IN THE COURT OF MS. VRINDA KUMARI
PRESIDING OFFICER : MOTOR ACCIDENT CLAIMS TRIBUNAL, PATIALA HOUSE COURTS, NEW DELHI

IN THE MATTER OF:
Ritesh Bhatia & Anr. Vs. Vats Bhatia & Ors.
M.A.C.T. 219/22

1 **Shri Ritesh Bhatia** **(Husband of Deceased)**
S/o Late Shri L.D. Bhatia,

2 **Smt. Santosh Bhatia** **(Mother-in-law of deceased)**
W/o Late Shri L.D. Bhatia,

Both R/o B65, Third Floor,
Phase-1, Near Deep Market,
Ashok Vihar, Delhi-110052 …...**Petitioners**

Versus

1 **Shri Vats Bhatia** **(Driver)**
S/o Shri Ritesh Bhatia
R/o B-65, 3rd Floor, Ashok Vihar,
Phase-1, Delhi-110052

2 **Shri Chander Prakash** **(Regd.Owner)**
S/o Shri Udha Ram
R/o H.No. B-60, Ashok Vihar,
Phase-1, Delhi-110052

3 **M/s ICICI Lombard Gen. Ins. Co. Ltd.** **(Insurer)**
4 Parsavnath Capital Tower,

Bhai Veer Singh Marg,
New Delhi-110001
Policy No. 3001/O/238110943/00/000
Period 29.01.2022 to 28.01.2023 …..**Respondents**

ORDER

1. Vide this Order, I shall dispose of the application u/O 1 R 10 CPC of the petitioners for impleadment of HDFC ERGO Gen. Ins. Co. Ltd. as respondent.

2. The contention of the petitioners is that the offending vehicle i.e. Scorpio bearing registration no. DL-7CR-9799 was duly insured with ICICI Lombard/R-3. However, on receiving the certified copy of the DAR, it came up that the offending vehicle was also duly insured with M/s HDFC ERGO Gen. Ins. Co. Ltd. The private car bundled policy issued by the proposed respondent M/s HDFC ERGO Gen. Ins. Co. was valid w.e.f. 29.01.2021 to 28.01.2024. It has been prayed that M/s HDFC ERGO Gen. Ins. Co. may be impleaded as a respondent in the present case.

3. In the written submissions, it has been contended by the petitioners that the Private Car Policy-Bundled comprised of own damage policy, PA cover for owner-driver and coverage of third party. It is

submitted that Own Damage policy was for one year only from the date of inception of policy. Thereafter, Own Damage policy was required to be renewed /purchased either from the same insurance company or from another insurance company. The registered owner of the offending vehicle preferred to purchase the Own Damage insurance policy from M/s ICICI Lombard Gen. Ins. Co. Ltd. w.e.f. 29.01.2022 to 28.01.2023. This policy covers only own damage risk with no other liability in connection with private car vehicle including third party cover. Inadvertently, M/s ICICI Lombard was impleaded as R-3 instead of M/s HDFC ERGO Gen. Ins. Co. Ltd.

4. Reliance has been placed by Ld. Counsel for petitioners upon following case laws:

(i) Khem Raj Chettri Vs. Hem Bahadur Chettri & Ors, 2024 LawSuit (Sikk) 15;
(ii) National Ins. Co. Ltd. Vs. Balakrishnan 2012 LawSuit (SC) 757;
(iii) United India Ins. Co. Ltd. Vs. Sudha Singh 2014 LawSuit (Pat) 84;
(iv) Ramchand Vs. Ghanshyam 2022 LawSuit (Bom) 575 and
(v) Tata AIG Gen. Ins. Co. Ltd. Vs. Krishan Lal 2023 LawSuit (Del) 436.

5. In its reply, the proposed Insurance Company HDFC ERGO has submitted that the deceased in the present case was occupant of

alleged offending vehicle. However, risk of occupant was not covered under the third party to the claim petition. It is submitted that the HDFC ERGO had issued a bundled private car policy which was valid from 29.01.2021 to 28.01.2022 (for Own Damage) and from 29.01.2021 to 28.01.2024 (for third party liability). The accident in question took place on 22.05.2022 on which date another policy valid from 29.01.2022 to 28.01.2023 issued by ICICI Lombard was in force. At the time of accident, the insured was covered under the 'Liability only Policy' and not a comprehensive package policy. It is submitted that deceased was mother of R-1 and wife of the petitioner. She was a passenger in the offending vehicle and does not fall within the ambit of third party policy. Since the insured opted for Own Damage policy insurance from some other insurance company to save the premium, therefore, HDFC ERGO was not liable to indemnify the insured for the risks of occupants. It is submitted that in the Liability only Policy, there is no coverage given to occupants carried on the vehicle whereas under same section of package policy, occupants are covered.

6. In the written submissions, it has been additionally averred that the petitioners had earlier filed the same claim petition arising out of the same accident before Ld. MACT, Rohini Courts. Later, they withdrew it on 12.01.2023 without seeking any liberty to file a fresh petition.

7. Insurance Company has relied upon following case laws:

(i) United India Insurance Co. Ltd, Shimla Vs. Tilak Singh & Ors., (2006) 4 SCC 404;
(ii) Varju & Others Vs. United India Insurance Co. Ltd & Others, 2005 SCC Online Raj 125:2006 ACJ 328;
(iii) New India Assurance Co. Ltd Vs. Shanit Bai (Smt) & Ors., (1995) 2 SCC 539 and
(iv) New India Assurance Co. Ltd. Vs Asha Rani & Ors, (2003) 2 SCC 223.

8. In *Tilak Singh's case,* it was held by Hon'ble Supreme Court of India that even under 1939 Act, the established legal position was that unless there was a specific coverage of the risk pertaining to a gratuitous passenger in the policy, the insurer was not liable. This judgment pertains to statutory insurance policy. In *Varju's case,* it was held by Hon'ble high court of Rajasthan that insurer was not liable to cover risk of occupants of vehicle in case of Act Only Policy. In *Shantibai's Judgment,* there was no special contract between the insurer and the registered owner in respect of an accident to a passenger. It was held that merely because insurance policy was a comprehensive policy, it would not help the respondents therein in any manner. In *Asha Rani's case,* it was held by Hon'ble Supreme Court of India that that an owner of a passenger carrying vehicle must pay premium for covering risks of passengers.

9. I have heard detailed arguments and have perused the record carefully including the case laws.

10. The perusal of the Insurance Policy issued by the HDFC Bank shows that it was a Private Car Policy-Bundled. It has following components:

(i) Own Damage Policy: 29.01.2021 to 28.01.2022.

(ii) Liability Policy: 29.01.2021 to 28.01.2024.

(a) Basic Third Party Liability

(b) LL to Paid Driver (IMT-28)

(c) PA Cover for Owner-Driver of 1500000 (CPA Cover Policy period from 29.01.2021 to 28.01.2024)

(d) PA Cover for Un-named Persons of 1000000 each (for 7 persons) (IMT 16).

11. The above said details would show that Own Damage Policy was for the period of one year only. There is nothing to show that after the expiry of one year period of Own Damage Policy, nature of the policy would change in any manner. Insurance Policy also shows that premium was payable by the insured under all the heads of the liability policy. It is not the case of Insurance Company that premium was not paid against these heads.

12. The Bundled Insurance Policy, thus, comprised of Own Damage Policy for one year and Liability Policy for three years. There is also nothing to show that the Bundled Policy would have discontinued after expiry of one year if Own Damage Policy was not renewed or purchased from HDFC ERGO only. In these circumstances and in view of the fact that premium under all the heads of liability policy was paid by the insured, the Tribunal is convinced that HDFC ERGO is a necessary party to the present case.

13. **The application u/O 1 R 10 CPC of the petitioners is allowed. HDFC ERGO is directed to be impleaded as respondent. As conceded by the petitioners in their written submissions, ICICI Lombard is not a necessary party to the present case. ICICI Lombard is directed to be deleted from the array of parties.**

14. **Application u/O 1 R 10 CPC stands disposed of.**

PRONOUNCED IN THE OPEN COURT ON THIS 20th DAY OF MARCH 2025

VRINDA KUMARI

Digitally signed by VRINDA KUMARI
Date: 2025.03.21 17:18:59 +0530

(Vrinda Kumari)
PO/MACT, PHC,
New Delhi/20.03.2025