving licence; and whether the said vehicle had valid documents at the time of the accident?;*
- (5) *Whether any terms and conditions of the concerned insurance policy have been violated in this case on the basis of which the respondents no.1 and 2 can avoid their liability? and;*
- (6) *Whether the concerned accident occurred due to rash and negligent driving of the deceased driver? and*
- (7) *Whether the petitioner/claimant is entitled to the reliefs prayed for by her?*

(i) The Learned MACT decided all the issues in favour of the Claimant and concluded *inter alia* that the insurance policy Document-'B' was a Package policy. The accident was due to the rash and negligent driving of the driver and hence the claim was maintainable. The Learned MACT observed that there was no basis for the income of the deceased, Junar Lucksom and taking recourse to the Notification dated 01-11-2014 of the Labour Department, Government of Sikkim, fixed his wages at ₹ 220/- (Rupees two hundred and twenty) only, per day, and consequently his notional income at ₹ 6,600/- (Rupees six thousand and six hundred) only, per month. Compensation of ₹ 10,02,040/- (Rupees ten lakhs, two thousand and forty) only, was awarded to the Claimant, Respondent No.1 herein, with interest @ 10% per annum, from the date of filing of the Claim Petition (i.e. 02-12-2019) till full and final payment.

3. Aggrieved with the finding of the MACT, the Appellant is before this Court, assailing the Judgment in MACT Case No.50 of 2019 (*Hemlata Lucksom vs. New India Assurance Co. Ltd. and Others*), dated 21-03-2023. Learned Counsel for the Appellant contended that the vehicle in accident was a private car and it is a well settled principle that an occupant in a private car is not a third party. That, in all likelihood the deceased was an unauthorized passenger in the accident vehicle. The insured having paid an additional premium of ₹ 300/- (Rupees three hundred) only, the Appellant had a limited liability of ₹ 2,00,000/- (Rupees two lakhs) only, per person. That, there was no statutory liability nor contractual obligation on the part of the Appellant to pay the compensation to the Claimant or to indemnify the owner of the vehicle, in light of

the above circumstances. That, the owner of the vehicle was liable to make good the compensation. To bolster his submissions, reliance was placed on **New India Assurance Company Ltd. vs. Sadanand Mukhi and Others**¹ and **Oriental Insurance Co. Ltd. vs. Jhuma Saha (Smt.) and Others**².

4. *Per contra*, Learned Senior Counsel for the Respondent No.1 argued that, the accident vehicle was insured with the Appellant by the insurer, the owner of the vehicle, thereby the deceased persons were third parties, who qualified as a third party has been succinctly elucidated by this Court in **Branch Manager, National Insurance Co. Ltd., Gangtok vs. Master Suraj Subba and Another**³, **Passi Lamu Sherpa and Another vs. The Branch Manager, New India Assurance Co. Ltd.**⁴ and **The Branch Manager, New India Assurance Co. Ltd. vs. Smt. Urmila Biswakarma (Chettri) and Others**⁵ and by the Supreme Court in **National Insurance Co. Ltd. vs. Ashalata Bhowmik**⁶. The Appellant has urged new grounds in Appeal which were absent during trial viz.; that of additional premium of ₹ 300/- (Rupees three hundred) only, paid, which created a limited liability upon the Insurance Company extending to ₹ 2,00,000/- (Rupees two lakhs) only, per person. No ground regarding IMT 16 was raised. It is now a settled legal position that new grounds cannot be urged in Appeal. In light of the foregoing discussions the finding of the Learned MACT warrants no interference.

5. Learned Counsel for the Respondent No.2 had no specific submissions to advance besides contending that, all

¹ AIR 2009 SC 1788

² (2007) 9 SCC 263

³ AIR 2014 Sikk 7

⁴ 2024 SCC OnLine Sikk 24

⁵ MANU/SI/0030/2022

⁶ AIR 2018 SC 4133

documents of the vehicle were valid and effective including the insurance policy, which being a Package policy covered all occupants of the vehicle making the Appellant liable to pay the compensation.

6. The rival contentions of Learned Counsel for the parties having been heard in detail, *in extenso* and the records of the Learned MACT, including the impugned Judgment carefully perused. The question that falls for consideration before this Court is;

"Whether the MACT was correct in having granted compensation to the Respondent No.1?"

7. While addressing this question, it may relevantly be recapitulated that this Court in **Master Suraj Subba** (*supra*) had opined that where the deceased, the husband of the insured, was not a party to the agreement of insurance, he had a valid driving licence and was driving the insured vehicle, he would undoubtedly fall within the meaning and ambit of third party. The Learned MACT had held as follows;

"10(i).....

32. In this regard one may go through the Provisions of Section 146 of the M.V. Act which speaks of necessity for insurance against third party risk. The object of this provision is to enable a third party to claim and recover damages from the Insurance company without recourse to the financial capacity of the driver or owner of the vehicle. The policy of insurance is thus a result of a contract between the insurer and the insured under which the insurer agrees to indemnify the insurer against the liability incurred by him. Hence other than the contracting party to the Insurance policy the expression "the third party" should include everyone else. It may be worthwhile to refer to the following decision with regard to the said issue."

(i) Upholding the said view, this High Court explained as to which person would qualify as a third party. In the instant case,

the Appellant is the insurer, the Respondent No.2 (owner) is the insured, any other person who is not a party to the insurance policy would fall within the ambit of a third person. The term 'injury' to any person as reflected in Section 147 of the MV Act, 1988, is wide enough to bring within its ambit the deceased, who was not a party to the insurance policy and therefore not the insured.

(ii) In *Passi Lamu Sherpa (supra)*, the deceased was the wife of the owner of the vehicle in which both of them were travelling. An accident resulted in the fatality of the couple. The Insurance Company claimed that the policy did not cover the compensation claimed as it only covered the personal accident of the owner/driver amounting to ₹ 15,00,000/- (Rupees fifteen lakhs) only. This Court while examining the provisions of Exhibit 7, the insurance policy, dealt with the limits of liability which is extracted hereinbelow as follows;

"8.

(iii).....

Limits of Liability

Limit of the amount the Company's Liability Under Section II 1(i) in respect of any one accident: as per the Motor Vehicles Act, 1988.

Limit of the amount of the Company's Liability Under Section II 1(ii) in respect of any one claim or series of claims arising out of one event: Up to ₹ 7,50,000."

It was observed that as per the IMT, the first (*supra*) pertains to liability covered in respect of the death as stated in Exhibit 7, as per the MV Act, which thereby makes the insurer liable to pay compensation as computed in terms of the said Act. The second pertains to the damages caused to property of a third party. Thus, the contention that the claim therein would be limited to ₹ 7,50,000/- (Rupees seven lakhs and fifty thousand) only, was

found to be an erroneous interpretation advanced by the Counsel for the Insurance Company. This Court also observed that the argument that the deceased wife would step into the shoes of the owner/driver disentitling the Claimants to compensation was a preposterous proposition, more so, when both the Respondent and wife succumbed to the accident. Compensation was allowed to the Claimants.

(iii) It is worthwhile to refer to *Amrit Lal Sood and Another vs. Kaushalya Devi Thapar and Others*⁷, where the Supreme Court was considering a policy termed as “Comprehensive Policy”, which contained amongst others “Section II – Liability to Third Parties”. It was held that, the expression “any person” appearing therein, included the occupant of a car, who was travelling gratuitously and that under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the Claimant. The Supreme Court after noticing the relevant clause of the insurance policy found that, under Section II(1)(a) of the policy, the insurer had agreed to indemnify the insured against all sums, which the insured shall become legally liable to pay, in respect of death or bodily injury to any person.

8. In the case at hand, Document-‘B’ is the certificate of insurance, which reveals that the policy is a “Package Policy (Private Vehicle)”, whereby the premium was deposited for own damage and other liabilities, including compulsory personal accident cover premium and additional personal accident cover premium for three persons (IMT 16). In light of the contents of Document-‘B’ the argument that the Insurance Company is liable

⁷ (1998) 3 SCC 744

to pay ₹ 2,00,000/- (Rupees two lakhs) only, per deceased person, is a misplaced submission as the limits of liability under Section II(1)(i) is for death or bodily injury to any persons, including occupants carried in the vehicle.

(i) The reliance placed by the Appellant on **Jhuma Saha** (*supra*) lends no succour to his case, as in the said case (*supra*), the controversy related to fastening the liability on the insurer, for the death of the owner of the registered vehicle in accident. The owner had died and no premium had been paid for death or bodily injury of the owner. The instant case, is distinguishable from **Jhuma Saha** (*supra*), as the deceased persons were not the owner of the vehicle, but were the driver and occupant thereof. That apart, it is indubitable that the insurance policy was a “package policy for private car”. While on this facet the observation of the Supreme Court in **National Insurance Company Limited vs. Balakrishnan and Another**⁸ is indispensable. Reference was made in the ratiocination to the decision of the High Court of Delhi in **Yashpal Luthra vs. United India Insurance Co. Ltd.**⁹, wherein Circular dated 16-11-2009 was 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*. The communication *inter alia* stated as follows;

“22. 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

⁸ (2013) 1 SCC 731

⁹ 2011 ACJ 1415 (Del)

(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)

(ii) The insurance companies were advised to strictly comply with the Circular dated 16-11-2009 and Order dated 26-11-2009 of the High Court. It is revealed that the competent authority of the IRDA had stated on 02-06-1986 that, the Tariff Advisory

Committee had admitted that the “*Comprehensive policy*” is presently called a “*Package policy*”. The decision would show that, the earlier Circulars dated 18-03-1978 and 02-06-1986, continued 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 Supreme Court further noted that, in ***Yashpal Luthra*** (*supra*) the Delhi High Court had *inter alia* observed that “Comprehensive/Package policy” of a private car covers the occupants and where the vehicle is covered under such policy, there is no need for the MACT to go into the question whether the insurance company is liable to compensate for the occupants in a private car. In fact, in view of the Tariff Advisory Committee’s directives and those of the IRDA, such a plea was not permissible and ought not to have been raised in the said case. The Supreme Court thus clarified that, if the policy is a “Comprehensive/Package policy”, the liability would be covered.

9. On the bedrock of the above pronouncement of the Supreme Court and taking into consideration the facts and circumstances and evidence in the instant case, including Document-‘B’ the insurance policy of the vehicle, which is admittedly a “Comprehensive/Package policy”, there is no reason to interfere with the impugned Judgment of the Learned MACT which is accordingly upheld, save to the extent of modifying the interest rate of 10% granted by the MACT, by reduction to 9%, for the purpose of maintaining uniformity in the interest rate, on the compensation in all MAC Appeals disposed of by this Court.

- 10.** Appeal is disposed of on the above terms.
- 11.** No order as to costs.
- 12.** Copy of this Judgment be forwarded to the Learned MACT for information.
- 13.** Lower Court records be remitted forthwith.

(Meenakshi Madan Rai)
Judge
10-12-2024

Approved for reporting : **Yes**