IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

**C.M.A. No.1604 of 2022**
**C.M.P. No.11828 of 2022**

National Insurance Company Limited,
No.2, Sivasakthi nagar,
Thirusoolam Erikkara Street,
Chennai. ... Appellant / Respondent

Vs.

Viji ... Respondent/ Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree passed in M.A.C.T.O.P. New No.22 of 2019, old No.10 of 2018 (Sub Court, Jayamkondam), dated 17.12.2021, on the file of the Motor Accidents Claims Tribunal and Special Court, Jayamkondam.

For Appellant : M/s. N.B. Sureka

For Respondent : Ms. M. Subathra
(For M/s. V. Balamurugan)

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**JUDGMENT**

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed on them to pay the compensation to the claimant vide Judgment and decree passed in M.A.C.T.O.P. New No.22 of 2019, old No.10 of 2018 (Sub Court, Jayamkondam), dated 17.12.2021, on the file of the Motor Accidents Claims Tribunal and Special Court, Jayamkondam.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The case of the claimant is that on 11.08.2017, at about early morning 3:00 AM, the claimant was travelling in his car bearing Registration No.TN-22-DA-3075 from Chennai to his native place at Ariyalur district. While the car reached near Aranthangi bus stop, due to rash and negligent driving by the driver of the car, hit on the electric pole, which resulted in causing injuries to the claimant. Thereafter, the claimant

was taken to the Government Hospital and thereafter, admitted in a private hospital at Kumbakonam. Due to the injuries sustained by the claimant, he has come forward with the claim petition seeking compensation for a sum of Rs.8,00,000/- by invoking Section 166 of the Motor Vehicles Act, 1988.

4. The respondent insurance company, who is the appellant herein is the insurer of the claimant's car and they resisted the claim petition stating that the accident has taken place without involvement of any third party vehicle and only due to the tortitious act of the claimant's driver, who rode the car in a rash and negligent manner, hit on the electric pole and caused the accident. Therefore, the injured claimant, who is the owner of the car is not entitled to claim compensation for the negligence of his driver.

5. Before the Tribunal, the claimant examined himself as P.W.1 and through him Exs.P.1 to P.8 were marked, on the side of the respondent, R.W.1 was examined and Ex.R.1 was marked. The disability certificate of the claimant, issued by the Medical Board, Perambalur was marked as Ex.C.1. The Tribunal after appreciating the evidence placed on record and submissions made on both sides has held that the claimant is entitled to get

compensation under the Personal Accident Coverage, as per the insurance policy and directed the insurance company to pay a sum of Rs.55,000/- as compensation along with interest @ 6% per annum from the date of filing of claim petition till the date of realization.

6. Aggrieved over the award and liability fixed on the insurance company by the Tribunal, they had come forward with this appeal.

7. The learned counsel appearing for the appellant/ insurance company submits that, since the claimant herein is the owner of the vehicle and on his behalf, the insurance company indemnifies to pay the compensation to the third parties, who are covered under the terms of the insurance policy, as per the liability arising out of Section 147. In this case, the Tribunal has invoked Personal Accident Coverage, since the owner is covered under the head personal accident coverage to the extent of Rs.2,00,000/-. As per the scheme of the Motor Vehicles Act, the owner is being indemnified by the insurance company to pay the compensation to any person, who had sustained injuries, but the owner is not entitled to claim compensation from the insurance company for the commission of his

own wrong, since, he is vicariously liable by the Act for the tortitious act committed by his driver. However, the Tribunal by invoking the contract of insurance, awarded compensation to the claimant, but the owner is eligible to claim compensation only for the scheduled injuries mentioned in the insurance policy and in this case, the owner has not sustained any schedule injuries, and same is not covered under the insurance policy, therefore prays to set aside the award of the Tribunal.

8. The learned counsel appearing for the respondent/ claimant submits that the Tribunal, after appreciating the evidence placed on record, more particularly, based on the premium paid by the owner of the vehicle under the personal accident coverage, awarded compensation for the injuries sustained by him. Therefore, prays to confirm the award of the Tribunal.

9. I have considered the submissions made on both sides and perused the entire materials available on record.

10. In this case, the claimant examined himself before the Medical Board and marked Ex.C.1 - disability certificate, wherein, it is stated that the claimant has sustained fracture on the vertebra and his disability is assessed as 5%. The Hon'ble Apex Court in ***New India Assurance Company Limited Vs. Prabha Devi and Ors. [2013 ACJ 1382]***, has categorically held that the liability of the insurer is only, for the purpose to indemnify the injury against the liabilities incurred towards third parties and under Section 147 of the Motor Vehicles Act, the risk of death or bodily injury for the owner of the vehicle is covered under the personal accident coverage. On perusal of the insurance policy - Ex.P.8, the personal accident coverage premium of Rs.100 has been collected by the insurance company, it shows that there is a personal accident coverage for the owner of the vehicle. Hence, the major point to be considered by this Court in the present case is that, *"whether the injured/ claimant, who is the owner of the vehicle is entitled to claim compensation by invoking Personal Accident Coverage."*

11. In ***National Insurance Co. Ltd. Vs. P. Alagesan [2013 (1) TNMAC 685]***, wherein this Court after analysing the scope of Sections 165,

166 and 167 has held that the owner is entitled to maintain claim against the company in terms of comprehensive policy. Subsequently, this Court in ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu [2021 ACJ 979]*** has held that the claim petition filed under section 166 of the Motor Vehicles Act for claiming compensation by invoking personal accident coverage is not maintainable.

12. A Division Bench of this Court recently in ***M/S.Tata AIG General Insurance Company Limited vs. Shanmugam [C.M.A. No.1395 of 2021, dated 19.08.2024]***, while considering the compensation claim made by the owner of the vehicle by invoking Section 163-A and personal accident coverage, answered the question whether the owner is entitled to claim compensation by invoking Motor Vehicles Act for the injuries sustained and it has been observed in paragraph No.25 as follows:

> *"25. The question before us is whether a claim petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident*

*cover. This does not prevent the owner of a vehicle, who has taken a personal accident cover, from claiming compensation from his insurer. However, the Claims Tribunal is not the Forum, before which he can make his claim, as he is not a Third Party. It is open to the owner of the vehicle to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum. In view of the answer to the first question as referred to us, the second question does not arise for consideration."*

13. In view of the above Division Bench judgment of this Court, which has already held that, under Section 163-A of the Motor Vehicles Act, the owner of the vehicle is not entitled to claim compensation for his own negligence and the same prinicple is applicable to the present case, that the owner of the vehicle herein is not entitled to file claim petition under Motor Vehicles Act by invoking personal accident coverage under Section 166 of the Motor Vehicles Act.

14. Accordingly, the order passed by the Tribunal, granting compensation to the claimant, by invoking personal accident coverage is not proper and the same is hereby set aside.

15. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. No cost.

**08.11.2024**

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Judge No.1,
   Motor Accident Claims Tribunal and Special Court,
   Jayamkondam.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

**K. RAJASEKAR, J.**

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**C.M.A. No. 1604 of 2022**

**08.11.2024**