

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 378 OF 2020

APPELLANTS: -
(Ori. Petitioners)

1. Smt. Mangala wd/o Vijay Khandar
Aged about-43 years Occu. Household.
2. Ku. Pallavi d/o Vijay Khandar,
Aged about-22 years, Occu. Student
3. Sagar s/o Vijay Khandar,
Aged about-21 years, Occu. Student.
4. Smt. Indubai wd/o Annaji Khandar
Aged about-70 years, Occu. Household.

All the Appellants No. 1 to 4 are
R/o Patansawangi, Tah. Saoner,
District- Nagpur.

... Versus ...

RESPONDENT: -
(Ori. Respondent)

National Insurance Company Limited,
Through its Manager,
Dharampeth Branch, Laxmi Bhavan
Square, Dharampeth, Nagpur-440010

Shri H.P. Lingayat, Advocate for the Appellants.
Shri B.P. Bhatt, Advocate for the Respondent.

CORAM : **S.M. MODAK, J.**

DATE OF RESERVING THE JUDGMENT : **14/09/2020**

DATE OF PRONOUNCING THE JUDGMENT: **29/09/2020**

JUDGMENT:-

The issue involved in this appeal is about liability of insurance company to pay as per clause of '*personal accident cover*' in the insurance policy. The issue is about extent of liability of insurance company when the insured/owner of the Jeep was himself the driver-cum-deceased and when no other vehicle is involved. The issue is whether the Motor Accident Claims Tribunal (for short "M.A.C.T") has got jurisdiction to decide such claim petition.

02] The learned Member of M.A.C.T. negated the grievances of the claimants who are legal representatives of the deceased/insured. The legal representatives of the deceased - Vijay Annaji Khandar claimed compensation from the respondent - Insurance Company from the M.A.C.T., Nagpur by invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short "M.V. Act").

03] Existence of valid insurance policy was not in dispute. Deceased - Vijay Khandar was the owner of the Jeep and a policy holder. On the material date i.e. 16/10/2004 at 17:30, he was driving the Jeep on Saoner, Nagpur Road. The deceased dashed his Jeep to a tree while avoiding a head on collision with a Tata Sumo. The Sumo was coming from opposite direction and the driver take the Sumo on right side. If the deceased could not have taken right turn, further vehicular accident might have happened.

Deceased succumbed to the injuries.

04] The petition was contested by the Insurance Company – respondent. Deceased himself was the owner/insured. The Company denied their liability. The policy does not cover loss occasioned to the insured. Because he is not the third party. There is also emphasis on withdrawal of earlier claim petition filed under Section 166 of M.V. Act and non-maintainability of fresh petition under Section 163-A of M.V. Act. Both have adduced oral and documentary evidence.

05] It is true that issue of negligence is not relevant in an inquiry in a claim petition under Section 163-A of M.V. Act. Trial Court upheld the objection taken on behalf of the insurance company. Trial Court held:

“the owner/insured cannot be said to be a third party
and hence exonerated the company”.

It is the correctness of this judgment dated 6th February, 2020 passed in M.A.C.P. No.6 of 2015 is challenged before this Court by the original claimants.

06] Learned Advocate Shri Lingayat and learned Advocate Shri Bhatt argued on behalf of original complainant/appellant and respondent/Company respectively. Both relied upon various judgments. Amongst them, there is unanimity that deceased/owner/insured is not a third party falling under the provisions of Section 147 of M.V. Act. So, the

scope of appeal is narrowed down. The issue is restricted--

1) whether Insurance Company is liable to reimburse under the caption personal accident of insured?

2) whether the M.A.C.T can award compensation?

07] Both the learned Advocates have relied upon various judgments. One can claim compensation under Section 166 or under Section 163-A of M.V. Act. There can be compensation for the loss caused on account of death or permanent injury. There can be compensation for damage caused to the property. There can be a claim for compensation on account of both the heads. An accident may involve only one vehicle or it may involve more than one vehicle.

08] You may claim compensation from the registered owner only (if vehicle is not insured) or from registered owner and the insurance company. In an accident, there may be loss/damage to the occupants of the vehicle/to the vehicle or there may be loss to persons/property outside the vehicle. Law mandates the owner to obtain insurance policy. It is called as Act Policy. It is a biparty agreement between owner/insured and the company/insurer. So, the insurance company indemnifies the insured to repay if any loss is caused to a third party due to act of insured. Section 146 of M.V. Act mandates the owner to obtain insurance policy before motor vehicle is put to use. Whereas Section 147 of M.V. Act lays down

requirements of policies and limits of liability. So also the insured is free to contract with the insurer to reimburse for the personal loss caused to the occupants of the vehicle. There is a purpose behind mandating to obtain Act Policy. Once you causes an accident thereby causing damage to a third person, the interest of such third person needs to be protected. In this appeal, we are not concerned with liability to reimburse loss of third party. But we are concerned with liability of insurance company to reimburse for the loss caused to the insured as per personal accident coverage. Though, trial Court has not given finding on this issue, both the learned Advocates have consented to this Court to give finding on this issue by this Court.

09] Always, there is a controversy raised who is a 'third party'. It is not defined. In common parlance, a party other than insurer and insured is called third party. Question is always raised whether registered owner can be said to be a 'third party'. This question is no more *res-integra*. There are numerous judgments apart from the judgments cited before me. Learned Advocate Shri Lingayat cited these judgments because there were directions to pay as per personal accident clause (even though the insured is not treated as a third party).

JUDGMENTS RELIED UPON BY THE APPELLANTS

“10.The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janakraj could

not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to”.

10] These were the observations of Hon’ble Supreme Court in case of ***Oriental Insurance Company Limited Vs. Rajni Devi and Ors.*** reported in (para 10). That was a claim under Section 163-A of M.V. Act and only one vehicle (motorcycle) was involved and one of the rider expired when motorcycle went out of control. Owner paid extra amount of Rs.50/- covering his personal insurance (liability of compensation was quantified to Rs.1,00,000/-).

11] In case of ***Ningamma and Anr. Vs. United India Insurance Company Limited*** reported in ***2009 (13) SCC 710***, it has been held that:

“19. 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 MV Act. 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 MV Act.”

It has been further held:

“20. 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 MV Act 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”.

Deceased succumbed to the injuries caused while driving motorcycle. Motorcycle hits a bullock cart (which was proceeding ahead) when the cart stops suddenly. Deceased was not the owner. He borrowed it from the owner. As such, he steps into the shoes of the owner. Claim petition was under Section 163-A of M.V. Act [however the matter was remanded to High Court for considering it under Section 166 of M.V. Act].

12] Hon'ble Supreme Court had the occasion to decide correctness of the decision of High Court in case of ***National Insurance Company Limited Vs. Ashalata Bhowmik and Ors.*** reported in ***2018 (9) SCC 801***. The insurance company was held responsible to pay to the legal representatives of deceased to driver/owner of vehicle. Hon'ble Supreme Court reiterated the law regarding liability of insurance company in case of death of owner/its own insured. When insured is not liable, question of liability of insurer does not arise (however insurance company was directed to pay Rs.2,00,000/- with interest for personal accident cover).

13] In case of ***Ramkhiladi and Anr. Vs. The United India Insurance Company and Anr.*** reported in ***2020 (2) SCC 550***, Hon'ble Supreme Court dealt a case involving accident of two motorcycles. The driver of one motorcycle expired. His legal representatives decided not to proceed against the owner/insurance company of second motorcycle. They proceeded under Section 163-A of M.V. Act against the owner and insurance company of motorcycle driven by the deceased.

14] Learned Member of M.A.C.T. held company responsible. The deceased was held to be in the employment of the owner. High Court set aside the judgment. F.I.R. was lodged against the driver of another motorcycle and the claimants have not joined the owner and company of that motorcycle.

15] Hon'ble Supreme Court on re-appreciation of evidence held "deceased was permissible owner and not employee of owner" (para 5.3). Deceased was not held to be a third party and the parties are governed by the contract of insurance and liability of company would be qua 3rd party only. The claimants were awarded Rs.1,00,000/- with interest under personal accident claim.

JUDGMENTS RELIED UPON ON BEHALF OF INSURANCE COMPANY

16] According to learned Advocate Shri Bhatt in following judgments, the M.A.C.T. is held not competent to award amount as per personal accident clause. They are in case of---

1. ***Smt. Sangeetha Subramani and others Vs. Sri Krishna Chari Puttachari*** delivered by High Court of Karnataka on 24/09/2018 (in M.F.A. No.5337/2011).
2. ***M/s. The Cholanandalam MS General Insurance Company Limited Vs. Ramesh Babu*** in C.M.A. No.2434 of 2019 and

C.M.P. No.11121 of 2019 dated 02.09.2020 delivered by
High Court of Madras.

17] In case of ***Smt. Sangeetha Subramani***, the issue was “whether rider of a two wheeler (who is not the owner) can claim compensation as third party for an accident where no other vehicle is involved. After taking overview of the decision of High Court as well as Hon’ble Supreme Court, the issue was answered in the negative. The claimants were held not entitled to claim compensation under Section 163-A or 166 of M.V. Act. Learned Advocate Shri Bhatt stressed more on the observations, when comprehensive policy is there. In that eventuality also, the claimants are entitled not to claim compensation for own damage and premium.

18] Learned Advocate Shri Lingayat politely disagreed with those observations. I have read this judgment minutely. There cannot be a dispute about liability of company to reimburse the loss to the insured himself. The dispute is whether insurance company is also not liable to reimburse to the insured when there is personal accident cover. It will be relevant to consider in what manner, the High Court came to that conclusion.

High Court of Karnataka has referred to two judgments of Hon’ble Supreme Court. They are in case of--

1. ***Oriental Insurance Company Limited Vs. Rajni Devi and Ors.***

reported in ***2008 (5) SCC 736***.

2. *National Insurance Company Ltd. Vs. Laxmi Narain Dhut*
reported in *(2007) 3 SCC 700*.

No doubt, the High Court of Karnataka has considered the observations in case of *Rajni Devi* pertaining to entitlement of insured. But it is important to note that finally Hon'ble Supreme Court gave directions to pay Rs.1,00,000/- for personal accident cover.

In para No. 24 of *Smt. Sangeetha's Case*, it has been observed:

“24. So far as claims relating to own damage are concerned, the Apex Court, in the case of National Insurance Company Limited Vs. Laxmi Narain Dhut has held that it has to be decided by another forum i.e., forum created under the Consumer Protection Act, 1985. Therefore, even if the policy is a comprehensive policy covering the risk of the insured, a claim seeking compensation for death or permanent injuries suffered by the insured, a claim petition under any of the provisions of MV Act, is not maintainable. On the same principles, if a contract policy covers not only the owner-cum-driver of the vehicle, but also covers “any other person driving the vehicle”, the claim cannot be maintained before Motor Accidents Claims Tribunal (for short ‘MACT’). The remedy lies before the Consumer Redressal Forum”

Probably, High Court of Karnataka has considered these observations even while rejecting the claim under comprehensive policy. According to learned Advocate Shri Lingayat, these observations are obiter dicta and they are not the observations on the issue involved in that case before Hon'ble Supreme Court. According to him, High Court of Karnataka committed error in accepting those observations.

19] In case of *M/s. The Cholamandalam*, similar issue was involved about liability of insurance company to comply with the promises given as per personal accident coverage clause of package policy. The claim was allowed by M.A.C.T. Number of contentions were raised on behalf of insurance company before the High Court. It includes the jurisdiction of M.A.C.T., entitlement to compensation (more than the maximum limit mentioned in the clause) under the phrase 'just compensation'. All the contentions were answered in favour of the insurance company and the claim petition was dismissed. Learned Advocate Shri Bhatt relied upon paragraph Nos. 28 to 38 and 41. He brought to my notice that the Court was pleased to differentiate with the observations made in case of *Bajaj Allianz General Insurance Company Limited Vs. C. Ramesh* reported in *2013 (1) TN MAC 325* (relied upon by the appellant).

20] Learned Advocate Shri Lingayat tried to distinguish the fact of that case. According to him, there was an objection to jurisdiction taken at the beginning itself. Whereas, in this case it is not taken. It is true that in the case of *M/s. The Cholamandalam*, there was jurisdiction objection taken at the beginning. It is also true that it was not decided by the M.A.C.T.

21] I have read the written statement filed on behalf of the insurance company before the trial Court. In para No.17, there was a plea taken that deceased is not third party and hence, claim is not maintainable. There was

also a plea that once earlier petition is dismissed (and restoration petition was not pressed) fresh petition on the same cause of action is not maintainable.

CONCLUSION

22] With respect to those observations, I differ with the view taken by High Court of Karnataka and High Court of Madras. The issue involved before Hon'ble Supreme Court in case of ***Laxmi Narain Dhut*** is relevant to be considered.

OBSERVATION IN CASE OF LAXMI NARAIN DHUT

“21. Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company, but it has to be decided by another forum i.e. forum created under the Consumer Protection Act, 1986 (in short “the CP Act”). Before the Tribunal, there were essentially three parties i.e. the insurer, the insured and the claimants. On the contrary, before the Consumer Forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved”.

It will also be material to consider the background in which above observations are made. Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Swaran Singh*** reported in ***2004 (3) SCC 297*** dealt with the scope of defences available to insurance company while defending the claim petition. Whereas in case of ***Laxmi Narain Dhut***, Hon'ble Supreme Court was posed with a question “whether the observations in case of

Swaran Singh are applicable when third party claims are not involved. It was held “decision in ***Swaran Singh*** case has no application to cases other than third party risks”. On this background, observation in para 21 are made. So, I agree with learned Advocate Shri Lingayat that High Court of Karnataka ought not to have considered the above observations while deciding the case of ***Smt. Sangeetha***.

23] In case of ***M/s The Cholamandalam***, the High Court of Madras has emphasized on difference between statutory policy and contractual policy. It had also observed about maintainability of claim before M.A.C.T. when issue as to adherence to the promises as per contractual policy is involved. I have minutely read those observations. There is no dispute about difference in between statutory policy and contractual policy. It is also true that the provisions about obtaining statutory policy is recognized in Chapter XI (Insurance of Motor Vehicles Against Third Party Risks) of M.V. Act. It is also true that there is clause as to ‘personal accident coverage’ in the policy at Exh.37. The policy also includes covering risk of third party. I feel that the High Court in ***M/s The Cholamandalam’s*** case has taken restricted view while dealing with the issue of jurisdiction of M.A.C.T. I differ with that view. The relevant provisions of M.V. Act need to be considered.

RELEVANT PROVISIONS OF M.V. ACT, 1988

24] I do not accept the submission of learned Advocate Shri Lingayat that “the insurance company can be fastened with the liability under the

provisions of sub-section 5 to Section 147 of M.V. Act”. The reason is simple. That clause will come in picture only when the policy is issued under Chapter XI. So, unless and until the issue of third party risk is involved, that provision cannot be resorted to.

25] The provisions of Section 165 of M.V. Act deal with jurisdiction of M.A.C.T. When certain conditions are fulfilled, it gets jurisdiction. They are---

- a) Claim for compensation in respect of accidents.
- b) Arising out of use of motor vehicle.

If these conditions are fulfilled, M.A.C.T gets jurisdiction. The consequences of accident may be death or bodily injury (two persons) or damage to any property of third party. Now, we have to interpret these provisions *vis-a-vis* the provisions of Section 147 of M.V. Act. The latter section deals with the requirements of policy in case of third party risk. Now, Section 165 of M.V. Act nowhere contemplates dealing with a claim only when policy is obtained under Section 147 of M.V. Act. We have to understand the legislative meaning for not including this requirement in Section 165 of M.V. Act. The reason is simple. There may be a possibility that a person may use a vehicle without obtaining statutory policy or he may not renew the policy. In that eventuality, it will be argued that M.A.C.T. cannot entertain the petition. However, that is not the legislative mandate. So, I am inclined to hold that petition before the M.A.C.T. will be maintainable once the condition under Section 165 of M.V. Act are fulfilled. So, in the given case, there is a clause of

personal accident coverage in case of motor accident, M.A.C.T. can entertain the petition.

26] So also I am fortified by observations of Hon'ble Supreme Court in case of *The Chairman, Thiruvalluvar Transport Corporation Vs. The Consumer Protection Council* reported in *1995 (2) SCC 479* and High Court of Madras in case of *Bajaj Allianz General Insurance Company Limited Vs. C. Ramesh* reported in *2013 (1) TN MAC 325*. High Court of Madras in case of *Bajaj Allianz General Insurance Company Limited* has elaborately dealt with the present issue. After considering various reported and unreported judgments, it came to the conclusion that claim under personal accident cover would also lie before M.A.C.T. and there is no need for the injured/legal representative of the deceased to go to Consumer Forum (para 59). At the same time, it will be relevant to see what our Hon'ble Supreme Court has held about the jurisdiction of the Consumer Forum. This situation has arisen in case of *Consumer Protection Council* as referred above. The complaint was made directly to National Commission by Consumer Protection Council to claim up compensation due to death of a traveler of a bus. It was granted. When the State Transport Corporation have approached the Hon'ble Supreme Court, the decision was set aside.

27] After taking overview of the provisions of Consumer Protection Act and Motor Vehicles Act, it was held that Consumer Court is not having

jurisdiction. The Motor Vehicles Act is a special law dealing with motor accident compensation, whereas Consumer Protection Act is a general law dealing with grievances of consumers. The complaint was scrutinized in the light of the definition of Complaint and Service given in 1986 Act. It was held that failure of the insurance company to accept the claim does not amount to deficiency in service. It was observed “the complaint, in the instant case, cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but fatal injury was the direct result of the accident.

28] It is pertinent to note that, Hon’ble Supreme Court in the cases referred above i.e. in cases of *Rajni Devi*, *Ashalata Bhowmik* and *Ramkhiladi* was pleased to award compensation as per personal accident cover.

FINAL CONCLUSION

29] For the above discussion, I am not inclined to accept the contention of Shri B.P. Bhatt, learned Advocate for the respondent that M.A.C.T. cannot entertain the claim made by the insured/owner under personal accident claim against the insurance company. Dismissal of Petition filed under Section 166 of M.V. Act was not on merits but it was for default. Restoration application was also dismissed for default so, it will also not come in the way of claimants.

FACTUAL ASPECTS

30] Amongst the claimants, claimant – Smt. Mangala Khandar (wife of the deceased) has given evidence. She is not the eye witness. One Purushottam Bonde has given evidence. He was travelling in the Tata Sumo Jeep driven by the deceased. He had seen the accident. In order to avoid collision when the truck coming from the opposite direction, the deceased was compelled to take right turn and the jeep hits the tree. Whereas Nilima Ramesh Godbole is the representative of the insurance company. She had brought on record the certificate of insurance at Exh.37. She admits that as per the personal accident cover risk up to Rs.2,00,000/- is covered. The company has paid Rs.35,000/- towards the damage of the vehicle but she admits that no document to that effect has been filed.

31] I am not inclined to interfere in the findings given by the learned Member of M.A.C.T. on the point of non-applicability of the provisions of Section 163-A of M.V. Act to the present claim. I concur with him. It is not clear whether the claimants have argued before the learned Member of M.A.C.T. about invocation of personal accident cover or it was argued but not answered by the learned Member of M.A.C.T. Already, the parties have adduced the evidence and they were aware about the contents of the contract. The terms have been reduced in the certificate of insurance. (Though the details of compensation vis-a-vis injuries does not find place in

Exh.37).

32] It is undisputed fact that Rs.100/- was paid towards the premium compulsory personal accident to owner-cum-driver and maximum liability is quantified to Rs.2,00,000/-. I think the appellants are entitled to get Rs.2,00,000/- from the Insurance Company. So, I am inclined to allow the appeal. The appellants are also entitled to get interest @ 6% on this amount from the date of filing of the petition till recovery. Hence, I pass the following order:-

ORDER

- i. The appeal is **allowed**.
- ii. The judgment dated 6th February, 2020 delivered in Special Claim Petition No.6/2015 is set aside (only to the extent of not granting compensation under personal accident cover).
- iii. The claim petition is allowed.
- iv. The respondent – Insurance Company is directed to pay Rs.2,00,000/- (rupees two lakhs only) to the appellants towards the compensation on account of death of Vijay Khandar along with the interest @ 6% from the date of filing of petition till realization.
- v. On depositing the amount, the M.A.C.T. is directed to

distribute it as follows:-

- a) An amount of Rs.25,000/- (rupees twenty five thousand only) be paid to appellant No.4 – Smt. Indubai Khandar.
 - b) An amount of Rs.25,000/- (rupees twenty five thousand only) be kept in fixed deposit with any Nationalized Bank in the name of appellant No.3 – Sagar Vijay Khandar till the time he attains the majority.
 - c) An amount of Rs.1,00,000/- (rupees one lakh only) be paid to appellant No.1 – Smt. Mangala Khandar.
 - d) An amount of Rs.50,000/- (rupees fifty thousand only) be paid to appellant No.2 – Ku. Pallavi Khandar (who must have attained the majority up till now).
 - e) The amount of interest be paid to appellant No.1 – Smt. Managala Khandar only.
 - f) The cost of the main petition and this appeal be paid to the appellants by the respondent.
 - g) The amount to be deposited within 15 days with M.A.C.T., Nagpur.
- vi. Decree be drawn up.
- vii. Record and proceedings be sent back.

Civil Application (CAF) No.1123/2020

In view of the disposal of the first appeal, this application praying for dispense with typed copy of handwritten Document/Annexure Nos.6 to 16 and 20 does not survive. It is disposed of accordingly.

JUDGE

vijay