



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Misc. Appeal No. 2207/2017

HDFC ERGO General Insurance Company Ltd., Jodhpur Office at N.K. Tower, Chopasni Road, Jodhpur through its Authorized Representative.

-----Appellant

Versus

1. Smt. Rajbala W/o Shri Butiram Jat, Resident of Village Ojtu, Tehsil Chirawa, District Jhunjhunu.
2. Jagdish Prasad S/o Shri Sualal, Resident of Village Badalwas, P.S. Sadar, District Sikar Driver.
3. Surendra Kumar S/o Shri Kishnaram Jat, Resident of Village Mandawra, P.S. Sadar, District Sikar Owner.

-----Respondents

Connected With

S.B. Civil Misc. Appeal No. 2204/2017

HDFC ERGO General Insurance Company Ltd., Jodhpur Office at N.K. Tower, Chopasni Road, Jodhpur through its Authorized Representative.

-----Appellant

Versus

1. Girdharilal S/o Shri Nandaram Swami, Resident of Village Chitawa, Tehsil Nawa, District Nagaur.
2. Jagdish Prasad S/o Shri Sualal, Resident of Village Badalwas, P.S. Sadar, District Sikar Driver.
3. Surendra Kumar S/o Shri Kishnaram Jat, Resident of Village Mandawra, P.S. Sadar, District Sikar Owner.

-----Respondents

S.B. Civil Misc. Appeal No. 2205/2017

HDFC ERGO General Insurance Company Ltd., Jodhpur Office at N.K. Tower, Chopasni Road, Jodhpur through its Authorized Representative.

-----Appellant

Versus

1. Dayal S/o Shri Fularam Kumawat, Resident of Village Deeppura, Tehsil Nawa, District Nagaur.



2. Jagdish Prasad S/o Shri Sualal, Resident of Village Badalwas, P.S. Sadar, District Sikar Driver.
3. Surendra Kumar S/o Shri Kishnaram Jat, Resident of Village Mandawra, P.S. Sadar, District Sikar Owner.

-----Respondents

S.B. Civil Misc. Appeal No. 2206/2017

HDFC ERGO General Insurance Company Ltd., Jodhpur Office at N.K. Tower, Chopasni Road, Jodhpur through its Authorized Representative.

-----Appellant

Versus

1. Smt. Sunita W/o Shri Lalchand Regar, Resident of Regar Basti, Kuchaman City, District Nagaur.
2. Jagdish Prasad S/o Shri Sualal, Resident of Village Badalwas, P.S. Sadar, District Sikar Driver.
3. Surendra Kumar S/o Shri Kishnaram Jat, Resident of Village Mandawra, P.S. Sadar, District Sikar Owner.

-----Respondents

S.B. Civil Misc. Appeal No. 2208/2017

HDFC ERGO General Insurance Company Ltd., Jodhpur Office at N.K. Tower, Chopasni Road, Jodhpur through its Authorized Representative.

-----Appellant

Versus

1. Shankarlal S/o Shri Kanaram Regar,
2. Smt. Maya W/o Shri Shankarlal Regar, Both Residents Of Village Panchwa, Tehsil Nawa, District Nagaur.
3. Jagdish Prasad S/o Shri Sualal, Resident of Village Badalwas, P.S. Sadar, District Sikar Driver.
4. Surendra Kumar S/o Shri Kishnaram Jat, Resident of Village Mandawra, P.S. Sadar, District Sikar Owner.

-----Respondents

For Appellant(s) : Mr. Jagdish Vyas.
For Respondent(s) : Mr. Gaju Singh.
Mr. Anil Bidan Halu.

**HON'BLE DR. JUSTICE NUPUR BHATI****Judgment****Reserved on: 29/07/2024****Pronounced on: 08/08/2024**

1. These appeals have been preferred by the Appellant-insurance company under section 173 of the Motor vehicle act, 1988 (hereinafter referred to as 'the Act'), against the Judgment and award dated 02.03.2017 passed by MACT, Parbatsar, District Nagaur, whereby compensation has been awarded to the claimants and the appellant has been directed to pay the compensation at the first instance and thereafter to recover the same from the owner & driver of the vehicle. The instant appeal has been filed by the appellant seeking the relief that the Judgment and award dated 02.03.2017 be quashed and set aside qua the appellant.

2. Briefly stated, the facts of the case are that on 05.05.2011 the claimants – Girdhari, Dayal, Sunita, Rajbala and Surendra were traveling from Chitawa to Adaksar in a Jeep- RJ23 UA 0302 (hereinafter referred to as "the vehicle"). The Driver of the Jeep Jagdeesh Prasad was driving the said vehicle rashly, negligently and at high speed. As a result the vehicle turtled and Girdhari, Dayal, Sunita and Rajbala got grievously injured and Surendra died. Subsequently, separate claim petitions were filed before MACT, Parbatsar (hereinafter referred to as "the tribunal") by the claimants which were tagged together as they related to the same accident. It was alleged by the claimants before the learned tribunal that the vehicle was insured with the Appellant herein and



therefore it is jointly and severally liable along with owner and driver of the vehicle to pay the compensation to the claimants.

3. It was contended by the appellant herein before the learned tribunal that the said vehicle was insured under 'Act only policy'(Policy No. 2319200008570100002), according to which the insurance company has no liability towards the occupants of the said vehicle. And also no premium was charged by the insurance company to cover the risk of the occupants. Further the appellant herein alleged before the learned tribunal that the driver of the vehicle was not carrying any valid and effective driving license at the time of the accident. Hence, on these grounds the appellant herein pleaded before the learned tribunal that it had no liability to pay the compensation to claimants.

4. On the basis of the pleadings of the parties, the learned tribunal framed total 5 issues, which are being re-produced as under:-

1. आया दिनांक 05.05.2011 को वाहन संख्या आर.जे.23 यू.ए. 0302 को उसके चालक विपक्षी संख्या-1 जगदीश प्रसाद के द्वारा तेजगति एवं असावधानी से चलाकर दुर्घटना कारित की, जिसके कारण गिरधारीलाल, दयाल, सुनिता व राजबाला के चोटें आईं एवं सुरेन्द्र उर्फ सोनू की मृत्यु कारित हुई?
2. आया विपक्षी संख्या-01 वाहन चालक, विपक्षी संख्या-2 वाहन स्वामी के नियोजन में कार्य कर रहा था और इसी नियोजन काल में यह दुर्घटना कारित हुई?
3. आया विपक्षीगण की ओर से प्रस्तुत प्रारंभिक आपत्तियों एवं विशेष विवरण में अंकित तथ्यों का क्या प्रभाव है?
4. आया प्रार्थीगण विपक्षीगण से 31,65,000/-, 48,67,000/-, 9,35,000/-, 9,65,000/- एवं 40,62,000/- रुपये प्रतिकर के रूप में प्राप्त करने के अधिकारी है और यदि है तो किस-किस विपक्षी से और कितनी-कितनी राशि?
5. अनुतोष?"

5. In respect of these issues the claimants examined five witnesses (all the five claimants) and total 151 annexures were exhibited. And the Appellant herein examined NAD-1- Nitin Kumar



who deposed before the learned tribunal that at the time of the accident the vehicle was insured with the appellant-insurance company as a private car against liability only policy, under which no premium was taken for the occupants of the vehicle. He further deposed before the learned tribunal that the occupants were traveling unauthorizedly in the vehicle.

6. The learned Tribunal after hearing the parties and considering the evidence produced by the parties *vide* its Judgment and award dated 02.03.2017 (hereinafter referred to as 'impugned judgment') held the driver and owner of the vehicle liable and directed the appellant herein to pay the compensation amount and thereafter recover the same from Driver and owner of the vehicle.

7. It is submitted by the learned counsel on behalf of the appellant that the vehicle was insured with it as a private car against "Liability Only Policy" which was issued in order to meet the requirements of the act. He also submitted that it is an admitted fact that the claimants were the occupants of the vehicle at the time of accident. It is submitted by the learned counsel on behalf of the appellant that the risk of the occupant of a vehicle insured as a private vehicle against "Act Only Policy" is not covered and such occupants are not "third party" within the meaning of the act. In support of said contention, learned counsel for the appellant placed reliance on *NIC vs. Balakrishnan & Ors.* : 2013 (1) SCC 731. It is submitted by the learned counsel on behalf of the appellant that the learned tribunal failed to appreciate that the protection provided in Chapter-XI of the act is against the third party risk only. He also submitted that in a case



where a person is not a third party within the meaning of the act, the protection under Chapter-XI of the Act is not available and the insurer cannot be made liable automatically by resorting the principle laid down in the case of NIC vs. Swaran Singh : 2004 (3) SCC 297. Thus, he submitted that the appellant-insurance company cannot be directed to pay the compensation at the first instance and thereafter to recover the same from the owner & driver of the vehicle.

8. It is further submitted by the learned counsel on behalf of the appellant that the vehicle was being plied for hire or reward in contravention of the policy conditions as well as provisions of the Act. It is submitted by the learned counsel on behalf of the appellant that while deciding Issue No.3 the learned tribunal accepted the defenses raised on behalf of the appellant and held that the vehicle (RJ23 UA 0302) was insured as a private vehicle against "Act Only Policy" wherein the risk of the occupant was not covered, however, the learned tribunal directed the appellant to pay and recover the same from the owner & driver of the vehicle.

9. Further, the learned counsel on behalf of the appellant placed reliance on the following judgments:

1. The Oriental Ins.Co.Ltd. v/s Meena Variyal, 2007(5) SCC 428
2. NIC v/s Balakrishnan, 2013(1) SCC P.731
3. Ull Co.Ltd.v/s Smt. Hudi, CMA 765/10 decided on 03.12.2013.
4. National Ins.Co.Ltd. v/s Smt.Sahidan Bano, 2015 (2) RAR 892 (Raj.)
5. OIC v/s Smt. Sharda Devi, CMA 696/2003, Decided on 04.08.2016
6. UII Co.Ltd. v/s Sanju Devi, CMA 278/2010, Decided on 29.08.2023



10. *Per contra*, it is submitted by the Learned counsel on behalf of the respondents that the occupants of the vehicle will also fall under the category of third party and therefore the direction given *vide* the impugned judgment to the appellant in this behalf is correct. He placed reliance upon *New India Assurance Co. Vs. Satpal Singh [(2000) 1 SCC 237]* and *Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd., (2020) 20 SCC 632*.

11. Heard the learned counsel appearing on behalf of the parties and perused the record.

12. The question that falls for adjudication before this Court is whether the learned tribunal was right in giving direction of pay and recover to the appellant-insurance company, when the vehicle was registered as private vehicle and insured under "Act only policy"?

13. Before adverting to adjudicate the instant appeal on merits, this court finds it germane to consider the current position of law with regards to the issue in hand.

14. In ***National Insurance Co. Ltd. v. Balakrishnan, (2013) 1 SCC 731*** the Supreme Court while making a distinction between an "act only policy" and "Comprehensive/package policy" made following observation:

"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. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

15. In **United India Insurance Co. Ltd. v. Tilak Singh** : 2006

(4) SCC 404, the Supreme Court extended the ratio of *Asha Rani* case : 2003 (2) SCC 223 to vehicles other than goods vehicles as well in the following terms:

"20. The view expressed in *Satpal Singh* case [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] however, has been specifically overruled in the subsequent judgment of a Bench of three Judges in *New India Assurance Co. Ltd. v. Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493]. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in *Satpal Singh* case [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide SCC p. 235, paras 25 and 27):

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any



passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.”

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.”*

16. In **Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. and Ors., MANU/SC/1537/2022**, the Supreme Court gave following observation regarding the direction to “pay and recover”:

“8. Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to “pay and recover”, is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to “pay and recover”. However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.

13. Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that Respondent No. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the Appellant.”

17. In **United India Insurance Company Limited v. Vinod Kanwar, 2021 SCC OnLine Raj 2668**, this court was dealing with a similar issue with respect to “act only policy” and gave following observations:

“8. Having regard to the rival contentions of the learned counsel for the parties and after perusing the material available on record, in the present case, the question before this Court is whether learned Tribunal had right to order pay and recover in case of ‘Act Only Policy’, where the risk of the deceased was not covered.



9. In the present case, it is not in dispute that the risk of deceased was not covered under the policy of vehicle. There is no statutory requirement to cover the risk of occupants in private Car. The risk of occupant in a private Car can only be covered by paying premium, which is not the case in the present matter. It is admitted fact that no premium was paid by the owner of the Car for covering the risk of the occupant. Learned Tribunal also exonerated the Insurance Company since the policy was 'Act Only Policy'.

10. The deceased, in the present case cannot be termed as third party, whereas, pay and recover order can only be passed for satisfying the judgment and award in respect of third party risk. The duty of the Insurance Company as indicated in Section 149 of the Act, is only to satisfy the judgment and award irrespective of any liability as required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 of the Act. As per the provisions of Section 147 of the Act, in case of private Car there is statutory requirement to cover any liability in respect of death or bodily injury to any person or damage to any third party. In this provision, there is no statutory requirement to cover the risk of occupant of private Car. As per the provisions of Section 149 of the Act, order of pay and recover in such type of cases can only be made in respect of liability caused to third party.

11. In the case of S.B. Civil Misc. Appeal No. 696/2003, *The Oriental Insurance Company Limited v. Smt. Sharda Devi*, decided on 4.8.2016, relied by learned counsel for the appellant, this Court while referring the judgment of Hon'ble Apex Court in the matter of *Oriental Insurance Co. Ltd. v. Meena Variyal*, (2007) 5 SCC 428, *National Insurance Company Limited v. Balkrishnan* : (2013) 1 SCC 731, modified the order of pay and recover of the learned Tribunal.

12. In the matter of *Smt. Pawni v. G. Gobi @ Gopi*, S.B. Civil Misc. Appeal No. 322/2003 decided on 13.9.2019, this Court also while relying on the judgment of *National Insurance Company Ltd. v. Balakrishnan*: (2013) 1 SCC 731 : AIR 2013 SC 473, and *Oriental Insurance Co. Ltd. v. Meena Variyal* : (2007) 5 SCC 428, held that the risk of deceased, who was sitting in insured vehicle would not be covered by third party and hence, the appellant Insurance Company would not be liable to satisfy the award. The Court further held that it is well settled proposition of law that in such case provision of direction to pay and recover cannot be issued.

...

14. In view of the settled legal position on this point, the Insurance Company cannot be directed to pay the amount of compensation awarded by the Tribunal to the claimants and then recover it from the driver & owner of the insured vehicle."

18. In ***New India Assurance Co. Ltd. v. Meenakshi, 2023***

SCC OnLine Mad 1833, the Madras High Court while dealing with



a similar factual matrix where an "act only policy" was there, made following pertinent observation regarding principle of pay and recover:

"35. This Court is unable to countenance the argument of the learned counsel for the claimants in view of the categorical pronouncements of Hon'ble Supreme Court in several cases answering this issue against the claimants. A Full Bench of this Court has considered the liability of the insurers. It has been held that in the absence of any statutory requirement to cover liability in respect of a passenger and goods vehicle, the principle of pay and recover as statutorily recognised in Sections 149[4] and 149[5] are not applicable ipso facto

xxx

37. It is true that in some of the cases cited by the learned counsel for the claimants, the Hon'ble Supreme Court had occasion to direct pay and recovery having regard to peculiar facts and circumstances of the case. This Court found that in all those cases, the Hon'ble Supreme Court has not laid down as a proposition of law but in exercise of its power under Article 142 of the Constitution of India to render complete justice between parties. Therefore, this Court has no inclination to follow any of those judgments to direct pay and recovery."

19. In view of the above cited judgments, the position of law as it stands at present is that in case of a private vehicle insured against "Act only Policy", the liability of occupants is not covered as the protection of Chapter-XI of the Motor Vehicles Act, 1988 is only available against the third party risks and the occupants of a private vehicle are not third parties. And in such cases direction to pay and recover cannot be issued to the insurer. In the present case, the vehicle was evidently insured as a 'Private Car Liability Only Policy'/'Act Only Policy' wherein the risk of the occupants was not covered and also no premium was received by the appellant-insurance company for the occupants of the vehicle.

20. Further, the case relied upon by the learned counsel on behalf of the respondents- *New India Assurance Co. Vs. Satpal Singh [(2000) 1 SCC 237]* was overruled in the subsequent



judgment of a Bench of three Judges in *New India Assurance Co. Ltd. v. Asha Rani* [(2003) 2 SCC 223. Further, in the other case cited by the learned counsel on behalf of the respondents - *Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd.*, (2020) 20 SCC 632, the Supreme Court gave such direction exercising its power under Article 142 of the Constitution of India and it did not lay down that such directions can be given to insurance company in such cases. Further, in view of a recent judgment of the Supreme Court in *Balu Krishna Chavan(Supra)*, the cited authority is of no avail to the respondents.

21. Therefore, in view of the position of law as discussed in the above paragraphs, the learned tribunal erred in directing the Appellant-insurance company to satisfy the award and then recover it from the Owner & Driver.

22. In view of the aforesaid discussion, these appeals are allowed and the impugned judgment dated 02.03.2017 is modified to the effect that the appellant company is completely exonerated from any liability to satisfy the award and the owner & driver are held liable to pay the entire amount of compensation as awarded by the learned tribunal *vide* the impugned judgment within a period of six weeks from the date of receipt of certified copy of this judgment, failing which the same shall carry interest @ 7.5% p.a.

(DR. NUPUR BHATI),J

Reserved DJ/-