THE HIGH COURT OF MADHYA PRADESH
M.A. No.139/2010
(National Insurance Company Ltd. vs. Dilip Kumar Jain & Ors.)

Gwalior, Dated : 02.04.2019

Shri S.N. Gajendragadkar, Counsel for the appellant.

Smt. Meena Singhal, Counsel for the respondent No.1.

Shri T.C. Narwariya, Counsel for the respondents No.2 and 3.

This miscellaneous appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 4.12.2009 passed by 13th Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.44/2009 by which an amount of Rs.1,53,700/- has been awarded against the appellant as well as the respondents No.2 and 3 along with interest @ 6% per annum from the date of filing of the claim petition and it has been directed that an amount of Rs.50,000/- shall be deposited in the FDR of any Nationalized Bank and the remaining amount be paid to the claimant by account payee cheque. It has also been directed that if any interim amount has been paid, then the same shall be adjusted in the final compensation amount and the appellant has also been held liable to make payment of compensation amount.

2. Challenging the award passed by the Claims Tribunal, the counsel for the appellant submitted that the appellant has been wrongly held liable for making payment of the compensation amount. The appellant being Insurance Company had no independent contract

and unless and until the owner of the offending vehicle is held liable, the appellant cannot be directed to indemnify the insured and to pay the compensation amount to the claimant. It is further submitted that in the FIR which was lodged by one Vinod Jain, it was specifically mentioned that he and the injured were sitting in the offending vehicle after making payment of fair whereas the witnesses have taken a somersault before the Claims Tribunal and since the offending vehicle was registered as a private vehicle, therefore, the appellant is not liable to indemnify the owner and driver. It is further submitted that since the policy in question was the Act policy, therefore, even the gratuitous passengers sitting in the offending vehicle are not covered under the policy and even if it is held that the appellant was liable to indemnify the owner, then the maximum liability of the appellant was only to the extent of Rs.1,00,000/-. It is further submitted that the "Act" policy is compulsory under the Motor Vehicles Act and, therefore, the "Act" Policy is also known as "A" policy whereas "B" policy is a comprehensive policy or a package policy and, therefore, it is submitted that the Claims Tribunal has wrongly held that the appellant is responsible for making payment of the compensation amount. It is further submitted by the counsel for the appellant that the cross-objection filed by the

claimant is not maintainable for the simple reason that a cross-objection against the co-respondent is not maintainable. To buttress his contentions, the counsel for the appellant relied upon the judgment passed by the Supreme Court in the case of **Panna Lal vs. State of Bombay & Ors.** reported in **AIR 1963 SC 1516** as well as the judgments passed by the High Court in the case of **New India Assurance Co. Ltd. vs. Soneram & Ors.** reported in **2010 ACJ 2680**, in the case of **Smt. Shazadi Begum vs. Vinod Kumar & Anr.** reported in **AIR 1978 MP 20** and in the case of **Oriental Insurance Co. vs. Dwarika Prasad Agarwal & Ors.** reported in **1996 JLJ 589.** With regard to the liability of the Insurance Company in case of "Act' policy, the counsel for the appellant has relied upon the judgment passed by the Supreme Court in the case of **National Insurance Company Limited vs. Balakrishnan & Anr.** reported in **2013(1) SCC 731** and in the case of **Oriental Insurance Co. Lted. vs. Surendra Nath Loomba & Ors.** reported in **2013 ACJ 231**.

3. *Per contra*, it is submitted on behalf of the claimant/respondent No.1 that merely because the claimant is a co-respondent in the present appeal would not mean that now his status is that of a defendant. The claimant would also remain claimant for all practical purposes at all different stages of the litigation. Thus it cannot be said

that the cross-objection filed by the claimant is a cross-objection against the co-defendant. Furthermore, it is submitted by the counsel for the No.1 that the compensation amount awarded by the Claims Tribunal is on a lesser side. However, with regard to the direction given by the Claims Tribunal that the appellant is responsible for making payment of compensation amount without holding that the insured/owner and driver are also jointly and severally responsible to satisfy the award is concerned, it is submitted that it is a mistake committed by the Claims Tribunal which can be corrected by this Court while deciding his appeal.

4. Heard the learned counsel for the parties.

5. The Supreme Court in the case of **Pannalal (Supra)** has held as under :

> **"18**. In our opinion, the view that has now been accepted by all the High Courts that O. 41 R. 22 permits as a general rule, a respond dent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being re-opened between the objecting respondent and other respondents, that an objection under O.4l R. 22 can be directed against the other respondents, is correct. Whatever may have been the position under the old S. 561, the use of the word "cross- objection" in O. 41 R. 22 expresses unmistakably the intention of the

> legislature that the objection has to be directed against the appellant. As Rajamannar, C. J. said in ILR 1950 Mad 874: (AIR 1950 Mad 379) (FB):
> "The legislature by describing the objection which could be taken by the respondent as a "cross-objection" must have deliberately adopted the view of the other High Courts. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant."
> We think, with respect, that these observations put the matter clearly and correctly. That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against a co-respondent is indicated by the substitution of the word "appellant" in the third paragraph by the words "the party who may be affected by such objection."

6. Thus, it is clear that generally a cross-objection filed by a co-respondent against the respondents is not maintainable under Order 41 Rule 22 C.P.C., however, where the relief sought against the appellant in such an objection intermixed with the relief granted to the other respondents, and the relief granted to the appellant cannot granted without re-opening between objecting respondent and other respondents, then the cross-objection by a co-respondent would be maintainable against the appellant and other respondents. In the present case, the respondent no.1 is the claimant and had filed an application under Section 166 of Motor Vehicles Act against the

appellant and other respondents. Thus, this Court is of the considered opinion, that the cross-objection filed by the claimant against the appellant (Insurance Company) and other respondents (Driver and Owner) is maintainable. Accordingly, the preliminary objection raised by the appellant with regard to maintainability of the cross-objection by the claimant is hereby overruled.

7. It is the case of the appellant (National Insurance Co. Ltd.) that the accident took place on 22-12-2005, in which the claimant (respondent no.1) had suffered injuries. The age of the claimant is 41 years and is a businessman by profession. It was the case of the claimant, that he was waiting for a vehicle, when the driver of the vehicle i.e., Tata Sumo bearing registration No. MP06-B-1162 was passing by. After noticing the claimant, lift was offered by the driver, which was accepted by the claimant. On the way, due to rash and negligent driving, the vehicle turned turtled resulting in injuries to the claimant. According to Dr. UPS Kushwaha (P.W.5), the claimant has suffered 20% disability.

8. It is submitted that one Vinod Jain, had immediately lodged the F.I.R. Ex. D/1 in which, he had specifically alleged that the claimant had paid fare to the driver of the vehicle. Thus, it is submitted that since, the offending vehicle was registered as private vehicle and

there was a violation of term of Insurance Policy, therefore, the Insurance Company is not liable. It is further submitted that the Insurance Policy Ex. D/1 was a "Private Car Policy A liability only", and therefore, the risk of the occupants of the vehicle is not covered.

9. *Per contra*, it is submitted by the counsel for the respondent no.1 that the Insurance Policy was a comprehensive/Package Policy, therefore, the occupants of the vehicle are covered.

10. Heard the learned Counsel for the parties, on the question of liability of the Insurance Company.

11. It is the submission of the Counsel for the appellant, that one Vinod Jain (P.W.3), who was also travelling in the offending jeep had lodged the F.I.R. Ex. P.1 in which it was specifically mentioned that at the bus stand of Shivpuri, the driver of the offending jeep was calling for the passengers, and accordingly, he along with the claimant had boarded the vehicle after payment of fare. The driver of the vehicle was driving the vehicle in a rash and negligent manner, as a result of which the vehicle turned hurtled, causing injuries to the claimant. It is submitted by the Counsel for the Insurance Company, that since, the offending vehicle was Insured as a Private Vehicle, therefore, the vehicle was being plied in contravention of the Insurance Policy.

12. Vinod Jain (P.W.3) was confronted with the allegations made in the F.I.R. and this witness has stated that the contents of the F.I.R, Ex. P.1 were not read over to him. When this witness was asked to read F.I.R., Ex. P.1, he could not read the same, as according to him, the handwriting was not clear. This witness has specifically stated that he and the claimant had boarded the jeep as the driver of the jeep was known to him. Even Dileep Kumar (P.W.2) has not stated about the payment of fare. The F.I.R. is not a substantive piece of evidence, although the same can be used for corroboration and contradiction purposes and the substantive evidence is the evidence given before the Court.

13. The Supreme Court in the case of **Mangla Ram Vs. Oriental Insurance Co. Ltd.** reported in **(2018) 5 SCC 656** has held as under :-

> **"24.** It will be useful to advert to the dictum in *N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the

Tribunal in motor accident cases. The same reads thus: (SCC pp. 458-59)

"*3.* Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are

unjustly indifferent in this regard."

25. In *Dulcina Fernandes*, this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in *Bimla Devi*. In paras 8 & 9 of the reported decision, the dictum in *United India Insurance Co. Ltd.* v. *Shila Datta*, has been adverted to as under: (*Dulcina Fernandes case*, SCC p. 650)

"*8.* In *United India Insurance Co. Ltd.* v.*Shila Datta* while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (*ii*), (*v*) and (*vi*) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)

'*10.* (*ii*) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

* * *

(*v*) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …

(*vi*) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge

> of and matters relevant to inquiry, to assist it in holding the enquiry.'
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> *9.* The following further observation available in para 10 of the Report would require specific note: (*Shila Datta case*, SCC p. 519)
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> '*10.* … We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.'"
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> In para 10 of *Dulcina Fernandes*, the Court opined that non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability."

The Supreme Court in the case of **Halappa Vs. Malik Sub.** reported in **(2018) 12 SCC 15** has held as under:-

> **"8.** The judgment of the Tribunal indicates that the defence of the insurer based on the first information report, the complaint Ext. P-1 and the supplementary statement of the appellant at Ext. P-2 was duly evaluated. The Tribunal, however, observed thus:
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> "… Respondent 3 and RW 1 submitted that the petitioner has invited the alleged unfortunate accident but except the FIR and complaint Ext. P-1 Respondent 3 has not produced any documents to show that at the time of accident the petitioner was travelling as a passenger by sitting on the engine of the tractor in question. During the course of cross-examination RW 1 has admitted that Respondent 3 has maintained a separate file in respect of accident in question and he has also admitted that Respondent 3 has not produced the

investigator's report of this case. Admittedly Respondent 3 has not examined any independent eyewitness to the accident to prove that on the relevant date and time of the accident the petitioner was travelling as a passenger by sitting on the engine of the tractor. If really the petitioner has sustained grievous injuries by falling down from the engine of said tractor Respondent 3 insurer could have produced the separate file maintained by it in respect of the accident in question and it could have also produced investigator's report in respect of the said accident but admittedly Respondent 3 has not produced the said separate file and investigator's report in respect of the accident in question for the reasons best known to it. On the other hand as already stated above it is clear from the statement of petitioner on oath and eyewitness and from the supplementary statement of petitioner at Ext. P-2 and police statement of witnesses at Ext. P-3 and charge-sheet at Ext. P-6 it is clear that due to rash and negligent driving of said tractor by Respondent 1 the said tractor turtled down and fell over the petitioner who was about to board the tractor and as a result of which the petitioner has sustained grievous injuries. Moreover as already stated above the Investigating Officer concerned after detail investigation has filed the charge-sheet against Respondent 1 for the offences punishable under Sections 279 and 338 IPC…"

9. The High Court has proceeded to reverse the finding of the Tribunal purely on the basis that the FIR which was lodged on the complaint of the appellant contained a version which was at variance with the evidence which emerged before the Tribunal. The Tribunal had noted the admission of RW 1 in the course of his cross-examination that the insurer had maintained a separate file in respect of the accident. The insurer did not produce either the file or the report of the investigator in the case. Moreover, no independent

> witness was produced by the insurer to displace the version of the incident as deposed to by the appellant and by PW 3. The cogent analysis of the evidence by the Tribunal has been displaced by the High Court without considering material aspects of the evidence on the record. The High Court was not justified in holding that the Tribunal had arrived at a finding of fact without applying its mind to the documents produced by the claimant or that it had casually entered a finding of fact. On the contrary, we find that the reversal of the finding by the High Court was without considering the material aspects of the evidence which justifiably weighed with the Tribunal. We are, therefore, of the view that the finding of the High Court is manifestly erroneous and that the finding of fact by the Tribunal was correct."

The Supreme Court in the case of **State of M.P. Vs. Surbhan** reported in **AIR 1996 SC 3345** has held as under :

> **"7**. It is contended that the FIR mentions the names of above persons who were specifically mentioned and it lends corroboration to the evidence of P.W. 2. We find no substance in this contention. The FIR cannot be used as substantive evidence or corroborating a statement of third party, i.e., P.W. 2. FIR cannot be used to corroborate the evidence of P.W.2. It can be used either to corroborate or for contradiction of its maker."

The Division Bench of this Court in the case of **Dhanwanti and others Vs. Kulwant singh and others** reported in **1994 ACJ 708** has held as under :

> "10. ....It is a well settled proposition of law that evidence recorded in criminal court and the findings

> arrived at thereon should not be used in claim cases. Such evidence for the purposes of claim cases is inadmissible. [See Shabbir Ahmed Vs. M.P.S.R.T.C., Bhopal, 1984 ACJ 525 (M.P.)]"

The co-ordinate bench of this Court in the case of **Oriental Insurance Co. Ltd. Vs. Kamli and others** reported in **2010 ACJ 1340** has held as under :

> "F.I.R. is not a substantive piece of evidence and as such, it cannot be placed on pedestal higher than the statement made before the Claims Tribunal on oath..... therefore, we donot find any illegality in the approach of the Claims Tribunal while coming to the conclusion that the deceased was not travelling in the tractor-trolley."

The Supreme Court by judgment dated 14.2.2019 passed in Civil Appeal No.1665/2019 (**Sunita and Ors. Vs. Rajasthan State Road Transport Corporation & Anr.)** has held as under :-

> "20..... It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

14. Accordingly, it is held that the claimant had not paid any fare to the driver of the vehicle.

15. However, the next question for consideration is about the nature of the Insurance Policy.

16. As per the Insurance Policy Ex. D/1 the same was “Private Car Policy A Liability only”. The Insurance Policy has been proved by D.W. 2 John Matthews.

17. Section 146 of Motor Vehicles Act, 1988 reads as under :

> **"146. Necessity for insurance against third party risk**.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:
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> Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).
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> *Explanation.*—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.
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> (2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.
>
> (3) The appropriate Government may, by order,

exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(*a*) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(*b*) any local authority;

(*c*) any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.—For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and—

(*i*) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(*ii*) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(*iii*) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority."

"Act" Policy is issued under Section 147 of Motor Vehicles Act, which reads as under :

"147. Requirements of policies and limits of liability.—(1) In order to comply with the

requirements of this Chapter, a policy of insurance must be a policy which—

(*a*) is issued by a person who is an authorised insurer; and

(*b*) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(*i*) against any liability which may be incurred by him in respect of the death of or bodily injury to any person [, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(*ii*) 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:

Provided that a policy shall not be required—

(*i*) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(*a*) engaged in driving the vehicle, or

(*b*) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(*c*) if it is a goods carriage, being carried in the vehicle, or

(*ii*) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public

place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), 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.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any

> law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

"Act" Policy does not cover the occupant of the car or the pillion rider. The Supreme Court in the case of **Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V.** reported in **(2008) 7 SCC 428** has held as under :

> **"11.** Before embarking on the rival contentions, we may notice the insurance policy. The contract of insurance was entered into on or about 2-12-1992. It was "a policy for act liability" meaning thereby a third-party liability.
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> **12.** The relevant clauses of the said contract of insurance are as under:
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> "1. Subject to the limit of liability as laid down in the Motor Vehicles Act the Company will indemnify the insured in the event of accident caused by or arising out of the use of motor vehicle anywhere in India against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person and/or damage to any property of third party.
>
> *Exception*
>
> Except so far as necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death arising out of and in the course of employment of person in the employment of the insured or in the employment of any person who is indemnified under this policy or bodily injury sustained by such person arising out of and in the course of

such employment."

13. In terms of Section 147 of the Act only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.

14. The liability of the insurer to reimburse the owner in respect of a claim made by the third party, thus, is statutory whereas other claims are not.

15. The only question which, therefore, arises for our consideration is as to whether the pillion-rider on a scooter would be a third party within the meaning of Section 147 of the Act.

16. Indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle.

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*.)

18. A Division Bench of this Court in *United India Insurance Co. Ltd.* v. *Tilak Singh* extended the said principle to all other categories of vehicles also, stating as under: (SCC p. 412, para 21)

"*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."
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> **19.** The submission of Ms Bhat, learned counsel, however, is that this Court should not extend the said principle to the vehicles other than the goods carriage. As at present advised, we may not go into the said question in view of some recent decisions of this Court viz. *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut*, *Oriental Insurance Co. Ltd.* v. *Meena Variyal* and *New India Assurance Co. Ltd.* v. *Vedwati*.
>
> **20.** The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third-party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.
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> **21.** We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third-party risk and not the risk of the owner or a pillion-rider. An exception in the contract of insurance has been made i.e. by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle."

The Supreme Court in the case of **New India Assurance Co. Ltd. v. Sadanand Mukhi,** reported in **(2009) 2 SCC 417** has held as under :

> **"13.** Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question

> depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an "Act policy", the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational."

18. However, it is apparent from the Insurance Policy, Ex. D/1, that the appellant had charged Rs. 450/- as an additional premium for 9 passengers. Thus, it is clear that the gratuitous passengers were insured by the Insurance Company. However, the maximum liability of the Insurance Company would be to the extent of Rs. 1,00,000 **(As per Indian Motor Tariff G.R. 36)** and not Rs. 10,000 as mentioned in the Insurance Policy, Ex. D.1. Thus, it is held that although the Insurance Policy Ex. D/1 was an "Act" Policy, but since, the

Insurance Company had charged additional premium of Rs. 450/- for nine passengers (i.e, Rs. 50 for each passenger), therefore, the Insurance Company is severally and jointly liable to pay compensation subject to maximum liability of Rs. 1 Lac.

19. Thus, the liability of the Insurance Company is held accordingly.

20. It is next contended by the Counsel for the appellant that the compensation amount awarded by the Claims Tribunal is on a higher side. It is submitted that although Dr. UPS Kushwaha (P.W.5) has held that the claimant had suffered 20% permanent disability but the permanent disability has to be assessed in respect of whole body and accordingly, the Permanent Disability should have been assessed at 10%. Considered the submissions made by the Counsel for the appellant. Dr. UPS Kushwah (P.W.5) has issued the Permanent Disability Certificate, Ex. P.14, but he has also admitted that he had never treated the claimant. In Para 4 of his cross-examination, he has admitted that he had certified the permanent disability of 20% of the left hand of the claimant and has not mentioned the permanent disability in respect of the whole body. Although Dr. UPS Kushwaha (P.W.5) had never treated the claimant, but the Permanent Disability Certificate, Ex. P/14 has been issued by the Medical Board, therefore,

there is nothing to disbelieve the permanent disability certificate, Ex. P.14.

21. It is contended by the Counsel for the respondent no.1 that the claimant is a shopkeeper and his monthly income is Rs. 5000/-. However, there is nothing on record to suggest the monthly income of the claimant. Even the claimant has not filed his books of accounts to show that his monthly income was Rs. 5000/- and therefore, the claims Tribunal has assessed the monthly income of the claimant as Rs. 3000/- which is reasonable in absence of any document.

22. The Claims Tribunal has also held that because of fractures sustained by the claimant, he was not in a position to run the shop for a period of 3 months therefore, has awarded Rs. 9000 by way of compensation towards loss of 100% income for 3 months. As the monthly income of the claimant has been assessed as Rs. 3000, therefore, the yearly income of the claimant comes to Rs. 36,000 and the 20% loss of income comes to Rs. 7,200. The age of the claimant has been assessed as 39 years, and Claims Tribunal has applied the multiplier of 16, whereas in the light of the judgment passed by the Supreme Court in the case of **Sarla Verma Vs. DTC** reported in **(2009) 6 SCC 121**, it should have been 15. However, the Insurance

Company has not challenged the multiplier applied by the Insurance Company, therefore, the award of Rs. 1,15,200/- towards loss of income is upheld. The claimant had remained hospitalized for a period of 3 days but he has not filed any document to show the medical expenses. The claims Tribunal has awarded Rs. 500/- towards expenses for each day of his hospitalization and Rs. 3000/- towards medical expenses and special diet. In the considered opinion of this Court, in view of the injuries and fracture sustained by the claimant, the total amount of Rs. 4,500 towards hospitalization expenses, medical expenses and Special diet appears to be on a lower side, therefore, it is enhanced to Rs. 10,000/-. The award of amount of Rs. 25,000 towards mental pain and suffering appears to be proper. Accordingly, the respondent no.1 is awarded the compensation amount as under :

1.	Loss of 20% income	= Rs. 1,15,200
2.	Hospitalization charges and medical expenses	= Rs. 10,000
3.	Loss of 100% income of 3 months	= Rs. 9,000
4.	Mental Pain and sufferings	= Rs. 25,000
	Total	= Rs. 1,59,200/-

23. As the Insurance Company has been made jointly and severally

liable to pay the compensation amount and as the liability of the Insurance Company/Appellant under the Insurance Policy, Ex. D/1 is fixed at Rs. 1,00,000, therefore, the Insurance Company shall have the right to recover the remaining amount from the insured/owner.

24. With aforesaid modifications, the award dated 4-12-2009 passed by 13th Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No. 44/2009 is hereby affirmed.

25. The appeal and the Cross-objection succeeds and are **allowed** to the extent mentioned above.

(G.S. Ahluwalia)
Judge

(alok)