

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.176/2009

Date of Reserve : 7<sup>th</sup> December, 2009

Date of Decision: 9<sup>th</sup> December, 2009

YASHPAL LUTHRA & ANR. .... Appellants

Through : Mr. M.K. Sinha and  
Mr. N. Prabhakar, Advs.

versus

UNITED INDIA INSUR. CO.LTD. & ANR. .... Respondents

Through : Mr. L.K. Tyagi, Adv. for R-1.  
Mr. D.K. Nag, Adv. with  
Ms. Reshmi Rea Sinha, Adv.  
for IRDA. Mr. Pankaj Seth, Adv.  
for Royal Sundaram Alliance  
Insurance Co. Ltd. and  
Universal Sompo General  
Insurance Co. Ltd.  
Mr. Pradeep Gaur, Adv. for  
National Insurance Co. Ltd.  
Ms. Manjusha Wadhwa, Adv.  
for Oriental Insurance Co. Ltd.  
Ms. Suman Bagga, Adv. for  
Choldamandalam.  
Mr. Arun Mohan, Sr. Adv. as  
amicus curiae.

**CORAM :-**

**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. The Court time and resources can be usefully deployed, or they can be unnecessarily consumed or even simply wasted. In the latter case, delays result and there is, apart from injustice by reason thereof, popular dissatisfaction.

2. One of the issues that arose in this appeal gave an indication that the 'issue' was perhaps non-existent. Nevertheless, as an issue, it was consuming extensive Court time. It is in this backdrop that this Court decided to go deeper in an attempt to see if such waste of Court time and resources could be prevented.

3. The issue, and one that appears to be routinely raised by the Insurance Companies in motor accident claims, is:-

**Whether under a comprehensive/package policy, 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?**

4. The terms and conditions of the insurance policy explicitly covers death of or injury to the pillion rider. The relevant clause of the insurance policy is reproduced hereunder:-

"1. Subject to the limits of liability as laid down in the Schedule thereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the insured vehicles against all sums which the insured shall become legally liable to pay in respect:-

**"(i) 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 employment of such person by the insured."  
*(Emphasis added)*

5. The tariff as well as the terms and conditions of the Insurance Policy were regulated by Tariff Advisory Committee (hereinafter referred to as TAC) under the Insurance Act, 1938 till 31<sup>st</sup> December, 2006 and thereafter by Insurance Regulatory and Development Authority (hereinafter referred to as IRDA) under the Insurance Regulatory and Development Authority Act, 1999. TAC issued a circular dated 18<sup>th</sup> March, 1978 to all the Insurance companies to cover the occupants in a private car under comprehensive policy w.e.f. 25<sup>th</sup> March, 1977. On 2<sup>nd</sup> June, 1986,

TAC directed all the Insurance companies to cover a pillion rider on a two-wheeler under the comprehensive policy. The aforesaid directions of TAC are binding on all the Insurance companies who incorporated the specific clause (reproduced above) in all their insurance policies after the aforesaid directions.

6. Despite clear clause in the Insurance Policy (reproduced above) and binding directions of TAC and IRDA, the Insurance Company has denied the liability in respect of a pillion rider in this case. Same plea is raised by Insurance Companies in every case of pillion rider and occupants in a car under comprehensive/package policies and large number of such cases are reported to be pending in different Courts all over the country.

7. This Court sought to examine whether this really is an issue that calls for determination in every case; or, is it something which, keeping in view the TAC's directives and that of the IRDA, need not arise, and, more importantly, ought not to be raised by any Insurance Company? There can be no dispute about the larger

principle that a non-existent issue cannot be allowed to consume Court time and resources.

8. To assist the Court in this endeavour, this Court, by order dated September 9, 2009 appointed Mr. Arun Mohan, Senior Advocate<sup>1</sup> as *amicus curiae*.

### **THE FACTS IN THIS CASE**

9. On 24<sup>th</sup> February, 2006, the deceased Vinod Luthra (24 years of age) was returning home riding on the pillion of motorcycle bearing No.DL-75AU-2074 being driven by his friend. At Ahuja Park traffic light near Lodhi Road Complex, the motorcycle was hit by an unknown vehicle, due to which the deceased fell down and suffered fatal injuries.

10. The parents and the widow of the deceased preferred a claim before the Motor Accident Claims Tribunal in which United India Insurance Company was the first Respondent and the owner of the motorcycle was the second Respondent. The motorcycle bearing

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<sup>1</sup> Author of Book titled 'Justice, Courts and Delays'  
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No.DL7S-AU-2074 was insured with respondent No.1 vide package insurance policy, Ex.R1W1/A.

11. Respondent No.1 contested the claim petition before the learned Tribunal on the ground that respondent No.1 had not covered the risk of a pillion rider on the two-wheeler.

12. The learned Tribunal passed the award of Rs.4,53,300/- against Respondent No.2 (Umed Singh Mateyee) only, i.e., the learned Tribunal accepted the plea of Respondent No.1 and exonerated it from the liability.

13. The claimants preferred this first appeal where they urged that the insurance company was also liable. The claimants also sought enhancement of the award amount. In appeal, the question that arose was: Whether the pillion rider on a two-wheeler (and likewise occupants in a private car) would be covered by a package / comprehensive policy?

## **EXAMINING THE FACTUAL BACKDROP**

14. Being more a question of fact based on the directives of TAC and that of IRDA, this Court deemed it necessary to examine the competent officer of Respondent No.1 under Section 165 of the Indian Evidence Act.

15. Vide order dated 4<sup>th</sup> September, 2009, the Manager (Legal) of respondent No.1 was directed to appear before this Court for examination under Section 165 of the Indian Evidence Act, in pursuance to which the Mr. B.S. Balyan, Manager of United India Insurance Co. Ltd. appeared before this Court on 9<sup>th</sup> September, 2009 and admitted the aforesaid clause in the insurance policy, but denied the liability. The Manager of the respondent No.1 was however not aware of the Circulars and the instructions issued by the TAC and IRDA. The General Manager of respondent No.1 was, therefore, directed to appear before this Court to explain the factual position.

16. Till 31<sup>st</sup> December, 2006, TAC and w.e.f. 1<sup>st</sup> January, 2007, IRDA are the statutory regulatory authorities and they fix the tariff as well as the terms and conditions of the policies by all insurance companies. Notice was, therefore, issued to TAC and IRDA to explain the factual position with respect to liability of the insurance companies with respect to a pillion rider on a two-wheeler and the occupants in a private car under the comprehensive / package policy.

17. On 26<sup>th</sup> October, 2009, the Deputy Manager of TAC was examined under Section 165 of the Indian Evidence Act and he deposed that all the Insurance Companies are liable to pay compensation in respect of occupants in a private car w.e.f. 25<sup>th</sup> March, 1977 and in respect of a pillion rider on a two-wheeler w.e.f. 2<sup>nd</sup> June, 1986 under the comprehensive/ package policy.

The relevant statement of the Deputy Manager of IRDA (Mr. K.O. Antony) is reproduced hereunder:-

"The Insurance Company is not liable in respect of the pillion rider on a scooter and occupant in a car in

respect of an 'Act Only' policy which only covers the risks towards the Third Party'.

In respect of Comprehensive Policy, the TAC issued a circular dated 18<sup>th</sup> March, 1978 instructing all the Insurance Companies to cover the liability towards the occupant in a car w.e.f. 25<sup>th</sup> March, 1977. There is no change in position since then and the Insurance Companies are liable in respect of liability towards the occupant of a private car under the Comprehensive Policy, which is now called a Package Policy.

On 2<sup>nd</sup> June, 1986, the TAC issued instructions to all the Insurance Companies to cover the pillion rider on a scooter/motorcycle under the Comprehensive Policy. This position continues to be till date. The Comprehensive Policy is now called a Package Policy.

The instructions/circulars dated 18<sup>th</sup> March, 1978 and 2<sup>nd</sup> June, 1986 continue to be valid and effective till date and all the Insurance Companies are bound to pay compensation in respect of the liability towards a pillion rider on a scooter and occupant in a car under the Comprehensive Policy / Package Policy irrespective of the terms and conditions contained in the policy."

18. The Officer on Special Duty of IRDA (Mr. Anantha Krishnan) also appeared before this Court on 26<sup>th</sup> October 2009 and he deposed that all Insurance Companies are liable in respect of occupants in a private car w.e.f. 25<sup>th</sup> March, 1977 and in respect of a pillion rider on a scooter w.e.f. 2<sup>nd</sup> June, 1986 under the comprehensive / package policy. The relevant portion of his statement is reproduced hereunder:-

"All the Insurance Companies are liable in respect of occupant in a private car w.e.f. 25<sup>th</sup> March, 1977; and in respect of a pillion rider on a scooter w.e.f. 2<sup>nd</sup> June, 1986, under a Comprehensive Policy, now called as Package Policy.

The circulars dated 18<sup>th</sup> March, 1978 and 2<sup>nd</sup> June 1986 were issued by TAC. The control and regulation of Tariff class of insurance business was taken over by Insurance Regulatory Development Authority (IRDA) w.e.f. 1<sup>st</sup> January, 2007 and IRDA has specifically reiterated the said instructions in their guidelines. The circulars dated 18<sup>th</sup> March, 1978 and 2<sup>nd</sup> June, 1986 of the TAC, contents of which were incorporated in the 'India Motor Tariff effective from 1<sup>st</sup> July, 2002 continue to be operative and binding on the Insurance Companies."

19. The General Manager of respondent No.1 (Mr. M.A. Kharat) was also examined by this Court under Section 165 of the Indian Evidence Act on 5<sup>th</sup> November, 2009 and he admitted that respondent No.1 is liable in respect of occupants in a private car and a pillion rider on a two wheeler under the comprehensive / package policy. The relevant portion of the statement of Mr. M.A. Kharat, General Manager of respondent No.1 is reproduced hereunder:-

"I admit that United India Insurance Company Limited is liable in respect of the occupants in a private car and pillion rider on a two wheeler under Package/Comprehensive Policy.

Question : In how many cases you have raised this plea, in how many cases you have succeeded in avoiding the

liability on the basis of this plea and how many appeals have been filed on this ground?

Answer: We are compiling the said data and we shall submit that same before this Court within four weeks.

Question : What action has been taken by you in these cases?

Answer: It came to the notice of the Head Office that such plea has been raised by some offices whereupon the Head Office issued instructions dated 6<sup>th</sup> October, 2008 to Cochi Office of our Company to immediately withdraw the appeals filed on this ground. However, I am not aware whether such appeals have been withdrawn. I will check-up the same and intimate to this Court on the next date of hearing.

I admit that United India Insurance Company Limited is liable in the present case and I withdraw the submissions made before the learned Tribunal as well as before this Court on this ground. The entire award amount along with interest shall be deposited as per the directions of this Court within a period of 30 days.

I shall compile the details of all appeals filed before different Courts on this ground within a period of two weeks and all the appeals on this ground shall be withdrawn by the company within a period of two weeks thereafter and the compliance report shall be filed before this Court. Wherever the appeal is filed on various grounds including this ground, the company shall withdraw the appeals filed on this particular ground and shall contest the appeals filed on other grounds, if available.

The United India Insurance Company Limited has raised this plea before the Hon'ble Supreme Court in the case bearing appeal No.3335/2009. The company shall inform the advocate on record to place on record these instructions and to inform the Court that it is the policy of the company to bear the liability in respect of occupants in a private car and pillion rider on a two-wheeler under Package/Comprehensive Policy.

I admit that Mr. B.S. Balyan, Manager, United India Insurance Company Limited has made erroneous statement before this Court on 9<sup>th</sup> September, 2009 and 26<sup>th</sup> October, 2009."

20. On 16<sup>th</sup> November, 2009, IRDA issued a Circular to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. The relevant portion of the said circular is reproduced hereunder:-

**"IRDA**

**Ref: IRDA/NL/CIR/F&U/073/11/2009      November 16, 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 18<sup>th</sup> March, 1978 [regarding occupants carried in Private Car] effective from 25<sup>th</sup> March, 1977.
- (ii) MOT/GEN/10 dated 2<sup>nd</sup> 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's 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 afore-mentioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approve of Competent Authority.

Sd/- (Prabodh Chander)  
Executive Director"

## **THE CONSENSUS AT THE MEETING OF THE INSURERS**

21. On 26<sup>th</sup> November, 2009, a meeting of CEOs of all the Insurance Companies was convened under the auspices of the IRDA. The *amicus curiae* was appointed as Observer for the meeting. This meeting was attended by the CEO's of all the seventeen Insurance Companies, namely, Bajaj Allianz General

Insurance Co., ICICI Lombard General Insurance Co. Ltd., IFFCO  
Tokyo Insurance Co. Ltd., Reliance General Insurance Co. Ltd., Royal  
Sundram Allianc Insurance Co. Ltd., TATA AIG General Insurance  
Co. Ltd., Cholamandalam General Insurance Co. Ltd., HDFC ERGO  
General Insurance Co. Ltd., Future Generally India Insurance Co.  
Ltd., Universal Sompo General Insurance Co. Ltd., Shriram General  
Insurance Co. Ltd., Bharti Axa General Insurance Co. Ltd., Raheja  
QBE General Insurance Co. Ltd., National Insurance Co. Ltd., New  
India Assurance Co. Ltd., Oriental Insurance Co. Ltd., United India  
Insurance Co. Ltd. After deliberations, all the Insurance Companies  
admitted their liability in respect of occupants in a private car and  
a pillion rider on a two-wheeler under the comprehensive/package  
policy. All the Insurance Companies agreed to comply with the  
Circular dated 16<sup>th</sup> November, 2009 issued by IRDA restating the  
position relating to the liability of the insurance companies. All the  
Insurance Companies further agreed to withdraw the contrary plea  
wherever taken before the Motor Accident Claims Tribunals and to

issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies within two weeks and the withdrawal to be done within four weeks thereafter.

22. The relevant portion of the Minutes of the Meeting convened by IRDA on 26<sup>th</sup> November, 2009 is reproduced hereunder:-

"5. The insurers companies have sought the advice of the learned amicus, Shri Arun Mohan in the matter. The learned amicus explained that it would be prudent on the part of the Companies to take the advice of their counsel. However he stated that the companies may express their views freely and he will record them as stated by them.

Thereafter the learned amicus noted the stand taken by the Companies on various issues as under.

- (i) All the Insurance Companies agreed to comply with the circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the Insurance Companies in respect of occupants in a private car and pillion rider on a two wheeler under the comprehensive / package policies. Insurers, however, maintained that they will take up the issues of pricing with the Regulatory Authority for future.
- (ii) With respect to the pending cases before the MACT, all the Insurance Companies have agreed to withdraw the aforesaid plea wherever taken and to issue appropriate instructions to their respective lawyers and the operating officers within 7 days.
- (iii) With respect to the appeals pending before the High Courts, all the insurance companies have agreed to issue instructions within 7 days to their respective operating officers as well as to counsels to withdraw the contest on this ground [that of pillion rider in two-wheeler or occupant in a private car].
- (iv) The number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue will be identified by the companies within a period of 2 weeks and the contest on this ground shall be withdrawn within a period of four weeks thereafter.
- (v) With respect to the appeals pending before the Hon'ble Supreme Court, all the insurance companies have agreed to inform, within a period of 7 days, their respective

Advocates on record about the IRDA Circulars for appropriate advice and action.

The companies have submitted that in view of the difficulty in collecting data on the number of claims pending on the issue before the MACTs, they may be given time. The learned amicus explained that collection of such data is required by the Honorable Court and efforts must be made and if there are difficulties the court may be apprised of the position. The Government companies expressed a lot of difficulty in finding out the statistics on this ground because they have to work out the statistics on the basis of the information extracted from each of the files and contacting each of the advocates and also by examining the defences the advocates might have taken before the courts. However, all the insurers were unanimous that they shall abide by the orders of the High Court by not contesting the cases before MACT/High Courts on this ground at all. The learned amicus curiae advised the insurers to take immediate steps and collect the statistics at a central point for further necessary communication to the Hon'ble High Court."

23. On 3<sup>rd</sup> December, 2009, IRDA issued a Circular to all the Insurance Companies, which is reproduced hereunder:-

**"IRDA**

**IRDA/NL/CIR/F&U/078/12/2009**

**3<sup>rd</sup> Dec. 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. 176/209 in the case of Yashpal Luthra Vs. United India & Others, 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 16<sup>th</sup> 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 16<sup>th</sup> 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 counsels 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 Supreme 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.

The 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"

24. National Insurance Co. Ltd., Oriental Insurance Co. Ltd., TATA  
AIG General Insurance Co. Ltd., IFFCO Tokio General Insurance Co.  
Ltd., Bharti AXA General Insurance Co. Ltd. and Raheja QBE General  
Insurance Co. Ltd. have admitted their liability in respect of a  
pillion rider on a two-wheeler and occupants in a private car under  
comprehensive/package policy before this Court.

25. Oriental Insurance Co. Ltd. has also issued circular dated 25<sup>th</sup>  
November, 2009 to all their officers advising them as under:-

"We have received

Circular NO.IRDA/NL/CIR/F&U/073/11/2009 dt. 16.11.2009 from IRDA whereby it is confirmed that insured's liability in respect of occupant carried in a Private Car and Pillion Rider carried on 2-wheeler is covered under the Standard Motor Package Policy. IRDA has further confirmed that vide various Circulars issued after detariff of Motor, there has been no change in the scope of the standard covers. A copy of the Circular is enclosed for record & ready reference.

The terms of the cover as per the Motor Package Policy for Private Cars and 2-wheeler as given in the Policy wording Section 2.1(i) are very clear and are reconfirmed by the IRDA Circular.

It is, therefore, advised to immediately review all cases where appeal has been filed on the ground that Insurer is not liable for occupants of Private Cars and Pillion Rider in a 2-wheeler

under the Motor Package Policy. If the appeal is based solely on these grounds then it must be immediately withdrawn. If there are other grounds for filing appeal then the case must be examined on merits and decision regarding continuation of appeal be taken by the Regional Manager concerned.

Lastly, it must be ensured that our offices desist from filing appeals on the grounds of Pillion Rider or occupants of Private Car not being covered under Motor Package Policies.”

26. National Insurance Co. Ltd. has also issued a circular dated 27<sup>th</sup> November, 2009 to all their Regional In-charges and Regional Offices advising them as under:-

“We forward herewith the captioned circular of the IRDA dated 16/11/2009.

In the Meeting of CEOs/GMs convened by IRDA on 26/11/2009 at New Delhi, it has unanimously been decided by the PSU Companies for the time being, no fresh SLPs will be filed in the Supreme Court on the above ground and all currently pending SLPs will be dealt with as per the advice of our Counsels on a case to case basis. Further advices in this regard will be intimated in due course.

Meanwhile, you are advised to take the following steps in the matter immediately.

1. Initiate immediate action, at any rate before 7/12/09, for withdrawal of all Appeal cases filed by you in High Courts **SOLELY ON THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND**

**PILLION RIDER OF TWO-WHEELERS (NOT CARRIED FOR HIRE OR REWARD) COVERED UNDER PACKAGE POLICIES.**

2. If such Appeals have been filed on concurrent grounds of Quantum, Negligence etc as well along with the above ground, **FILE APPLICATIONS BEFORE HIGH COURTS TO THE EFFECT THAT THE COMPANY IS NOT PRESSING THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND PILLION RIDERS OF TWO-WHEELERS UNDER PACKAGE POLICIES AND THEREAFTER CONTINUE TO MAINTAIN THE SAID APPEALS ON THE REMAINING GROUNDS.**
3. Segregate all MACT cases where such a pleading has been taken in our written statements, **AND FILE APPLICATIONS BEFORE THE RESPECTIVE COURTS TO THE EFFECT THAT THE COMPANY NO LONGER WISHES TO PRESS THE SAID PLEADING AND CONTINUE TO DEFEND THE CASES ON OTHER GROUNDS.**
4. Update the data of all such cases filed Solely on the above ground before High Courts and furnish the same to HO TP department in the format already sent to your **ALONG WITH THE FINANCIAL IMPACT OF SUCH WITHDRAWAL.**
5. You are also advised to **SUBMIT DETAILS OF THE INSTANCES FALLING UNDER ITEM NO.3 ABOVE IN A**

**SPECIFIC 'FORMAT' BEING SENT TO YOU  
SEPARATELY.**

6. Since the Company is required to furnish the accurate Data regarding the above to IRDA and to Delhi High Court by 7/12/09, you are advised to take immediate action in compliance."

**THE POSITION AS IT EMERGES**

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.

28. Be that as it may, by issuance of fresh circulars dated 16<sup>th</sup> November, 2009 and 3<sup>rd</sup> December, 2009 by IRDA reiterating the position and the action taken by Insurance Companies pursuant thereto, the pending and future claims will no longer consume the Court time for deciding this issue. To that extent, the Court time will be saved and the resultant justice to the claimants on this account shall not be delayed or denied.

29. All Motor Accident Claims Tribunals functioning in the National Capital Territory of Delhi will take note and ensure that no such plea is allowed to be put forward by any Insurance Company.

30. It is also hoped that large number of pending cases all over the country shall come to an end, and the claimants who have been denied compensation on this ground, shall ultimately get the compensation legitimately due to them.

31. This matter will remain on board for the limited purpose of receiving the details from the insurance companies and passing, if need be, any orders thereon.

32. As far as claim of Yash Pal Luthra and another is concerned, separate order shall be passed.

33. This Court appreciates the able and effective assistance by Shri Arun Mohan, Senior Advocate as *amicus curiae*. This Court also appreciates the belated efforts of IRDA to regulate the Insurance Companies and to enforce the terms of the comprehensive/package Insurance policy and the circulars dated 18<sup>th</sup> March, 1978 and 2<sup>nd</sup> June, 1986.

34. Copy of this judgment be given 'Dasti' to learned counsel for the parties, the learned amicus curiae and nominated counsels for all Insurance Companies under signature of the Court Master.

35. Copy of this judgment be also sent to all Motor Accident Claims Tribunals in NCT of Delhi.

**J.R. MIDHA, J.**

**DECEMBER 09, 2009**