

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3335 OF 2009
(Arising out of SLP (C) No.10136 of 2007)

Bhagyalakshmi and others

... Appellants

Versus

United Insurance Co. Ltd. and another etc.

... Respondents

JUDGMENT

S.B. SINHA, J.

Leave granted.

1. Liability of an insurance company for death of a person travelling in a private car arises for consideration in this appeal.
2. Before, however, adverting to the said question, we may notice the fact of the matter.

M.N. Lingappa (hereinafter referred to as ‘the deceased’) while travelling in a private car owned by one Shri K.N. Narayanajoshi,

respondent No.7 herein met with an accident and succumbed to the resulting injuries. Appellants are his heirs and legal representatives.

They filed an application for grant of compensation of Rs.1,50,00,000/- (Rupees one crore fifty lakhs) before the Motor Accident Claims Tribunal, Tumkur (for short 'the Tribunal') in terms of Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

3. The learned Tribunal by its order, awarded a compensation of Rs.98,64,428/-.

4. Respondent No. 1 preferred an appeal thereagainst before the High Court of Karnataka at Bangalore. The claimants also filed cross-objections.

5. The core question that arose for consideration before the High Court was as to whether the insurance policy covered the risk of the passenger travelling in the car. The High Court by its impugned judgment answered the said question in favour of the 1st respondent.

6. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellants would contend :-

- i) The insurance policy being a comprehensive one, the High Court committed a serious error in opining that the risk of a passenger travelling in the car was not covered thereunder.
- ii) Having regard to the fact that the second proviso appended to Section 95(1)(b) of the Motor Vehicles Act, 1939 was deleted by the Parliament in the 1988 Act, the liability of a passenger in a private vehicle must also be included in the policy in terms of the provisions of the 1988 Act.

7. Mr. P.R. Sikka, learned counsel on behalf of respondent No.1- Insurance Company would contend that the respondent having not paid the requisite amount of premium, the High Court judgment is unassailable.

8. The policy in question was in respect of a private car. It was valid for the period 6.10.1995 and 5.10.1996, the relevant clauses whereof are as under :

“SECTION II - LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability 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 vehicle against all sums which the insured shall become legally liable to pay in respect of:

i) death of 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 Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.”

9. We may notice the nature of the policy, which is Private Car ‘B’

Policy:

“ PRIVATE CAR ‘B’ POLICY

Whereas the insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance contained and has paid the premium mentioned in the schedule as consideration for such insurance in respect of accidental loss or damage occurring during the period of insurance.

NOW THIS POLICY WITNESSETH:

That subject to the Terms Exceptions and Conditions contained herein or endorsed or expressed hereon;

SECTION I. LOSS OR DAMAGE

The Company will indemnify the insured against loss or damage to the vehicle insured hereunder and / or its accessories whilst thereon

- a. By fire explosion self ignition or lightning.
- b. By burglary housebreaking or theft.
- c. By riot and strike.
- d. By earthquake (fire and shock damage).
- e. By Flood, Typhoon, Tempest, Hurricane, Storm, Inundation, Cyclone, Hailstorm, and Frost.
- f. By accidental external means.
- g. By malicious act.
- h. By terrorist activity.
- i. whilst in transit by road, rail, inland, waterway lift, elevator or air.
- j. By landslide rockslide.

Subject to a deduction for depreciation at the rates mentioned below in respect of parts replaced :

1. For all rubber, nylon, plastic parts, tyres and tubes, batteries

- 50%

2. For all parts made of glass - Nil

3. For all other parts

Age of Motor Car	0% of depreciation
Upto 6 months	Nil
Between 6 months and 1 year	5%
Between 1 year and 2 years	10%
Between 2 years and 3 years	15%
Between 3 years and 4 years	25%
Between 4 years and 5 years	35%
Between 5 years and 6 years	40%
Between 10 years	50%

The company shall not be liable to make any payment in respect of :-

- a) Consequential loss, depreciation, wear and tear, mechanical and electrical break down, failures or breakages;
- b) Damage to tyres and tubes unless the Motor Car is damaged at the same time when the liability of the company shall be limited to 50% of the cost of replacement, and
- c) any accidental loss or damage suffered whilst the insured or any person driving with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs.

In the event of the Motor car being disabled by reason of loss or damage covered under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers and of redelivery to the insured but not exceeding in all Rs. 1000/- in respect of any one accident.

The insured may authorise the repair of the Motor car necessitated by damage for which the Company may be liable under this Policy provided that :

- a) the estimated cost of such repair does not exceed Rs.500/-;
- b) the Company is furnished forthwith with a detailed estimate of the cost; and
- c) the insured shall give the Company every assistance to see that such repair is necessary and the charge reasonable.”

10. Indisputably the amount of premium paid was Rs.605/-. It is in two parts. Part I refers to ‘Own Damage’ – premium on vehicle and non-

electrical accessories wherefor a sum of Rs.400/- was paid, apart from the basic premium for the liability 'fire and thief' amounting to Rs.160/- In addition a sum of Rs.15/- was paid towards 'Increased Third Party Property Limit'.

11. Whereas the contention of Mr. Patwalia is that as the liability to third party covers death of or bodily injury to any person including occupants carried in the vehicle, the contention of Mr. Sikka is that only a sum of Rs.15/- having been paid towards third party limit, the policy cannot be said to have covered the life of passenger traveling in the car.

12. The business of insurance is governed by the Insurance Act, 1938 (for short 'the 1938 Act'), Section 64-VB whereof reads as under :-

“Section 64VB - No risk to be assumed unless premium is received in advance

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier

than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.--Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.”

13. Part II-B of the 1938 Act provides for Tariff Advisory Committee and Control of Tariff Rates. Section 64-UC provides for power of the Advisory Committee to regulate rates, advantages etc. Sub-section (4) of Section 64-UC makes the decision of the Advisory Committee final. Sub-section (5) of Section 64-UC provides that where an insurer is guilty of breach of any rate,

advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of the Act.

14. The policy in question is a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of persons travelling in the car including the owner thereof.

15. The question is as to whether the policy in question is a comprehensive policy or only an Act policy.

We may, however, notice that in National Insurance Co. Ltd. v. Jugal Kishore, [(1988) 1 SCC 626], this Court opined :-

“6. We have accordingly perused the photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs 20,000 contemplated by clause (b) aforesaid was covered. Our attention was invited by learned counsel for the respondents to the circumstance that at the right-hand corner on the top of p.1 of the policy the words “Commercial Vehicle Comprehensive” were printed. On this basis and on the basis that the premium paid was higher than the premium of an “act only” policy it was urged by the learned Counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs 20,000 only. We find it difficult to accept this submission. Even though it is not permissible to use a vehicle unless it is covered at least under an “act only” policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an “act only” policy is payable depending on the estimated value of the

vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regulations framed for the purpose. Coming to the photostat copy of the policy in the instant case it would be seen that Section 2 thereof deals with liability to third parties. Sub-section (1) minus the proviso thereto reads as hereunder:

“(1) Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant’s cost and expenses which the insured shall become legally liable to pay in respect of—

(i) death or bodily injury to any person caused by or arising out of the use (including the loading and or unloading) of the motor vehicle

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle.” “

16. There, however, the schedule of the policy indicated the limits of the liability of the amount paid. However, in the present case the schedule of the policy does not indicate the limits of liability. It does not indicate exclusion of any person. It takes any person including 'insured'. Such person indisputably would come within the purview of the liability to third party to which we have referred to heretobefore.

There being no limitation with regard to coverage, in terms of the provisions of the Act, no upper limit is fixed. Liability of the insurer, thus unlike the old Act, may not be limited.

17. In Oriental Insurance Co. Ltd. v. Rajni Devi, [(2008) 5 SCC 736 , this Court has held :-

“7. It is now a well-settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.”

18. Mr. Patwalia has relied upon the decision of this Court in Amrit Lal Sood v. Kaushalya Devi Thapar, [(1998) 3 SCC 744], wherein upon considering the meaning of the terms, ‘comprehensive policy’ and ‘comprehensive insurance’ it was held :-

“8. Thus under Section II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to “any person”. The expression “any person” would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous.”

19. Even in Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu, [(2001) 2 SCC 491], a Division Bench of this Court distinguished Jugal Kishore (supra) and following Amrit Lal (supra) held as under :-

“9. The reliance of the learned counsel for the appellant on New India Assurance Co. Ltd. v. Shanti Bai and National Insurance Co. Ltd. v. Jugal Kishore is of no help to him inasmuch as in

those cases the effect of judgment in Amrit Lal Sood case has not been considered. In Shanti Bai case the Court was dealing with the effect of a comprehensive policy vis-à-vis the liability of the insurer in respect of third-party risk on the basis of the estimated value of the vehicle and found that the limit of liability with regard to third-party risk does not become unlimited or higher than the statutory liability only on account of entering into a comprehensive policy. It was pointed out that the comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle which did not mean the limit of liability with regard to third-party risk becoming unlimited or higher than the statutory liability. In the case of National Insurance Co. Ltd. v. Jugal Kishore this Court observed that the liability under the policy could not exceed the statutory liability under Section 95 of the Act only on the ground that the insured had undertaken comprehensive insurance of the vehicle. The payment of higher premium on that score, however, did not mean that the limit of liability with regard to third-party risk became unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act.”

20. We may also notice that in New India Assurance Co. v. Satpal Singh, [(2000) 1 SCC 237],this Court held as under :-

“10. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the following limits, namely:

“(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.”

Hence, under sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurer’s liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained.”

21. However, with regard to goods carriage vehicle Satpal Singh (supra) was overruled in New India Assurance Co. Ltd. v. Asha Rani, [(2003) 2 SCC 223], wherein it was observed :-

“23. The applicability of the decision of this Court in *Mallawwa v. Oriental Insurance Co. Ltd.*² in

this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of “goods vehicle” in the 1939 Act and “goods carriage” in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words “in addition to passengers” occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that “goods carriage” would mean a motor vehicle constructed or adapted for use “*solely* for the carriage of goods”. Carrying of passengers in a “goods carriage”, thus, is not contemplated under the 1988 Act.”

22. Submission of Mr. Patwalia is that whereas carrying of passenger in a goods carriage vehicle is prohibited, it is not so in a private car. Learned counsel may be correct but we must notice that in a large number of decisions rendered by this Court it has been held that a passenger would not be a third party within the meaning of the provisions of the Act. We may notice some of them.

23. In United India Insurance Co. Ltd. v. Tilak Singh, [(2006) 4 SCC 404], it was held :-

“21. In our view, although the observations made in Asha Rani case 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.”

This Court in Oriental Insurance Co. Ltd. v. Jhuma Saha, [(2007) 9

SCC 263] has held :-

“10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.”

In Oriental Insurance Co. Ltd. v. Sudhakaran K.V., [(2008) 7 SCC

428] this Court has opined :-

“17. This Court in a catena of decisions has categorically held that a gratuitous passenger in a

goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. (See *New India Assurance Co. Ltd. v. Asha Rani*.”

It was held :-

“25. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; (iii) the pillion-rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”

[See also New India Assurance Company Ltd. v. Sadanand Mukhi and others, (2009) 1 SCALE 252].

24. Before this Court, however, the nature of policies which came up for consideration were Act policies. This Court did not deal with a package policy. If the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third party risk which would include all persons including occupants of the vehicle and the insurer having entered into a contract of insurance in relation thereto, we are of the opinion that the matter may require a deeper scrutiny.

25. We may notice that the effect of package policy in relation to three wheelers, came up before the Delhi High Court in United India Insurance Company, (MAC App. No.980/2006 etc. decided on 31st May, 2007) wherein it has been opined :-

“33. Tilak Singh's case (Supra) holds that the proposition of law in Asha Rani's Case (Supra) in relation to goods vehicle shall apply with equal force to 'gratuitous passenger' in any other vehicle also. As noted herein above Tilak Singh's case (supra) related to a statutory policy. It would be pertinent to mention here that Tilak Singh's case (supra) related to the death of a pillion rider on a two wheeler scooter and his legal representatives had claimed compensation against the registered owner of the scooter and the insurer. The two wheeler scooter was insured for third party risk for the period 07/03/1989 to 06/03/1990 and the accident had taken place on 31.10.1989. The Court found that the Insurance Policy covering the risks did not contain an endorsement of IMT 70 covering liability to pillion riders and, therefore, in that context held that the Insurer Company was not liable to indemnify the insured and pay compensation to the legal representatives of the deceased. I may indicate here that IMT-70 is no longer in operation and as per Section 3 of the present tariffs even a pillion rider is covered by Third Party risks unless he happens to be an employee of the insured for which extra premium is to be required to be paid.

34. To summarize, where the policy is a statutory policy or an act only policy, a gratuitous passenger in a private vehicle would not be covered for a bodily injury or death under the policy of

insurance. But, nothing prevents the insurance company from issuing a wider coverage i.e. assuming a greater risk liability. As in the instant case, where the policy is a Package Policy for Private Cars, terms of the policy and the applicable conditions as notified by the Tariff Advisory Committee would have to be looked into to determine the risk liability assumed by the insurer.”

26. The question as to whether gratuitous passengers travelling in a private car or pillion riders carried on two-wheelers are automatically covered under a package policy/comprehensive policy came up also before The Madras High Court recently in Royal Sundaram Insurance Co. Ltd. v. V. A. Meenakshi and Ors. (C.M.A No. 312 of 2009). The Division Bench of the Court, after observing the judgment of this court and various High Courts on the subject, dismissing the appeal filed by the insurance company and affirming the order of the Tribunal awarding compensation of Rs. 19.10 Lakh to the legal representatives of the deceased passenger of the insured vehicle, held that:

“29. Therefore it is clear from the Act itself, the words of the policy and the decision in *Amritlal Sood's* case (supra) that a Comprehensive Policy covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is driving his car covered by a Comprehensive Policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and children are permanently disabled by the injuries. If we

agree with the appellant Insurance Company, those pathetic claimants will not get any compensation. The law never intended this to happen. That is why the TAC explicitly came out with the clarificatory Circular in 1978. We cannot forget that the words used are "third party" and "Comprehensive", so we cannot deny this relief to the third party occupant in a car covered by a Comprehensive Policy.”

[See also the decisions of High Court of Karnataka in National Insurance Company Limited v. Pattabhi Ramaiah and Ors. (M.F.A No. 5921 and 7045 of 2006 (M.V)) and Delhi High Court in United India Insurance Co. Ltd. v. Alka Mangla and Ors. (AIR 2008 Delhi 201)].

27. We, therefore, are of the opinion that the matter requires consideration by a Larger Bench. We order accordingly. Let the papers be placed before the learned Chief Justice for appropriate orders.

.....J.
[S.B. Sinha]

.....J.
[(Dr.) Mukundakam Sharma]

New Delhi
May 06, 2009