

C.M.A(MD)No.1091 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.04.2026

PRONOUNCED ON:17.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1091 of 2024

and

C.M.P.(MD)No.11349 of 2024

National Insurance Company Limited,
2nd Floor, 31/6, Nathan Arcade,
Canara Bank Upstairs,
New Bye Pass Road,
Musiri.

: Appellant/2nd Respondent

Vs.

1.Krishnakumar

: Respondent /Petitioner

2.Ramachandran

: Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the judgment and decree passed in M.C.O.P.No.75 of 2021, dated 22.11.2022, on the file of the Motor Accident Claims Tribunal cum Special Sub Judge, Tiruchirappalli.



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C.M.A(MD)No.1091 of 2024

For Appellant : Ms.P.Malini

For Respondents :Mr.J.Anand Kumar
for R.1

: No Appearance for R.2

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.75 of 2021, dated 22.11.2022, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court to deal with MCOP cases, Tiruchirappalli.

2. The appellant / Insurer who was mulcted with liability to pay compensation of Rs.4,20,000/- with interest and costs to the first respondent/claimant for the disability sustained by him consequent to an accident occurred on 25.11.2019, challenged the liability fastened on it and also the quantum of compensation awarded by the Tribunal.

3. For the sake of convenience and brevity, the parties will be referred as per their status and ranking in the trial Court.



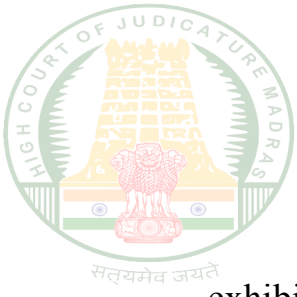
C.M.A(MD)No.1091 of 2024

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4. The case of the claimant is that on 25.11.2019 at about 4.15p.m., the petitioner was riding a two wheeler bearing Registration No.TN-47-AZ-3480 from Musiri Vadugapatti to Velkanatham on the extreme left side of the road from South to North and at the place near Seevampatti on Musiri to Pulivalam Main road, one unknown vehicle dashed against the two wheeler and as a result of which, the claimant fell down and sustained multiple grievous injuries all over his body.

5. The defence of the second respondent / Insurer is that the claimant drove the two wheeler bearing Registration No. TN-47-AZ-3480 in a rash and negligent manner and caused the accident by his own negligence, that the claimant in order to claim compensation has canvassed a false story as if an unknown vehicle dashed against him and that the petition filed under Section 163-A of the Motor Vehicles Act is legally not maintainable.

6. During trial, the claimant examined himself as P.W.1 and exhibited 8 documents as Exs.P.1 to P.8. The second respondent/Insurer examined their Assistant Manager Thiru.Ramkumar as R.W.1 and

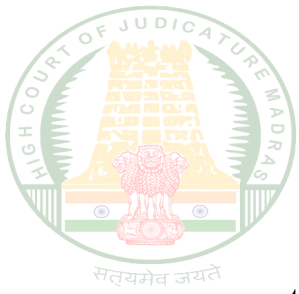


C.M.A(MD)No.1091 of 2024

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exhibited the copy of the Insurance Policy as Ex.R.1. The disability certificate issued to the claimant by the Medical Board came to be exhibited as Ex.C.1. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 22.11.2022 by holding that the claimant has sustained injury on his own wrong and as such, the claim petition filed under Section 163-A of Motor Vehicles Act is not maintainable, but invoking personal accident coverage and taking note of the disability at 28%, directed the second respondent- Insurer to pay compensation of Rs.4,20,000/- with interest and costs. Aggrieved by the impugned award, the Insurer has preferred the present Civil Miscellaneous Appeal.

7. It is not in dispute that the two wheeler bearing Registration No. TN-47-AZ-3480 was owned by the first respondent and the same was insured with the second respondent. It is also not in dispute that the claimant borrowed the vehicle from the first respondent and while riding the vehicle, invited the accident. The Hon'ble Supreme Court in ***Ramkhiladi Vs. the United India Insurance Company and another***



C.M.A(MD)No.1091 of 2024

WEB COPY

reported in **2020(2) SCC 550**, has categorically held that a borrower or permissive user of a vehicle occupies the possession of the owner and cannot be treated as a third party and consequently, a claim under Section 163-A of the Motor Vehicles Act against the owner and the Insurer of the borrowed vehicle is not maintainable. The Tribunal has rightly held that the claim under Section 163-A is not maintainable.

8. In the present case, as rightly observed by the learned trial Judge, an additional premium towards Personal Accident Coverage has been paid and the coverage is to the extent of Rs.15,00,000/-. The learned Counsel for the Insurer would mainly contend that the personal accident coverage is applicable only in cases of death or permanent total disablement and not in cases of partial permanent disablement.

9. In the case on hand, admittedly the claimant has suffered disability assessed at 28%. The Tribunal has observed that the claimant sustained a severe head injury, underwent a craniotomy procedure and consequently suffered permanent disability.



C.M.A(MD)No.1091 of 2024

WEB COPY

10. The learned Counsel for the Insurer would then contend that the claimant has to approach the appropriate forum for getting appropriate relief under the personal accident coverage and is not entitled to get any relief before the Motor Accident Claims Tribunal. The learned Counsel placed reliance on the judgment of the Division Bench of this Court in C.M.A.No.1395 of 2021 in *M/s Tata AIG General Insurance Company Limited Vs. Shanmugam* and argued that the owner / Insurer cannot approach the Motor Accident Claims Tribunal by filing a claim under Section 163A of the Motor Vehicle Act for the injuries sustained by him relying upon the personal accident coverage and it is open to the owner of the vehicle to directly approach the Insurer or to approach the Consumer forum or any other appropriate Forum.

11. At this juncture, it is necessary to refer the decision of this Court in *K.Ganesh Kumar Vs. The Branch Manager, New India Assurance Company Limited* reported in *2023 (1) TNMAC 47*, wherein this Court held as follows :



C.M.A(MD)No.1091 of 2024

WEB COPY

“ 14. No doubt, as rightly contended by the learned Counsel for the Insurer, as per Indian Motor Tariff (IMT) 15 and 16 of the policy, the personal accident coverage is extended only to the specified injuries and the same are extracted hereunder for better appreciation:

“IMT-15 Personal Accident cover to the insured or any named person other than paid driver of cleaner (applicable to private cars including Three Wheelers rated as private cars and motorized Two Wheeler with or without side car [not for hire or reward]

In consideration of the payment of an additional premium it is hereby agreed and understood that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by the insured person in direct connection with the vehicle insured or whilst mounting and dismounting from or traveling in vehicle insured and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of such injury result in



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	Scale of compensation
(i) Death	100%
(ii) Loss of two limbs or 100% sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of an eye	50%
(iv) Permanent total disablement from injuries other than named above	100%

Provided always that

1. the compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.--- during any one period of insurance in respect of any such person.

2. No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3. Such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s) whose



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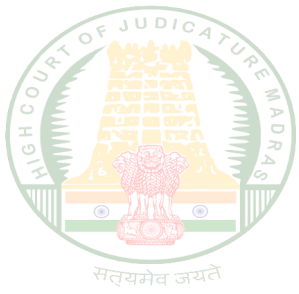
C.M.A(MD)No.1091 of 2024

receipt shall be a full discharge in respect of the injury of such person Subject otherwise to the terms exceptions conditions and limitations of this policy.

** The Capital Sum insured (CSI) per passenger is to be inserted.*

IMT.16. PERSONAL ACCIDENT TO UNNAMED PASSENGERS OTHER THAN INSURED AND THE PAID DRIVER AND CLEANER (For vehicles rated as Private Cars and Motorised Two Wheelers (not for hire or reward) with or without side Car)

In consideration of the payment of an additional premium, it is hereby understood and agreed that the Insurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the insured and /or the paid driver attendant or cleaner and /or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act,1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or traveling in but not driving the insured Motor Car and caused by violent, accidental, external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in:



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C.M.A(MD)No.1091 of 2024

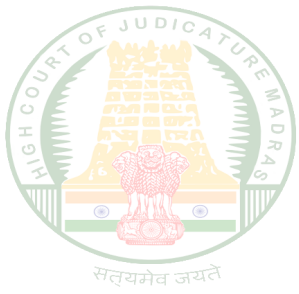
*[The Tabular column as in IMT-15 and Clauses 1 to 3 in the Proviso, remains the same and therefore, there is no need to repeat the same] (4) not more than ---- ** persons/passengers are in the vehicle insured at the time of occurrence of such injury. Subject otherwise to the terms exceptions conditions and limitations of this policy.*

** The Capital sum insured (CSI) per passenger is to be inserted*

*** the registered sitting capacity of the vehicle insured is to be inserted.”*

*15. At this juncture, it is necessary to refer the judgment of this Court in **Bajaj Allianz General Insurance Co., Ltd., Vs. C.Ramesh** reported in 2013 (1) TN MAC 325, whereunder this Court has held as follows:*

“When a owner cum driver takes a personal accident cover, an optional contract of insurance and makes an additional premium, he is entitled to claim compensation, as per the terms and conditions of the policy and such compensation shall be payable directly to the insured or to his/her legal representatives, as the case may be, whose receipt shall be the full discharge in respect of the injury to the insured. However, this cover is subject to, (a) the owner-driver is the registered owner of the vehicle insured herein; (b) The owner-driver is the insured named in this



WEB COPY



C.M.A(MD)No.1091 of 2024

policy; and (c) the owner- driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident.

100. As regards the contention that the Personal Accident cover Policy issued by Bajaj Alliance General Insurance Company Ltd., would cover only (i) death, (ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye; (iii) Loss of one limb or sight of one eye; and (iv) permanent total disablement from injuries other than named above; and it does not cover any other injuries, arising out of an accident, it is relevant to consider the terms and conditions of the policy.

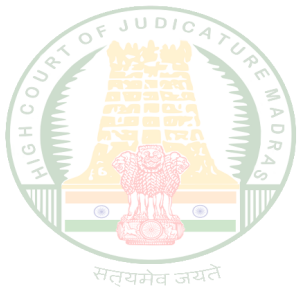
101. Personal Accident cover Policy has following general exceptions.

1. Any accidental loss damage and/or liability caused sustained or incurred outside the Geographical Area.

2. Any claim arising out of any contractual liability.

3. Any accidental loss damage and /or liability caused sustained or incurred whilst the Vehicle insured herein is;

(a) Being used otherwise than in accordance with the Limitations, as to use or



WEB COPY



C.M.A(MD)No.1091 of 2024

(b) Being driven by or is for the purpose of being driven by him/her in the charge of any person other than a Driver as stated in the Driver's clause.

1(a) Any accidental loss or damage to any property whatsoever or any loss of expense whatsoever resulting or arising therefrom, or any consequential loss.

(b) Any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purposes of this exception combustion shall include any self/sustaining process of nuclear fission.

2. Any accidental loss or damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

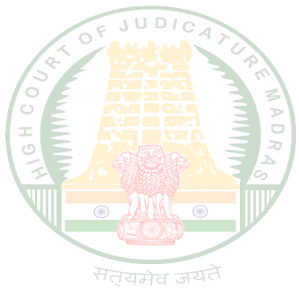
3. Any accidental loss damage and/or liability directly or indirectly or proximately or remotely occasioned by or contributed by or traceable to or arising out of or in connection with War, Invasion, the Act of foreign enemies, hostilities or Warlike operations (whether before or after declaration of war), Civil War, Mutiny Rebellion, Military or usurped power or by any direct or indirect consequences of any of the said occurrences and



in the event of any claim hereunder the insured shall prove that the accidental loss damage and /or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequences thereof and in default of such proof the company shall not be liable to make any payment in respect of such a claim.

102. Personal accident cover policy for the owner-cum- driver, is subject otherwise to the terms, exceptions, conditions and limitations of the policy an that the company undertakes to pay compensation, as per the following scales for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst mounting and dismounting from or traveling in vehicle insured and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of the occurrence of such injury result in.

	Scale of compensation
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of an eye	50%
(iv) Permanent total disablement from injuries other than named above	100%



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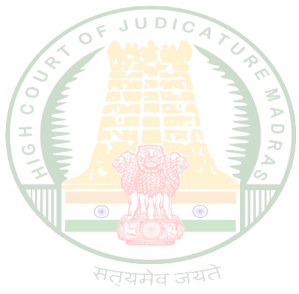
C.M.A(MD)No.1091 of 2024

103. There are four types of injuries, for which, separate scales of compensation is provided in the personal accident cover policy, for the owner-cum- driver. As per the terms and conditions of the policy, the compensation shall be payable under only one of the items 1 to 4, stated supra, in respect of owner-cum-driver, arising out of anyone occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs. 1Lakh, during any one period of insurance. No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self-injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs. Such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person. As stated supra, the cover is subject to, (a) he owner-driver is the registered owner of the vehicle insured herein; (b) The owner-driver is the insured named in this policy; and (c) the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident.



104. What is stated in the beginning of the sentence is Section III of the Personal Accident Cover Policy for the owner-cum-driver is only a scale for certain types of bodily injury/death, wherein, the injured or Legal Representatives of the deceased, as the case may be, are entitled to 100% compensation to Items (i) (ii) and (iv) i.e. the maximum amount specified in the policy or 50% compensation for item (iii), mentioned in [Section 3](#) of the policy. The maximum scales of compensation for bodily injuries/death for the owner-cum-driver of the vehicle, at the rate of 50% or 100%, depending upon the nature of the four specified injuries, does not mean that the injured, owner-cum-driver is not at all entitled to any compensation, if he sustains injuries, incurred expenses for treatment, medicines and any other incidental expenditure or when he suffers a permanent disablement, without the loss of two limbs or site of two eyes or one limb or site of one eye.

105. Scales of compensation is quantified and fixed, in respect of the four mentioned categories and in respect of other bodily injuries, directly or indirectly, wholly or in part, arising or resulting in an accident, involving the use of vehicle, the damages can always be measured, depending upon the nature of injuries, period of treatment, expenditure incurred, extent of disablement assessed by the Doctor and such other factors, which are taken into consideration for awarding compensation, on the



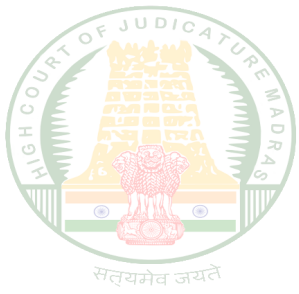
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C.M.A(MD)No.1091 of 2024

Principles of just compensation, but at the same time, the aggregate shall not exceed a sum of Rs.1 Lakh, during anyone period of insurance. In cases other than the specified injuries, Courts/Tribunals cannot shut down the legitimate claims of the insured or the Legal Representatives of the deceased, when the beneficial legislation is founded on the Principles of Just compensation.

106. The contention that the Insurance Company need not pay any compensation to any grievous injury or permanent disablement, arising out of the injuries, except for items 1 to 4, specified in the Personal Accident Cover Policy, cannot `be accepted, as the contract of insurance, viz., Personal Accident cover Policy for the owner-cum-driver, is also a Motor Transport Policy, under IMT-15, recognised by the Motor Tariff Committee. As stated supra, when the policies issued under the insurance Act are recognised by the committee, subject to the regulations and instructions, issued by the committee, it is not open to the Insurance Companies to disown their liability to pay compensation in respect of other bodily injuries, wherein, scales of compensation are not specifically provided. There is no negative covenant in the policy, that no compensation would be paid, in respect of other bodily injuries. It is well settled that the [Motor Vehicles Act](#) is a beneficial legislation. Reference can be made to a decision of the



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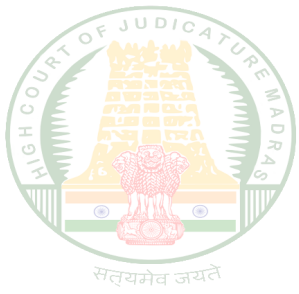


C.M.A(MD)No.1091 of 2024

Apex Court in *Rita Devi and others V. New India Assurance Company Ltd.* AIR 2000 SC 1930, wherein, in construing the provisions of the Act, the Supreme Court held that it is to advance the beneficial purpose underlying the enactment in preference to a construction, which tends to deviate the purpose.

107. In *Shivaji Dayamu Patil and another V. Vatchala Utham More*, 1991 ACJ 177, the Apex Court reiterated that in the matter of interpretation of the Beneficial legislation, the approach of the Courts should be to advance the beneficent purpose.

108. At Paragraph 56 of the judgment in *Deepal Girishbhai Soni v. United India Insurance Company Ltd.*, 2004 (5) SCC 385, the Supreme Court held that,--- “It is now well – settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See High Court of Gujarat & Anr. v. Gujarat Kishan Mazdoor Panchayat & Ors., JT 2003 (3) SC 50; *Indian Handicrafts Emporium and others v. Union of India and others*, 2003 (7) SCC 589; *Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.*, JT 2003 (9) SC 109: 2003 (9) SCALE 713; and *Ashok Leyland v. State of Tamil Nadu and Anr.*, 2004 (1) SCALE 224. The object underlying the statute is required to be given effect to by applying the Principles of Purposive Construction”



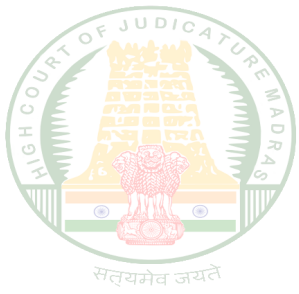
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C.M.A(MD)No.1091 of 2024

109. *Such a narrow construction of the terms of the policy, proposed by the Insurance Company, would run contrary to the purpose of the beneficial legislation. For the above said reasons, this Court is not inclined to deny the benefit of Personal Accident Cover to the Respondent/claimant, who is the owner-cum-driver of the vehicle involved in the accident. In the case on hand, according to the Respondent, on 31.10.2005, when he was riding his Motorcycle, bearing Registration No.TN- 40-Y-4883, on Bhavani Sagar to Puliampatti Road, near Thoppampalayam, due to heavy rain, there was stagnation of water in the middle of the road, and though he was riding his Motorcycle, at a moderate speed, while applying the brakes, the vehicle skidded, he fell down, along with pillion and sustained injuries. When the Claims Tribunal has specifically found that there was no negligence or wilful neglect or want of care on the part of the Respondent/Claimant, on the accident, he cannot be said to be a tort-feasor. The judgments relied on, by the learned counsel for the Insurance Company would not lend any support to the contentions of the Company.*

110. *In the case on hand, relying on the decisions in Thilagavathy v. Sundaram 1074 ACJ 491; Minu B. Mehta v. Balkrishna Ramchandra Nayan, 1977 ACJ 118; New India Assurance v. Susamma Varghese, 1990 ACJ 521; kaliathal v. New India Assurance Co. Ltd., 2004 (4) CTC*



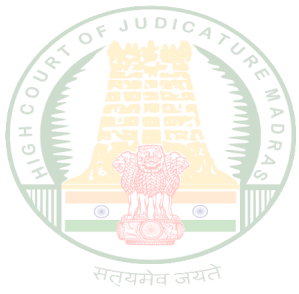
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C.M.A(MD)No.1091 of 2024

716 : 2004 (2) TN MAC 144 (SC), the Appellant-Insurance Company has disputed the liability to pay compensation, stating that Personal Accident Cover Policy covers only third party risk and not to the injured himself, and that the owner cannot take advantage of his own negligence. The stand of the insurance Company is contrary to the very purpose, for which Personal Accident Cover Policy is taken. Admittedly, RW1, an official examined on behalf of the company, in his cross-examination, has admitted that the owner-cum-driver, has insured himself under a Personal Accident Cover Policy, for a sum of R.1,00,000/- , the maximum limit under the Policy.

The Claims Tribunal, after considering the evidence, has arrived at a categorical conclusion that the accident did not occur due to negligence or neglect or want of care on the part of the owner-cum-driver. As per the medical evidence, Ex.P2- Wound Certificate, dated 17.02.2007, Ex.P7-Duplicate Copy of the Discharge Summary, dated 1.11.2005, Ex.P15 X-Ray, dated 29.06.2006 and Ex.P14 Disability Certificate issued by PW3, Doctor, the Respondent/Claimant has sustained dislocation of scapula and other injuries. On clinical examination, PW3, Doctor has assessed the disability at 18% and issued Ex.P14 Disability Certificate. Upon consideration of the medical evidence, the Claims Tribunal has awarded compensation of Rs.43,400/- with interest at the rate of 7.5% per annum.



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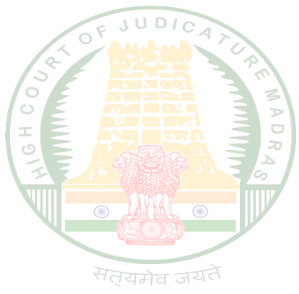


C.M.A(MD)No.1091 of 2024

In the light of the above decisions and discussion, this court is of the view that the benefit under a personal accident cover policy, should be extended to all kinds of injuries and that depending upon the nature of injuries, disablement, expenditure incurred under various heads, the injured is entitled to make a claim for compensation. In the case of four kinds of injury, specified under the policy, the scale of compensation is 100% or 50%, as the case may be, depending upon the nature of injuries mentioned under items 1 to 4. "

16. The learned Counsel for the Insurer would submit that the terms and conditions stipulated in Insurance Policy are of paramount importance for the purpose of deciding the liability and also to fix the quantum of compensation, that the policy being contractual in nature, the person claiming benefit must establish that he is entitled for compensation with reference to the terms and conditions agreed between the parties, that no one is entitled to claim any benefit beyond the scope of the terms and conditions and that the personal accident cover policy is strictly in accordance with the terms and conditions agreed between the parties.

*17. No doubt, the personal accident coverage is permitted only for the owner/driver under the policy. But the Hon'ble Supreme Court in **Ramkhiladi and another Vs. United India Insurance Company and another** reported in (2020)2 Supreme Court Cases 550, has held that the borrower of the*

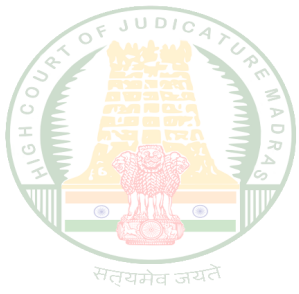


C.M.A(MD)No.1091 of 2024

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vehicle from its owner or any other permitted user of the vehicle can also be covered under the Personal Accident Coverage. Though the benefit under the personal Accident cover policy can generally be extended to the specific category of cases, the learned Judge of this Court in **Bajaj Allianz General Insurance Co., Ltd., case**, has held that the benefits under the personal accident coverage should be extended to all kinds of injuries. No doubt, in case of four kinds of injuries specified under the policy, the scale of compensation is 100% or 50% as the case may be depending upon the nature of injuries mentioned under the item Nos.1 to 4. In the case on hand, as already pointed out, the claimant has suffered 40% of partial permanent disability. Considering the scale of compensation, this Court is of the view that 1% of the amount can be awarded for every percentage of disability and as such, the claimant is entitled to get Rs.40,000/- towards disability suffered by him.

18. As already pointed out, the scale of compensation is 100% for death or for loss of two limbs or sight of two eyes or one limb and sight of one eye or for permanent total disablement. Since the claimant has not suffered such kind of injuries, he is certainly not entitled to get 100% of the coverage amount ie., Rs.1,00,000/- in the case on hand. Regarding compensation awarded for the damages caused to the vehicle, the Insurer has neither challenged the liability nor the amount awarded. In view of the settled position above



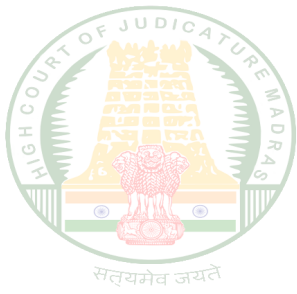
C.M.A(MD)No.1091 of 2024

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referred, the claimant is not entitled to get any amount towards pain and sufferings and for future medical expenses or for medical reimbursement. Hence, this Court concludes that the appeal filed by the claimant is absolutely devoid of merits and the same is liable to be dismissed.

12. The above decision is squarely applicable to the case on hand. As already pointed out, the claimant has suffered 28% permanent disablement and the liability under the personal accident coverage is for Rs.15,00,000/-. The Tribunal has proceeded to award compensation of Rs.4,20,000/- (Rs.15,000/- x 28%). Considering the scale of compensation and the personal accident coverage limit of Rs.15,00,000/-, the amount awarded by the Tribunal cannot be found fault with.

13. In view of the settled legal position, the claimant is not entitled to get any amount towards pain and sufferings, medical expenses already incurred and the future medical expenses. The appellant has not canvassed any other reason or ground to impugn the award. Consequently, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.



C.M.A(MD)No.1091 of 2024

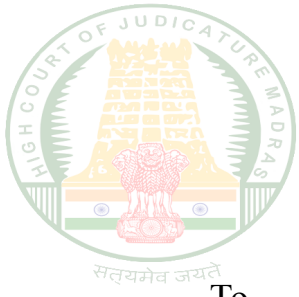
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14. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant – Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.75 of 2021, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court (To deal with MCOP Cases), Tiruchirappalli, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the claimant is entitled to withdraw the entire award amount along with interest and costs on due application before the Tribunal. Consequently, the connected Civil Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

17.07.2026

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

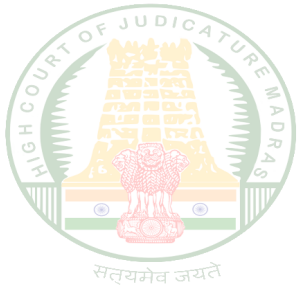
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C.M.A(MD)No.1091 of 2024

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1. The Motor Accident Claims Tribunal /
Special District Court No.I,
(to deal with MCOP Cases) Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.1091 of 2024

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1091 of 2024

17.07.2026