



C.M.A(MD)Nos.148 of 2021 and 190 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.09.2022

PRONOUNCED ON: 07.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.148 of 2021 and 190 of 2022

C.M.A.(MD)No.148 of 2021:

K.Ganesh Kumar : Appellant / Petitioner

Vs.

The Branch Manager,
New India Assurance Company Ltd.,
D.No.584,
Virudhunagar Main Road,
Thiruthangal,
Sivakasi Taluk,
Virudhunagar District.

: Respondent / Respondent

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2020, passed in M.C.O.P.No.78 of 2015, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Srivilliputtur.

For Appellant : Mr.K.Gokul

For Respondent :Mr.N.Dilip Kumar



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The Branch Manager,
New India Assurance Company Ltd.,
D.No.584,
Virudhunagar Main Road,
Thiruthangal,
Sivakasi Taluk,
Virudhunagar District.

: Appellant / Respondent

Vs.

K.Ganesh Kumar

: Respondent / Claimant

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2020, passed in M.C.O.P.No.78 of 2015, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Srivilliputtur.

For Appellant : Mr.N.Dilip Kumar

For Respondent :Mr.K.Gokul

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are directed against the award passed in M.C.O.P.No.78 of 2015, dated 24.06.2020, on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Srivilliputhur.



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2. In C.M.A.(MD)No.148 of 2021, the appellant/claimant, who was awarded with the compensation of Rs.1,26,968/- for the injuries sustained by him, challenged the quantum of compensation awarded by the Tribunal and claimed enhancement.

3. In C.M.A.(MD)No.190 of 2022, the appellant/Insurer, who was made liable to pay compensation of Rs.1,26,968/- with interest at 9% per annum and costs to the claimant for the disability sustained, consequent to the accident occurred on 09.12.2014, challenged the liability mulcted on it and the quantum of compensation awarded by the Tribunal.

4. It is not in dispute that on 09.12.2014 at 05.15p.m., when the claimant was riding a Honda Dream Neo motorcycle, bearing Registration No.TN-84-8244 in Srivilliputhur to Malli main road and on the east of Muthu Lakshmi mill, suddenly a dog crossed the road and hence, the claimant had applied the brake and dashed against the Tamarind Tree and fell down and sustained injuries. The claimant, after getting treatment at Madurai Vadamalayan Hospital, has laid the claim petition under Section 163(A) of the Motor Vehicles Act, against the



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Insurer claiming compensation of Rs.10,00,000/- for the injuries sustained by him and also the damages caused to the vehicle.

5. During the trial, the claimant has examined himself as P.W.1 and exhibited 21 documents as Exs.P.1 to P.21. The Insurer has examined one witness as R.W.1 and exhibited the copy of the Insurance Policy as R.W.1. The claimant's disability certificate has been exhibited as Ex.C.1. The learned trial Judge, upon considering the evidence both oral and documentary, has passed the impugned award, by holding that the claimant is entitled to get the benefits under the Personal Accident Coverage to the tune of Rs.1,00,000/- and Rs.26,968/- towards compensation for the damages caused to the vehicle, all totalling Rs.1,26,968/- with interest and costs. Aggrieved by the said award, both the claimant as well as the Insurer have come forward with the present Civil Miscellaneous Appeals.

6. The points for consideration are

(1) Whether the trial Court erred in applying the personal accident coverage and granting the entire amount of Rs.1,00,000/- to the claimant, despite showing that the personal accident coverage is applicable only



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for the death or permanent total disablement and not for partial permanent disablement and for other medical expenses?

(2) Whether the Tribunal erred in not granting any compensation for the pain and suffering suffered by the claimant and for expenses towards further treatment?

(3) Whether the Tribunal erred in awarding Rs.1,00,000/-, even after giving a finding that the claimant is entitled to get Rs.2,00,000/- for the disability suffered?

(4) Whether the impugned award dated 24.06.2020 is liable to be set aside?

The Points 1 to 4:

7. The learned Counsel for the Insurer would strongly contend that the injured himself was the tort-feasor, as he had caused the accident by his own negligence and as such, the claim petition itself is not legally maintainable under the provisions of the Motor Vehicles Act and that the very claim petition filed under Section 163(A) of the Motor Vehicles Act is legally unsustainable.



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8. In the case on hand, admittedly, the claimant has filed a petition under Section 163(A) of the Motor Vehicles Act. The learned Counsel for the claimant would submit that since the claimant has filed the claim petition under Section 163(A) of the said Act, there was no need or necessity for them to prove the negligence and that it was only an accident arising out of the use of the motorcycle.

9. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in *Ningamma and another Vs. United India Insurance Company Limited* reported in **2009 (13) SCC 710** :

“13.In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to Compensation under Section 163A of MV A or under any other provision(s) of law and also whether the Insurer who issued the Insurance Policy would be bound to indemnify the deceased or his legal representative?.....

18. In the case of [Oriental Insurance Company Ltd. v. Rajni Devi and Others](#), (2008) 5 SCC 736, wherein one of



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us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and



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therefore, he would step into the shoes of the owner of the motorbike.

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 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. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of [section 165](#) may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of [Section 166](#) is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of [Section 162](#), by



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determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.”

10. It is also necessary to refer the following decisions of this Court:

(1) *CMA.No. 4858 of 2019 dated, 09.10.2020 (Joyesmarry and another vs. Velumani and others):*

“13. Once it has been decided that the accident had taken place due to the negligence of the deceased, the question which arises for consideration is whether in such circumstances, the second respondent insurance company is liable to pay compensation to the claimants. The liability of the insurance company is to the extent of indemnification of the insured against the injured person, a third party or in respect of damages to property. The insurer is not liable to indemnify the insured if the accident had taken place where the insured



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himself was driving the vehicle and due to his negligence accident had taken place. The Hon'ble Supreme Court in Oriental Insurance Company Ltd., Vs. Jhuma Saha (Smt) and Ors reported in (2007) 9 SCC 263 has held as follows:

“10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988, would be maintainable.

11. Liability of the insurer – Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of the damages of property. Thus, if the insured cannot be fastened with liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.”

14. The above judgment has also been followed by the Hon'ble Supreme Court in the decision in National Insurance Co. Ltd., vs. Ashalata in Bhowmik and Ors reported in 2018(9)



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SCC 801, wherein at paragraph No.8 it has been held as follows:

8. This Court in Oriental Insurance Co. Ltd., Vs. Jhuma Saha (Smt) and Ors (2007) 9 SCC, 263 was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his LRs was not maintainable.

15. In the instant case, it is the owner of the vehicle who met with the accident due to his own negligence and therefore, the insurance company is not liable to pay any compensation to the claimants.”

(2) *Manager, New India Assurance Company Ltd., vs.*

***Vinayagamoorthy and another* reported in 2020(2) TNMAC 753 :**

“Motor Vehicles Act. 1988 (59 of 1988), Sections 166, 165, 163-A and 140 – Maintainability of Claim Petition under Section 166, when claimant is tortfeasor – Claimant / R1 driving Car belonging to R2/ owner with his wife and two minor children as occupants in Car – claimant drove Car, against flood water on bridge in a rainy day – Car swept away with its occupants in flood and



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wife and two children died – Claim petition filed by Claimant / R1 under Section 166 as a Legal Heir – Claimant, being a tortfeasor himself, cannot claim compensation for his own fault – Nor owner / R2 and Insurer can be held vicariously liable to pay compensation erred in allowing Claim Petition and awarding compensation – Claim under Section 163-A also not maintainable – Tribunal ought to have restricted Compensation under Section 140 – Claimant entitled to Rs. 1,50,000/- (Rs.50,000/- x 3) as compensation under Section 140 – Appellant / Insurer directed to deposit Rs.1,50,000/- with interest at 7.5% p.a within period of 6 weeks.”

11. In the case on hand, as already pointed out, the claimant has driven the vehicle and due to the sudden crossing of the dog, the claimant had dashed against the Tamarind tree, fell down and sustained injuries. Admittedly, the claimant is the owner of the vehicle bearing Registration No. TN-84-8244 and no other vehicle was involved in the accident. To put it in short, the claimant is the tort-feasor. Applying the legal position above mentioned, this Court has no hesitation to hold that the claim petition filed under Section 163(A) of the Motor Vehicles Act is legally not maintainable and the finding of the Tribunal in this regard cannot be



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found fault with. But at the same time, the premium for personal accident coverage for owner cum driver of the vehicle for Rs. 1,00,000/- was admittedly paid.

12. The learned Counsel for the Insurer would fairly concede that as per the contract of the insurance, the owner-cum-driver is entitled to get the amount agreed under the contract. The Tribunal, on that basis, has granted the entire coverage amount of Rs.1,00,000/- to the claimant.

13. The main contention of the Insurer is that the personal accident coverage can only be applied for the death or permanent total disablement and not for partial permanent disablement. In the case on hand, admittedly, the claimant's disability was assessed at 40% and it is only a partial permanent disability.

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



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“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 100% sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of an eye	50%
(iv) Permanent total disablement from injuries other than named above	100%

Provided always that



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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



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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.”

15. At this juncture, it is necessary to refer the judgment of this Court in ***Bajaj Allianz General Insurance Co., Ltd., Vs. C.Ramesh***



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reported in **2013 (1) TN MAC 325**, whereunder this Court has held as follows:

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



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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.



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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



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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.

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

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



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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



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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 disablement, arising out of the injuries, except for items 1



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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.



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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 Puliampatti Road, near Thoppampalayam, due to heavy rain, there was stagnation



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of water in the middle of the road, and though he was riding his Motorcycle, at a moderate speed, while applying the brakes, the vehicle skidded, he fell down, along with pillion and sustained injuries. When the Claims Tribunal has specifically found that there was no negligence or wilful neglect or want of care on the part of the Respondent/Claimant, on the accident, he cannot be said to be a tort-feasor. The judgments relied on, by the learned counsel for the Insurance Company would not lend any support to the contentions of the Company.

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



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Personal Accident Cover Policy, for a sum of R.1,00,000/- , the maximum limit under the Policy.

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

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



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may be, depending upon the nature of injuries mentioned under items 1 to 4. "

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

17. No doubt, the personal accident coverage is permitted only for the owner/driver under the policy. But the Hon'ble Supreme Court in ***Ramkhiladi and another Vs. United India Insurance Company and another*** reported in ***(2020)2 Supreme Court Cases 550***, has held that the borrower of the vehicle from its owner or any other permitted user of the vehicle can also be covered under the Personal Accident Coverage.



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

18. As already pointed out, the scale of compensation is 100% for death or for loss of two limbs or sight of two eyes or one limb and sight of one eye or for permanent total disablement. Since the claimant has not suffered such kind of injuries, he is certainly not entitled to get 100% of the coverage amount ie., Rs.1,00,000/- in the case on hand. Regarding compensation awarded for the damages caused to the vehicle, the Insurer



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has neither challenged the liability nor the amount awarded. In view of the settled position above referred, the claimant is not entitled to get any amount towards pain and sufferings and for future medical expenses or for medical reimbursement. Hence, this Court concludes that the appeal filed by the claimant is absolutely devoid of merits and the same is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal in C.M.A. (MD)No.190 of 2022 filed by the Insurer is partly allowed and the compensation awarded by the Tribunal at Rs.1,26,968/- is reduced to Rs. 66,968/- along with interest and costs. The Civil Miscellaneous Appeal in C.M.A.(MD)No.148 of 2021 filed by the claimant is dismissed. The Appellant / Insurer is directed to deposit a sum of Rs.66,968/- (Rupees Sixty Six Thousand, Nine Hundred and Sixty Eight only) with interest at 9% per annum from the date of petition till the date of payment to the credit of above said M.C.O.P.No.78 of 2015, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Srivilliputhur, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the claimant is permitted to withdraw the same on due application before



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the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the Appellant / Insurance Company. The parties are directed to bear their own costs.

07.11.2022

Index : Yes : No
Internet : Yes : No
SSL

To

- 1.The Motor Accident Claims Tribunal /
Principal Sub Court, Srivilliputtur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)Nos.148 of 2021 and 190 of 2022

07.11.2022