

ORIENTAL INSURANCE COMPANY LTD.

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v.

SURENDRA NATH LOOMBA AND OTHERS
(Civil Appeal Nos. 1345-1346 of 2009 etc.)

NOVEMBER 20, 2012

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[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

MOTOR VEHICLES ACT, 1988:

s.166 - Motor accident - Claimant traveling in offending vehicle lost both of his eyes - Compensation - Liability of insurer - Held: Whether the insurer would be liable or not would depend upon the nature of the policy when it is brought on record in a manner as required by law - When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured and nature of policy (whether it is "Act Policy" or "Comprehensive/Package Policy") cannot be discerned from the same - In the case at hand, the policy has not been brought on record - Matter remitted to Tribunal to enable the insurance company to produce the policy with liberty to parties to lead further evidence - However, quantum of compensation determined by High Court as Rs.16,42,656/- needs no interference.

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A car belonging to respondent no. 2, met with an accident as a result of which the claimant, who was traveling in the said car lost both of his eyes. The Motor Accident Claims Tribunal, keeping in view the salary and various prerequisites of the claimant, who was working as a Senior Manager in a nationalized Bank, awarded a compensation of Rs.20,97,984/- with 9% interest. The Tribunal held that the insurer had issued the Certificate of Insurance in respect of he vehicle and it was valid when the accident occurred. Both the insurance company and the claimant filed appeals before the High

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A Court which reduced the compensation to Rs.16,42,656/-

In the instant appeals filed, both by the insurance company and the claimant, it was contended for the insurance company that the insurance policy was only an "Act Policy" and, therefore, no liability of the insurer would arise.

Partly allowing the appeals of the insurance company and dismissing those of the claimant, the Court

HELD: 1.1 In the case at hand, the policy has not been brought on record. The stand of the insurer that it is an "Act Policy" has been disputed by the claimant who would submit that the policy may be a "comprehensive/package policy". When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Thus, it would be appropriate to remit the matter to the tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised. Ordered accordingly. [para 14] [1017-E-G]

Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another 2011 ACJ 1415 - relied on.

1.2 Whether the insurer would be liable or not would depend upon the nature of the policy when it is brought on record in a manner as required by law. [para 15] [1017-H; 1018-A]

1.3 As far as quantum is concerned, the compensation allowed by the High Court is just and proper compensation requiring no interference. [para 6 and 16] [1018-B]

United India Insurance Co. Ltd., Shimla v. Tilak Singh and 2006 (3) SCR 758 = (2006) 4 SCC 404; *Oriental*

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Insurance Company Ltd. v. Jhuma Saha (Smt.) 2007 (1) SCR 979 = (2007) 9 SCC 263, *Oriental Insurance Company Ltd. v. Sudhakaran K.V. and others* 2008 (9) SCR 367 = (2008) 7 SCC 428 and *New India Assurance Company Ltd. v. Sadanand Mukhi and others* 2008 (17) SCR 1313 = (2009) 2 SCC 417; *National Insurance Co. Ltd. v. Laxmi Narain Dhut* 2007 (3) SCR 579 = (2007) 3 SCC 700; *Oriental Insurance Company Ltd. v. Meena Variyal and Other* 2007 (4) SCR 641 = (2007) 5 SCC 428; *Bhagyalakshmi and others v. United Insurance Company Limited and another* 2009 (7) SCR 1031 = (2009) 7 SCC 148; *Amrit Lal Sood and Another v. Kaushalya Devi Thapar and Others* 1998 (2) SCR 284 = (1998) 3 SCC 744; and *National Insurance Company Ltd. v. Balakrishnan & Another* 2012 (11) JT 260 - referred to.

New India Assurance Co. Ltd. V. Asha Rani 2002 (4) Suppl. SCR 543 = (2003) 2 SCC 223 - cited.

Case Law Reference:

2006 (3) SCR 758	referred to	para 7	
2007 (1) SCR 979	referred to	para 7	E
2008 (9) SCR 367	referred to	para 7	
2008 (17) SCR 1313	referred to	para 7	
2002 (4) Suppl. SCR 543	cited	para 9	F
2007 (3) SCR 579	referred to	para 11	
2007 (4) SCR 641	referred to	para 11	
2009 (7) SCR 1031	referred to	para 12	
1998 (2) SCR 284	referred to	para 12	G
2012 (11) JT 260	referred to	para 13	
2011 ACJ 1415	relied on	para 13	

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A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1345-1346 of 2009.

From the Judgment & Order dated 12.07.2007 of the High Court of Uttarakhand at Nainital in A.O. No. 201 and 284 of 2003.

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C.A. Nos. 1347-1348 of 2009.

C Dr. Meera Agarwal, Ramesh Chandra Mishra (for Oriental Insurance Co. Ltd.) for the Appellant.

A.T.M. Rangaramanujam, Vinod Wadhawani, M.A. Chinnasamy, M.A. Krishna Moorthy for the Respondents.

The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. In the present batch of appeals, two preferred by the Oriental Insurance Company Limited and two preferred by claimant, the assail is to the common judgment passed by the High Court of Uttarakhand at Nainital in A.O. No. 201 of 2003 and A.O. No. 284 of 2003 wherein the award dated 19.5.2003 passed by the Motor Accidents Claims Tribunal, Dehradun (for short 'the tribunal') in M.A.C.T. Petition No. 10 of 1999 was challenged by the insurer and the claimant from different spectrums.

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F 2. The facts which are requisite to be stated are that on 9.10.1998 about 4.30 a.m. claimant, Surendra Nath Loomba, was travelling in a Maruti Esteem Car bearing Registration No. DL 8C-5096 belonging to the respondent No. 3, Savita Matta, and driven by the respondent No. 2, Raj Loomba, the son of the claimant. Near the President Body-guard House, Rajpur Road, the vehicle dashed against a tree and in the accident the windscreen (front) of car was smashed and its pieces got inserted into the eyes of the claimant as a consequence of which he lost his both eyes. As set forth, at the time of the accident

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National Bank and his gross salary was Rs.18,949.86 per month and various perquisites were also attached to the service. Keeping in view his salary and other perquisites he filed an application under Section 166 of the Motor Vehicles Act, 1988 before the tribunal putting forth a claim of Rs.62,00,000/- with 18% interest as compensation. A
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3. The respondent No. 2, Raj Loomba, filed his written statement contending, inter alia, that at the time of accident the vehicle was insured with the Oriental Insurance Company Limited and hence, it being the insurer was liable to pay the compensation. C

4. The insurance company resisted the claim of the claimant on the ground that the driver of the vehicle did not have a valid driving licence; that the proceedings had been initiated in a collusive manner; and that even if the accident as well as the injuries were proven the insurer was not liable to indemnify the owner as the claimant was travelling as a gratuitous passenger. D

5. The tribunal on the basis of material brought on record came to hold that as the insurer had issued Certificate of Insurance in respect of the vehicle in question and it was valid during the period when the accident occurred, it was liable to pay the compensation; that the opposite party No. 1 had a valid driving licence and the accident had occurred and there was no collusion between the parties; and that the victim was entitled to get a total sum of Rs.20,97,984/- towards compensation with 9% interest per annum regard being had to the pecuniary and non-pecuniary losses. Be it noted, the tribunal, while computing the amount, had deducted certain sum under certain heads which need not be stated in detail. E
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6. Aggrieved by the aforesaid award the insurance company preferred A.O. No. 201 of 2003 and the injured claimant preferred A.O. No. 284 of 2003 before the High Court. The High Court, by the common impugned order, reduced the H

A amount of compensation to Rs.16,42,656/- and concurred with the conclusion arrived at by the tribunal as regards the liability. Thus, the appeal preferred by the insurance company was allowed in part and the appeal preferred by the claimant was dismissed. Hence, the present batch of appeals by the insurance company as well as by the claimant.

7. First, we shall deal with the appeals preferred by the insurance company. It is worth noting that the Certificate of Insurance was filed before the tribunal which clearly showed that the vehicle was insured with the appellant-company. Dr. Meera Agarwal, learned counsel for the appellant-insurer would submit that it was only an "Act Policy" and, therefore, the liability of the insurer does not arise. She has commended us to the decisions in *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Others*¹, *Oriental Insurance Company Ltd. v. Jhuma Saha (Smt.)*², *Oriental Insurance Company Ltd. v. Sudhakaran K.V. and others*³ and *New India Assurance Company Ltd. v. Sadanand Mukhi and others*⁴.

8. Learned counsel for the respondents would contend that whether the policy is an "Act Policy" or a "Comprehensive/Package Policy" or whether any extra premium was paid to cover the passenger, is not reflected from the Certificate of Insurance as the policy was not brought on record by tendering the same before the tribunal.

9. In *Tilak Singh* (supra) this Court referred to the concurring opinion rendered in a three-Judge Bench decision in *New India Assurance Co. Ltd. V. Asha Rani*⁵ and ruled thus:-

"In our view, although the observations made in *Asha Rani*

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1. (2006) 4 SCC 404.
 2. (2007) 9 SCC 263.
 3. (2008) 7 SCC 428.
 4. (2009) 2 SCC 417.
 - H 5. (2003) 2 SCC 223.

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." A B

It is worthy to note in the said case the controversy related to gratuitous passenger carried in a private vehicle. C

10. In *Jhuma Saha (Smt.)* (supra) this Court has stated thus: -

"The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147 (b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case." D

11. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut*⁶ after elaborately referring to the analysis made in *Asha Rani* (supra) the Bench ruled thus:- E

"Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third-Party Risks". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relating to third parties are created only by fiction of Sections 147 and 149 of the Act". F G

In the said case it has been opined that although the statute is a beneficial one qua the third party but that benefit cannot be extended to the owner of the offending vehicle. The said

6. (2007) 3 SCC 700.

A principle was reiterated in *Oriental Insurance Company Ltd. v. Meena Variyal and Other*⁷, *Sudhakaran K. V.* (supra) and *Sadanand Mukhi* (supra).

12. It is apt to note here that this Court in *Bhagyalakshmi and others v. United Insurance Company Limited and another*⁸, after dealing with various facets and considering the authorities in *Amrit Lal Sood and Another v. Kaushalya Devi Thapar and Others*⁹, *Asha Rani* (supra), *Tilak Singh* (supra), *Jhuma Saha* (supra), *Sudhakaran K.V. and Others* (supra), has observed thus :-

"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."

13. Recently this Bench in *National Insurance Company Ltd. v. Balakrishnan & Another*¹⁰, after referring to various decisions and copiously to the decision in *Bhagyalakshmi* (supra), held that there is a distinction between "Act Policy" and "Comprehensive/Package Policy". Thereafter, the Bench took note of a decision rendered by Delhi High Court in *Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another*¹¹ wherein the High Court had referred to the circulars issued by the Tariff Advisory Committee (TAC) and Insurance

7. (2007) 5 SCC 428.

8. (2009) 7 SCC 148.

9. (1998) 3 SCC 744.

10. Civil Appeal No. 8163 of 2012 (Arising out of SLP(C) No. 1232/2012) decided on 20.11.2012.

11. 2011 ACJ 1415.

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Regulatory and Development Authority (IRDA). This Court referred to the portion of circulars dated 16.11.2009 and 3.12.2009 which had been reproduced by the High Court and eventually held as follows: -

"19. It is extremely important to note here that till 31st December, 2006 Tariff Advisory Committee and thereafter from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court the Competent Authority of IRDA had stated that on 2nd June, 1986 the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. He had also admitted that the comprehensive policy is presently called a package policy. It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue 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 competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position the circulars dated 16th November 2009

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A and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court after referring to individual circulars issued by various insurance companies and eventually stated thus:-

B "In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/ package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

E 21. 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 than a "Comprehensive/Package Policy". As the circulars have made the position very clear and the 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 the case of

Bhagyalakshmi (supra) 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 the 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.

22. In view of the aforesaid legal position the question that emerges for consideration is whether in the case at hand the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a comprehensive policy but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a package policy to cover the liability of an occupant in a car."

14. We have quoted in extenso to reiterate the legal position. In the case at hand, the policy has not been brought on record. The learned counsel for the appellant-insurer would submit that it is an "Act Policy". The learned counsel for the respondent would seriously dispute and submit that extra premium might have been paid or it may be a "Comprehensive/Package Policy". When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Thus, we are disposed to think that it would be appropriate to remit the matter to the tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised, and we order accordingly.

15. It needs no special emphasis to state that whether the insurer would be liable or not would depend upon the nature of

A the policy when it is brought on record in a manner as required by law.

B 16. As far as quantum is concerned, though numbers of grounds were urged, yet the learned counsel for the parties did not really address on the same and, therefore, we do not think it necessary to dwell upon the same and treat it as just and proper compensation requiring no interference.

C 17. In the result, the appeals preferred by the insurer, namely, Oriental Insurance Company Limited are allowed to the extent indicated hereinabove and to that extent the award is set aside and the matter is remitted to the tribunal and the appeals preferred by the claimant for enhancement of compensation are dismissed. There shall be no order as to costs.

D R.P. Appeals disposed of.