



HIGH COURT OF TRIPURA
AGARTALA

MAC APP 59 OF 2026

1. **Sri Ranjan Chakraborty**, son of Sri Ramendra Chakraborty, resident of Badharghat (Co-operative), P.O- AD Nagar, P.S. AD Nagar, District- West Tripura;
2. **Smt. Papi Bhattacharjee (Chakraborty)**, wife of Sri Ranjan Chakraborty, resident of Badharghat (Co-operative), P.O- AD Nagar, P.S. AD Nagar, District- West Tripura;
- Appellant(s)**

Versus

1. **Sri Debabrata Saha**, son of late Matilal Saha, resident of Central Road, Agartala, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura
(owner of vehicle No. TR-01-Z-6714);
2. **The Divisional Manager**, New India Assurance Company Limited, Mantribari Road, Agartala, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura,
(insurer of vehicle No. TR-01-Z-6714).
- **Respondents**

For Appellant(s)	:	Mr. A. De, Advocate
For Respondent(s)	:	None
Date of hearing	:	17.08.2026
Date of delivery of judgment: & Order	:	07.09.2026
Whether fit for reporting	:	Yes

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
Judgment & Order

This is an appeal preferred by the claimant-appellants assailing the impugned judgment and award dated 04.02.2026 passed by the Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala, in case No. T.S. (MAC) 14 of 2021.

2. Heard Mr. A. De, learned counsel appearing for the appellants. Despite service of notice upon the respondents, none have entered their appearance, hence this court has proceeded to hear and decide the matter in absence of the respondents.

3. Shortly stated, the claimant-appellants, being parents of the deceased, Deep Chakraborty, filed a claim case before the learned Motor Accident Claims Tribunal No.1, West Tripura, Agartala, claiming compensation for the death of their son arising out of a road traffic accident which took place on 29.06.2019 at Natunnagar through Agartala-Airport road who was at that time a pillion rider of the vehicle bearing registration No. TR-01-Z-6714 (Maestro), which was being driven rashly and negligently. In the claim petition, it was stated that the vehicle when reached at Natunnagar it dashed with a tree for which the rider and the pillion rider sustained multiple grievous injuries on their person, and immediately after the accident the victim was taken to AGMC & GBP hospital where the injured succumbed to his injuries. All the respondents contested the claim case by filing respective written statement. Witnesses were examined and cross-examined and documents were exhibited. After completion of trial, learned trial Court dismissed the claim petition filed by the claimant-appellants as not maintainable and hold that the petitioners being legal heirs of the deceased are not entitled to receive any compensation. Being aggrieved by and dis-satisfied with the said judgment and award dated 04.02.2026 passed by the learned Tribunal in T.S. (MAC) 14 of 2021, the claimant-appellants have preferred this appeal in terms of the following reliefs:

"a) Admit the appeal;

b) call for the records of case no. T.S. (MAC) 14 of 2021 from the Ld. Motor Accident Claims Tribunal No.1, West Tripura, Agartala;

c) after hearing the parties be kind enough to set aside the impugned award appealed against."

4. Mr. A. De, learned counsel appearing for the appellants has submitted that the insurance policy is a comprehensive policy

and the pillion rider also is covered under the said policy and since the pillion rider died out of the accident, the claimants are entitled for compensation from the insurance company. Learned counsel appearing for the appellant has submitted that the pillion rider should be treated as gratuitous passenger, and since the deceased died out of a road traffic accident, the claimant-appellants are entitled to compensation. Learned counsel has further submitted that the tribunal ought to have applied the principle of Pay and Recovery Policy. In support of his submission, learned Counsel has relied upon decision of the Hon'ble apex court rendered in ***Manuara Khatun & ors. vs. Rajesh Kr. Singh & ors.***, reported in ***2017 Legal Eagle (SC) 123***; and ***Kaminiben & ors. Vs. The Oriental Insurance Company Limited & ors.***, reported in ***2026 LiveLaw(SC) 174***.

5. I have perused the entire record including the judgment and award passed by the learned Tribunal. The fact that there was an accident involving the offending vehicle owned by respondent No.1 and the deceased who was a pillion rider on the said motor cycle died in the said accident, 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 Exhibit 'C' is also not in dispute. Obviously, the accident occurred while respondent No.1 was the rider of the motor cycle at the time of the alleged accident. Therefore, the material question that is to be determined is, *whether the pillion rider is covered under the policy issued under Exhibit 'C' or not?*

6. On scrutiny of the record, it is evident that the policy issued was "Act on policy/Liability 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 or no add-on-premium was paid, so as to cover the pillion rider. A pillion rider cannot claim compensation from the insurance company under "Act on Policy" (third-party liability). A pillion rider is treated as gratuitous passenger and Act on Policy do not extend bodily injury or death coverage to such gratuitous passenger unless an extra premium is paid. The policy does not reveal that any extra premium has been paid for the pillion rider, and thus, the deceased son of the appellants shall be treated as gratuitous passenger. In the policy, protection is taken in the name of one Sonali Saha i.e. spouse of the insured, under the heading '**PA cover for Owner-Driver**' but protection of any co-passenger is not optioned under '**PA cover for named persons**'. This type of protection is usually purchased as an add-on by paying an extra premium over the insurance policy.

Perusal of Exhibit 'C' discloses that, it is an 'Liability policy' and the premium of Rs.1175/- was recovered in respect of compulsory PA cover for owner-driver basic even though the minimum premium was Rs.995/-. The cover for the owner-cum-driver was limited to Rs.15,00,000/-. It is worth to note that nowhere, there is any mention that the pillion rider or the occupant is also covered under the policy. Exhibit 'C' contains an Avoidance Clause, wherein, it is stated that *the insured is not*

indemnified if the vehicle is used or driven otherwise than in accordance with this schedule. Any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1988 is recoverable from the insured.

7. From the record, it is further evident that in course of trial, the counsel for the claimant did not take any step to examine the owner or the driver or the Investigating Officer regarding fixing of any liability. From the record, it is also evident that OPW-1, the Administrative Officer under Respondent No.2 during his examination has identified the certified copy of the Insurance Policy which was marked as Exhibit 'C'. During cross-examination, this OPW-1 has deposed that said Exhibit 'C' is an Act Policy. OPW-1 has further deposed that *Act Policy and liability policy are same nature of policy. There is no separate circular regarding the Act policy which does not cover the risk of pillion rider.* In his cross-examination, he has further stated that *the pillion rider is the occupant of the two wheeler and Exhibit C does not cover the liability of any occupant.* To rebut this submission, the petitioner did not take any step. Thus, the claims tribunal after considering the policy for deciding whether the policy covers risk of pillion rider or not, came to the conclusion that the owner of the vehicle has not paid any additional premium as required under the policy, therefore, insurance company is not liable to pay the amount of compensation to the claimant-appellants in this case.

8. An insurance company is not liable to pay compensation to a pillion rider under a basic 'Act' or 'Liability' Policy, if no extra premium is paid to cover the risk of the pillion rider. A basic statutory insurance policy only covers damage or injury to third party. A pillion rider on a private two-wheeler is to be considered as third-party or gratuitous passenger under a basic Act policy because the basic policy excludes pillion riders and the insurance company cannot be held responsible to pay any compensation for their death or bodily injury of the pillion rider.

9. Chapter XI of the Motor Vehicles Act, 1988 covers the compulsory insurance of Motor Vehicles against third-party risks. Section 146 of the MV Act deals with the necessity for insurance against third party risk. It makes it illegal to drive or use any motor vehicle in a public place without a valid third-party insurance policy. 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.

10. Section 147 of the Motor Vehicles Act, 1988 requires every motor vehicle owner to hold a valid insurance policy from an

authorized insurer that covers third-party liabilities, including bodily injury, death, and property damage. Section 147 of the MV 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 -

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

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

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

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation. - For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

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

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

11. For considering as to whether the pillion rider on a two wheeler vehicle would be a third party within the meaning of Section 147 of the Act, the apex court in ***Oriental Insurance Company Limited Vs. Sudhamaran K.V and Others***, reported in **2008(2) TNMAC 16 (SC)**, has held thus:

“14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.

15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle.

16. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger. In view of the terms of the contract of insurance, however, she would not be covered thereby.

.....

19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under [Section 147](#) of the Act cannot be extended

to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

In ***Dr.T.V.Jose Vs.Chacko P.M @ Thankachan and Others*** reported in **(2001) 8 SCC 748**, it has been held that "the law is clear that a third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward, the insurer company was held not liable to reimburse the appellant. The relevant paragraph is extracted hereunder;

" 20. Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons 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 a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to sub-section which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

In ***United India Insurance Company vs. Nagammal and others*** reported in **2009 (1) CTC 2**, the apex court held thus:

"31. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following pictures emerges:

(i) The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.

(ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of "pay and recover", as statutorily recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v) Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.

(vi) No such direction can be issued by any Trial Court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.

(vii) Where, however, the matter has already been decided by the Trial Court before the decision in Baljit Kaur's case. It would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of "pay and recover" should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be."

In ***Oriental Insurance company Limited vs. Sudhakaran K.V. & ors.*** reported in **(2008) 7 SCC 428**, the apex court has categorically held that *the insurer was not liable for the death of the pillion rider under the statutory/Act only Policy.* The apex Court held that *Section 147 does not statutorily request an insurer to cover the risk of a pillion rider. A pillion rider is not to be treated as a third party for this purpose which the accident is caused by the negligent riding of the same two wheeler.* The apex court explained that *the statutory obligation under Section 147 is confined to the risks that the statute requires the insurer to cover. Other risks can be covered contractually, if the insured pays the requisite additional premium.* In para 25, it has been held that *the law which emerges from the said decision is (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for the pillion rider (ii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent driving of the scooter and not on the part of the driver on other vehicle.*

On the issue of *Act On Policies*, the apex Court in ***United India Insurance Company Limited vs. Tilak Singh & ors.*** reported in **(2006) 4 SCC 404**, has categorically observed that *coverage for a pillion passenger could be obtained by payment of an additional premium, through the relevant policy endorsement. Therefore, only on the basis of Act-only policy in absence of any additional premium/coverage the insurer not liable*

for pillion rider, but where the policy specifically covers the pillion rider, the position can be different. It was further held that the insurer was not liable for the death of the pillion rider because the policy was only a statutory policy. The Court specifically held that a statutory policy under Section 147 of the Motor Vehicles Act does not automatically cover a gratuitous passenger/pillion rider. The Hon'ble Supreme Court also thus held that, a pillion rider travelling gratuitously on a two-wheeler is not covered by a statutory motor insurance policy under Section 147 of the Motor Vehicles Act, 1988. The insurer becomes liable only if the risk of the pillion rider is specifically covered by the insurance contract, ordinarily through appropriate additional premium/coverage. Therefore, a pillion rider is not covered under a statutory/Act-only policy and that the insurer is not liable for the death or bodily injury of a gratuitous pillion rider unless the risk is specifically covered under the policy upon payment of the requisite additional premium.

In ***Mohana Krishnan S vs. K. Balasubramaniam*** [***Special Leave to Appeal (C) No. 3433 of 2020***], the Hon'ble supreme court has held that *the current legal position is that pillion rider is not covered under third party insurance unless an additional premium in this regard was paid.*

12. In the case in hand, Exhibit 'C' (Liability Policy/Act policy) except covering the owner-cum-driver entails no other liability. In other words, the respondent No.2 is not liable to pay compensation to the pillion rider since no extra premium was paid

to the respondent no. 2 extending the liability towards the pillion rider. Exhibit 'C' does not cover the pillion rider i.e. son of the appellants. In the above conspectus, the appellants cannot claim any compensation under third party coverage.

13. In view of the above and considering facts and circumstances of the present case on hand, this Court is of the considered view that since the policy is only an Act policy issued by the respondent-Insurance company to the insurer and the son of the appellants i.e. the victim was only an occupant of the rider of the motor cycle, cannot be considered as 'third party' of the vehicle. The doctrine of 'pay and recovery' also cannot be applied to the facts of the case, since the Insurance company is not liable to pay the compensation in view of the above discussions. Moreover, the trial court did not give any adverse findings about the accountability of the owner/driver of the vehicle. Hence, no case is made out against the respondent-insurance company. Unless accountability is fixed to ascertain entitlement for compensation, principle of 'pay and recovery' cannot be applied.

14. With the above observations, the appeal stands **dismissed**. As a sequel, pending application(s), if any, also stands disposed. Send down the LCRs forthwith.

JUDGE

**SAIKAT
KAR**

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