



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2023

R

BEFORE

THE HON'BLE MR. JUSTICE C.M.JOSHI

MISCELLANEOUS FIRST APPEAL NO. 174 OF 2018 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 6621 OF 2018 (MV-D)

IN M.F.A NO. 174 OF 2018

BETWEEN:

THE NATIONAL INSURANCE CO. LTD.,
NEAR KRISHNA KALYANA MANTAPPA,
1ST FLOOR, ADJACENT TO KARNATAKA BANK,
M.G.ROAD, TUMKURU.

NOW REPTD. BY THE REGIONAL MANAGER,
THE NATIONAL INSURANCE CO.LTD.,
NO.144, SUBHARAM COMPLEX,
M.G.ROAD, BENGALURU-560 001.

...APPELLANT

(BY SRI A.N KRISHNA SWAMY, ADVOCATE)

AND:

- 1 . SRI SANAULLA KHAN,
S/O. KAREEM KHAN,
AGED ABOUT 62 YEARS.
- 2 . SMT. AKTHAR UNNISA,
W/O. SANAULLA KHAN,
AGED ABOUT 55 YEARS.
- 3 . SRI SADIQ PASHA, S/O. SANAULLA KHAN,
AGED ABOUT 26 YEARS.
ALL ARE R/O: MALLAGHATTA,
KUNIGAL TOWN-572 130.





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MFA No. 174 of 2018
C/W MFA No. 6621 of 2018

- 4 . SRI NISAMMUDDIN,
S/O. LATE MEHABOOB KHAN,
AGED ABOUT 46 YEARS,
R/AT: NO.23, KAVERINAGAR,
LAGGERE, BENGALURU-58.

...RESPONDENTS

(BY SRI A.K BHAT, ADVOCATE FOR
SRI M.V MAHESHWARAPPA, ADVOCATE FOR R1 TO R3;
NOTICE TO R4 IS HELD SUFFICIENT V/O DATED 13.02.2023)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 24.08.2017 PASSED IN MVC
NO.583/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC,
KUNIGAL, AWARDED COMPENSATION OF RS.7,27,114/- WITH
INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL
DEPOSIT.

IN M.F.A NO. 6621 OF 2018

BETWEEN:

- 1 . SANAULLA KHAN, S/O. KAREEM KHAN,
AGED ABOUT 62 YEARS.
- 2 . AKTHAR UNNISA, W/O. SANAULLA KHAN,
AGED ABOUT 55 YEARS.
- 3 . SADIQ PASHA,
S/O. SANAULLA KHAN,
AGED ABOUT 26 YEARS.

ALL ARE R/AT: MALLAGHATTA,
KUNIGAL TOWN,
TUMKUR DISTRICT -586 201.

...APPELLANTS

(BY SRI A.K BHAT, ADVOCATE FOR
SRI M.V MAHESHWARAPPA, ADVOCATE)



AND:

1 . NISAMMUDDIN,
S/O. LATE MEHABOOB KHAN,
AGED ABOUT 46 YEARS,
R/AT: NO.23, KAVERINAGAR,
LAGGERE, BENGALURU-560 058.

2 . DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
NO.911, DASAPPA COMPLEX,
TUMKUR ROAD, T.DASARAHALLI,
BENGALURU-560 057.

REPRESENTED BY THE MANAGER,
NATIONAL INSURANCE CO. LTD.,
1ST FLOOR, ADJACENT TO KARNATAKA BANK,
M G ROAD, TUMKUR-576 201.

...RESPONDENTS

(BY SRI A.N KRISHNASWAMY, ADVOCATE FOR R2;
NOTICE TO R1 IS D/W V/O DATED 08.010.2021
IN MFA NO. 174/2018)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 24.08.2017 PASSED IN MVC
NO.583/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC,
MACT-XV, KUNIGAL, PARTLY ALLOWING THE CLAIM PETITION
FOR COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF
JUDGMENT THIS DAY THROUGH VIDEO CONFERENCING AT
KALABURAGI, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the judgment and award passed in MVC
No.583/2011 by Senior Civil Judge and JMFC and



MACT-XV, Kunigal dated 24-8-2017, the petitioners as well as the Insurance Company have approached this Court in these appeals.

2. MFA No.174/2018 is filed by the Insurance Company assailing the fastening of the liability on it and MFA No.6621/2018 is filed by the petitioners seeking enhancement of the compensation.

3. The brief facts are as below:

That on 24.03.2011 at about 10.30 p.m. deceased Siddiqullah Khan, was travelling from Kunigal as a pillion rider on bike No.K.A.04-EA-5134. While so traveling near weir of Kunigal big tank the rider of Hero Honda Bike rode it in high speed in rash and negligent manner took his vehicle in a ditch, as a result fell on right side of the road with the bike. Due to this accident Siddiqullah Khan sustained fatal injuries. Immediately, he was shifted to Sridevi Hospital Tumakuru and then to NIMHANS Bangalore for better treatment. However, as per the advise of doctors he was shifted to Mallige hospital Bangalore and was in ICU.



Unfortunately, he succumbed to the injuries on 26.03.2011 at about 9.30 PM. Thereafter, the petitioners have performed his last rites by incurring expenses of Rs.40,000-00. Besides, the petitioners have also incurred expenses of Rs.80,000-00 towards his medical expenses.

4. Earlier to the accident the deceased was aged about 24 years, bachelor and earning Rs.500-00 per day from scrap business. The Kunigal police have registered a case against the offending bike rider in Crime No.79/2011 for the offences punishable under Section 279 and 304(A) of IPC. The bike is owned by the respondent No.1 and insured with respondent No.2. Now, due to his unfortunate death the petitioners have been put to mental agony and financial loss. Hence, the petitioners have claimed of compensation of Rs.15,00,000/- with 12% interest per annum.

5. In response to the notice issued, the respondent No.1 did not appear and he was placed ex-parte; and the respondent No.2 has appeared through its counsel. The respondent No.2 has filed the written statement, contending



that, there was no rash and negligent riding by the rider of Hero Honda bike. The alleged accident has happened due to mechanical failure of the bike and the Kunigal police in collusion with the petitioners have registered a false case against the bike rider. Further, it has submitted that, at the time of accident neither the rider of the bike nor the deceased wore protective head gear and thereby, the contributory negligence may be fixed against the deceased also. The rider of the hero Honda bike bearing No.KA-04-EA-5134 did not possess valid and effective driving license at the time of accident, as such, the insurance company is not liable to pay any compensation. The compensation claimed is exorbitant for which the petitioners are not entitled. By denying the age and income of the deceased and also the expenses incurred for his funeral and treatment, it has sought for dismissal of petition. Later the Insurance Company has taken up the contention that the policy issued was 'Act Only' policy and therefore, the pillion rider is not covered under the policy.



6. On the basis of the above pleadings, the Tribunal framed following issues;

1. Whether the petitioners proved that on 24.03.2011 at about 10.30 p.m. the deceased Siddiqullah Khan has suffered accident near weir (Kodi) of Kunigal Big Tank, on Tumakuru-Kunigal Road, as a result of actionable negligence of rider of Motorbike with Reg. No.KA-04-EA-5134?

2. Whether the 2nd respondent proves that the accident has taken place due to mechanical failure of Hero Honda Motorbike bearing Reg. No. No.KA-04-EA-5134?

3. Whether the 2nd respondent proves that the rider of Hero Honda Motorbike bearing Reg.No.KA-04-EA-5134 was not holding a valid and effective driving license at the time of the accident?

4. Whether the petitioners are entitled for any compensation, and if so, at what quantum and from whom?

5. What order or award?

7. The petitioner No.1 was examined as PW1 and examined one witness as PW2 and marked Exs.P1 to P16 in the evidence. Respondent No.2 Insurance Company has



examined its official as RW1 and got marked Exs.R1 and R2 in the evidence.

8. The Tribunal after hearing both the sides and answering issue No.1 in the affirmative, issue No.4 partly in the affirmative and issue Nos. 3 and 4 in the negative, partly allowed the petition by awarding the compensation of Rs.7,27,114/- under different heads as below:

Towards loss of Dependency	Rs.6,48,000/-
Towards Love and affection Rs.10,000/- each to petitioners No.1 to 3	Rs.30,000/-
Towards loss of estate	Rs.20,000/-
Funeral expenses	Rs.15,000/-
Medical expenditure	Rs.14,114/-
Total	Rs.7,27,114/-

By the impugned judgment, the Tribunal has fastened liability on the respondent No.2-Insurance Company.

9. Being aggrieved by the said judgment and award, the respondent No.2-Insurance Company has approached this Court in appeal contending that the policy issued by it was "Act only policy" and therefore, the pillion rider, who was gratuitous passenger on the two wheeler was not



covered under the policy and no additional premium was collected by it to cover the pillion rider.

10. Being aggrieved by the said judgment and award the petitioners have also approached this Court in appeal contending that the Tribunal erred in assessing the income of the deceased and the Tribunal should have deducted 1/3rd towards the personal expenses of the deceased considering the fact that there are three dependants on the deceased.

11. In MFA No.174/2018, the respondents No.1 to 3, who are the petitioners before the Tribunal have appeared through their counsel. However, respondent No.4 did not appear despite proper service of notice. In MFA No.6621/2018, on issuance of notice to respondent No.1 was dispensed with at the risk of the appellant therein and the respondent No.2 being the Insurance Company has appeared through its counsel.

12. The arguments by learned counsel Sri A. N. Krishna Swamy, appearing for the Insurance Company and the



learned counsel Sri A.K. Bhat, appearing for Sri M.V. Maheshwarappa, for respondent Nos. 1 to 3 have been heard.

13. The learned counsel Sri A.N. Krishna Swamy, appearing for the Insurance Company would submit that the pillion rider is not covered when it is the 'Act only policy.' He submits that Ex.R1 which is the copy of the Insurance Policy clearly shows that the it was 'Act only Policy' and no extra premium was collected for covering the risk of the pillion rider. He submits that there are umpteen number of decisions which postulate that the pillion rider or occupant of the car cannot come within the purview of the 'third party'. It is contended that this aspect has been laid down by the Apex Court in the case of **New India Assurance Company Limited Vs. Asha Rani and others**¹. He submits that Section 147 of the Motor Vehicles Act, lay down who are covered under the compulsory policy and that it is only applicable for transport vehicles. The inmates of the passenger car are not covered by way of compulsory

¹ (2003) 2 SCC 223



insurance and therefore, unless, the owner of the vehicle pays extra premium to cover the risk of the inmates of the car or the pillion rider as the case may be, such risk is not covered. Therefore, it is contended that the occupants of the car or the pillion rider stand on the same footing and therefore, the fastening of the liability on the Insurance Company is not proper and correct. He also clarified that, as per the Circular issued by the Insurance Regulatory Authority, the coverage for the pillion rider was extended only in respect of the comprehensive policy issued even though there was no specific mention that the pillion rider is covered for having paid the extra premium. He further contends that the decision in the case of **Oriental Insurance Company Limited Vs. Sudhakaran K.V.**², clearly lay down that the inmates of the car are not covered under the compulsory policy. He also refers to the decision in the case of **New India Assurance Company Limited Vs. C.M. Jaya and others**³ and in the case of **Amrit Lal Sood and another Vs. Kaushalya Devi Thapar and**

² 2008 ACJ 2045

³ 2002 ACJ 271



others⁴ to fortify his arguments. He also referred to the judgment in the case of **National Insurance Company Limited Vs. Jugal Kishore**⁵ which also refers to the duties of the coverage of the insurance policy. Finally, he submits that the tariff or premium paid is the criteria as seen from umpteen number of decisions. The coverage only depend upon the premium paid and if extra premium is not paid covering the risk of the pillion rider, then an Act policy cannot be termed to be covering the risk of the pillion rider. Hence, he submits that the Tribunal clearly erred in holding that the respondent No.2-Insurance Company is liable to pay the compensation.

14. Per contra, learned counsel Sri A.K. Bhat, for Sri M.V. Maheshwarappa, appearing for the petitioners who are also appellants in MFA No.6621/2018 contended that, whatever may be the nomenclature, the conditions of the policy are to be looked into. He submits that the conditions of Ex.R2 policy are the basis for the liability. He points to the

⁴ 1998 ACJ 531

⁵ 1988 ACJ 270 (SC)



avoidance clause in Ex.R2 and submits that the pillion rider may not be covered, but, if extra premium is paid, he is covered and therefore, the Ex.R2 policy showing basic premium is Rs.100 and extra premium was paid to the extent of Rs.200 and therefore, the policy covers the pillion rider. Therefore, he contends that the in view of conditions contained in the Ex.R2, an order of pay and recovery may be passed by this Court.

15. In support of his contentions, he places reliance on the decision in the case of **Amrit Lal Sood and another Vs. Kaushalya Devi Thapar and others⁶** and **Rikhi Ram and another Vs. Smt. Sukhrania and others⁷**.

16. In the light of the above submissions by learned counsels appearing for both the sides, the points that arise for consideration are:

- (i) Whether the pillion rider was covered under the policy issued at Ex.R1 and in view of the conditions contained in Ex.R2?

⁶ 1998 ACJ 531

⁷ AIR 2003 SC 1446



(ii) Whether the petitioners are entitled for enhancement of the compensation?

17. The fact that there was an accident involving a motor cycle owned by respondent No.1 (before the Tribunal) and the deceased who was a pillion rider on the said motor cycle is not in dispute. So also the fact that the respondent No.2-Insurance Company had insured the said vehicle owned by respondent No.1 under the policy issued as per Ex.R1 is also not in dispute. Obviously, the accident occurred due to the negligence on the part of respondent No.1, who was the rider of the motor cycle at the time of the accident and no other vehicle was involved in the accident. Therefore, the material question that is to be determined is, *whether the pillion rider is covered under the policy issued under Ex.R1 or not?*

18. A perusal of Ex.R1 discloses that, it is an 'Act only policy' and the premium of Rs.300/- was recovered in respect of third party basic even though the minimum premium was Rs.100/-. Compulsory personal accident to



owner-cum- driver was also covered with an additional premium of Rs.50/-. However, the cover for the owner- cum -driver was limited to Rs.1,00,000/-. It is worth to note that nowhere, there is any mention that the pillion rider or the occupant is also covered under the policy. However, it is mentioned that the seating capacity of the vehicle is '1 + 1', on the bases of which the Tribunal had fastened the liability on the Insurance Company.

19. Ex.R2 contains an avoidance clause, wherein, it is stated as below:

" Nothing in this policy or any endorsement herein shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act. But the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions.."

20. The learned counsel appearing for the appellant- Insurance Company has placed reliance on the decision in



the case of **T.V. Jose (Dr.) Vs. V. Chacko P.M.**,⁸ wherein, it was held in para 19 as below:

"19. In this case only the first sheet of the policy is on record. This clearly shows that the policy is a third-party policy. The terms and conditions governing this policy are not on record. What was shown to the Court were terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy. In the absence of terms and conditions governing this policy it is not possible to accept the submission of Mr Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The 8th respondent Company will, therefore, not be liable to reimburse the appellant."

21. Then he relied on the decision in the case of ***Oriental Insurance Company Limited Vs. Sudhakaran K.V.***⁹, where, by relying on an earlier decision in the case of ***United India Insurance Company Limited Vs. Thilak Singh***¹⁰ the Apex Court has held as below:

"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.

⁸ (2001) 8 SCC 748

⁹ (2008) 7 SCC 428

¹⁰ (2006) 4 SCC 404



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* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] .)

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 :

“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.”

22. Thus, in view of the authoritative decision in the case of ***Sudhakaran K.V.***, it was made clear that the occupants of the vehicle cannot be the 'third party'. The gratuitous passengers are held to be the occupants and obviously, 'An Act Policy' would not cover their risk.



23. In the case of ***Amrit Lal Sood and another vs. Kaushalya Devi Tapar and others*** referred supra which was relied by both the sides, it was observed in para 4, 5 and 13 as below:

"4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

5. In the present case, the policy is admittedly a "comprehensive policy". "Comprehensive insurance" has been defined in *Black's Law Dictionary*, 5th Edn. as "All-risk insurance" which in turn is defined as follows:

"Type of insurance policy which ordinarily covers every loss that may happen, except



by fraudulent acts of the insured. (*Miller v. Boston Ins. Co.* [218 A 2d 275, 278 : 420 Pa 566]) Type of policy which protects against all risks and perils except those specifically enumerated.”

Xxx
Xxx
Xxx

13. In the policy in the present case also, there is a clause under the heading: “AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY” which reads thus:

“Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the *Motor Vehicles Act, 1939, Section 96*. But the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions.”

24. An obvious conflict that was perceived by another Bench of the Apex Court resulted in referring the matter to a Larger Bench in the case of ***New India Assurance Company Limited vs. C.M. Jaya and others*** referred supra. In the said case, it was observed that there was no such conflict between the two decisions and the cases were distinguished on the facts. It was observed in para 8 as below:



"8. In the light of what is stated above, we do not find any conflict on the question raised in the order of reference between the decisions of two Benches of three learned Judges in *Shanti Bai*, 1995 ACJ 470 (SC) and *Amrit Lal Sood*, 1998 ACJ 531 (SC), aforementioned and, on the other hand, there is consistency on the point that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act. In *Amrit Lal Sood's* case, the decision in *Shanti bai* is not noticed. However, both these decisions refer to the case of *Jugal Kishore* and no contrary view is expressed."

Obviously, dispute was in respect of the limits of the liability in a comprehensive policy. It was observed that in *Shanti Bai's* case, comprehensive policy is also subject to the limit as contained in the policy and it is not unlimited. Obviously, the above decisions do not answer the question involved in the present case.

25. A decision of the Division Bench of this Court in the case of **Branch Manager, New India Assurance**

**Company Limited vs. Mahadev Pandurang Patil¹¹**

clarifies the position. In the said decision, this Court had considered the decisions in the case of *Satpal Singh, Asha Rani, Thilak Singh and others, Dr. T.V. Jose Vs. Chacko and Sudhakaran K.V.*, referred supra and ultimately in para 14, 15, 16 and 17 held as below:

"14. From the scheme of Chapter XI, the statutory insurance which is made mandatory is only to protect the interest of third parties. Section 146 deals with the necessity for insurance against third party risks. Section 147 deals with the requirements of policies and limits of liability. 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. Section 2(35) of the Act defines what a public service vehicle means, i.e., any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. 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 however the liability in so far as they are concerned is limited to the liability under the Workmen's Compensation Act.

¹¹ ILR 2011 KARNATAKA 850



It does not speak of any passenger in a 'goods carriage'. Therefore, it is clear the statutory insurance is confined to the death 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.

15. Therefore, the passenger of a vehicle which is not meant for public service is not covered under this Section. The said passenger in the case of a two wheeler is the pillion rider and in the case of three wheeler and four wheeler the occupants of such vehicle who are not carried in the said vehicle for hire or reward. Therefore, the insurance policy taken in respect of a vehicle, in which they are travelling as such passengers are not treated as third parties and such an insurance do not cover the risk of such persons. The reason is Section 147 does not require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injuries suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. The occupants/passengers/inmates of a private vehicle do not fall within the definition of the word third party. Therefore, the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle, passengers in such private vehicle or a pillion rider in the case of a two wheeler. Gratuitous passengers who are not carried for hire or reward in a vehicle other than a public service vehicle, cannot be construed as third parties.

16. If the risk of an occupant of a car, inmate of a vehicle or passenger in a private car, is to be covered, additional premium has to be paid. If no additional premium is paid, their risk is not covered. The statutory liability under Sections 146 and 147 of the Act has to be read with the terms of the insurance policy issued under Section 146 of the Act. But that does not prevent an insurer from



entering into a contract of insurance covering a risk wider than the minimum requirement of the statute, whereby the risk to gratuitous passengers could also be covered. A third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. The liability is restricted to the liability arising out of the statutory requirements under Section 146 only.

17. In view of the authoritative pronouncement of the Apex Court holding that an occupant/inmate/passenger in a private car, is not a third party, the finding recorded by the tribunal that the insurance policy issued covers the risk of such persons and therefore the insurance company is liable to pay compensation amount is illegal and contrary to the law declared by the Apex Court. In fact, in the policy, no additional premium is received by the insurance company to cover the risk of such persons. It is clear from the terminology used in the policy which fact is not in dispute. In one of the cases, additional premium is collected to loading the risk of third party only, as is clear from the policy that loading was not meant to cover risk of inmates of a private car and therefore, merely because an additional premium is collected under the said policy, it cannot be inferred that the risk of inmates of a car are covered. The words are specific that the loading is done in order to cover only third party risk, it is not a case of additional premium being collected to cover the risk of inmates along with third parties. Therefore, in the facts of this case, we are satisfied, as the insured has not paid additional premium and the insurance company has not collected any additional premium, the risk of the occupants of a private car was not covered. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set aside.



26. So also the decision in the case of ***Rikhi Ram and another Vs. Smt. Sukhrania and others***¹² also lays down that, the compulsory insurance contemplated under statute only covers third party risk. There cannot be any dispute in respect of above proposition of law. Obviously, the intent of the enactment is to protect the interest of the third party. The decisions in the case of *Thilak Singh, Sudhakaran K.V.* and other subsequent decisions lay down that the occupants of the car or the pillion rider cannot be covered under the definition of the 'Third party'. This aspect was clarified by the decision in the case of *New India Assurance Company Limited Vs. Asha Rani others*¹³ also by referring to the position of a gratuitous passenger. Therefore, it is evident from the authoritative decisions that the risk of the pillion rider was not covered under the 'Act only policy'.

27. It is pertinent to note that the decision in the case of ***New India Assurance Company Limited Vs. C.M.***

¹² AIR 2003 SC 1446

¹³ (2003) 2 SCC 223



Jaya has not overruled the earlier decision in the case of *Amrit Lal Sood Vs. Kaushalya Devi Thapar* or *New India Assurance Company Limited Vs. Shanti Bai*. It was a case wherein the extent of the liability of the Insurance Company was in question and while answering the same, it was held that the Insurance Company can cover the higher risk by accepting additional premium. Under these circumstances, it is clear that the deceased was pillion rider and no extra premium was collected for the occupant of the vehicle other than the driver and therefore, the risk of the pillion rider was not at all covered under the policy. Under these circumstances, it is evident that the Tribunal had erred by holding that the policy mentioned about the seating capacity of 1+1 and that itself would be the coverage of the policy. Under these circumstances, the finding of the Tribunal that the liability has to be fastened upon respondent No.2- Insurance Company is not sustainable under law.

28. Coming to the question as to the pay and recover, it is relevant to note that the avoidance clause referred



supra, is concerning the person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act. In the case on hand, the petitioners are not the persons covered under the Motor Vehicles Act, as the decisions referred supra clearly and categorically lay down that the pillion rider being the gratuitous passenger is not a third party. Therefore, the said clause is not at all applicable to the case on hand. Hence, the contention of pay and recover is also not maintainable.

29. There is absolutely no argument is canvassed in respect of the quantum of the compensation. The Tribunal has considered the fact that the deceased was a bachelor and therefore, it has deducted 1/3rd towards the personal expenses of the deceased. Obviously, the said calculation is in conformity with the Constitution Bench decision of the Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others**¹⁴. While coming to such conclusion, it has considered the notional income at Rs.4,500/- per month. No arguments are canvassed in this

¹⁴ AIR 2917 SC 5157



aspect and therefore, no interference or reassessment is required in same. Under these circumstances, the appeal filed by the Insurance Company deserves to be allowed and the appeal filed by the petitioners/claimants deserves to be dismissed. Hence, the following:

ORDER

(i) The appeal filed by the appellant/Insurance Company in MFA No.174/2018 is allowed and the liability fastened upon the appellant/respondent No.2-Insurance Company is hereby absolved. The petition as against respondent No.2-Insurance Company stands dismissed.

(ii) Respondent No.1- owner of the offending vehicle is liable to pay the compensation as determined by the Tribunal to the petitioners.

(iii) The appeal filed by the petitioners in MFA No.6621/2018 is dismissed.

(iv) The rest of the order of the Tribunal regarding apportionment and fixed deposit remain unaltered.



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(v) The amount in deposit in MFA No.174/2018 is ordered to be refunded to the Insurance Company on proper identification.

Sd/-
JUDGE

tsn*
List No.: 19 SI No.: 2