

**IN THE GAUHATI HIGH COURT**

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

**ITANAGAR PERMANENT BENCH (NAHARLAGUN)**

**MAC. Appeal No.12 (AP) of 2018**

1. The National Insurance Company Limited (subsidiary of General Insurance Corporation of India) registered head office at 3, Middleton Street, Calcutta-700071, represented by the Assistant Manager, Gauhati Regional Office, Bhangagarh, Guwahati-781005.

*....Appellant.*

– *VERSUS* –

1. Smt. Yatup Marda(Dupit), W/o Lt. Dr. Nobin Dupit, Permanent Resident of Village-Dupit, P.O. Taliha, District Upper Subansiri, Arunachal Pradesh.
2. Mr. Dinken Nobin Dagium, S/o Lt. Dr. Nobin Dupit, Permanent Resident of Village-Dupit, P.O. Taliha, District Upper Subansiri, Arunachal Pradesh.
3. Shri Tako Dupit, S/o Lt. Tanu Dupit, Permanent Resident of Village-Dupit, P.O. Taliha, District Upper Subansiri, Arunachal Pradesh.

*.....Respondents.*

Advocate for the Appellants: Ms. R. D. Mazumdar

Advocate for the Respondents: Mr. T. Son

**::: BEFORE :::**

**HON'BLE MR. JUSTICE NANI TAGIA**

**JUDGMENT AND ORDER (Oral)**

**25.10.2019**

Heard Ms. R. D. Mazumdar, learned counsel for the appellant/insurance company and Mr. T. Son, learned counsel for the respondents/claimant.

**2.** This appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by the appellant challenging the judgment and award dated 19.06.2015, passed by the learned Member, Motor Accident Claims Tribunal (MACT), Basar in MAC Case No.67/2012, whereby an amount of Rs.34,65,000/- (Rupees Thirty Four Lakhs Sixty Five Thousand only) have been awarded as a compensation to be paid to the respondents/claimant.

**3.** The facts leading to filing of the present appeal may briefly be stated as follows:

**4.** On 23.03.2010, while Dr. Nobin Dupit (deceased) was traveling in a Maruti 800 car bearing Registration No. AR-07/2018 met with an accident near Langam village in between Goiling and Hayuliang at Anjaw District. The said Maruti 800 car bearing Registration No. No. AR-07/2018 is stated to be owned by Sh. Tako Dupit, the father of the deceased (Dr. Nobin Dupit). At the relevant point of time, the deceased, who was working as a Medical Officer (ASHA), aged about 28 years and was earning Rs.15,000/- per month. The Hayuliang P.S. Case No.01/2010 under Section 174 of the Cr.P.C also came to be registered in this connection. During the investigation, it was found that the accident had occurred due to mechanical defect of the Maruti 800 car. The claimants, who are the wife and the son of the deceased filed a claim petition under Section 166 of the Motor Vehicle Act, 1983 claiming a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) as compensation on account of death of the deceased (Dr. Nobin Dupit), out of the use of Maruti 800 car bearing Registration AR-07/2018, before the learned Member, MACT at Basar, which was registered as MAC Case No.67/2012. The offending vehicle was stated to be insured with the appellant/opposite party, the insurance company.

**5.** On failure of summons to be served upon the appellant/opposite party, the service of notice upon the appellant/opposite party was taken by the claimants through a newspaper publication made in the "*Times of India*" dated 21.02.2015, yet the appellant/opposite party did not contest the case by filing a written statement in the Tribunal. Accordingly, the learned Tribunal proceeded ex-parte against the appellant/opposite party. On the basis of pleadings of the claimants, the learned Tribunal framed the following issues:

*"...i. Whether the victim Dr. Nobin Dupit died as a result of the injuries sustained by him in the alleged road accident dated 23/03/2010 involving vehicle No. AR-07-2018, which was driven by the deceased?*

*ii. Whether the deceased was working as a Medical Officer at Goiliang Health Sub-Centre and drawing monthly salary of Rs. 15,000/-(Rupees fifteen thousand) only?*

*iii. Whether the claimant is not the legally married wife of the deceased person?*

*iv. Whether the claimant is entitled to receive any compensation and if yes, to what extent and who amongst the opposite parties will be liable to pay the compensation amount?*

**6.** The learned Tribunal by the judgment and award dated 19.06.2015 answered all the issues in favour of the claimants and on the basis thereof, an amount of Rs.34,65,000/-(Rupees Thirty Four Lakhs Sixty Five Thousand only) was awarded as a compensation to be paid to the respondents/claimant. The compensation amount of Rs.34,65,000/- arrived at by the learned Tribunal was calculated in the following manner:

<i>"...Pecuniary loss (1,20,000/- x 18):</i>	<i>Rs.21,60,000/-</i>
<i>Loss of future prospect, adding</i>	
<i>50% on the annual income:</i>	<i>Rs.10,80,000/-</i>
<i>Funeral expenses:</i>	<i>Rs.25,000/-</i>
<i>Loss of Love and affection and for suffering:</i>	<i>Rs.1,00,000/-</i>
<i><u>Loss of consortium:</u></i>	<i><u>Rs.1,00,000/-</u></i>
<i><u>Total</u></i>	<i>Rs. 34,65,000/-</i>

*(Rupees thirty four lakhs sixty five thousand) only..."*

**7.** Assailing the correctness of the impugned judgment and award dated 19.06.2015, passed by the learned Member, Motor Accident Claims Tribunal (MACT), Basar in MAC Case No.67/2012, the learned counsel for the appellant, Ms. R. D. Mazumdar has submitted that the policy of insurance with regard to the said Maruti 800 car bearing Registration No. AR-07/2018 was to the extent of third (3<sup>rd</sup>) party risk alone and it did not cover the owner of the vehicle. The deceased, who was the son of the owner of the vehicle was himself driving the offending vehicle and the accident occurred not because of any fault of other vehicle, but the accident occurred because of faulty driving of the deceased

himself. Therefore, no third (3<sup>rd</sup>) party in the accident was involved and the person who drives the vehicle would step into the shoes of the owner, for which, the insurance company would not be liable for any damages on account of the death of either the owner or the person driving the vehicle.

**8.** In support of her submissions, Ms. R. D. Mazumdar, the learned counsel for the appellant has relied on the following decisions: (i) *Oriental Insurance Co. Ltd. Vs. Jhuma Saha & Ors.*, reported in (2007) 9 SCC 263 and (ii) *New India Assurance Co. Ltd. Vs. Sadanand Mukhi & Ors.*, reported in (2009) 2 SCC 417.

**9.** Having submitted as above, Ms. R. D. Mazumdar, learned counsel for the appellant has also filed an additional affidavit annexing the insurance policy of the offending vehicle Maruti 800 car bearing Registration No. AR-07/2018 to show that the insurance policy of the offending vehicle covered own damage as well as the premium pay for risk of the owner of the vehicle covering liability of Rs.2,00,000/-(Rupees Two lakhs) only. By referring to the insurance policy of the offending Maruti 800 car, Ms. Mazumdar, learned counsel contends that the claimants/respondent, however, would be entitled to a compensation of Rs.2,00,000/-(Rupees Two Lakhs) only on account of the death of the deceased.

**10.** Mr. T. Son, learned counsel for the respondents/claimant, on the other hand, has not disputed the fact that the deceased, who was the son of the owner of the vehicle was himself driving the said offending Maruti 800 car and, further submits that the compensation amount of Rs.2,00,000/-(Rupees Two Lakhs only) as covered by the insurance company covering the risk of the owner of the vehicle, the said amount should be accompanied with an interest from the date of the accident.

**11.** I have heard the learned counsels for the parties as well as perused the materials available on record.

**12.** Upon hearing the learned counsels for the parties as well as on perusal of the materials available on record, it has remained undisputed that the deceased (Dr. Nobin Dupit) died on 23.03.2010 out of the used of Maruti 800 car bearing registration No. AR-07/2018 owned by the father of the deceased

Sh. Tako Dupit. It has also remained undisputed that the said offending vehicle was insured by the appellant/insurance company. On the above admitted position of facts, the question which requires determination of this Court is whether the deceased having himself driven the offending vehicle, the claim petition under Section 166 of the Motor Vehicle Act, 1988 would be maintainable or not.

**13.** To answer the question raised above, the decision relied on by the learned counsel for the appellant be now referred to. In the case of *Oriental Insurance Co. Ltd.(Supra)*, reported in (2007) 9 SCC 263, while adjudicating as to whether the owner of the insured vehicle having met with an accident would be entitled to a compensation in a claim petition filed under Section 166 of the Motor Vehicle Act, 1988, the Hon'ble Supreme Court in Paragraph Nos.10 and 11 of the decision has held as follows:

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

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

**14.** In another decision reported in (2009) 2 SCC 417 (*New India Assurance Co. Ltd. Vs. Sadanand Mukhi & Ors.*), while adjudicating as to whether the claimants would be entitled for a compensation on account of death of the son of the owner of motorcycle, which had occurred due to the accident the deceased's son met with while himself driving the insured motorcycle of the father, the Hon'ble Supreme Court in paragraph Nos.11 to 19 has held as follows:

*".....11. Provisions relating to grant of compensation occurring in Chapter XI and XII of the Act have been enacted by the Parliament in order to achieve the purpose and object stated therein. Section 146 of the Act lays down the requirements for insurance against third party risk. Where a third party risk is*

involved, an insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been stated in [Section 147](#) of the Act. [Section 147\(1\)\(b\)](#) of the Act, 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--*

\* \* \*

*(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."*

*The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.*

**12.** *It is not a case where even [Section 163-A](#) of the Act was resorted to. Respondents filed an application under [Section 166](#) of the Act. Only an act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two wheelers, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in [Section 147](#) of the Act, in our opinion, is not correct.*

**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 the 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.*

**14.** *Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.*

**15.** *Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured. We may, for the said purpose, notice certain decisions covering different categories of the claims. In United India Insurance Co. Ltd. v. Tilak Singh, [ (2006) 4 SCC 404 ] this Court considered the provisions of the Motor Vehicles Act, 1939 as also 1988 Act and inter alia opined that the insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger.*

**16.** *In Oriental Insurance Co. Ltd. v. Jhuma Saha, [ (2007) 9 SCC 263 ], it was held :-*

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

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

*It was furthermore held :-*

"13. 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."

**17.** The matter came up for consideration yet again in [Oriental Insurance Co. Ltd. v. Meena Variyal](#) [(2007) 5 SCC 428] wherein it was observed :-

"13. As we understand [Section 147\(1\)](#) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's [Compensation Act, 1923](#) in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's [Compensation Act, 1923](#) in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. [Section 149\(1\)](#), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of [Section 147](#) (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of [Section 147](#) of the Act.

14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's [Compensation Act, 1923](#) in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of [Section 147](#), we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's [Compensation Act, 1923](#) and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's [Compensation Act, 1923](#). Therefore, on a plain reading of [Section 147](#) of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand."

**18.** The said principle was reiterated in [United India Insurance Co. Ltd. v. Davinder Singh](#), [ (2007) 8 SCC 698 ] holding :-

"10. It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the [Motor Vehicles](#)

*Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-`-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum."*

*19. In view of the aforementioned authoritative pronouncements, we have no hesitation to hold that the Insurance company was not liable....."*

**15.** The ratio discernible from the above two decisions of the Hon'ble Supreme Court cited herein above is that, the owner is not entitled to get any compensation if he drives the vehicle and meets with an accident- as the insurance policy is a third (3<sup>rd</sup>) party in nature. The contract between the insured and the insurer is that if any accident occurred out of the use of motor vehicle then only the third (3<sup>rd</sup>) party is entitled to get compensation. The insurer and the insured is the first and second party and other than them, all are third (3<sup>rd</sup>) party. But in the instant case, the deceased was the son of the owner of the offending vehicle, who was himself driving the vehicle and met with an accident and, therefore, the deceased was not a third party. The deceased would therefore, be deemed to have stepped into the shoes of the owner and, accordingly would not be a 3<sup>rd</sup> party. Hence, the claimants would not be entitled to get any compensation. Accordingly, the appeal filed by the insurance company deserves to be allowed and is accordingly, allowed.

**16.** Having allowed the appeal filed by the appellant/insurance company, it is further noticed that the appellant/insurance company has filed an additional affidavit, whereby insurance policy in respect of the offending vehicle have been annexed herein to indicate that the policy has the coverage of personal accident claim for an amount of Rs.2,00,000/-, for which, necessary premium was paid.

**17.** Ms. R. D. Mazumdar, learned counsel for the appellants submitted that the additional affidavit annexing the insurance policy was filed primarily to indicate that it has a personal accident coverage policy for an amount of Rs.2,00,000/- which the claimants would be entitled to. Accordingly, it is held that the claimants are entitled to a sum of Rs. 2,00,000/-(Rupees Two Lakhs only) under personal accident policy. The appellant/insurance company, therefore, shall deposit a sum of Rs.2,00,000/-(Rupees Two Lakhs only) along

with an interest @6% per annum from the date of accident before the Registry of this Court towards the personal accident coverage of the insured within a period of 4(four) weeks from today.

**18.** As and when the aforesaid amount is deposited by the appellant/insurance company, the claimants would be at liberty to withdraw the deposited amount from the Registry of this Court on being identified by the engaged counsel.

The appeal is **disposed of**, in terms above.

The statutory deposit made, if any, shall be refunded to the appellant.

Send back the LCR forthwith.

**JUDGE**

*Pura*