

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2434 of 2019

and

C.M.P.No.11121 of 2019

M/s.The Cholamandalam MS General
Insurance Company Limited,
Dare House, 2nd floor,
N.S.C.Bose Road,
Chennai – 600 001

Appellant

Ramesh Babu

vs.

.. Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 10th July 2018 passed in M.C.O.P.No.27 of 2013 by the Hon'ble Motor Accidents Claims Tribunal (III Additional District Court), at Kallakurichi.

For Appellant : Mr.J.Michael Visuvasam

For Respondent : Mr.T.G.Balachandran

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 10.07.2018 passed in M.C.O.P.No.27 of 2013 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

2. M/s.The Cholamandalam MS General Insurance Company Limited is the appellant and the learned counsel appearing on behalf of the appellant pleaded the facts by stating that on 15.06.2011, at about 06.00 a.m., while the respondent/owner was driving the Tata Indica Tourist Taxi TN-32-L-8595 from Tiruvannamalai to Kallakurichi Main Road, near Vanapuram, due to unavoidable reasons, dashed against the palm tree on the roadside, resulted in the road traffic accident. The respondent is the owner of Tata Indica Tourist Taxi. Thus, the facts admitted is that the respondent, who is the owner of the vehicle, hit against the palm tree on the road side, resulted in an accident.

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3. The respondent/claimant filed the Claim Petition under Section 163 of the Motor Vehicles Act, seeking a compensation of Rs.2,00,000/-

(Rupees Two Lakhs only) from the appellant/Insurance company. The contention of the respondent was that he sustained grievous injuries due to the road traffic accident occurred on 15.06.2011. The Claim Petition was filed only against the appellant/Insurance company as the respondent car was insured with the appellant/Insurance company. The appellant has defended the Claim Petition, categorically stating that the respondent/claimant being the owner of the vehicle bearing Regn.No.TN-32-L-8595, is not a third party and therefore, there is no statutory coverage is provided in terms of Section 147(1) of the Motor Vehicles Act, 1988. The respondent/claimant being the owner of the vehicle, which met with an accident, cannot be construed as a third party nor the claim is covered under the statute with reference to Section 147(1) of the Motor Vehicles Act.

4. The “policy” issued to the owner of the Tata Indica Tourist Taxi bearing Registration No.TN-32-L-8595 covers only two kinds of risks and the same are as follows:

- 1) own damages
- 2) Liability only policy risk

5. The appellant/Insurance Company collected premium towards

- 1) Own damage(OD)Cover
- 2) TP liability cover and
- 3) PA covers for owner-driver

6. Therefore, there is absolutely no statutory coverage is provided in terms of Section 147(1) of the Motor Vehicles Act and therefore, the Claim Petition is not maintainable and liable to be set aside. The Claim Petition was filed under Section 166 of the Motor Vehicles Act. However, the Tribunal has referred the Claim Petition as if it was filed under Section 163A of the Motor Vehicles Act. However, misquoting of the provision could not dis-entitle the claimant from availing the rights. Misquoting of the provisions of law would not vitiate the proceedings itself. Therefore, such a contention deserves no merit consideration.

7. The learned counsel appearing on behalf of the appellant/Insurance company strenuously contended that the Motor Vehicles Act 1988 envisages Insurance coverage for a 'THIRD PARTY', who may suffer the risk of injury, or death, due to the use of the Motor Vehicle, on a Public

Place. Thus, the owner of a Motor Vehicle has to mandatorily buy a Policy of Insurance, in terms of Section 146 of the Motor Vehicles Act, which provides coverage, for a 'THIRD PARTY', (other than a party to the Contract), in respect of a bodily injury or death, caused due to use of Motor Vehicle on a Public Road.

8. The grievances of the appellant/Insurance company is that the Motor Accident Claims Tribunal has failed to appreciate the fact that the statutory coverage is provided only to the third party in terms of Section 147(1) of the Motor Vehicles Act, 1988 and further, failed to advert to the question of the respondent/claimant's entitlement to lay a Claim before the Motor Accident Claims Tribunal for compensation.

9. The Tribunal without assigning any reasons with reference to the statute, has directed the appellant/Insurance company to pay the compensation to the respondent. The contention raised regarding the maintainability of the Claim Petition has not been adjudicated by the Tribunal. Thus, the judgment and decree is liable to be scrapped.

10. The learned counsel for the appellant/Insurance Company has stated that the respondent/claimant being the owner of the vehicle, has failed to produce the original policy of insurance, which was issued to him and adduce any evidence regarding his entitlement under the said policy of insurance. This apart, the respondent/claimant has stated that he sustained grievous injuries. However, he has not established the factum of “Disablement” due to the injuries sustained in the road traffic accident by examining a Doctor. In view of the fact that the respondent/claimant has not proved the factum of disablement, he is not entitled for Personal Accident Coverage. In other words, it is contended that the respondent/claimant is not entitled for any compensation even under the Personal Accident Coverage as he has not examined the Doctor before the Tribunal and now, he cannot take a different stand with reference to his entitlement under the Personal Accident Coverage.

11. The compensation under the Personal Accident Coverage is provided only in respect of the injuries specified in the Table, given in Schedule IV of the Personal Accident Cover for OWNER-DRIVER, under the policy, as extracted hereunder:

<i>Sl.No.</i>	<i>Nature of Injury</i>	<i>Scale of Compensation</i>
i)	Death	100%
ii)	Loss of Two limbs or sight of two eyes or one limb or sight of one eye	100%
iii)	Loss of one limb or sight of one eye	50%
iv)	Permanent total disablement other than named above	100%

12. With reference to the above Schedule IV, the appellant has stated that the respondent/claimant had suffered only fracture of the 3rd, 4th and 5th ribs. Rib fracture will not give rise to any disablement much less permanent and total disablement and as such, in any event, would not be entitled to any compensation, even under Personal Accident Coverage, since the injuries does not fall within the coverage provided in the Table shown in Schedule IV.

13. The learned counsel for the appellant solicited the attention of this Court with reference to the judgment rendered in the case of ***Royal Sundaram Allianz Insurance Company Limited Vs. Somu dated 04.03.2020, reported in 2020 (1) TNMAC Page.547***, wherein it was held that the policy of Insurance being contractual, the claimant entitled to claim

compensation only with reference to the terms and conditions of the policy and not beyond that. Disability suffered not covered under the table given, in Section IV Personal Accident Cover for Owner-Driver, in the conditions of the policy of insurance. Accordingly, the award of the Tribunal was quashed in Paragraph 13 of the above judgment.

14. In yet another judgment in the case of ***Branch Manager, Oriental Insurance Company Limited Vs. Poongavanam, dated 12.03.2020, reported in 2020(1) TNMAC Page.600***, wherein it is held that when a claim is made in terms of Contractual liability (other than Statutory liability), the Policy Holder/Beneficiary has to approach the concerned Forum. Motor Accidents Claims Tribunal entertaining claims made under Personal Accident Coverage (being a contractual liability) was held erroneous. In paragraph 8 & 9 of the judgment has held as stated above. The respondent being the owner of Tata Indica Tourist Taxi bearing Registration No.TN-32-L-8595, is not entitled to any claim for compensation, Since there is no statutory cover envisaged for the owner under Section 147(1) of the Motor Vehicles Act. For these reasons, the appellant is of the opinion that the judgment and decree of the Tribunal is liable to be set aside.

15. The learned counsel appearing on behalf of the respondent/claimant vehemently opposed the contentions made by the appellant/Insurance company and has stated that the involved vehicle is having “Package Policy” with Personal Accident cover and owner cum driver is entitled to Rs.2,00,000/- compensation in case of an accident.

16. The fact regarding the accident is not disputed. The policy is a Package Policy with Personal Accident Cover. Under these circumstances, the learned counsel for the respondent/claimant has narrated the nature of injuries sustained by the respondent/claimant. They are:

- a) Multiple Fracture of ribs 3, 4 & 5 left,
- b) Haemothorax
- c) Surgical Emphysema
- d) Left ICD done to remove blood collected from thorax region

The respondent/claimant was admitted as inpatient in Prenave Hospital at Salem from 15.06.2011 to 27.06.2011 (13 days).

17. Considering the fact that the insurance policy was in force, which

is a Package Policy of Personal Accident Cover and the factum regarding the accident was established, the Tribunal has granted compensation as there is a Personal Accident Cover for owner-cum-driver. The Tribunal has awarded a sum of Rs2,16,500/- towards compensation. There is no error in entertaining the Claim Petition and the award of compensation.

18. The learned counsel for the respondent/claimant contended that it is true that there is a Personal Accident Coverage provided under the policy of insurance, the respondent being the owner and driver of the Tata Indica Tourist Taxi bearing Registration No.TN-32-L-8595, in respect of injuries sustained by him is entitled to receive award under disability, Loss of earning power, Pain and Suffering or under any other pecuniary or non-pecuniary loss.

19. The learned counsel for the respondent/claimant is of an opinion that narrow construction limiting the claim of Rs.2,00,000/- cannot be made and it would defeat the very intention of the legislature to award “just compensation” to the accident victim and it would not be in conformity with various judgments of the Apex Court viz., 1) R.D.Hattangadi Case, 2)

Nizam Institute of Medical Sciences Case, 3) Mahadeva Shetty's Case and
4) Reshma Kumar & Others Case etc.,

20. Four kinds of injuries are specified in the policy scale of compensation from 100% to 50% is not limited to it alone when there is sufficient oral and documentary evidence to prove the pecuniary and non-pecuniary loss suffered by the injured.

21. It is contended that Consumer Forum alone is not entitled to try claim under Personal Accident Cover as held in *Tiruvalluvar Transport Corporation Vs. Consumer Protection Counsel 1995 (2) SCC 479*.

22. The learned counsel for the respondent/claimant has mainly relied upon the judgment of this Court in the case of *Bajaj Alliance vs. C.Ramesh, decided on 08.01.2013, reported in 2013 (1) TNMAC 325*. He has further placed reliance with reference to the judgment in the case of *National Insurance Company Limited, Tiruchengode Vs. Krishnan, decided on 15.03.2013, reported in 2013 (1) TNMAC 729*.

23. With reference to the ***Bajaj Alliance case*** (cited supra), the learned counsel for the respondent/claimant relied upon the elaborate discussion made regarding the provisions of Motor Vehicles Act from Sections 140, 142, 163-A and 166 and various decisions, touching upon these Sections. Paragraphs 29, 30 & 31 of the judgment are referred, which all are extracted hereunder:

“29. In *Ningamma v. United India Insurance Co. Ltd.*, 2009 (2) TN MAC 169 (SC) : 2009 (13) SCC 710, the deceased borrowed a Motorcycle from the owner and dashed against the bullocks, without involving any other vehicle. A claim under Section 163-A was made by the Legal Representatives of the deceased. As the said representatives have stepped into the shoes of the owner of the vehicle, the Supreme Court held that they cannot maintain a Claim Petition under Section 163-A of the Act. In the same judgment, the Supreme Court further held that even if Section 163-A was not applicable, the High Court ought to have considered the claim under Section 166 of the Motor Vehicles Act and on the above facts of the case, remitted the matter to the High Court. At Paragraphs 14, 21 to 25, the Supreme Court, observed as follows:

“14. *Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new/predetermined structured formula for payment of compensation to road accident victims on the basis of*

age/income of the deceased or the person suffering permanent disablement. In view of the language used in said Section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised Insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

21. In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd., v. Rajni Devi, 2008 (5) SCC 736, 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 an employee of 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 MVA.

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.

24. 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.

25. 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 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.

30. On the aspect of 'Just Compensation', the Supreme Court, at Paragraphs 34 to 36, held as follows:

"34. Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the Claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the Claimant or not.

35. However, whether or not the Claimants would be governed by the terms and conditions of the Insurance Policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent

driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court. While entertaining the Appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues.

36. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of the MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law.”

31. Reading of the above judgment in *Ningamma v. United India Insurance Co. Ltd.*, 2009 (2) TN MAC 169 (SC) : 2009 (13) SCC 710 (cited supra) makes it clear that even if a Claim Petition is made under Section 163-A of the Act, as Motor Vehicles Act, 1988, is a beneficial legislation, an injured/Legal Representatives of the deceased should not be deprived from getting a just compensation, irrespective of the fact, whether there was any pleading or not, with reference to Section 166 of the Motor Vehicles Act and that it is the duty of the Tribunal/Court, to consider the claim.”

24. The detailed discussion made regarding Section 163-A of the Motor Vehicles Act as it is a beneficial legislation, the said provision is also elaborately discussed in the said judgment. The purpose and object of the Act, the scope of claim with reference to the beneficial legislation has been elaborately discussed. However, the facts and the legal grounds raised in the case on hand has not been adjudicated. Thus, the said case may not have any implication.

25. Relying on the said judgment, the learned counsel for the respondent reiterated that the respondent/claimant sustained injury, he filed the Discharge Summary and Medical Report and therefore, he is entitled for the compensation under the Personal Accident Coverage Policy for the owner-cum-driver.

26. The contention is that the said Personal Accident Coverage Policy is also to be considered as Motor Transport Policy. Once, it is considered as Motor Transport Policy, then the Tribunal is competent to adjudicate the Claim Petition and grant compensation to the victim as rightly done by the Tribunal in the present case.

27. This apart, the learned counsel for the respondent is of an opinion that even the claim amount need not be restricted as the Motor Accident Claims Tribunal has got jurisdiction to assess the quantum of compensation to be paid to the victim, which must be a 'just compensation' as held by the Apex Court of India in umpteen number of judgments. It is contended that, even in case of Personal Accident Coverage Policy, the claimants are entitled to file Claim Petition under Section 166 of the Motor Vehicles Act and the Tribunal is empowered to adjudicate the Claim Petition and the award compensation beyond the coverage provided in the insurance policy.

28. Considering the arguments, the factum regarding the accident is not disputed between the parties. The respondent/claimant is the owner of the Tata Indica Tourist Taxi bearing Registration No.TN-32-L-8595. Further, it was established that the respondent/claimant was driving the vehicle at the time of accident. The vehicle, which was owned and driven by the respondent/claimant, hit against the palm tree, resulted in a road traffic accident and consequently, the Claim Petition was filed under Section 166 of the Motor Vehicles Act. Thus, the facts are not disputed between the

parties.

29. The preliminary issue to be decided in this appeal is whether the Claim Petition can be maintained by the respondent/claimant with reference to Section 166 of the Motor Vehicles Act or not. The maintainability of the Claim Petition had been raised as a vital ground by the appellant in the appeal. Therefore, adjudication on the maintainability is of paramount importance as the question was raised even before the Tribunal and the perusal of the judgment reveal that there was no adjudication at all with reference to the maintainability ground raised by the appellant/Insurance company. In this regard, it is relevant to cite the counter filed by the appellant before the Motor Accident Claims Tribunal, wherein they have explained the nature of Package Policy as well as the terms and conditions stipulated for Personal Accident Cover. As per the Package Policy, in general, it is contractual in nature. The terms and conditions are agreed between the parties. Accordingly, Section (i) deals with the damage to the vehicles, which is contractual between the owner of the vehicle as well as the Insurance company. Section (ii) deals with Liability towards the third party is also agreed between the Insurance company as well as the policy

holder. Section (iii) deals with Personal Accident Cover to owner and driver is also provided.

30. When the Package Policy, more specifically, the Personal Accident Cover is claimed by the Policy holder, then the nature of the policy as well as the terms and conditions agreed between the parties are to be taken into account before entertaining a Claim Petition. It is not as if, all claims for compensation can be adjudicated by the Tribunal. The scope of the jurisdiction as well as the adjudicatory power is limited with reference to the provisions of the Motor Vehicles Act. There may be several policies, which all are contractual in nature. Those contractual policies are between the parties, on certain specific terms and conditions and the said contractual policy cannot be construed as statutory policy. In the absence of any statutory liability on the part of the Insurance company, the provisions of the Motor Vehicles Act cannot be invoked nor an adjudication can be done before the Tribunal. Mere contractual liability are not enforceable before the Motor Accident Claims Tribunal. The very purpose and object of the Motor Accident Claims Tribunal are to adjudicate the Claim Petitions and grant 'just compensation' with reference to the provisions of the Motor Vehicles

Act. The Tribunal has got powers to fix quantum of compensation and the procedure to fix just compensation are also guided in many number of judgments both by the Apex Court as well as by various High Courts across the country. Therefore, the enforceability is also to be taken note of. If a particular Personal Accident Policy is contractual in nature, then statutory liability cannot be fixed on the Insurance company. Violations of terms and conditions of contract, the party is affected or aggrieved, then entitled to approach the competent Forum to enforce the contractual obligations. Once, it is a contract and terms and conditions are agreed between the parties, which are reduced in writing and signed by the parties, then it is a contract under the provisions of the Indian Contract Act and the terms and conditions of the Contract Act are enforceable before the competent Court of Law and not before the Motor Accident Claims Tribunal under the Motor Vehicles Act. The coverage under the Motor Vehicles Act is provided under Section 147 of the Motor Vehicles Act. Contractual liability cannot be equated with statutory liability. The Tribunals are empowered to adjudicate the statutory liability with reference to the Motor Vehicles Act and accordingly, grant compensation to the accident victims. For determining the compensation, guidelines are given both under the Act as well as in

judgments.

31. Let us now look into the policy, which reveals that Section IV- Personal Accident Cover for Owner-Driver, which reads as under:

“SECTION IV – PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

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 or 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 in:

<i>Details of injury</i>	<i>Scale of Compensation</i>
<i>i) Death</i>	<i>100% of CSI</i>
<i>ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye</i>	<i>100% of CSI</i>

Details of injury	Scale of Compensation
iii) Loss of one limb or sight of one eye	50% of CSI
iv) Permanent Total Disablement from injuries other than named above.	100% of CSI

Provided always that

1) The Compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the Insurer shall not in the aggregate exceed the sum of Rs.2 lakhs during any one period of Insurance.

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 directly to the Insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the Insured.

4) 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.

(c) The person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.

(d) The person holding an effective Learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

(e) Where more than one vehicle is owned by the Insured, he/she can opt for this under one vehicle only.”

32. Reading of the conditions stipulated in the said Package Policy with reference to the Personal Accident Cover for owner-cum-driver, it is contractual in nature. The contract is between the owner of the vehicle as well as the Insurance company concerned. There is no third party involvement with reference to the Personal Accident Cover. The conditions / claim of Personal Accident Cover is also well enumerated in the policy because Clause IV deals with the coverage. Once, the terms and conditions stipulated in the Personal Accident Cover is satisfied, then alone, the owner-cum-driver is entitled to get the compensation as fixed in the Personal

Accident Cover.

33. In the present case, admittedly, a sum of Rs.2,00,000/- is agreed under Personal Accident Cover. However, the Tribunal has granted the compensation of Rs.2,16,500/-. Therefore, the Tribunal has granted compensation beyond the agreed contract between the parties to the Personal Accident Cover. The Tribunal is bound to see the nature of the insurance policy as well as the coverage with reference to the terms and conditions stipulated, which were agreed between the parties. Once, the policy is contractual in nature and the parties have signed the agreement, then such a contract cannot be construed or brought within the ambit of statutory liability.

34. It is important to note that the terms and conditions stipulated in the Insurance policy are of paramount importance for the purpose of deciding the liability as well as to fix the quantum of compensation to be paid. In the event of no coverage under the policy, then the Insurance company cannot be held liable to pay compensation. The policy being contractual in nature, the person claiming benefit under the policy must

establish that he is entitled for compensation with reference to the terms and conditions agreed between the parties in the signed contract. Undoubtedly, no person is entitled to claim any benefit beyond the scope of the terms and conditions agreed between the parties. Thus, nature of policy, terms and conditions stipulated, which all are agreed upon are the factors to be ascertained preliminarily by the Courts for the purpose of entertaining the Claim Petitions as well as to fix the liability to pay compensation.

35. The Motor Vehicles Act being a Special legislation and the Motor Accident Claims Tribunal is constituted to deal with the Accident Claims specifically and under the provisions of the Motor Vehicles Act, the Tribunal have no jurisdiction to deal with all other policies issued by the Insurance company, which all are contractual in nature and the terms and conditions agreed between the parties specifically. Such contracted policy cannot raise any right to the parties to file Claim Petition under the Motor Vehicles Act and such claims are to be made before the competent Forum namely before Consumer Forum or before the competent Civil Court of Law. The enforceability of the terms and conditions cannot be adjudicated as such contractual policies are unconnected with the scope of the

provisions of the Motor Vehicles Act, more specifically, under Section 147 of the Motor Vehicles Act.

36. It is relevant to consider that the Motor Vehicle policies are issued by the Insurance company for the purpose of grant of compensation and the language employed is “Compensation”. However, the Personal Accident Coverage Policy reveals that it is “benefit” is to be granted. Thus, the word “Compensation” adopted under the Motor Vehicle Policy cannot be equated with the “benefit” to be granted under the Personal Accident Policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the compensation to be assessed and granted under the Motor Vehicles Act. There is a difference between the Motor Vehicle Policy and Personal Accident Coverage Policy. Motor Accident Policies are strictly within the ambit of the provisions of the Motor Vehicles Act. The Personal Accident Coverage Policy is strictly in accordance with the terms and conditions agreed between the parties. The contractual liability or obligations cannot be adjudicated by the Motor Accident Claims Tribunal under the provisions of the Motor Vehicles Act and in such an event, the Motor Accident Claims Tribunal are usurping the powers of the

competent Civil Court, which is impermissible. If such contractual liabilities are adjudicated before the Motor Accident Claims Tribunal, then the Tribunal are exercising excess jurisdiction, which is not contemplated nor conferred under the provisions of the Motor Vehicles Act.

37. This being the distinct factors, which are to be ascertained with reference to the nature of Insurance Policy, all the Tribunals are bound to look into the nature of the Policy at the first instance, before entertaining the Claim Petition. The Litigants should not be unnecessarily driven to various Courts by waiting for a long period before the Accident Claims Tribunal. Whenever a Claim Petition is filed, either under Section 166 or under Section 163-A of the Act or otherwise, the entertainability as well as the maintainability of the Claim Petitions are to be verified with reference to the nature of the policies issued by the Insurance Company. Contrarily, the Tribunal cannot adjudicate the terms and conditions agreed between the parties in a contract and grant compensation by invoking the provisions under the Motor Vehicles Act.

38. With reference to the cases cited by the learned counsel for the

respondent/claimant namely *Bajaj Alliance (cited supra)* as well as *National Insurance Company Limited, Tiruchengode (cited supra)*, the same cannot have any direct application with reference to the legal grounds raised in the present appeal. The respondent/claimant has not established even the disablement with reference to the terms and conditions of the Personal Accident Coverage Policy. This apart, the Tribunal has granted more than the agreed amount in the Personal Accident Coverage Policy. Therefore, the facts and circumstances with reference to those cases may not have any application. As rightly contended by the learned counsel for the appellant/Insurance company, in the case of *Bajaj Alliance (cited supra)*, it was the injury, which were falling under the purview of the terms and conditions and in the present case, the very entertainability and maintainability of the Claim Petition itself is questioned.

39. In the present case, the Personal Accident Coverage Policy has been agreed between the appellant/Insurance company as well as the respondent. Rs.2,00,000/- is fixed under the Personal Accident Coverage Policy. The Tribunal has granted a sum of Rs.2,16,500/-towards compensation. The Tribunal has not adjudicated the maintainability of the

Claim Petition by looking into the terms and conditions stipulated in the Insurance Policy. With reference to the nature of injuries, there must be an adjudication strictly with reference to the Personal Accident Coverage Policy. Suffering an injury is one aspect. The Coverage provided under the terms and conditions of the policy is also important, so as to decide the entitlement of compensation.

40. For instance, the Personal Accident Coverage Policy states that the compensations are payable under 4(a), which is stated in Section IV of Personal Accident Cover for owner-cum-driver. Therefore, if the injuries are within the scope of the agreement, then alone, the person covered under the Personal Accident Cover is entitled to get compensation. Even otherwise, the said entitlement cannot be adjudicated by the Motor Accident Claims Tribunal as the terms and conditions are contractual in nature and not statutory in character. Only the statutory liability are amenable to the jurisdiction of the Motor Accident Claims Tribunal and not the contractual liability. All such contractual liabilities are falling within the scope of the Indian Contract Act and the aggrieved persons to the contract can approach the competent Court of Law and not the Motor Accident Claims Tribunal

under the Motor vehicles Act.

41. This being the scope of the policy now in dispute in the present appeal, this Court is of the considered opinion that the Tribunal has not adjudicated these grounds raised by the appellant in their counter before the Tribunal. This apart, for availing the benefit of Personal Accident Coverage Policy, the respondent/claimant has to establish the nature of the 'disablement' and the same is to be established before the competent Court of law and the Motor Accident Claims Tribunal is not empowered to entertain the Claim Petition under the Motor Vehicles Act. This being the principles to be followed, this Court is of the considered opinion that the Tribunal has committed an error in not adjudicating the legal issues raised by the appellant/insurance company nor decided the issue with reference to the terms and conditions of the Personal Accident Coverage Policy. For all these reasons, the judgment and decree is perverse.

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42. Accordingly, the judgment and decree dated 10th July 2018 passed by the Motor Accidents Claims Tribunal / III Additional District Court, Kallakurichi in M.C.O.P.No.27 of 2013 is set aside and the Civil

Miscellaneous Appeal in C.M.A.No.2434 of 2019 stands allowed. If the appellant/Insurance company has deposited any award amount before the Tribunal, then they are permitted to withdraw the said deposited amount with accrued interest by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2020

Index : Yes
Internet: Yes
Speaking Order
Kak

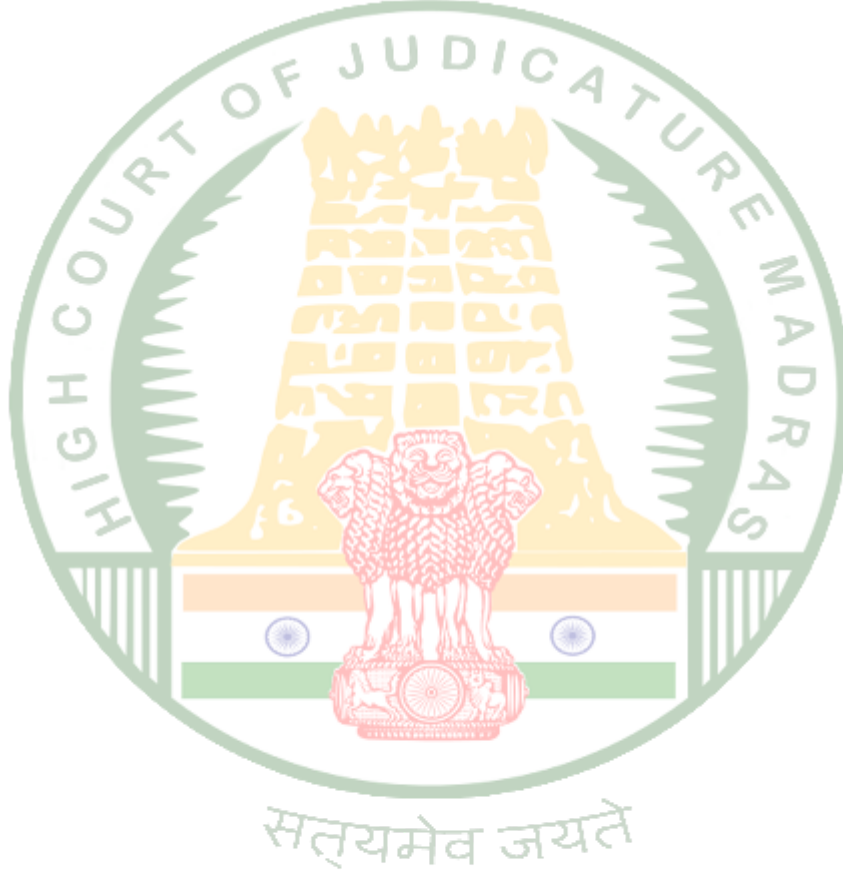
Note: Registry is directed to communicate a copy of this judgment to the Registrar General, High Court, Madras, who in turn, is directed to communicate the copy of this judgment to all Motor Accidents Claims Tribunal across the State of Tamil Nadu and Pondicherry.

To

1.The Motor Accident Claims Tribunal,
III Additional District Court,
Kallakurichi.

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

3.The Registrar General,
High Court,
Madras.



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S.M.SUBRAMANIAM, J.
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CMA No.2434 of 2019

02.09.2020

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