



Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 697 OF 2022
WITH
INTERIM APPLICATION NO. 10288 OF 2022
IN
FIRST APPEAL NO. 697 OF 2022**

IFFCO-TOKIO General Insurance Co. Ltd.,
Through its Authorized Representative
Sunny Bhandari, AFL House, Marol Maroshi
Road, 2nd Floor, Andheri (E) Mumbai
Also at
3rd Floor, Iffco Bhavan, 181, Waterfield Road
Next to Jammu & Kashmir Bank,
Bandra (West), Mubmai 400 050.

...Appellant

~ versus ~

1. **Darshana Vasant Mukadam,**
Aged 36 years, Occ: Nil
R/at. Plot No. 222/03, Room No. 102,
Teen Taki, Near Bal Sanskar Mandir,
Sector 19, Koper Khairane Goan,
Navi Mumbai 400 079.
2. **Vasant Kamlakar Mukadam,**
Age adult, Occu: Service,
R/at. Room No.3, Plot No. 222,
Opp. Bus Depot, Sector 19,
Koper Khairane. Navi Mumbai.

...Respondents

APPEARANCES

For the Appellant**Mr Rajesh Kanojia, i/b Res Juris.****For The Respondents****Mr TJ Mendon.**

CORAM : R. M. JOSHI, J.



RESERVED ON : 12TH JANUARY 2026.
PRONOUNCED ON : 27TH JANUARY 2026.

JUDGMENT:

1. This appeal takes exception to the Judgment and Award dated 14th October 2021, passed in MACP No. 586 of 2017, whereby death claim filed by the claimant came to be allowed, with direction, to the opponents No. 1 and 2 jointly and severally, to pay a compensation amount of Rs.7,48,103/- with interest at the rate of 7% per annum from the date of filing of the Petition till realization of the amount. In addition to the 7% of interest, penal interest, at the rate of 8%, is also directed to be paid.

2. Learned counsel for the Appellant submits that the Tribunal has committed error in granting compensation to the claimant in ignorance of the fact that the deceased is son of the owner and rider of the offending motorcycle. According to him, the impugned judgment is contrary to the judgment of Hon'ble Supreme Court in case of *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors.*¹ wherein it is held that son of the owner of the insured vehicle is not third party. It is his further submission that terms and

¹ (2008) 17 S.C.R. 1313.



conditions of the Insurance Policy in question do not cover the liability of payment of compensation towards pillion rider. It is his submission that additional premium has been paid only to cover limited risk of owner/driver. He further argued that, in view of the admitted fact herein that the deceased was pillion rider on the motorcycle, which was rode by the owner/father of the deceased, the deceased being not third party, the claimant would not be entitled to receive any compensation arising out of the said accident. On the point of penal interest, it is his submission that the said order passed by the Tribunal is not sustainable in view of the judgment of the Division Bench of this Court in case of ***New India Assurance Company Limited Vs. Smt. Saira Imtiaz Lambe & Ors. (FA No. 783 of 2015).***

3. Learned counsel for the claimant supported the impugned Judgment and Award by contending that irrespective of the fact that the deceased is son of the owner and rider of the offending motorcycle, his right to receive a compensation on the death is not affected as the policy in the present case is not act policy, but is a comprehensive policy. He drew attention of the Court to the judgment of the Hon'ble Supreme Court, in case of ***New India***



*Assurance Company Ltd. vs. Sadanand Mukhi & Ors*² Sadanand Mukhi (*supra*) to argue that it is only in case of a act policy, the third party would be entitled to receive compensation and since the son of the owner, being not third party, may not be entitled to receive composition in act policy. He drew attention of the court, to the documentary evidence on record which indicates that the policy in question issued by the Appellant/Insurer is not act policy, but comprehensive policy. He also drew attention of the Court to the order dated 2nd June, 1986, passed by Tariff Advisory Committee, Bombay, wherein it is directed to the Insurer to cover the death or bodily injuries to any person, including person conveyed in, or on motorcycle, provided such person is not carried for hire or rewards. It is his submission that it is not a case of the Insurer before the tribunals, nor there is any evidence to indicate that the deceased was carried for higher or reward and as such, the question of non payment of compensation to the claimant does not arise. To support his submissions, he placed reliance on following judgments:-

(a) *Oriental Insurance Co. Ltd. vs. Ajayakumar & Ors.*³

² (2008) 17 SCR 1313.

³ (1999) SCC OnLine Ker 291.



(b) *Royal Sundaram Alliance Insurance Co. Ltd. vs. Meenakshi & Ors.*⁴

(c) *Mathew vs. Shaji Mathew & Anr.*⁵

4. It is not a disputed fact that on 1st October 2017, deceased Jignesh was a pillion rider on the motorcycle owned by his father, that is the owner of motorcycle bearing registration No. MH-43-AP-2820. It is also not in dispute that since the rider of the motorcycle lost control and dashed to the road divider, pillion rider fell down on the road and sustained injuries. He died in hospital on 5th October 2017. Police had registered the offence against the rider of the motorcycle for rash and negligent driving of the motorcycle and being responsible for the death of pillion rider therein.

5. The opponent No.1 owner of the motorcycle failed to cause appearance before the Tribunal. The Insurer, however, filed Written Statement at Exhibit 12. It is not disputed by the Insurer that during the relevant period Insurer had issued a policy covering the risk of the insured in respect of the offending motorcycle. Insurer also claimed that the Insurer is not liable for payment of compensation for the reason that the rider of the motorcycle was

4 2009 ACJ 2218.

5 2010 ACJ 322.



not holding valid and effective license. No dispute has been made by the Insurer with regard to the nature of insurance policy. Similarly, right of the claimant to receive compensation has not been denied on the basis of the fact that the deceased was son of the owner and rider of the offending motorcycle.

6. Irrespective of the fact of the admission given by the Insurer with regard to the Insurance Policy covering the risk of the offending vehicle, the claimant placed on record the Insurance Policy indicating terms and conditions thereof. Perusal of the said policy indicates that the policy is not act policy, but is a comprehensive policy. Once the policy is not act policy, question of this Court going into the issue, as to whether the deceased was third party or not, does not arise. It is pertinent to note that, in the judgment in case of ***Sadanand Mukhi*** (Supra) the Hon'ble Supreme Court was dealing with a case wherein there was an act policy and not comprehensive policy. In the facts of the said case, it was held that the Insurer is not liable to pay compensation as the deceased son of the owner of the insured was not third party. Since, in the instant case, the policy is package policy/



comprehensive policy, with respect the same judgment of the Hon'ble Supreme Court has no application to the present case.

7. Now question would arise, as to whether there would be coverage of liability of pillion passenger in respect of death or bodily injury caused to him. It would be relevant to take note of the order dated 2nd June, 1986 of Tariff Advisory Committee, which reads thus:-

“To:

All Regional Offices of:

1. National Insurance Co.Ltd., Calcutta.
2. The New India Assurance Co.Ltd.,Bombay.
3. The Oriental Insurance Co.Ltd., Delhi.
4. United India Insurance Co.Ltd. Madras.

Govt. Insc. Funds:

1. Maharashtra State- Bombay.
2. Gujarat State- Ahmedabad.
3. Kerala State -Trivandrum.
4. Karnataka State- Bangalore.

Re: Compensation to Pillion Riders

Insurers' attention is invited to Section II(1) (a) of Standard Form for Motor Cycle, Comprehensive Policy, Sheet 59 of the IMT.

It has now been decided that the Standard Motor Cycle Comprehensive Policy should cover liability to Pillion Passengers treating them as occupants in the Motor Cycle and provide indemnity to such persons who/are not carried for hire or reward.

Accordingly, Extra Benefit No.2 granting legal liability to cover side car passengers will stand deleted and Standard Cover under Section 2 (1) (a) of the Policy are worded as under:-



“Death or bodily injury to any person including person conveyed in or on the Motor Cycle provided such person is not carried for hire or a reward”.

Insurers are requested to issue necessary instructions to their Divisional Branch offices accordingly.”

8. It is thus clear that since the time of the said order, in case of a comprehensive policy, liability towards death or bodily injury of a pillion passenger will be covered by the insurance policy, treating him as occupant of the motorcycle. The only condition for non payment would be that if such person is carried for hire or reward, there would be no liability of the Insurer to pay compensation. Thus, after the said order, the liability towards the death or bodily injury caused to a pillion rider is covered in Insurance Policy, which is not act policy. Thus, in the instant case, the package policy covers the risk of the pillion rider, irrespective of the fact, whether he is third party or otherwise. Since it is not case of Insurer that deceased was carried on motorcycle for hire or reward, question of denying liability of Insurer to pay compensation does not arise. This court therefore finds no substance in the challenge to the impugn Judgment and Award sought to be raised by the Insurer.



9. However, on the point of the penal interest, there is a substance in the contention of the counsel for the Appellant/ Insurer that it was not open for the Tribunal to pass any order of penal interest, which is contrary to the law settled by the Division Bench of this Court in case of ***Smt. Sairo Imtiaz Lambe*** (Supra) and hence cannot sustain.

10. In view of the above, I pass the following order:

ORDER

- (a) The Appeal is partly allowed.
- (b) The Order passed by the Tribunal in respect of the penal interest of 8% per annum stands set aside.
- (c) Rest of the order stands confirmed.
- (d) R & P, if received, be sent back to the Tribunal.

11. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)