IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.11.2018

DELIVERED ON 18.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2201 of 2007 and
CMP No.2 of 2007

National Insurance Company Limited,
Gobichettipalayam ... Appellant/Respondent

Vs.

Velmurugan ... Respondent /Claimant

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 23.12.2005 passed in M.C.O.P.No.60 of 2004 by the I Additional Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Gobichettipalayam.

For Appellant : Mr.N.Vijaraghavan

For Respondent : Mr.Ma.Pa.Thangavel

J U D G M E N T

Aggrieved over the findings of the learned I Additional Subordinate Judge, Motor Vehicle Accident Claim Tribunal, Gobichettipalayam, fastening liability on the Insurance Company to pay compensation of Rs.1,67,892 with interest at the rate of 7.5% per annum, for the injuries sustained by the first respondent from the date of the claim petition in MCOP No.60 of 2004, the National Insurance Company has filed this present appeal under Section 173 of the Motor Vehicles Act.

2. The case of the respondent/claimant is as follows.

On 18.06.2003, the respondent/claimant was traveling in his tempo van bearing registration No. TN 74C 2163 on Thangammapuripattinam-Mettur. At about 3.00 p.m., when the van was nearing Bypass road at Thangammapuri patinam, the driver of the van drove the van rashly and negligently and hit a lorry bearing registration No. TMN 7877 which was parked on the left hand side of the road, as a result of which, the claimant sustained injuries all over his body. According to him, the rash and negligent driving of the driver of the van was the cause of the accident and that the appellant/ Insurance company is liable to pay compensation of Rs.3,00,000/- to him for the injuries sustained by him.

3. The appellant/Insurance Company contested the claim petition.

4. After analysing the evidence on record, the tribunal awarded a compensation of Rs.1,67,892/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

5. Mr.N.Vijaraghavan, learned counsel appearing for the appellant would submit that the injured being the owner cum insured of the van bearing registration No.TN-74-C-2163, is not entitled to file the claim petition against himself under Section 166 of the Motor Vehicle Act, as he is not a third party. He further submitted that since the owner/injured was only an occupant of the vehicle and not on his wheels would not be entitled to claim compensation from the appellant/insurance company and that he cannot take advantage of any additional premium paid by him under Indian Motor Tariff (IMT) 15 and 16. His specific contention is that the policy (Ex.R1) in existence at the time of accident was a Compulsory Personal Accident Cover for the owner-cum-driver of the vehicle and that the same cannot be made applicable to the occupant of the vehicle, merely because he is the owner of the vehicle and that even if there was a Personal Accidents Cover Policy, it covers only owner-cum-driver and in such circumstances, the contract of insurance is enforceable only when the owner sustains injury/injuries while driving the vehicle resulting in any permanent disablement mentioned in the policy. Since the injuries suffered by the claimant do not fall under any of the categories of injuries mentioned in the policy, no compensation is payable by the insurance company. Reliance was placed upon the decision of this court in The Divisonal Manager, M/s United India Insurance Company Limited Vs. Rekha and others in C.M.A No.1428 of 17 in which, it has been held thus.

> " 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 package 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 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."

6. Per contra, Mr.Ma.Pa.Thangavel, learned counsel appearing for the respondent/claimant relied on the following decisions.

(i) Bajaj Allianz General Insurance Company Limited Vs. C.Ramesh reported in 2013(1) TNMAC 325

(ii) National Insurance Company Limited Vs. Krishnan reported in 2013(1) TNMAC 729

and contended that restricting the compensation to the amount specified in the policy would defeat the very intention of the legislature to award "just compensation " to the accident and if the contention of the appellant/Insurance company has to be accepted, then no compensation can be awarded under other heads viz. 'disability', 'Loss of earning', 'pain and sufferings' or under any other pecuniary and non-pecuniary losses.

7. In the instant case, a sum of Rs.100/- has been received by the Insurance Company as an additional premium towards personal accident cover, as per the evidence of Thiru R.Sadhasivam (RW1), working for the appellant Insurance Company. He has also deposed that the Personal Accident Coverage for the owner is upto Rs.2,00,000/- and that the owner is entitled to drive the vehicle ofcourse, with a valid driving licence.

8. In the decision in National Insurance Company Limited Vs. Krishnan reported in 2013(1) TNMAC 729 relied on by the learned counsel for the respondent/claimant, a single bench of this court after considering the decisions of the Honourable Supreme Court held in para 36 of its judgment that

> "If the contention of the Appellant-Insurance Company has to be accepted, then no compensation can be awarded under other heads, viz., Disability, Loss of Earning, Pain and Suffering or under any other pecuniary and non- pecuniary losses. Even the respondent/claimant will not be in a position to get back Rs.1,15,934/-, incurred by him, towards medical expenses. Such a narrow construction of limiting the compensation only to Rs.1,00,000/- cannot be made, when sufficient oral and documentary evidence, has been adduced to prove that the pecuniary and non-pecuniary losses suffered by the injured, exceeds the maximum limit. Restricting the compensation to only Rs.1,00,000/- would defeat the very intention of the legislature, to award, "just compensation " to the accident victim, and it will not be in conformity with the judgments of the Apex Court, stated supra,
>
> On the facts and circumstances of the case, this court is of the view that the overall quantum of compensation awarded to the respondent/ claimant cannot be said to be grossly excessive. In the result, the civil miscellaneous appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, to the credit of MCOP No.459 of 2008, on the file of the Motor Accidents Claims Tribunal (Sub-Court), Sankari, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the

respondent/ claimant is permitted to withdraw the same, by making necessary applications before the Tribunal".

9. In the decision in Bajaj Allianz General Insurance Company Limited Vs. C.Ramesh reported in 2013(1) TN MAC 325, this court has held that a Personal Accident Cover Policy should be extended to all kinds of injuries and that depending upon the nature of injuries, disablement, expenditures incurred under various heads, injured is entitled to make a claim for compensation. In the said decision in paragraph No.91,it has been observed thus.

> "Though the contract of Insurance, i.e. Personal Accident Cover Policy, contains specific clauses,defining eligibility to make a claim and also specific clauses of disqualification, from the terms and conditions, there is nothing to indicate that the injured or the Legal Representatives of the deceased, as the case may be, have to prove that there was no negligence or neglect or fault on the part of the owner cum driver. At this juncture, it should be noted that similar to the maximum limit, as provided for, under Section 140 of the Motor Vehicles Act, the maximum amount that could be claimed under the personal cover is only Rs.1,00,000/-. When there is no involvement of two vehicles, but the owner-cum-driver sustains injuries or disablement, on account of grievous injuries, not on account of his negligence, and when there is a use of vehicle, can he be denied of just compensation? In the humble opinion of this court, the injures or the Legal Representatives of the deceased, as the case may be, are entitled to maintain a claim for compensation to the maximum of Rs.1,00,000/-, as per the terms and conditions of the Personal Accident Cover Policy. If the contentions of the Insurance Company that even if the owner cum driver had taken a personal accident cover and paid an additional premium, still he or legal representatives, as the case may be, are not entitled to claim compensation to cover the personal injury or death, as the case may be, if there is negligence on part of the owner cum driver, then there is no need to take a personal accident cover. As stated supra, the policy is personal to the holder and it is not to indemnify the loss sustained by others."

10. A division Bench of this court in the judgment dated 26.10.2017 in The Divisional Manager, M/s United India Insurance Company Limited Vs. R.Rekha and others in CMA No.1428 of 2017 has held thus.

"As far as the present case is concerned, the deceased was travelling as 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 of 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."

11. The Division Bench also referred the decisions in New India Assurance Company Limited Vs. Prabha Devi and others reported in 2013(1) TNMAC 781 (SC) in which it has been held thus.

" 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. Considering such submission, this court felt that the assistance of the Insurance 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 vehicles 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. Further more, 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 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.

In support of his contention, the learned counsel for the appellants relied on the decision of the Hobourable Supreme Court in the case of (New India Assurance Company Limited 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.

12. The division bench also directed 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 who are the owner of the vehicle who may incidentally sustain bodily injury or death. Directions were also issued to give an option 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.

13. It is brought to the notice of this court that IRDA had followed the guidelines given by the Division Bench of this court in letter and spirit.

14. In the instant case, the policy is a comprehensive/package policy and an additional premium is paid covering the bodily injury/death of the owner-cum driver. the injured was the owner of the four wheeler and the accident did not involve any other motor vehicle. Therefore, as per the

direction of the Division Bench of our High Court, the liability of the insurance company is limited to the amount indemnified for the insured against the third person or in respect of damages of property. However, the claimant is entitled for payment upto Rs.2,00,000/- towards Personal Accident Cover proportionate to the premium paid by him. In the instant case, the quantum of compensation is only Rs.1,67,852/- which is within Rs.2,00,000/-.

15. As far as the contention of the learned counsel appearing for the appellant that Personal Accident Cover Policy can be extended only to the specified injuries mentioned in the insurance policy. It is relevant to extract Indian Motor Tarrif (IMT) 15 and 16 of the Policy, since in this case admittedly additional premium was received by the Insurance Company under Section 64(B) of the Insurance Act, for the covering its liability for "owner -cum - driver".

> 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

	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%

	Scale of compensation
(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 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:

[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.

17. In the decision of this court in Bajaj Allianz General Insurance Co. Ltd. V. C.Ramesh reported in 2013 (1) TN MAC 325, this court has held thus.

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 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

(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%

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 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 disablment, 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 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"

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 Puliyampatti 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 o want of care on the part of the Respondent/Claimant, om 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 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.
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> 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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> 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. "

This court is totally in agreement with all the views expressed by the single bench of this court in the above decision.

18. In the result,

(i) The appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) Though the appeal is allowed holding that the insurance company is liable to pay compensation to the extent mentioned in the policy (i.e. Rs.2,00,000), the quantum of compensation awarded by the tribunal being Rs.1,67,892/-, it need not be disturbed and is upheld.

(iii) The appellant/Insurance Company is directed to deposit the said amount with interest at the rate of 7.5% per annum within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the insurance company, the claimant is at liberty to withdraw the same, after following due process of law.

mst

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. I Additional Subordinate Judge,
   Motor Vehicle Accidents Claims Tribunal,
   Gobichettipalayam

2. The National Insurance Company Limited,
   Gobichettipalayam.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Vijayaraghavan, Advocate, SR.No.88553
+1cc to Mr.P.Thangavel, Advocate, SR.No.89092

CMA.No.2201 of 2007
and CMP No.2 of 2007

Kak(14/06/2019)