

**HIGH COURT OF TRIPURA  
AGARTALA  
MAC App. No.41 of 2023**

**Sri Dipaul Debbarma**

S/o Sri Rajendra Debbarma  
Resident of Village Chenkharukami, P.O. Belbari  
P.S. Radhpur, Sub-Division-Jirania, Dist. West Tripura

----Claimant-Appellant(s)

Versus

**1. Sri Rajendra Debbarma**

S/o Late Rabi Debbarma  
Resident of Rashiram Sepaipara, P.O. Noabadi  
P.S. Jirania, Dist. West Tripura.  
Owner of the vehicle No.TR01G-4748(Motor Bike)

**2. The Divisional Manager,**

New India Assurance Company Ltd.  
Mantribari Road, Agartala, P.S. West Agartala  
P.O. Agartala, Dist. West Tripura

----OP-respondent(s)

**3. Sri Kabir Bedi Debbarma**

S/o Sri Rajendra Debbarma  
Resident of village Chengkharukami, P.O. Belbari  
P.S. Radhapur, Sub-Division-Jirania,  
Dist. West Tripura

----Proforma-OP-respondent(s)

**MAC App. No.117 of 2023**

**Sri Rajendra Debbarma**

S/o Late Rabi Debbarma,  
Resident of Rasuram Sepai Para, P.O.-Noabadi.  
P.S. Jirania(Owner of Motor Bike No.TR 01-G-4748

-----Appellant(s)

Versus

**1. Sri Dipaul Debbarma**

S/o-Sri Rajendra Debbarma  
Resident of Chenkharukami,  
P.O. Belbari, P.S.-Radhpur,  
Sub-Division-Jirania, Dist.-West Tripura

**2. New India Assurance Company Ltd.**

Represented by its Divisional Manager,  
Having Mantri bari Road, Agartala,  
P.S.-West Agartala

P.O. Agartala, Dist.-West Tripura

**3. Sri Kabir Bedi Debbarma**

S/O-Sri Rajendra Debbarma  
R/O- Chengkharukami, P.O.-Belbari  
P.S.-Radhapur, Sub-Division-Jirania,  
Dist.-West Tripura

----Respondent(s)

**In MAC App. No.41 of 2023**

For Petitioner(s) : Mr. D. R. Chowdhury, Sr. Adv.  
Mr. S. Sarkar, Adv,

For Respondent(s) : Mr. T. D. Majumder, Sr. Adv,  
Mr. G. S. Das, Adv,  
Mr. K. Deb, Adv,  
Ms. S. Saha, Adv.

**In MAC App. No.117 of 2023**

For Petitioner(s) : Mr. T. D. Majumder, Sr. Adv.

For Respondent(s) : Mr. D. R. Chowdhury, Sr. Adv.  
Mr. S. Sarkar, Adv,  
Mr. G. S. Das, Adv,  
Mr. K. Deb, Adv,  
Ms. S. Saha, Adv.

Date of hearing : 27.05.2024

Date of delivery of  
Judgment & Order : 20.06.2024

Whether fit for  
reporting : YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

The MAC App. 41 of 2023 is preferred challenging the judgment and award dated 28.02.2023 passed by Learned MAC Tribunal No.1, West Tripura, Agartala in connection with case no.TS(MAC) No.79 of 2017 by the claimant-appellant and connected MAC App. No.117 of 2023 is preferred by the owner of the motor bike bearing no.TR01-G-4748 challenging the

same judgment and award dated 28.02.2023 passed by Learned MAC Tribunal no.1 Agartala, West Tripura in the said case no.TS(MAC) No.79 of 2017.

**2.** Heard Learned Senior Counsel Mr. D. R. Chowdhury assisted by Learned Counsel Mr. S. Sarkar for the claimant-appellant in connection with MAC App. No.41 of 2023 and also heard Learned Counsel Mr. G. S. Das for the Insurance Company and also heard Learned Senior Counsel Mr. T. D. Majumder in connection with case no.MAC App. No.117 of 2023 who was representing the appellant-owner of the offending motor bike and Learned Counsel Mr. G. S. Das for the Insurance Company. Since the subject matter of both the appeals are same so by a common judgment, the matter is taken up for hearing and decision.

**3.** The claimant-appellant Mr. Dipaul Debbarma, son of Rajendra Debbarma filed a petition under Section 166 of M.V. Act, 1988 before the Learned MAC Tribunal claiming compensation for the death of his deceased mother Hiranmala Debbarma who expired in a vehicular accident involving motor bike registration no. TR-01-G-4748. In the claim petition, it was stated by the claimant-appellant that on 15.05.2021 at about 11.30 a.m. his mother Hiranmala Debbarma told him that in the morning she got information about the illness of her mother in her parent's house. At that time, one of her distant relative namely Renu Debbarma alias Renu Kumar Debbarma along with

his friend came to their house for invitation about the birthday ceremony of his daughter. That time his mother requested Renu Debbarma to give a lift to her father's house and accordingly, by riding the motor bike bearing registration no.TR01-G-4748, they were proceeding towards the father's house of Hiranmala Debbarma and on the way, at the time of crossing a speed breaker at Aishyabari (Harisadhan Para) under Jirania Police Station. His mother fell down from the backside of motor bike due to rash and negligent driving by the rider of the motor bike and as a result his mother received injuries to her head. Immediately she was taken to G.B.P. Hospital, Agartala wherein she got admitted as an indoor patient. As the condition of his mother was critical so she was referred to SSKM Hospital, Kolkata and accordingly, she was taken to Kolkata on the next day but due to non-availability of seat in SSKM Hospital, she was taken to Rabindranath Tagore International Institute of Cardiac Sciences, Kolkata on 16.05.2021 as an indoor patient but ultimately, she succumbed to her injuries on 20.05.2021 at about 2.10 p.m. in the said hospital and by this way an amount of Rs.4,50,000/- was incurred for the treatment of her injuries. Concerning the said accident, a police case was registered vide Jirania P.S. case no.31 of 2011 under Section 279/338 of IPC. It was further submitted that the deceased was aged about 40 years at the time of accident and she used to earn Rs.25,000/- per month being a school teacher of TTAADC. It was also stated that the claimant-appellant and proforma OP-respondent no.3

were fully dependent upon the income of the deceased. It was further submitted that prior to the death of his mother, his father deserted his mother and his father was living separately with one Shilpi Debbarma. Finally, the claimant-appellant filed the claim petition before the Learned Tribunal below.

**4.** The OP-respondent No.1 being the owner of the motor bike by filing written statement admitted the age, occupation, monthly income of the deceased, place, date and time of the police case concerning the said accident, injuries of the deceased, etc. The OP-respondent No.1 in his written statement stated that the eye witness to the accident on oath stated that Kabir Bedi Debbarma was not the rider of the vehicle at the time of accident rather some of the witnesses stated that one Renu Debbarma was the rider of the offending vehicle at the time of accident. The OP-respondent no.1 in his written statement admitted that prior to the accident, his deceased wife was living separately along with her two minor sons. The OP-respondent No.1 in his written statement stated that previously he filed case concerning the said accident but after marriage with one Shilpi Debbarma he was reluctant to continue the said case. Moreover, in his written statement, he stated that his vehicle was duly insured with New India Assurance Company Ltd. covering the period w.e.f. 20.11.2010 to 19.11.2011. So, if any compensation be awarded that should be borne by the Insurance Company.

5. The OP-respondent no.2 New India Assurance Company Ltd. in their written statement stated that the averments made in column no.1-14 are matters of record and the claimant-appellant is to prove the same by producing documentary evidence. It was further submitted that a direction may be given to the owner to produce the original insurance policy before the Tribunal otherwise the Insurance company will not be held responsible for making payment of compensation, if any awarded. In the written statement, they stated that in column no.15 the name of the rider of offending motor bike was shown as Runu Debbarma but the claimant-appellant in his claim petition submitted that the police officer after investigation submitted charge-sheet against the proforma OP-respondent No.3 namely Kabir Bedi Debbarma. He is the son of the deceased. In their written statement, they also stated that as per charge-sheet, Kabir Bedi Debbarma faced trial without any objection and if false charge-sheet was submitted against Kabir Bedi Debbarma then he ought to have been taken legal step for his false implication. In their written statement, they further stated that the claimant-appellant has filed the claim petition after 6 years of accident creating/managing the name of the driver of the offending motor bike to take coverage of the policy condition where as his father was the owner of the offending motor bike. In the written statement, they have formally denied the averments of the claimant-appellant made

in the claim petition made in the column no.22. Lastly, OP No.2 prayed for dismissal of this application with costs.

**6.** The proforma OP-respondent No.3 in his written statement stated that the claimant-appellant is his full blooded brother and at the time of death of their mother, both of them were maintained by their mother and their father was living separately. It was further submitted that at the time of accident the claimant-appellant was at Bengaluru to pursue his study and he himself was at Shillong for further course of his studies. It was also submitted that his father married another lady namely Shilpi Debbarma and living separately as husband and wife. In his written statement, he admitted that the IO of this case purposefully filed charge-sheet against him showing him as absconder and after receiving notice from the Court of Learned J.M. 1<sup>st</sup> Class, Court No.5, Agartala, he appeared and contested the case and none of the witness appeared to identify him as a rider of the motor bike but some of the witnesses stated that one Runu Debbarma was the rider of the motor bike. It was further submitted that at the time of accident, he was a minor and he had no knowledge about riding of any vehicle and he was at Shillong but IO filed charge-sheet against him falsely. In his written statement, he further claimed 50% share of the awarded amount of compensation.

**7.** Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

**1) Did deceased Hiranmala Debbarma die in a road traffic accident occurred on 15.05.2011 at any time**

prior to 11.30 a.m. at Aishyabari, Harisadhar Para, P.S. Jirania on Jirania College Chowmuhani to NIT road out of use of vehicle bearing registration No.TR-01-G-4748 (Motor Bike) due to rash and negligent driving of rider of said Motor Cycle?

2) Is the petition bad for non joinder of necessary party?

3) Is the petitioner entitled to get compensation? If so, to what amount and who is/are liable to pay the same?

4) To what other reliefs are the parties entitled?

8. To substantiate the issues, the claimant-appellant was examined himself as PW-1 and proved certain documents which were marked as Ext.1 to 6. He also examined another witness Bidesh Debbarma as PW-2. The OP-respondent No.1 examined himself as OPW-1 and proved certain documents which were marked as Exbt.A to I. On behalf of OP-respondent no.2 one Suman Das was examined as OPW2 and proved certain documents which were marked as Ext.J to M.

Finally, after hearing of arguments, Learned Tribunal below allowed the claim petition but fastened the liability upon the owner of the offending motor bike in place of the Insurance Company.

9. For the sake of convenience, I would like to refer hereinbelow the operative portion of the order of award which runs as follows:

**Order**

"It is, therefore, held that the claimant petitioner is entitled to get compensation of Rs.23,23,100/-(Rupees Twenty-three Lakh Twenty-three thousand One Hundred only) with interest @ 7% per annum with effect from 28.04.2017 i.e. the date of filing of the claim petition till the date of actual payment. The O.P. No.1 Sri Rajendra Debbarma, S/O. Late Ravi Debbarma, resident of Rashi Ram Sepahi Para, P.O. Nowabi, P.S. Jirania, District West Tripura will pay the amount of compensation with interest within 30 days



**from today in terms of Section 168(3) of M.V. Act, 1988.**

**Out of the total amount of compensation inclusive of interest, 50% shall be kept in fixed deposit scheme in the name of the claimant petitioner in any Nationalized Bank of his locality for a period of five years and the remaining 50% shall be paid to him through his bank account. The claimant petitioner shall however be at liberty to withdraw monthly interest from his fixed deposit certificate to meet his day to day expenses. No loan or withdrawal shall be permitted from the fixed deposit certificate without prior permission of this Tribunal.**

**Supply copy of this award free of cost to the parties.**

**The claim petition stands disposed of on contest.**

**Enter the result in the relevant Register as well as in the CIS."**

**10.** In course of hearing of argument, Learned Senior Counsel, Mr. D. R. Chowdhury assisted by Learned Counsel Mr. S. Sarkar submitted that the Learned Tribunal below without any basis fastened the liability upon the owner on the ground that the policy document does not cover the pillion rider. Here in the case, the deceased was a pillion rider and furthermore, Learned Tribunal below based upon the charge-sheet came to the observation that that Kiran Bedi Debbarma proforma OP-respondent No.3 was the rider of the bike and he had no valid driving license to ride the bike on that day but the Learned Tribunal did not consider the evidence adduced by the claimant-appellant in this case and finally submitted that Learned Tribunal also came to the observation that as per policy, it is two-wheeler liability policy covered for third party but there is no coverage of pillion rider and since the deceased was a pillion rider so he did not appreciate the evidence on record of the owner of the motor bike and came to the further observation

that Renu Debbarma was not connected with the case and since the owner has violated the terms and conditions of Insurance Police so he has to indemnify the entire compensation to the appellant which was not in accordance with law because according to Learned Senior Counsel, the pillion rider is also entitled to get compensation and the Insurance Company is liable to pay the entire compensation to the appellant.

**11.** Learned Senior Counsel Mr. T. D. Majumder submitted that the findings of the Learned Tribunal are not in accordance with law because the Learned Tribunal fastened the liability of entire payment of compensation upon the owner of the vehicle leaving the Insurance Company. But according to Learned Senior Counsel, the pillion rider will also get compensation under 'comprehensive policy' so the OP-respondent-Insurance Company be asked to indemnify the entire compensation to the owner.

**12.** Learned Counsel Mr. G. S. Das for the Insurance Company countered the submissions made by Learned Senior Counsel for the claimant as well as Learned Senior Counsel for the owner of the offending bike and submitted that as per terms of policy, the policy was not a comprehensive policy rather it was act policy/package policy as such the Insurance Company is not liable to make any payment of compensation to the claimant-appellant in this case and submitted that Learned Tribunal below rightly determined the amount of compensation and fastened the liability upon the owner of the offending motor

bike and urged for dismissal of both the appeals upholding the award/judgment of the Learned Tribunal below.

**13.** I have gone through the entire record of the Learned Tribunal below and also heard detailed arguments of the Learned Counsel of the rival parties. There is no dispute on record in respect of death of deceased Hiranmala Debbarma due to road traffic accident on the alleged day although she succumbed to her injuries later on at Kolkata after the accident. The police in the connected case submitted charge-sheet against Kabir Bedi Debbarma proforma OP-respondent-3 showing him as absconder but from the paper book, it appears that in the criminal trial he has been acquitted from the charge levelled by the prosecution against him.

On the other hand, the claimant-appellant took the plea that on the alleged day one Renu Debbarma was the driver of the offending motor bike but the learned Tribunal below did not accept that contention rather came to the observation that Kabir Bedi Debbarma was the rider of the bike and he had no valid driving license and fastened the liability upon the owner since he violated the terms of policy.

**14.** The Insurance Company before the Learned Tribunal submitted the written statement. In the written statement, it was not submitted anything by the Insurance Company that the pillion rider is not entitled to get any compensation as per terms of the policy of the offending bike bearing no.TR-01-G-4748 and accordingly, during the trial on

behalf of the Insurance Company one Mr. Suman Das appeared. He tried to support his version in the written statement submitted by the Insurance Company and in the affidavit, he also submitted that the Insurance policy of the motor bike was in the name of husband of the deceased as two-wheeler liability only policy and as per policy, pillion rider does not cover and no premium was paid as a coverage of pillion rider except the coverage for triple liability third party and in absence of package policy the pillion rider does not cover. So, the insurance company is not liable to indemnify any compensation on behalf of the owner. In course of hearing of argument, Learned Counsel only raised their voice on the ground that pillion rider is not entitled to get compensation as per terms of the policy.

**15.** In support of the contention, Learned Senior Counsel for the appellant relied upon the following judgments:

In **Ashok vs. Narmada Bai and anr.** dated 15.09.1998 reported in **2000 ACJ 553**, wherein in para nos.4 and 12, Madhya Pradesh High Court observed as under:

**"4. Section 128 of the Motor Vehicles Act, 1988 permits carrying of one person apart from driver on a two-seated motor cycle. So sitting on the pillion seat by Dinesh while appellant Ashok was driving, was permissible in law. It is expected that the motor cycle could be used by a driver and one more person sitting on the pillion seat.**

**12. Thus not only under the term of policy Exh. D-1 but also in view of provisions of section 147(1)(b)(i) it becomes clear that the insurer undertook to indemnify the insured in respect of all liabilities arising out of death of or bodily injury to any person. A pillion rider on a two-wheeler is an authorized rider as per section 128 of the Motor Vehicles Act. He would certainly be covered by 'any person'**

laid down in the above section and in the policy. The policy Exh. D-1 is comprehensive, it is not in dispute. It included the liability of public risk. It is thus clear that the insurer is also liable to pay the damages to the claimants. They are liable to indemnify the appellant whose vehicle was insured in this case. In view of the above discussion the appeal is accepted. It is directed that respondent No.2 is also liable to pay the damages in this case, allowed in favour of respondent No.1. To this extent the award of the Tribunal is amended. I leave the parties to bear their own costs."

In **United India Insurance Co. Ltd. vs. Chandana Saha and Ors.** dated 09.12.2005 reported in **(2006) GLR 156**, wherein in para 9 Gauhati High Court observed as under:

"9. For the reasons noted above, we are of the view that a pillion rider is a person who is covered by an Act policy taken under section 147 of the Act, and, therefore, the legal heirs of the deceased are entitled to the compensation for the death of such a pillion rider."

In **Amrit Lal Sood and anr. vs. Smt. Kaushalya Devi Thapar and others** dated 17.03.1998 reported in **AIR 1998 SC 1433**, Hon'ble Supreme Court observed para 8 as under:

"8. Thus under Section II 1(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to 'any person'. The expression 'any person' would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."

In **New India Assurance Co. Ltd. vs. D. R. Ramesh & Ors.** dated 05.12.2005 reported in **AIR 2006 Karnataka 169**, wherein Karnataka High Court observed as under:

"Notice to R.1 through paper publication held sufficient.

2. The insurer has taken permission under S.170 of the M.V. Act.

3. One Smt. Laxamma pillion rider of TVS Moped, the second respondent-husband is the rider of the moped. The pillion rider fell down from the vehicle as a result died. The FIR is lodged by the rider. The content of the FIR does not disclose the negligence on the part of rider. The police after investigation have filed 'B' report. The contents of the 'B' report disclosed that there were water logged trenches on the road. The rider could not properly judge the road condition while crossing over the trench. On account of jerk the pillion rider fell down. The facts noted in the 'B' report may not warrant criminal prosecution. But nonetheless, it cannot exonerate the tortuous liability. Over confident and misjudgment of the rider of the TVS moped is the main cause for the accident and it amounts to actionable negligence.

4. The decision of this Court in C. N. Krishnamurthy v. P. Shashidara Murthy, ILR (1998) Kar 2391 : (1998 AIHC 3291) has no application to the facts.

5. The children of the deceased are the petitioners seeking compensation. The Tribunal has awarded compensation of Rupees 228300/- with interest at 6% from the date of the petition till payment.

6. The deceased is a housewife. Her income is assessed at Rs.1500/- p.m. As per Unit system Rs.600/- to be defrayed towards personal expenses. The total loss of dependency would be 151200(900X12X14 multiplier). Further the petitioners are entitled to Rs.10000/- for loss of expectancy and Rs.3000/- for funeral expenses. In all the petitioners are entitled to a total compensation of Rs.1,64,200/- as against Rs.238300/-. Accordingly, the appeal is allowed as indicated above.

7. The amount in deposit to be transferred to the Tribunal for payment. The compensation amount to be distributed equally amongst the petitioners.

8. The amount in respect of the minors to be kept in the F.D. until they attain majority. Order accordingly."

**16.** On the other hand, from the side of the Insurance Company, few citations were referred:

In **Oriental Insurance Co. Ltd. vs. Sudhakaran K. V. and others** dated 16.05.2008 reported in **(2008) 7 SCC 428**, wherein in para 25, Hon'ble Supreme Court observed as under:

"25. 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 **New India Assurance Co. Ltd. v. Shri Satyanath Hazarika & Ors.** dated 08.03.1989 reported in **(1989) 2 GLR 63**, wherein in para 18 Gauhati High Court observed as under:

"18. In the result, we answer the question referred to this Bench by stating that an insurer would be liable to indemnify the insured in respect of compensation awarded against him for the death or bodily injury to a gratuitous passenger in all those cases which are pending before the Claims Tribunal or appellate authorities since 25th March, 1977. In other cases the insurer would be liable in cases of the present nature if the particular policy covered the risk, and it shall be the burden of the insurer to satisfy by producing the policy that such a risk was not covered by the policy, if that was its case before the Claims Tribunal."

In **General Manager, United Insurance Company Limited vs. M. Laxmi and others** dated 14.11.2008 reported in **(2009) 17 SCC 301**, wherein in para nos.10 and 11 Hon'ble the Apex Court observed as under:

**"10. In United India Insurance Co. Ltd. v. Tilak Singh:(2006) 4 SCC 404 it has been noted as follows: (SCC p.412, para 21)**

**"21. In our view, although the observations made in Asha Rani case:(2003) 2 SCC 223 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."**

**11. In view of what has been stated by this Court in Asha Rani:(2003) 2 SCC 223 and Tilak Singh:(2006) 4 SCC 404 cases, the order of the High Court is clearly unsustainable and is set aside and that of MACT is restored."**

**In United India Insurance Co. Ltd., Shimla vs.**

**Tilak Singh and others** dated 04.04.2006 reported in **(2006)**

**4 SCC 404**, wherein in para nos.20 and 21, Hon'ble the Apex

Court observed as under:

**"20. \* \* \* \* \***

**"27. Furthermore, 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."**

**21. In our view, although the observations made in Asha Rani case:(2003) 2 SCC 223 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."**



Referring the aforesaid citations, Learned Counsel Mr. G. S. Das submitted that since the policy of the owner of the vehicle does not cover the case of pillion rider as such the Insurance Company cannot be held liable for that and submitted before the Court to uphold the judgment of the learned Tribunal.

**17.** In this case, after perusing the judgment of Learned Tribunal below, it appears to this Court that the Learned Tribunal below relied upon the police report and ignored the evidence on record of the claimant-appellant and his witness and also came to the observation that the policy does not cover the pillion rider and hence fastened the liability upon the owner. It is the settled position of law that simply on the basis of charge-sheet there is no scope to disbelieve the evidence on record of the claimant-appellant before the Tribunal. Here, from the evidence on record, it appears that the appellant and his witnesses very specifically stated that one Renu Debbarma was the rider of the offending motor bike which the Learned Tribunal below did not consider. It is also on record that proforma OP no.3 was relieved from the charge of criminal prosecution. So, it is clear that the police report on the basis of which the Learned Tribunal below determined that Kabir Bedi Debbarma was the driver was not conclusive one and established. Rather from the evidence of the appellant and his witness, it appears that on the alleged day one Renu Debbarma was the driver of the offending motor bike and his valid license

was duly exhibited although the Learned Tribunal below did not consider the same.

**18.** In **National Insurance Company Limited vs. Balakrishnan and anr.** dated 20.11.2012 reported in **(2013) 1 SCC 731**, wherein in para nos. 26 and 27 Hon'ble Apex Court observed as under:

**"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 :(2009) 7 SCC 148 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."**

From the aforesaid principle of law laid down by the Hon'ble Supreme Court, it appears to this Court that if the

policy [Exbt.C] is a comprehensive package policy then the Insurance Company would be liable to make payment of compensation to the claimant-appellant.

**19.** Here, in the given case, Learned Tribunal below could not properly assess/determine whether the policy was a 'comprehensive/package policy' or 'Act policy' or not. So, it appears that the matter be remanded back to the Learned Tribunal to determine the following point afresh after allowing both the parties to adduce additional evidence. Points for determination:

***Whether on the alleged case, the insurance policy i.e. Ext.C falls under comprehensive/package policy or act policy or not?***

**20.** In the result, both the appeals are allowed. The judgment and order dated 28.03.2023 passed by Learned MAC Tribunal No.1, Agartala, West Tripura in connection with case no.TS(MAC) No.79 of 2017 is hereby set aside. The matter be remanded back to the Learned Tribunal below and the Learned Tribunal below shall scrutinize the policy in a proper perspective and shall take necessary additional evidence, if required and after proper determination of the aforesaid point, shall pass afresh judgment after hearing the rival parties. The entire exercise shall be made within a period of 3(three) months from the date of receipt of copy of this judgment and order. There shall be no order as to costs.

