

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.08.2017

Pronounced on : 26-10-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1428 of 2017

The Divisional Manager
M/s. United India Insurance Co., Ltd.,
Block – 19, Neyveli Township
Kurinjpadi Taluk

.. Appellant

Versus

1. R. Rekha
2. T. Ponnambalam
3. P. Elavarasi
4. Minor. Himanish
represented by his mother
and next friend R. Rekha

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.04.2015 made in M.C.O.P. No. 66 of 2011 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Neyveli.

For Appellant	:	Mr. S. Arunkumar
For Respondents	:	Mr. K. Suryanarayanan Mr. M.B. Raghavan for IRDA

JUDGMENT

R. SUBBIAH, J

This appeal is filed by the Insurance Company challenging the award and decree dated 28.04.2015 passed by the Motor Accident Claims Tribunal, (Subordinate Judge) Neyveli in and by which the claim petition filed by the

respondents 1 to 4, seeking compensation for the death of the deceased Rajini, who was the husband of first respondent, son of the respondents 2 and 3 and father of the minor fourth respondent, was allowed awarding a total compensation of Rs.51,37,125/-..

2. The present appeal is filed by the Insurance Company questioning their liability to pay the compensation amount to the claimants.

3. For the purpose of disposal of this appeal, facts which are germane and necessary are as under.

4. The respondents are the legal representatives of the deceased Rajini. They have filed the claim petition before the Tribunal under Section 166 (1) of The Motor Vehicles Act contending that on 13.06.2011, at about 10.30 pm, while the deceased Rajini was travelling as a Pillion rider in the Two Wheeler – TVS Star City Motor Cycle bearing Registration No. TN 31 CZ 0378 owned by him and driven by one Balamurugan in the Neyveli – Virudachalam Road, near Romapuri Tasmac Shop, a cyclist suddenly darted across the road, with the result, the driver of the vehicle lost his balance. In order to avoid hitting the cyclist, the driver of the vehicle namely Balamurugan applied sudden brake. In the impact, the deceased was thrown out of the vehicle and sustained multiple head injuries. Immediately, the deceased was taken to PIMS hospital, Puducherry where he was admitted as an in-patient and given treatment. In spite of best treatment given, the deceased succumbed to the injuries and died on 14.06.2011. On the death of the deceased,

the respondents herein have filed the claim petition seeking compensation of Rs.60 lakhs for the death of the deceased.

5. Before the Tribunal, the claim petition filed by the claimants/ respondents was resisted by the Insurance Company by filing a detailed counter statement. According to the Insurance Company, since the deceased himself was the owner of the vehicle and he is not a third party, on his death, his legal representatives are not entitled to maintain the claim petition. Apart from that the Driver of the vehicle namely Balamurugan was not having a valid licence to drive the two wheeler at the time of accident. According to the Insurance Company, the claimants are not entitled to maintain the claim petition against the appellant/ Insurance Company as, under Section 147 of The Motor Vehicles Act, the risk of the deceased, who is the owner of the vehicle, is not required to be covered by the Insurance Company and if at all, the claimants/respondents are entitled it can only be to a maximum amount of Rs.1,00,000/- under the Compulsory Personal Accident Coverage as per the Insurance policy and nothing more. Thus, the Insurance company sought for dismissal of the claim petition.

6. Before the Tribunal, in order to prove the averments contained in the claim petition, the first respondent herein, who is the wife of the deceased, was examined as PW1 apart from examining two other witnesses as Pws 2 and 3. Exs. P1 to P16 were marked on behalf of the claimants. On behalf of the Insurance Company, one Mr. Ramesh, Assistant Divisional Manager was examined as RW1 but no document was marked.

7. In view of the stand taken by the insurance company specifically questioning their liability to pay the compensation amount, the Tribunal formulated a question as to whether the legal representatives of the deceased are entitled to maintain the claim petition against the insurer inasmuch as the vehicle was owned by the deceased himself. After analysing the evidence available on record, the Tribunal answered the said question by placing reliance on the decision rendered by the Honourable Supreme Court in the case of **(National Insurance Company Limited vs. Balakrishnan)** reported in **2012 (2) TNMAC 637 (SC)** and came to the conclusion that when the owner cum driver of the vehicle has paid additional premium of Rs.100/- taking a coverage for the pecuniary and non-pecuniary losses suffered by him in an accident arising out of the use of the vehicle owned by him, then, on his death, his legal representatives can maintain the claim petition against the insurer. After having arrived at such a conclusion, the Tribunal proceeded to assess the quantum of compensation payable to the respondents and ultimately passed the award for a sum of Rs.51,37,125/- payable by the insurance company. Aggrieved by the same, the Insurance Company has come forward with this appeal.

8. When the present appeal was taken up for hearing on 28.04.2017, it was contended by the appellant/insurance company, by placing reliance on the decision of the Honourable Supreme Court in the case of **(New India Assurance Company Limited vs. Prabha Devi and others)** reported in **(2013) (1) TN MAC 781 (SC)** that the findings of the Tribunal in fastening liability on the insurance company is contrary to the said Judgment of the Honourable Supreme Court.

Regulatory and Development Authority of India (in short IRDA) is necessary for disposal of the appeal. Accordingly, the Insurance Regulatory Development Authority of India, having office at III Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad was directed to depute an official conversant with the issues or engage a learned counsel to render assistance after going through the Circular bearing No.IRDA/NL/Circular/F & U/ 073/11/2009 dated 16.11.2009. Accordingly, Insurance Regulatory Development Authority of India (in short IRDA) has also entered into appearance through their counsel.

9. The learned counsel appearing for the appellant/insurance company submitted that at the time of accident, the deceased was travelling as a pillion rider in the two wheeler owned by him. On the death of the deceased, the claimants have filed the application under Section 166 of The Motor Vehicles Act seeking compensation. While awarding compensation, the Tribunal failed to consider that an application under Section 166 of The Motor Vehicles Act can be filed only against the insured/owner of the vehicle and not by the legal heirs of the owner who himself died in the road accident due to his own negligence. According to the learned counsel for the appellant, the Tribunal failed to note that the deceased/owner of the vehicle has only paid premium of Rs.50/- for payment of compensation to the tune of Rs.1,00,000/- under the Compulsory Personal Accident Coverage and therefore, awarding a sum of Rs.51,37,125/- towards compensation is against the terms and conditions of the Insurance Policy. Furthermore, absolutely there is no statutory requirement on the part of the Insurance Company to pay compensation in respect of the claim made by the legal heirs of owner of the

vehicle. Even before the Tribunal, RW1 was examined who has categorically deposed that the deceased, as a owner of the vehicle, has paid only a sum of Rs.50/- as premium and obtained cover under Compulsory Personal Accident to owner-cum-driver to an extent of Rs.1,00,000/-. Therefore, as per the packaged policy, the claimants are entitled to compensation only to the extent of Rs.1,00,000/- under the Compulsory Personal Accident Coverage for owner-cum-driver. RW1 has also clearly deposed about the terms of contract by referring to the Insurance Policy, Ex.P5 and the entitlement of the claimants to claim compensation under the Compulsory Personal Accident Coverage for owner-cum-driver upto Rs.1,00,000/-. Therefore, the trial Court erred in awarding the compensation payable to the claimants by fastening the liability on the appellant insurance company.

10. In support of his contention, the learned counsel for the appellants relied on the decision of the Honourable Supreme Court in the case of (**New India Assurance Co., Ltd., vs. Prabha Devi and others**) reported in **2013 (1) TN MAC 781 (SC)** wherein it was held that liability of the insurer is only for the purpose of indemnifying insured against liabilities incurred towards third party and Section 147 of The Motor Vehicles Act does not require the insurer to assume the risk for death/bodily injury to the owner of the vehicle.

11. The learned counsel appearing for the appellant/Insurance company also relied on several decisions to drive home the point that the insurance company is not liable to pay compensation to the claimants in this case. Among

the several decisions relied on by the learned counsel for the appellant, in the case of **(New India Assurance Company Limited vs. C.M. Jaya and others)** reported in **(2002) 1 ACC 299 (SC)** the Constitutional Bench of the Supreme Court has held that a statutory liability cannot be more than what is required under the statute itself. In the event of a bodily injury/death resulted out of a motor accident for the owner cum driver of the vehicle, the Insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is done, it would amount to re-writing the statute or the contract of insurance, which is not permissible.

12. The learned counsel for the appellant also relied on the decision of the Division Bench of this Court rendered in **Kumaravel Gounder and others vs. Bajaj Allianz General Insurance Company** reported in **(2013) (1) TN MAC 120 (DB)** wherein it was held that unless separate premium was paid towards risk of Personal Accident Cover, the Insurance Company cannot be mulcted with any liability. In Para No.15 of the said decision, it was held as follows:-

“15. Any policy in terms of Section 147 of Motor Vehicles Act covers the liability incurred by the insured in respect of death or bodily injury to any person including owner of goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 of the Act does not require any Insurance Company to assume the risk for the death or bodily injury to any person including the occupants carried in the motor car.

13. As regards the decision of the Honourable Supreme Court in the case

of (**National Insurance Company Limited vs. Balakrishnan**) and another reported in **2012 (2) TNMAC 731 (SC)** relied on by the Tribunal to award the compensation in favour of the claimants, the learned counsel for the appellant/Insurance Company would submit that the matter has been referred to a larger bench for an authoritative pronouncement, as could be evident from Para No.20 of the said Judgment. In effect, the learned counsel for the appellant would contend that the Insurance Company is not liable to pay any compensation to the claimants as the deceased himself was the owner of the vehicle and the liability of the Insurance Company to pay compensation is only limited to Rs.1,00,000/- under Personal Accident Cover. Thus, the learned counsel for the appellant submitted that for the sum of Rs.50/- paid by the deceased cum owner of the vehicle towards Compulsory Personal Accident cover, the legal heirs of the deceased, who are the claimants herein, are only entitled for compensation of Rs.1,00,000/- and therefore, he prayed for setting aside the Decree and Judgment of the Court below.

14. Repudiating the submissions of the learned counsel for the appellant, the learned counsel appearing for the claimants/respondents would contend that the deceased, being the owner of the Motor Cycle involved in the accident travelled as a Pillion rider and therefore, he is covered under the provisions of the Insurance Policy. According to the learned counsel, if the pillion rider or passenger is a gratuitous passenger and is not required to be covered under Section 147 of the Motor Vehicles Act and in such event, the insurer cannot be liable to pay compensation if the owner of the vehicle had taken only a “Act Only” or “Liability Only Policy”. However, it was clarified by the Honourable Supreme Court that the

position is different under a comprehensive or package policy. The learned counsel for the respondents/claimants has also contends that the insurance policy covers the death or bodily injury that may be suffered by the owner cum driver of the vehicle in case, the owner cum driver was travelling as a pillion rider. In this context, the learned counsel for the claimants placed reliance on the decision rendered by the Honourable Supreme Court in **(Bagyalakshmi vs. United India Insurance Company Limited)** reported in **(2009) 7 SCC 148** wherein it was held that in a package policy, the contract of insurance, if given its face value, covers the risk not only of a third party but also of persons travelling in the car including the owner thereof. Ultimately, it was held that a comprehensive/package policy of a two wheeler covers a pillion rider as well 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 Accidents Claims Tribunal to go into the question whether the insurance company is liable to pay or compensate for the death or injury of a pillion rider on a two-wheeler or the occupants of a private car. Therefore, according to the learned counsel for the respondents/claimants, in view of the decision of the Honourable Supreme Court in Bagyalakshmi's case, the pillion rider in a two wheeler under a packaged policy is covered to an unlimited extent. In the present case, the deceased travelled in the motor cycle was a pillion rider and therefore, he is covered under the packaged policy and the insurer is liable to pay such compensation. The Tribunal, taking into consideration the above legal position, has rightly awarded the compensation in favour of the claimants and it calls for no interference by this Court.

15. Mr. M.B. Raghavan, learned counsel appearing for IRDA has invited the attention of this Court to the provisions of Section 146 of The Motor Vehicles Act and submitted that it is not necessary to provide insurance coverage for the owner of the vehicle, who sustain injury or death due to his/her own negligence. Section 146 of The Motor Vehicles Act mandates Owners of vehicles to obtain compulsory insurance for motor vehicles against liability for death/bodily injury to persons/property caused by use of vehicle. Therefore, the Insurance Policy taken for a motor vehicle proceeded on the basis of protecting the owner of vehicle against liability for third parties and passengers, but not for any death/injury to the owner himself. At the same time, the Statutory authorities in charge of regulating the Motor Insurance Policies being obviously concerned at the complete lack of protection for Owner of vehicle in the event of a mishap. Therefore, in 2002, a New India Motor Tariff was implemented with effect from 01.08.2002 as per which a Compulsory Personal Accident Cover for owner/Driver was introduced for the first time under a Motor Policy. The coverage was introduced as per Regulation 36 of The Motor Tariff. The 2002 Motor Tariff lays down coverage for the owner of the vehicle in the event of an accident by charging additional premium. However, such coverage for the owner is non-statutory and purely contractual. It was therefore governed by the provisions of Section III which covered death and specific injuries enumerated therein. However, each of the contract covers certain types of injuries and provide fixed benefit in the nature of a life insurance cover. The coverage being a special and contractual, the Insurance company can be directed to pay compensation only to the extent as agreed and undertaken and nothing more. In this context, the learned counsel for IRDA relied on the decision of the Honourable

Supreme Court in the case of **Oriental Insurance Company vs. Rajni Devi** reported in **2008 ACJ 1441** wherein it was held that the Insurance company is liable to pay only the agreed sum of Rs.1,00,000/- as per the terms of the special contract and nothing more. Thus, being a special contract, the liability of the Insurance Company is confined to the amount specifically insured and for death/specific injuries only. There cannot be any liability fastened on the Insurance Company generally for any or every injury which is not contemplated by the special contract.

16. The learned counsel for the IRDA also submits that the Policy mentioned above was brought into effect 15 years ago, as per which the owner of the vehicle, who either sustains bodily injury or died in the accident will be entitled to only a sum of Rs.1,00,000/- or Rs.2,00,000/- as per the contract. Such a meager amount of compensation to the unfortunate victims of road accidents, particularly the owner of the vehicle, is grossly inadequate and it has to be enhanced. According to the learned counsel, it is irrational that a owner of the vehicle, who takes an insurance policy for the risk of third party is himself/herself could not get adequate compensation in the event of his/her death or bodily injury and the compensation paid out of such special contract will not add adequate succor to the bereaved family. Therefore, the Special Contract which was envisaged 15 years ago needs to be revised and re-visited to confer relief to the owner of the vehicle who sustain bodily injury or death in a motor accident.

this Court the Indian Motor Tariff which came into effect from 30.06.2002, particularly in relation to Personal Accident Cover. According to the learned counsel, on payment of additional premium, the Insurance Company undertakes to pay compensation to the insured on the scale provided for the bodily injury, as follows:-

“Details of injury	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 one eye	50%
iv) Permanent total disablement from injuries other than named above	100%”

18. Thus, according to the learned counsel, based on the Indian Motor Tariff, the Insurance Companies collect Rs.50/- for the owner-cum-driver in a case of two wheeler and they are assured with Compulsory Personal Accident Cover to an extent of Rs.1,00,000/- subject to the above referred table. The tariff for the above coverage is fixed by IRDA in consultation with Insurance Companies. It is further submitted that under Section 163A, 165 and 166 of Motor Vehicles Act, there is an impediment that a claim can be laid by a victim against the owner or driver or insurance company, but nowhere the Act enables the owner/insured to maintain a claim against his insurer under Section 147 of the Motor Vehicles Act.

19. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. On the basis of the above submissions, the only question that arises for consideration in this appeal is

whether the claim petition filed by the claimants under Section 166 (1) of the Motor Vehicles Act is maintainable against the insurance company for the death of the deceased cum owner of the vehicle in a motor accident over and above the compensation payable under the Compulsory Personal Accident Cover.

20. Before dealing with the rival submissions, it is just and necessary to look into the relevant provisions of the Motor Vehicles Act, which are as follows:-

“146. Necessity for insurance against third party risks:-

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is no force in relation to the use of the vehicle by the person or that other person as the case may be, a policy of insurance complying with the requirements of this chapter.

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities namely-

(a) Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority

(c) any State transport undertaking

Provided that no such order shall be made in relation to any such authorities unless a fund has been established and is maintained by the authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the State Government as the case may be, and--

(ii) in relation to any Corporation or company owned by the Central Government and one or more State Government, means the Central Government.

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority

147. Requirements of policies and limits of liability:-

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place

(ii) 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-

Provided that a policy shall not be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workman's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, upto the following limits, namely--

(a) save as provisional in clause (b), the amount of liability incurred

(b) in respect of damage to any property of a third party, a limit of rupees six thousand

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier.

(3) A policy shall be of no effect for the purposes of this

Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters, and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or clauses of persons specified in the policy in respect of any liability which the policy purports to cover in the case of the person or those classes of persons.

163-A. Special provisions as to payment of compensation on structured formula basis:- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to the accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs of the victim, as the case may be.

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may keeping in view the cost of living by notification in the official gazette from time to time amend the second Schedule.

166. Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made--

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where the death has resulted from the accident, by all or any of the legal representative of the deceased, as the case may be; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed.

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.

21. In the present appeal, the Insurance Company has questioned the maintainability of the claim petition under Section 166 (1) of The Motor Vehicles Act and the consequential liability fastened on them by the Tribunal to pay compensation to the claimants at Rs.51,37,125/- on the ground that there is a violation of the condition of the insurance policy. It is the vehement contention of the counsel for the appellant that when the owner of the vehicle died in the road accident without the involvement of any other motor vehicle, he cannot be construed as a third party for the purpose of payment of compensation and at best, the claimants, who are the legal heirs of the deceased, are only entitled for payment of Rs.1,00,000/- under the Personal Accident Cover as per the terms of the policy and the amount of premium paid thereof.

22. From a perusal of the Judgment and Decree passed by the Tribunal, we find that the Tribunal placed strong reliance on the decision of the Honourable Supreme Court in the case of **National Insurance Company Limited vs. Balakrishnan and another** reported in **2012 (2) TN MAC 731 (SC)** to conclude that since the deceased made a payment of additional premium of Rs.100/- taking a coverage for pecuniary and non-pecuniary losses that may be suffered by him in any motor accident, the legal heirs of the deceased are entitled for payment of compensation.

23. On perusal of the decision relied on by the Tribunal in the case of National Insurance Company Ltd., vs. Balakrishnan and another mentioned supra, we find that the Honourable Supreme Court, in para No.19, held as follows:-

“19. On a perusal of the aforesaid paragraph, it is clear as crystal that the decisions that have been referred to in *Bhagyalakshmi* involved only “Act policies”. The Bench felt that the matter would be different if the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third-party risk which would include an occupant in a vehicle. It is worth nothing that the Bench referred to certain decisions of the Delhi High Court and the Madras High Court and thought it appropriate to refer the matter to a larger Bench. Be it noted, in the said case, the Court was dealing with comprehensive policy which is also called a package policy.....

20. Thus, it is quite vivid that the Bench in *Bhagyalakshmi* case had made a distinction between the “Act Policy” and “Comprehensive Policy/Package Policy”. We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a “comprehensive/package policy”. We are absolutely conscious that the matter has been referred to a larger bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a “comprehensive/package policy” regard being had to the contract of insurance.”

24. Thus, the issue involved in the case before the Honourable Supreme Court in the above referred Judgment is as to what would be the liability of the insurer if the policy is a comprehensive/package policy and it was referred to a larger bench for an authoritative pronouncement. Therefore, the reliance placed by the Tribunal on the above referred judgment is unsustainable.

25. In the decision of the Honourable Supreme Court in the case of (**New India Assurance Company Limited vs. Prabha Devi and others**) reported in **2013 (1) TN MAC 781 (SC)** it was held in Para No. 8 and 9 as follows:-

“8. Mr. Vishnu Mehra, learned counsel for the Appellant in Civil Appeal No. 479 of 2007 has submitted that the MACT as well as the High Court have erred in granting any compensation to the legal representations in view of Section 147 of the Act. He submits that in similar circumstances, this Court in the case of *Dharmaraj vs. New India Assurance Co., Limited and another* (2004) 4 CTC 716 (SC) = 2004 (8) SCC 553, has clearly held that the liability of the Insurance Policy is only for the purpose of indemnifying the insured against the liabilities incurred towards a third party or in respect of damages to property. Therefore, since the deceased himself was the insured as well as the owner of the vehicle, no amount of compensation could have been awarded to the claimants.

9. We have perused the Judgment of this Court in the case of *Dharmaraj vs. New India Assurance Co., Limited and another* (2004) 4 CTC 716 (SC) = 2004 (8) SCC 553, supra. In that case, the Appellant, who was the insured, was travelling in the insured vehicle, which met with an accident. In the accident, the Appellant as well as other passengers received injuries. A number of Claim Petitions came to be filed. The Appellant, who was the insured also filed a Claim Petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim Petitions filed by the other passengers, MACT directed that the Appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the Appellant, the MACT directed the driver

and the Insurance Company to pay compensation to the Appellant. The aforesaid findings of the MACT was upheld by the High Court in the Appeal filed by the Insurance Company. The Insurance Company was, in Appeal before this Court, challenging the Judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows:-

“8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of *Oriental Insurance Co., Ltd., vs. Sunita Rathi*, it has been held that the liability of the Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards a third party or in respect of damages to property. Thus, where the insured i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability too.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading “own damage”, the words “premium on vehicle and non-electrical accessories” appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. As owner of a vehicle can only claim provided a Personal Accident Insurance has been taken out. In this case there is no such insurance.”

10. In view of the aforesaid ratio of law, the claim made by the respondents could not have been allowed. Consequently, Civil Appeal No. 479 of 2007 is allowed. The impugned Award as well as the impugned Judgment of the High Court are set aside.”

26. As far as the present case is concerned, the deceased was travelling as a pillion rider in the two wheeler owned by him. Admittedly, the deceased himself was the owner of the two wheeler. At the time of accident, the driver of the two wheeler suddenly applied brake and hit a cyclist which led to the accident. No

other motor vehicle has been involved in this case. Thus, the accident did not involve any other motor vehicle other than the one in which the deceased was travelling as a pillion rider. Therefore, the liability of the insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview of Section 146 or 147 of The Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned Judgment and Decree of the Tribunal cannot be sustained. The Appeal filed by the Insurance Company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased.

27. Before parting with, we are pained to observe that as per the Indian Motor Tariff, the compensation payable to the legal heirs in case of death or bodily injury suffered by the owner of the vehicle is restricted to Rs.1,00,000/- only in case of two wheeler and Rs.2,00,000/- in case of four wheeler, by virtue of the Compulsory Personal Accident Cover mooted by the statutory authorities in charge of regulating the Motor Insurance Policies. As per the Compulsory Personal

Accident Cover, in case of death or bodily injury sustained by the owner of the vehicle, he or she is eligible for compensation of Rs.1,00,000/- alone.. The amount of compensation payable by the Insurer is confined and limited to the extent of Rs.1,00,000/- as per the India Motor Tariff, which came into effect from 01.08.2002. It is noteworthy to mention that prior to 01.08.2002, even the compensation of Rs.1,00,000/- for two wheeler owner and Rs.2,00,000/- for owner of four wheeler was not envisaged and the unfortunate victim of motor accidents, whose death is caused in the motor accident or who sustain bodily injury, will be left without any amount of compensation. It is needless to mention that nobody will suffer bodily injury or die voluntarily or on their own, particularly in a road accident that are caused only due to negligence and carelessness. A small omission or diversion while driving the vehicle by the drivers of the motor vehicle has very many consequences not only in the physical condition of the injured, but also leaves the legal heirs of the deceased to grope in the dark with clueless future. Therefore such accidents caused, unmindful of the consequences, should not be made to deprive the owner of the vehicle or his or her family to suffer and such sufferings should be mitigated by means of adopting a fair policy to compensate those victims of road accidents..

28. As pointed out by IRDA in their report, the Policy to compensate the owner of the vehicle by virtue of Compulsory Personal Accident Cover was introduced 15 years ago. In the year 2002, the sum of Rs.1,00,000/- envisaged under Compulsory Personal Accident Cover might be sufficient to meet the medical expenses for treatment of the injured owner of the vehicle to certain extent.

However, now 15 years have lapsed and the cost of medical treatment has skyrocketed. Parallely, the country is witnessing a burgeoning vehicle population due to which, not a single day passes without a road accident in which unfortunate victims silently suffer bodily injury or death. The death or bodily injury so suffered by the victims of motor accident not only paralyse their life, but also cripple the entire family or his or her dependants. In case the owner of the vehicle happened to be the breadwinner of the family, it will cause a dent in the financial source of the family. On the other hand, due to the negligence of the owner of the vehicle, if a third party suffers bodily injury or even death, such third party or his family members will get adequate compensation from the insurance company befitting to the pecuniary loss sustained by the injured or on account of the death of the deceased. On the contrary, if the owner of the vehicle himself sustain bodily injury or dies in a motor accident, due to his or her own negligence, the owner of the vehicle or his or her family members will not get compensation befitting to the actual pecuniary loss of the deceased or injured, but only a lump sum compensation of Rs.1,00,000/-. It is unfortunate that the owner of the vehicle who pays premium amount for the risks that may be confronted by the third party or due to any other factor, is not getting adequate compensation in the event of his or her death or bodily injury. Therefore, having regard to the above factual matrix, taking note of the escalation in the cost of living, particularly the cost of medical treatment, we direct the IRDA to enhance the Compulsory Personal Accident Cover from the existing Rs.1,00,000/- to atleast not less than Rs.15,00,000/- so that the amount of Rs.15,00,000/- will add to some succor or solace to the victims of road accidents,

death. Further, an option can be given to the insured/owner of the vehicle to pay higher premium amount to get enhanced compensation over and above Rs.15,00,000/- in case the owner of vehicle so desires to such enhanced compensation in the event of any untoward motor accident which may result in bodily injury or death. However, before resorting to enhance the premium for getting compensation under the Compulsory Personal Accident Cover, IRDA shall also have consultation with all the stake holders. Such an exercise can be undertaken and completed by IRDA within a period of six months from the date of receipt of a copy of this Judgment.

29. In the result, the Civil Miscellaneous Appeal is partially allowed. The award and decree dated 28.04.2015 made in M.C.O.P. No. 66 of 2011 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Neyveli is set aside. No costs. It is made clear that the claimants/respondents are only entitled for a sum of Rs.1,00,000/- towards Compulsory Personal Accident Coverage as per the terms and conditons of the Insurance policy, Ex.P5.

(R.P.S.J.,) (A.D.J.C.J.,)

26-10-2017

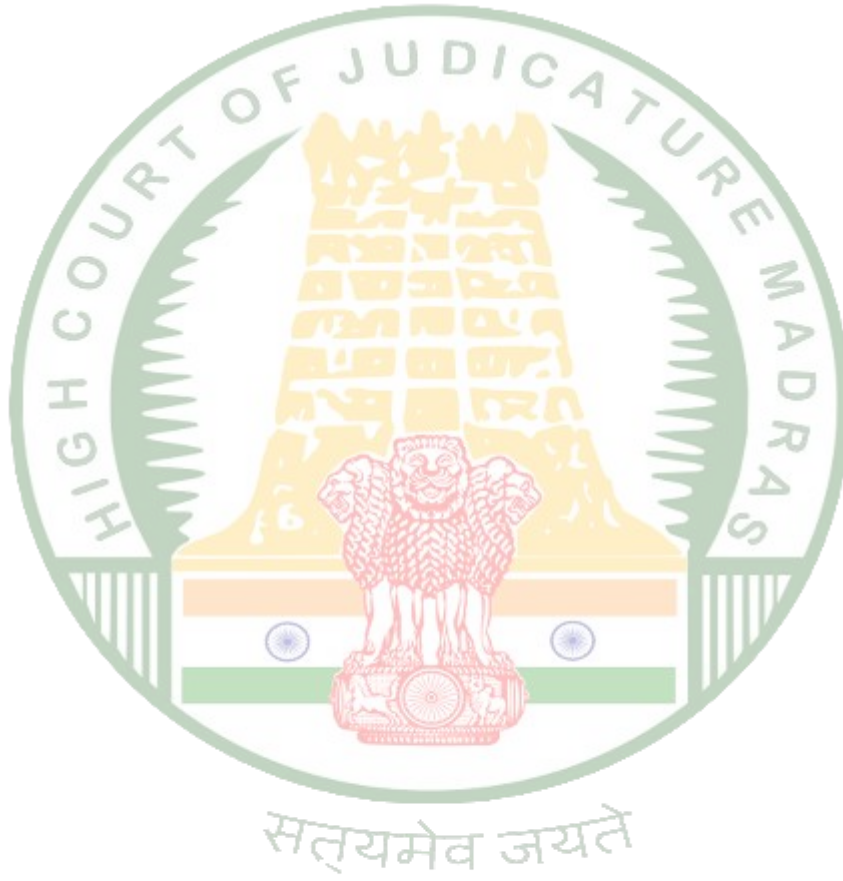
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Index : Yes

Note : Office is directed to mark a copy of this Judgment to Insurance Regulatory Development Authority of India, having office at III Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad for information and necessary action.

To

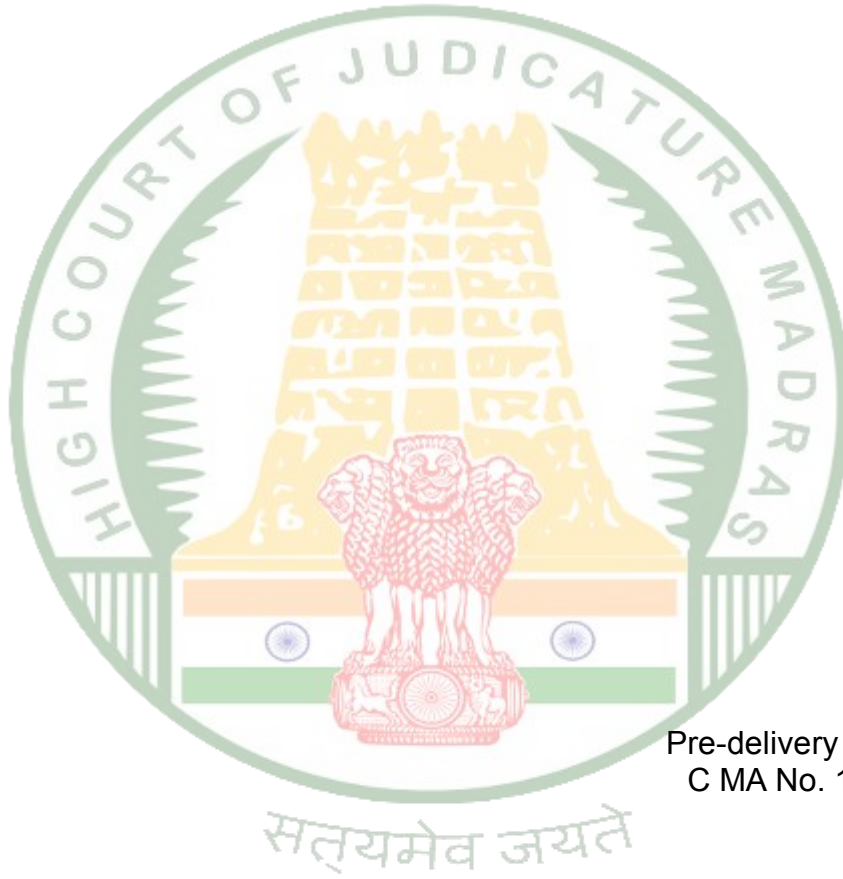
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R. SUBBIAH, J
and
A.D. JAGADISH CHANDIRA, J

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Pre-delivery Judgment in
C MA No. 1428 of 2017

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