IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

MISC. APPEAL No. 2467 of 2014

M.P. STATE MINING CORPORATION LTD.
Versus
UNITED INDIA INSURANCE CO. LTD. AND OTHERS

Appearance:

Shri Kantesh Kumar Gupta - Advocate for the appellant.

Shri Pradip Kumar Gupta - Advocate for respondent No. 1.

Shri Swapnil Sharma - Advocate for respondents No. 3 to 5.

WITH

MISC. APPEAL No. 151 of 2015

SMT MEENA SHAH AND OTHERS
Versus
UNITED OF INDIA INSURANCE CO AND OTHERS

Appearance:

Shri Swapnil Sharma - Advocate for appellants.

Shri Pradip Kumar Gupta - Advocate for respondent No. 1.

Shri Kantesh Kumar Gupta - Advocate for respondent No. 2.

Reserved on : 12/08/2026
Delivered on : 19/08/2026

ORDER

This order will decide Misc. Appeal Nos. 2467/2014 and 151/2015, as both the appeals are arising out of one and common award dated 19/09/2014 passed by XIII Additional Member, Motor Accident Claims Tribunal, Indore (M.P.) in Claim Case No. 267/2012, whereby the claim petition preferred by the claimants was partly allowed and an award was passed for payment of compensation of Rs. 28,86,616/- with a further direction that the liability of the Insurance Company will be limited up to Rs. 1,00,000/- only.

2) Misc. Appeal No. 2467/2014 has been preferred by the M. P. State Mining Corporation Limited, who was the owner of the offending vehicle, assailing the order of limiting the liability of the Insurance Company and Misc. Appeal No. 151/2015 is preferred by the claimants for the same declaring unlimited liability of insurance company and enhancement of the compensation amount.

3) The short facts of the case are that on 20/02/2012 at about 04:00 pm deceased Ravindra Shah was travelling in a car bearing registration number MP-04-CF-7300 with the President of M. P. State Mining Corporation Limited Shri Govind Malu from Indore to Bhopal and when the car reached near Jatakheda Jod, Sehore due to rash and negligent driving in a high speed, in front of *Masajid*, the car was turned turtle and resultantly the deceased Ravindra Shah sustained serious grievous injuries and succumbed to the same at spot itself. The other passengers have also received injuries. The incident was reported at Police Station Mandi, District Sehore and an offence was registered against the Rishi S/o Bhabhuti, driver of the car *vide* Crime No. 58/2012 and after investigation the charge sheet was filed against him.

4) The wife, children and mother of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,25,00,000/- against the Driver, Owner and Insurance Company, wherein the Insurance Company has set up specific defence that the liability of the

Insurance Company was limited up to Rs. 1,00,000/- as per the terms of the policy and the premium was paid for the liability of the passengers of the car was only up to the coverage of the risk of Rs. 1,00,000/-.

5) The Tribunal by award dated 19/09/2014 decided the claim petition, wherein the Tribunal has held that the accident occurred due to the rash and negligent driving of the car by the Driver, resultantly the passenger Ravindra Shah died. The Tribunal held entitle the claimants for total compensation of Rs. 28,86,616/-, but the liability of the Insurance Company was limited up to Rs. 1,00,000/- only and rest of the award was passed against the Driver and Owner of the offending vehicle.

6) The owner of the vehicle, M. P. State Mining Corporation Limited has preferred Misc. Appeal No. 2467/2014 under Section 173(1) of the Motor Vehicles Act, 1988 assailing the award on the ground that the liability of the Insurance Company was not limited and Insurance Company is under an obligation to indemnify the complete liability of the owner. The owner has relied upon the circular dated 16/11/2009 issued by Insurance Regulatory and Development Authority (IRDA), which mandates to cover the whole liability of compensation towards the occupants of the private vehicle, when issuing the Private Car Package Policy.

7) The counsel appearing on behalf of the owner submits that the owner has purchased the Comprehensive Package Policy and therefore, the Insurance Company cannot avoid the liability on the ground that the liability of the passenger is limited up to Rs. 1,00,000/- only.

8) In support of his contention, learned counsel relied upon the

judgment delivered by the Supreme Court in the matter of **New Indian Assurance Co. Ltd. Vs. C. M. Jaya and Others** reported in **AIR 2002 SC 651 : (2002) 2 SCC 278**, wherein the Supreme Court has held that the liability of the insurer is depend upon the payment of premium and if higher premium has been paid, the liability of the Insurance Company will be as per the policy.

9) Learned counsel appearing on behalf of the claimants supported the arguments of the counsel for the owner to the extent that the liability of the Insurance Company was unlimited as the owner purchased the comprehensive insurance policy.

10) Learned counsel appearing on behalf of the Insurance Company submits that so far as the passenger of vehicle is concerned, the liability of the insurer is limited as per the provisions of Section 147 of the Motor Vehicles Act, 1988, however, it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of the passenger also, but in absence of any such clause in the insurance policy, the liability of the insurer cannot be held unlimited in respect of passenger and it is limited to the statutorily liability towards third party risk.

11) The counsel appearing on behalf of the Insurance Company has pointed out that the liability was limited as the premium was paid only for the purpose of covering the liability up to Rs. 1,00,000/- for the passengers. He pointed out from the Insurance Policy (Ex.-D/1), wherein in the Schedule of Premium in the column of liability it is mentioned that "*PA to Unnamed Passengers Number 4, Amount 100000 Per Person - 200.00*". Counsel for the

Insurance Company pointed out that as per the policy, the premium of Rs. 200/- was paid to cover the risk of four passengers up to Rs. 1,00,000/- each and therefore, the Insurance Company is not liable to indemnify the liability of the owner for more than Rs. 1,00,000/-.

12) He further pointed out that the Clause 1(i) of Section 2 of the policy provides that subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of vehicle against all sums, which the insured shall become legally liable to pay in respect of death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

13) The counsel for the Insurance Company also relied on the judgment delivered by the Supreme Court in the matter of **C. M. Jaya (Supra)**, wherein the Supreme Court has held that the liability is limited in accordance with the payment of premium. The relevant paragraphs of the judgment relied upon by counsel for the Insurance Company read as under:

> *"8. Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in Section 95 of the Act, but it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory*

liability. This view has been consistently taken in the other decisions of this Court.

14. In the premise, we hold that the view expressed by the bench of three learned Judges in the case of Shanti Bai is correct and answer the question set out in the order of reference in the beginning as under:-

In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount."

14) He further relied on the judgment delivered by the Supreme Court in the case of **National Insurance Company Limited Vs. Balakrishnan and Another** reported in **(2013) 1 SCC 731**, wherein the Supreme Court has held that the "Act Policy" stands on a different footing from a “Comprehensive / Package Policy". As the Insurance Regulatory and Development Authority (IRDA), which is presently the statutory authority, has commanded the insurance companies that a “Comprehensive / Package Policy” covers the liability of the insurer for payment of compensation to the occupant in a motor vehicle. There cannot be any dispute in that regard and it will depend upon the terms of the entire policy to arrive at the conclusion, whether it covers the liability of an occupant in a car or not. The relevant paragraphs relied upon by counsel for the Insurance Company are read as under:

"22. The relevant portion of the circular which has been reproduced by the High Court is as follows:- [Yashpal Luthra Case, 2011 ACJ 1415 Del), ACJ pp. 1419-20, para 20]

“INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

IRDA Ref: IRDA/NL/CIR/F&U/073/11/2009

Dated : 16.11.2009

To,

CEOs of all general insurance companies

Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

Section II - Liability to Third Parties

(1) Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.'

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 - dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of the

circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

Sd/-

(Prabodh Chander)

Executive Director"

[emphasis supplied]

23. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same: [Yashpal Luthra case, 2011 ACJ 1414 (Del), ACJ pp. 1422-23, para 23]

"INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

"Ref : IRDA IRDA/NL/CIR/F&U/078/12/2009

Dated : 3.12.2009.

To,

All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo)

Re: Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/2009 in the case of Yashpal Luthra v. United India and Ors., the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;

ii) with respect to all appeals pending before the High Courts *on this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;*

iii) With respect to the appeals pending before the Hon'ble Apex Court, informing, within a period of 7 days, their respective advocates on record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/-
(Prabodh Chander)
Executive Director"
[emphasis added]

24. It is extremely important to note here that till 31st December, 2006 the 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. It 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 and 3rd December, 2009, that have been reproduced hereinabove, were issued.*

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus: [Yashpal Luthra Case, 2011 ACJ 1415 Del), ACJ pp. 1424, para 27]

> *"27. 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."

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and 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.

27. 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."*

15) The counsel for the Insurance Company submits that as the premium was collected only to cover the risk of Rs. 1,00,000/- of per passenger, therefore, the Insurance Company cannot be held liable for more than Rs. 1,00,000/-. He prays for dismissal of the appeal preferred by the owner.

16) After considering the arguments advanced by counsel for the parties in respect of liability of the Insurance company, the legal position prevailing as on today is that the liability of the Insurance Company will depend upon the terms and conditions of the insurance policy and only by mentioning the policy as Comprehensive / Package Policy in itself will not cover the unlimited risk of the passenger in a vehicle. If the terms and conditions of the policy provides unlimited liability of the Insurance Company, then only the Insurance Company will be liable for payment of the entire compensation, otherwise the liability of the Insurance Company will be limited up to the terms of the policy.

17) In the case in hand, the Insurance Company collected the premium of Rs. 200/- for the risk of four passengers in the vehicle and the liability was covered up to Rs. 1,00,000/- per passenger only. The owner had not paid the higher premium for covering unlimited risk and in the absence of payment of higher premium, the Insurance Company cannot be held liable for payment

of entire compensation amount to the claimants due to the death of the passenger of the vehicle in a road traffic accident.

18) The judgment delivered by the Supreme Court in the case of **C.M. Jaya (Supra)** and **Balakrishnan (Supra)** are applicable to the case in hand and Tribunal has not committed any error in holding that the liability of the Insurance Company is limited up to Rs. 1,00,000/-. The findings of the Tribunal to this extent are affirmed and upheld.

19) So far as the issue of enhancement of compensation is concerned, the Tribunal has assessed the income of the deceased @ Rs. 3,76,584/- per annum on the basis of last pay slip of Outlook Publication Pvt. Ltd. of the month of January, 2012 of the deceased, wherein he was working on the post of Assistant Editor and as per the last pay slip after deducting income tax, the deceased was getting Rs. 31,382/- per month. Though the claimants claimed that the deceased was working as Journalist, Speaker, Writer, Editor, Professor and News Anchor and was earning Rs. 60,000/- per month from these professions and was also earning Rs. 25,000/- from the College, wherein the deceased was working as Professor, but no evidence could be brought on record that immediately before accident the deceased was earning from these professions, therefore the salary, which deceased was getting from Out Look Publication Pvt. Ltd. can only be taken for consideration of loss of dependency.

20) No other evidence was produced by the claimants to prove additional income of the deceased. The deceased was aged about 51 years at the time of accident and therefore, addition of 15% amount toward future

prospects ought to have been added, as per the judgment delivered by the Supreme Court in the matter of **National Ins. Co. Ltd. Vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680**.

21) Similarly, the claimants are also entitled for loss of Estate @ Rs. 15,000/-; Funeral Expenses @ Rs. 15,000/-; and Rs. 40,000/- to each of the claimants towards loss of Consortium, which comes to Rs. 1,60,000/- in the light of the judgment of Supreme Court in the matter of **Pranay Sethi (Supra)**.

22) In view of this, the claimants are entitled for the following compensation:

Loss of Dependency:	Rs. 31,382/- pm x 12 months = Rs. 3,76,584/- pa + Rs. 56,487/- (15% FP) = Rs. 4,33,071/- x Rs. 3,24,803/- (3/4 Dependency) x Multiplier of 11 = Rs. 35,72,833/-
Loss of Estate:	Rs. 15,000/-
Funeral Expenses:	Rs. 15,000/-
Loss of Consortium:	Rs. 1,60,000/- (Rs. 40,000/- x 4)
Total Amount:	**Rs. 37,62,833/-**
MACT Awarded:	Rs. 28,86,616/-
Enhanced Amount:	**Rs. 8,76,217/-**

23) Thus, the just and proper amount of compensation in the instant case should be Rs. 37,62,833/- as against the award of the Tribunal of Rs. 28,86,616/-. Accordingly, the claimants are entitled to get enhanced amount of Rs. 8,76,217/- over and above the amount which has been awarded by the Tribunal.

24) Resultantly, the appeal filed by the owner M.A. no. 2467/2014 is dismissed and the appeal preferred by the claimants M.A. no. 151/2015 is partly allowed to the extent as indicated hereinabove. Other terms and

conditions of the impugned award including rate of interest @ 6% shall remain intact. Respondents (Owner, Driver) shall bear the costs of the appeal of the appellants. Memo of costs be prepared.

25) Record of the Tribunal be returned along with copy of this order. Let a copy of this order be kept in the record of connected appeal also.

(VINAY SARAF)
JUDGE

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