IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2018
Pronounced on : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.25 of 2008
and M.P.No.1 of 2008 &
Cross.Obj.No.53 of 2017

C.M.A.No.25 of 2008

M/s.Cholamandalam Ms.General Insurance Company Limited,
Branch Office, Coimbatore.
.. Appellant/R2

Vs.

1.Santhi
2.Minor Varsha
3.Minor Vinayagamoorthy
4.Velammal ...RR1 to 4/Petitioners
(Minors represented by mother and NF Tmt.Santhi)
5.N.Raja Sing ...R5/R1
(5th respondent ex parte before the Lower Court.
Hence batta not paid.)

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.13 of 2006 dated 30.07.2007 on the file of the Motor Accidenst Claims Tribunal, Chief Judicial Magistrate Court, Coimbatore.

For Appellant : M/s.Harini for
M/s.M.B.Gopalan
For Respondents 1 to 4 : Mr.Ma.P.Thangavel

Cross.Objection No.53 of 2017

1.Santhi
2.Minor Varsha
3.Minor Vinayagamoorthy
4.Velammal
(Minors represented by mother
and NF Tmt.Santhi)
.. Appellants/Cross objectors

vs.

1.M/s.Cholamandalam
M/s.General Insurance Company Limited,
Branch Office, Coimbatore.

2.N.Raja Sing
(2nd respondent ex parte before the Lower Court.
Hence batta not
paid.) .. Respondents

Prayer: Cross-Objection filed under Order XXXXI, Rule 22 of the C.P.C., praying for enhancement of further compensation of Rs.1,25,500/-. Against the Decree and Judgment passed by chief Judicial Magistrate, Motor Accidents Claims Tribunal, Coimbatore, dated:30/07/2007 made in MCOP No.13/2006.

For Cross Objectors
1 to 4 : Mr.Ma.P.Thangavel

For 1st Respondent : M/s.Harini for
Mr.N.B.Gopalan Associates

C O M M O N J U D G M E N T

The appellant an Insurance Company is aggrieved by the fair and decretal order dated 30.07.2007(impugned order) passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore (hereinafter referred to as the Tribunal) in M.C.O.P No.13 of 2006.

2.The Respondent Nos.1 to 4 are the legal heirs of the deceased Santhanakumar (hereinafter referred to as the deceased). The deceased while riding a motorcycle insured with the Appellant belonging to the 5th respondent suffered head injury and died on 14.08.2005 in the hospital, where he was admitted for treatment. He had hit a pedestrian and fell and injured himself on his head.

3. The 5th respondent had paid extra premium for covering the risk viz., P.A. “owner-driver”, apart from the third party liability and own damage coverage.

4. The policy states that the Company shall not be liable when such death or injury arises out of and in the course of the employment of such person by the insured.

5. A claim petition dated 02.12.2008 came to be filed by the Respondent Nos.1 to 4/ legal heirs of the deceased before the Tribunal under Section 163-A of the Motor Vehicle Act, 1988 on 2.12.2005. In the claim petition, it has been stated that the deceased hit a pedestrian and fell on the Tarmac and sustained head injuries.

6. The Respondent Nos.1 to 4 prayed for a compensation a sum of Rs.3,29,500/- on various heads from the 5th Respondent owner of the motorcycle and the insurer viz., the appellant herein. The 5th respondent remained ex-parte in the said proceeding.

7. At the time of the death, the deceased was aged 38 years and was employed with the 5th respondent and was stated to be earning a sum of Rs.2,500/- p.m. The claimant/respondent Nos.1 to 4 as Cross Objectioners herein filed a claim for a sum of Rs.3,29,500/-.

8. By the impugned fair and decretal order, the Tribunal has awarded a sum of Rs.2,04,000/- together with interest at 7.5% from the date of the claim petition to Respondent Nos.1 to 4 herein who were the claimants before the Tribunal. The break up of the amount awarded by the Lower Court are summarised below:-

For loss of income Rs.1,000 X 12 X 16	Rs.1,92,000/-
For Funeral expenses	Rs. 2,000/-
For loss of love and affection	Rs. 10,000/-
Total	Rs.2,04,000/-

9. Aggrieved by the impugned order, the Appellant-Insurance Company has filed the present appeal.

10. The contesting respondents have filed a cross appeal and have paid a sum of Rs.628/- as Court Fee for a sum of Rs.1,25,500/-.

11. In the Cross Objection under Order 41 Rule 22 of the Civil Procedure Code the respondent Nos. 1 to 4 /cross Objectors seek for enhancement of the claim Rs.3,29,500/- that was originally claimed before the Lower Court. Details of the claim canvassed at the time of hearing was increased as follows :

	Amount Claimed
Loss of consortium	Rs.1,00,000/-
Loss of love and affection for petitioner Nos.2 and 3	Rs.2,00,000/-(each Rs.1,00,000/-)
Loss of love and affection for 4th petitioner	Rs. 50,000/-
Loss of estate	Rs.2,00,000/-
Funeral expenses	Rs. 25,000/-
Transportation	Rs. 10,000/-
Total	Rs.5,85,000/-

12. The Appellant was represented by Ms.Harini, learned counsel for M/s.M.B.Gopalan, N.Vijay Raghavan and M.B.Raghavan and learned counsel Mr.M.Pa.Thangavel on behalf of the contesting Respondent Nos.1 to 4/cross Objectors. They have filed a written submission.

13. The two grounds have been raised by the Appellant in the present appeal is whether the Tribunal was justified in granting compensation to the legal heirs of the deceased if the deceased was himself not covered by the policy. It is the case of the Appellant that neither as per the policy nor under Section 147 of the Act, a third party rider of a motorcycle are contemplated.

14. The facts and evidence before the lower Court have not been disputed. Appellant submits that Respondent Nos.1 to 4 are not entitled for compensation on the strength of the risk covered by the policy as it was confined to only for "personal accident" of the owner-driver alone and not.

15. The respective counsel argued at length. On behalf of the Appellant it was argued that Ex.R1-Insurance Policy issued under Section 147 of the Motor Vehicles Act, 1988 did not cover any risk to person who was not the owner of the vehicle.

16. It was argued that the insured policy covered only accidents where the death or injury was sustained by the owner-driver and not a driver simplicitor who was not owner of the motorcycle insured with the Appellant. In support of the above, the learned counsel for the Appellant relied upon the following two decisions:

i) Ningamma and Another vs. United India Insurance Company Ltd.,(2009) 13 Supreme Court Cases 710;

ii)New India Assurance Company Ltd., vs. SadanandMukhi and Others, (2009) 2 SCC 417;

iii)New India Assurance Co., Ltd., vs. Smt.Neeraj and Orthers inMAC.APP.No.550/2013

iv)National Insurance Co., Ltd., vs. Prem and Others in MAC.APP.No.540 of 2012;

v)Branch Manager, National insurance Co., Ltd., vs. K.B.Sankarin CMA.No.1315 of 2005

17. Learned counsel also submitted that the Motor Insurance policy is a contract of indemnity and it saves the insured from the risk which the insured may be exposed from a claim by a third party. The deceased was not a third party. The accident was not covered under the policy.

18. The Counsel for the Respondent/Cross objectioner drew attention to the following cases:

vi)New India Assurance Co., Ltd., vs. Umesh Kumari and others(2010) 1 RCR (Civil) 669 : 2011 ACJ 890 (P & J);

vii)Bajaj Allianz General Insurance Co., Ltd., vs. Jamser Singh and another, 2014 SCC Online P& H 17806: 2016ACJ 47;

viii)National Insurance Co., Ltd., vs. Sinitha and Others ,2012(1) TN MAC 1 (SC);

ix)Nagappa vs. Gurudayal Singh & Others, 2004 (2) TN MAC 398 (SC);

x)Rani and 4 others vs.Oriental Insruance Co., Ltd.,in CMA.No.1832 of 201

19. Learned Counsel for the Appellant has resisted the cross objection/Appeal for enhancement on the ground that respondent Nos.1 to 4 were not entitled for compensation and therefore submits that the question of enhancement will not arise at all.

20.Though the above citations were relied upon it is noticed that some of the decisions may not be relevant to the facts of the present case directly. There has been further clarity by way of judicial pronouncements on the subject which may be relevant.

21. The Hon'ble Supreme Court in the case of the Judgment reported in National Insurance Co., Ltd., Lakshmi Narain Dhut (2007) 3 SCC 700 has recognized the difference between Thirty Party Risk and owner's risk.

22. In Para Nos.21, 22 and 23 of Ningamma and Another vs. United India Insurance Company Ltd.,(2009) 13 SCC 710, the Hon’ble Supreme Court held as under:-

> “21. “In our considered opinion, the ratio of the decision in Oriental Insurance Co., Ltd., case is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163 A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.
>
> 22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the M.V.Act.
>
> 23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. ”

23. In New India Assurance Co., Ltd., vs. Sadanand Mukhi And Others(2009) 2 SCC 417, the Hon'ble Supreme Court referred to Para No.14 of the Oriental Insurance Company Ltd., vs. Meena Variyal (2007) 5 SCC 428 which reads as under:

> i ".......... On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant , whether the deceased could be understood as a work man coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance company is not liable to indemnify the insured in the case on hand".

24. In Sadanand Mukhi case referred to supra, the son while riding his father's motor cycle died in an accident when a stray dog came in front of the vehicle. A claim under Section 166 was filed which was allowed by the Tribunal and upheld by the High Court. After referring to a plethora of judgment, the Hon'ble Supreme Court allowed the appeal of the Insurance Company by holding that it was not liable to pay compensation. In para 13, the Hon'ble Supreme Court held as under :

> 14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

25. Though, the above decision does not indicate as to whether the subject insurance in that case was that of a third party insurance or a comprehensive insurance or not, it is evident that if the owner himself could not claim insurance, persons stepping into his shoes namely the legal heirs of the deceased rider of the motor cycle also could not claim the compensation.

26. Therefore, the question to be answered is whether a P.A Cover for the owner-driver would cover a driver who was not the owner and if so, whether the legal heirs can claim compensation.

27. In National Insurance Company Ltd., Vs. Sinitha (2012) 2 SCC 356 it was argued on behalf of the Insurance Company that the deceased Shijo being the rider of the motorcycle cannot be treated as a third party. It was argued on behalf of the insurance company that the claim under Section 163-A can only be raised at the behest of a third party based on the determination rendered by the Hon'ble Supreme Court in Oriental Insurance Company Limited vs. JhumaSaha, 2017 (2) TN MAC 56 (SC) 2007(9) SCC 263. In the said case "the deceased was the owner of the vehicle. The claimant blamed himself for the accident. The accident did not involve motor vehicle other than the one which he was driving. The Court held that if the insured cannot be fastened with liability, the question of insurer being liable to indemnify the insured does not arise."

28. According to the Insurance Company in Sinitha case, since the rider of the vehicle involved in the accident was Shijo himself, he would step in the shoes of the owner, and as such, no claim for enhancement can be raised in an accident caused by him, under Section 163-A of the Act. The Hon'ble Supreme Court refused to interfere with the High Court decision and in para-19 held as under:

> "'19. To substantiate his second contention, it would be essential for the petitioner to establish that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the

relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested not its shoulders. Since the relationship between the Shijo and owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that shijo while riding of the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the Judgment rendered by this court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner"

29. The Hon'ble Supreme Court in the above case highlighted the scope of Section 140 in Chapter X and Section 163-A in Chapter XI of the Act. The above view has been diluted by the Hon'ble Supreme Court in United India Insurance Co., Ltd., vs Sunil Kumar and other 2017 SCC Online 1443 by its order dated 24.07.2017 in Civil Appeal No.9694 of 2013. The Hon'ble Court has held that it is not open to the insurer to raise any defence of negligence on the part of the victim under Section 163A of the Act. It was held that a claim under Section 163A of the Act cannot be defeated by the insurance company on the ground of negligence on the part of the claimant/deceased claimant. Para 8 of the ordere reads as under:-

"8.From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/04 to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.”

30. In Bagyalakshmi vs. United Insurance Company Ltd., (2008) 7 SCC 148, the Hon’ble Supreme Court had to consider an appeal from the Division Bench of this Court. In the decision impugned before it, the Hon’ble Division bench of this Court had held that the legal heirs were entitled to get compensation. In Royal Sundaram Insurance Co., Ltd., vs. V.A.Meenakshi 1 C.M.A.No.312 of 2009, the Division Bench of this Court dismissed the appeal filed by the Insurance Company and affirmed the order of the Tribunal awarding a compensation of Rs.19.10 lakhs to the legal representatives of the deceased passenger of the insured vehicle. This Court had observed as under:

29. Therefore, it is clear from the Act itself, the words of the policy and the decision in Amrit Lal Sood case (1998) 3 SCC 744 that a comprehensive policy covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is driving his car covered by a comprehensive policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and the children are permanently disabled by the injuries. If we agree with the appellant-Insurance Company, those pathetic claimants will not get any compensation. The law never intended this to happen. That is why the TAC explicitly came out

with the clarificatory circular in 1978. We cannot forget that the words used are third party' and comprehensive, so we cannot deny this relief to the third-party occupant in a car covered by a comprehensive policy"

31.The Hon'ble Supreme Court therefore referred the case to the larger bench.

32. In National Insurance Company vs. Balakrishnan and another, (2013) 1 SCC 731 the Hon'ble Supreme Court considered the issue, "What would be the liability of the insurer if the policy is a comprehensive/package policy." It observed that it was 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.

33. In paras 24, 25, 26 and 28 it was observed as under :

> 24. " ………Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the comprehensive policy and the said position continues to be in vogue till date. It had also admitted that the comprehensive policy is presently called a package policy. It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the comprehensive/package policy irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued."

25.It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated [2011 ACJ 1415 (Del)] thus: (Yashpal Luthra case [2011 ACJ 1415 (Del)] , ACJ p. 1424, para 27)

> '27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.'

26. In view of the aforesaid factual position, there is no scintilla of doubt that a comprehensive/package policy would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an Act Policy stands on a different footing from a Comprehensive/Package Policy. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a Comprehensive/Package Policy covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the Act Policy which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a Comprehensive/Package Policy, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the

statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

27.In view of the aforesaid legal position, the question that emerges for consideration is: whether in the case at hand, the policy is an 'Act policy' or 'comprehensive/package policy'? There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a 'comprehensive policy' but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a 'package policy' to cover the liability of an occupant in a car."

28. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the Tribunal as regards the liability of the insurer and remit the matter to the Tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a comprehensive package policy", the liability would be fastened on the insurer.

34.The above view was followed by the Hon'ble Supreme Court in Oriental Insurance Co., Ltd., vs. Surendra Nath Loomba, (2012) 13 SCC 792.

35.The Division Bench of this Court in Divisional Manager, United India Insurance Co., Ltd., vs. R.Rekha and 3 Others 2017 (2) TN MAC 674 (DB) noted that 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/- in case of two wheeler is to be increased to Rs.15,00,000/-

36. After perusing the pleadings, documents, evidence, grounds of appeal and case laws cited and the arguments advanced on behalf of either side and having deliberated on the issue it is noticed that in the present case, the motor cycle was insured to cover " personal accident" P.A.of the owner-driver, the owner. The present case is about rider of motor cycle who was not the owner.

37. The policy specifically states that "Subject to the limits of the liability as laid out in the schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to be in respect of copy of Insurance Policy, which reads as follows:

> i) Subject to the limits of liability as laid down in the schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of
>
> i) death of or bodily injury Divisional Manager, United India Insurance Co., Ltd., vs. R.Rekha and 3 Others 2017(2) TN MAC 674 (DB) including occupants carried in the insured vehicle (provided such occupants are not claimed for hire or reward) but except so far as is liable where such death or injury arises out of and in the course of the employment of such person by the insured.
>
> ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

38.Thus, the above clause in policy is expansive. It not only includes any accident caused by or arising out of the use of the insured vehicle against all sum which insured shall be liable to pay in respect of death or bodily injury to any person. As the deceased and his family member stepped into the shoes of the owner of the vehicle as held in Ningamma Case, compensation under Section 163A cannot be awarded to the respondents. However, Section III of the policy allows owner of the vehicle to get insurance while mounting into/dismounting from travelling in the insured vehicle as a co-driver.

39.Section III of the policy reads as under:

> "Subject otherwise to the terms exceptions conditions and limitations of this policy, the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured whilst mounting

into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result".

40. The Tribunal has concluded that the appellants' has neither proved negligence nor carelessness or technical fault in the motorcycle. The Tribunal has at the same time concluded that the death was on account of the accident while riding motorcycle and therefore the family of the deceased was entitled to get compensation as per the decision of the Supreme Court in 2000(5) SCC 113 and the decision of this Court in 1997 ACJ 118.

41. Extra premium was paid to cover the eventuality of "personal accident" of the owner alone apart from the third party risk. The deceased rider was not a third party. The deceased however stepped into the shoes of the insured owner and therefore his legal heirs are entitled to claim compensation.

42. At the same time, the decision of the Hon'ble Supreme Court in Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 12 and the decision of the Constitution Bench of the Hon'ble Supreme Court in National Insurance Company limited vs. Pranay Sethi and others, 2017 (2) TN MAC 690 cited are not relevant as the legal heirs of the deceased cannot claim compensation as the deceased was not a third party. The deceased stepped into the shoes of the owner and is therefore, entitled to get compensation as if he was the owner.

43. Though the policy restricts the risk to a mere Rs.one lakh for personal accident, in the facts of the case, the compensation awarded appears to be a just compensation does not require interference in the light of the observation of the Hon'ble Division Bench of this Court in Divisional Manager, United India Insurance Co., Ltd., vs. R.Rekha and 3 Others 2017 (2) TN MAC 674 (DB).

44.In the result,

(i) C.M.A.No.25 of 2008 is dismissed.

(ii) Cross Objection No.53 of 2017 is dismissed.

(iii)The Appellant-Insurance Company is directed to deposit the the award amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the respondents 1 & 4/claimants 1 and 4 are permitted to withdraw their respective shares with accrued interest, on due application, after adjusting the amount, if any, already withdrawn.

v) The share of the minor respondents 2 & 3/claimants 2 and 3 are to be deposited in any one of the nationalised banks till they attain majority while the first respondent-claimant/guardian of the minors is permitted to withdraw the accrued interest once in three months.

vi) On attaining majority, respondents 2 and 3 are permitted to withdraw their respective shares. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Arul

To

1.The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras-600 104.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.85029

C.M.A.No.25 of 2008
and M.P.No.1 of 2008 &
Cross.Obj.No.53 of 2017

EV(CO)
GSP(05/02/2019)