Madras High Court
The National Insurance Co. Ltd vs Krishnan on 15 March, 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2013

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.3006 of 2012
M.P.No.1 of 2012

The National Insurance Co. Ltd.,
Tiruchengode 637 211,
Namakkal District. .. Appellant

vs.

1.Krishnan
2.Krishnan .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.C.Kulanthaivel

J U D G M E N T

Being aggrieved by the finding, fastening liability on the Insurance Company to pay compensation and also the quantum of compensation of Rs.3 Lakhs, awarded with interest at the rate of 7.5% per

annum, from the date of claim, National Insurance Company Ltd has filed this appeal.

2. Short facts leading to the appeal are as follows:

On 10.11.2007, about 7.30 P.M., when the respondent was travelling as a passenger in a Jeep, bearing Registration No.TN 28 R 4099, insured with the appellant-Insurance Company, on Tiruchengode-Namakkal Main Road, near, Elanagar Sivabakkiyam Mentra Depressed Home, due to the rash and negligent driving of the driver of the Jeep, the vehicle dashed against a tree. The respondent/claimant sustained injuries in Chest, Head, Abdomen, Cervical Spine, Clavicle and Left Elbow and injuries all over the body. Immediately, he was taken to Government Medical Centre Hospital, Coimbatore and given treatment. Thereafter, he has taken treatment in C.M.Hospital, Namakkal; L.K.M. Hospital, Erode and Gukulam Hospital, Salem. In this regard, a case in Cr.No.263 of 2007, has been registered against the driver of the Jeep, for the offences under Section 279, 337, 304(A) IPC, on the file of Velegoundampatti Police Station and at the time of filing of the claim petition, the case was stated to be pending, before the learned Judicial Magistrate, Tiruchengodu. According to the respondent/claimant, at the time of accident, he was aged 42, years and as owner of Rig and Granite factories, claimed to have earned Rs.10,000/- per month. Incidently, the respondent/claimant was the owner of the Jeep. However, describing himself as a passenger, the claim petitioner has been filed, for compensation of Rs.5,00,000/-, impleading himself, as one of the respondents.

3. The appellant-Insurance Company has disputed the manner of accident and the nature of injuries. As the injured/claimant himself was the owner of the jeep, the Company has raised an objection, as to how, a claim petition can be maintained against himself, when, he is the insured of the offending vehicle. It was also contended that he cannot be treated as a third party. On the principle that the Insurance Company has is vicariously liable to indemnify the liability of the owner of the vehicle, only to third parties and not to the owner himself, the Company questioned maintainability of the claim petition filed under Section 166 of the Motor Vehicles Act, read with Rule 3 of the Tamil Nadu Motor Vehicles Claims Tribunal. Without prejudice to the above, the appellant-Insurance Company has disputed the nature of injuries, expenses incurred and the quantum of compensation, claimed under various heads.

4. Before the Claims Tribunal, the respondent/claimant examined himself as PW.1 and PW.6, is the Doctor, who examined the respondent/claimant, with reference to medical records. Ex.P1 FIR, Ex.P2 Motor Vehicles Inspector's Report, Ex.P3 Sketch, Ex.P4 Charge Sheet, Ex.P5 Policy, Ex.P18 Wound Certificate, Ex.P19 Discharge Summary, Ex.P20 C.T.Scan Report, Ex.P21 Medical Bills, Ex.P21 Medical Bills, Ex.P38 Disability Certificate and Exs.39 and 40, X-Rays and the receipts, have been marked on the side of the respondent/claimant. On behalf of the appellant-Insurance Company, one Mr.Devarajan has been examined as RW.1 and he has marked Ex.B1 Insurance Policy.

5. Upon evaluation of pleadings and evidence, the Claims Tribunal held that the first respondent, owner of the vehicle, incidently in the case on hand, the claimant himself and also the insurer as jointly and severally liable to pay a compensation of Rs.1,50,000/-, with interest at the rate of 7.5%

per annum. Being aggrieved by the same, the appellant-National Insurance Company Ltd., has filed this appeal.

6. At the outset, Mr.S.Arun Kumar, learned counsel for the appellant submitted that the injured, being the owner-cum-insured, is not entitled to maintain a claim against himself, under Section 166 of the Motor Vehicles Act, for the reason that, as per the principles of the Insurance Policy, taken under Section 64(3) of the Insurance Act, the Insurance Company is vicariously liable only if the claim is made by a third party. Pointing out that, at the time of accident, the owner/injured was only an occupant of the vehicle and not on his wheels, learned counsel for the appellant-Insurance Company further submitted that even if an additional premium was paid, that would not cover the owner of the vehicle, who happened to only an occupant, to maintain a claim for compensation, against himself and further submitted that when there is a negligent act committed by his driver, the owner, being the occupant of the vehicle, cannot take advantage of any additional premium paid, under IMT 15 and 16. According to him, the policy in existence, at the time of accident, was a compulsory personal accident cover, for the owner-cum-driver and that the same cannot be made applicable to the occupant of the vehicle, who happened to be the owner of the vehicle.

7. Without prejudice to the above, learned counsel for the appellant-Insurance Company submitted that even if there was a personal accident cover policy, it covers only a owner-cum-driver and in such circumstances, the said contract is enforceable, only when the owner sustains injury/injuries, which driving the vehicle, resulting in any permanent disablement, mentioned in the policy. He also submitted that the injuries and permanent disablement, stated to have been suffered by the owner/occupant, do not fall within the categories mentioned in the policy and hence, no compensation is payable by the Insurance Company.

8. Without prejudice to the above, learned counsel for the appellant-Insurance Company submitted that even taking it for granted that the policy could be extended to the owner, who was an occupant, still the quantum of compensation that the Tribunal can award, has to be within the maximum limit, provided for in the contract. For the abovesaid reasons, he prayed to set aside the award.

9. Per contra, placing reliance on a catena of decisions, which are dealt with, in the later paragraphs of this judgment, Mr.Kulandaivel, learned counsel for the respondent submitted that the claim petition can still be maintainable against the insurer. As per Ex.B1 Policy, a sum of Rs.100/- has been paid towards the personal accident cover policy, to cover the bodily injuries or the death of the owner cum driver and even assuming that he was not actually driving the vehicle, which met with an accident, yet, having agreed under the Contract of Insurance, to indemnify the owner, the Insurance Company is liable to pay the compensation, irrespective of the fact, as to whether the owner travelled as an occupant or driven the vehicle. It is the specific contention of the learned counsel that the Insurance Company cannot repudiate its liability to pay compensation, when additional premium has been received, to cover the owner of the vehicle.

10. On the quantum of compensation, Mr.Kulandaivel, learned counsel for the respondent/claimant submitted that the nature of injuries, extent of disablement suffered by the injured and the actual medical expenses incurred, have been proved by adding oral and documentary evidence. According

to him, when the claim is made under Section 166 of the Motor Vehicles Act, 1988, it is the duty of the Claims Tribunal to compute the compensation, both under pecuniary and non-pecuniary losses and in such circumstances, the injured is entitled to a just and reasonable compensation, under all heads. According to him, the contentions of the Insurance Company that the injured is entitled to claim compensation, only if the injuries and the consequential permanent disablement, fall within the categories mentioned in the policy and only to the limited extent, provided for, in the Personal Accident Cover Policy, have to be rejected.

11. Inviting the attention of this Court to the medical records, Ex.P18 Wound Certificate, Ex.P19 Discharge Summary, Ex.P20 C.T.Scan Report and Ex.P21 Medical Bills, learned counsel for the respondent submitted that the quantum of compensation, under pecuniary and non-pecuniary losses, have been properly arrived at and that therefore, there is no need to interfere with the award, both on the finding, fastening liability on the Company to pay compensation and the quantum of compensation. For the abovesaid reasons, he has prayed for dismissal of the appeal.

Heard the learned counsel for the parties and perused the materials available on record.

12. At the outset, this Court is of the view that the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, by the injured/claimant against himself, claiming compensation for the injuries/permanent disablement, is not maintainable. The Claims Tribunal has committed a gross mistake in ordering joint and several liability against the owner, who happened to be a claimant in this case and the appellant-Insurance Company. The respondent, being the owner of the vehicle, cannot be made liable to pay compensation to himself and consequently, the National Insurance Company Ltd., Tiruchengode, appellant herein, cannot be vicariously made liable to indemnify the insured. But at the same time, it has to be considered, as to whether the injured, being the owner of the vehicle, can claim compensation against the insurer, without impleading him, as a party in the claim petition. The said issue has been answered in a recent decision of this Court in United India Insurance Co. Ltd., v. K.Paruvatham reported in 2012 (1) TNMAC 111, wherein, for the death of her husband, wife made a claim petition under Sections 166 and 147 of the Motor Vehicles Act, 1988. At the time of accident, he was travelling in a car, which dashed against a stationary vehicle. The Insurance Company alone was prosecuted. The liability of the company to pay compensation was disputed, on the ground that being the legal heir, she has stepped into the shoes of the insured and that therefore, placing reliance on a decision in Oriental Insurance Co. Ltd., v. Sunita Rathi reported in 1998 ACJ 121, it was contended that, as per the policy, she cannot claim compensation, as the legal heir of the deceased. Per contra, the respondent therein, has contended that inasmuch as the policy considered in the abovesaid reported case, was a comprehensive policy, the Insurance Company cannot repudiate the claim. Reliance was also placed on the following decisions, (i) New India Assurance Co. Ltd. v. Kendra Devi and others, 2008 (1) TN MAC 67 (SC): 2008 (1) CTC 430;

(ii) Oriental Insurance Co. Ltd. v. Jhuma Saha and others, 2007 (2) TN MAC 56 (SC) : 2007 ACJ 818;

(iii) New India Assurance Co. Ltd v. Meera Bai and others, 2007 ACJ 821; and

(iv) Dhanraj v. New India Assurance Co. Ltd. and another, 2004 (2) TN MAC 144 (SC) : 2005 ACJ 1.

13. My Esteemed Brother, Hon'ble Mr.Justice G.M.Akbar Ali, has framed following point for consideration. Whether being the dependant/legal representatives of the deceased, the insured herself can maintain a claim petition against the insurer. After considering the decisions, stated supra, at Paragraphs 22 to 24, the learned Judge held as follows:

2. If there is a personal accident coverage, the Insurance Company is liable. However, the above referred case laws and discussions relate to the death or bodily injury of the owner/insured. The question before this Court is whether a owner can maintain a claim as a legal heir of the deceased who died in an accident involving the insured vehicle. The contention of the Insurance Company is that the liability under Section 163-A of Motor Vehicles Act is on the owner of the vehicle as a person and the Claimant cannot be both a Claimant as also the recipient.

23. However, Section 166 deals with just compensation to a Claimant who is entitled to file a Claim Petition for the death of the bread winner or for the bodily injury of the Claimant. Section 147 deals with requirement of policy and limits of liability. The liability of the Insurance Company is to the extent of indemnification of the insured against a third person. If the insured can be fastened with any liability the Insurer is liable to indemnify the insured. For the death of a passenger, if covered by the Policy of the insurance, the insured is liable and therefore, the Insurance Company is liable to indemnify the insured. In my considered view, the insured, "as a person" being the legal heir of the deceased, in a "different capacity" is entitled for the compensation under Section 166 of the Act. In that event, in my considered view, the Insurance Company cannot escape from indemnifying the insured simply because the insured happens to be the recipient. In a simple analogy, had there been any other legal heir apart from the insured, they would maintain a claim for compensation as they are entitled for compensation. Therefore, the insured being the sole legal heir/dependant in a dual capacity is entitled to be indemnified by the Insurance Company and is also entitled to be a recipient of such claim.

24. It is also pertinent to note that in a comprehensive Policy of Insurance if the personal accident of the owner is covered the legal heirs of the owner can maintain a claim. On the same analogy, the owner/insured being the legal heir of the deceased/passenger, who is covered under the Policy is also entitled for a just compensation under Section 166 of the Act.

14. It is worthwhile to extract the decisions considered in K.Paruvatham's case, which are as follows:

4. This has been reiterated in Oriental Insurance Co. Ltd v. Sunita Rathi and others, 1998 ACJ 121, by the Apex Court, wherein it has been held as follows:

"3..... The liability of the Insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance..."

15. In New India Assurance Co. Ltd v. Meera Bai and others, 2007 ACJ 818, the Apex Court had an occasion to deal with the liability of the Insurance Company when the owner/insured himself was an injured in the accident. In that case, the owner himself was driving the vehicle and sustained injury. The Apex Court held that the owner is not covered under the policy and therefore, the Insurance Company is not liable.

17. In Dhanraj v. New India Assurance Co. Ltd and another, 2004 (2) TN MAC 144 (SC) : 2004 (4) CTC 716 (SC) : 2005 ACJ 1, the question arose was whether the Insurance Company was liable for the death or bodily injury sustained by the owner/insured and the Apex Court held that the Insurance Company is not liable and held as follows:

"18. Thus, an Insurance Policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle".

However, it is also observed, "10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself We are unable to accept the contention that the premium of Rs.4,989 paid under the heading 'own damage' is for covering liability towards personal injury. Under the heading 'own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is, thus, clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

Therefore, if there is any personal accident insurance which is otherwise known as 'P.A. coverage', an owner of a vehicle can maintain a Claim Petition.

18. In Oriental Insurance Co. Ltd v. Jhuma Saha and others, 2007 (2) TN MAC 56 (SC): 2007 ACJ 818, it is held that, "11. Liability of the Insurer Company is to the extent of indemnification of the insured against the Respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the Insurer being liable to indemnify insured, therefore, does not arise."

19. However, in Oriental Insurance Co. Ltd. v. Jhuma Saha and others, 2007 (2) TN MAC 56 (SC) : 2007 ACJ 818, the Hon'ble Supreme Court has also referred a decision reported in Dhanraj v. New India Assurance Co. Ltd and another, 2004 (2) TN MAC 144 (SC) : 2004 (4) CTC 716 (SC) : 2005 ACJ 1, and observed as follows:

"13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(l)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case".

20. In New India Assurance Co. Ltd v. Kendra Devi and others, 2008 (1) TN MAC 67 (SC) : 2008 (1) CTC 430, is a case where compensation for the death of the owner cum driver was awarded against the Insurance Company by the Tribunal which was upheld by the High Court, the Apex Court held as follows:

"6. The only contention of the learned Counsel for the Appellant-Insurance Company, is that inasmuch as the Insurance Policy was issued for paid driver and not for owner who also happened to drive the vehicle himself at the time of the accident. In support of his contention, learned Counsel drew our attention to the Insurance Policy (Annexure P-3). Perusal of the Schedule of Premium mentioned in the Insurance Policy, shows that apart from liability to public risk, the owner has paid premium only for paid driver and/or conductor. By contending that in the case on hand, the deceased being the owner-cum-driver and without additional premium/coverage for owner-cum-driver, the Insurance Company is not liable to pay any compensation for death of the deceased who was owner-cum-driver and not paid driver as mentioned in the Schedule of Premium. In support of his contention, learned Counsel for the Appellant heavily relied on Section 147 of the Motor Vehicles Act, 1988 which speaks about the statutory liabilities and a decision of this Court in New India Assurance Co. Ltd. v. Meera Bai andOrs., 2006 (9) SCC 174".

15. In the light of the abovesaid decision, this Court is inclined to accept the contention of Mr.S.Arun Kumar, learned counsel for the appellant-Insurance Company that the claim petition is not maintainable against the first respondent, but still it is maintainable against the appellant-Insurance Company.

16. Before adverting to the main challenge, as to whether the occupant of the vehicle, being the owner, who has taken a policy, by paying an additional premium to cover the liability towards personal accident cover, is entitled to maintain a claim, when he was actually not on wheels, at the time, when the accident occurred, to put it in otherwords, when there was no payment of additional premium to cover the death or permanent disablement of an occupant of the vehicle and whether the additional premium received by the Insurance Company, under Section 64(B) of the Insurance Act, under the expression, "owner-cum-driver", would cover the occupant of the vehicle, who happened to be the owner of the vehicle, let me extract IMTs 15 and 16 of the Policy:

IMT 15. PERSONAL ACCIDENT COVER TO THE INSURED OR ANY NAMED PERSON OTHER THAN PAID DRIVER OR CLEANER (Applicable to private cars including three wheelers rated as private cars and motorized two wheelers 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 the occurrence of such injury result in:-

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Details of Injury Scale of Compensation

i)	Death	100%
ii)	Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
iii)	Loss of one limb or sight of one eye	50%
iv)	Permanent Total Disablement from injuries other than named above	100%

Provided always that

(1) compensation shall be payable under only one of the items (i) to (iv) above in respect of a

(2) no compensation shall be payable in respect of death or 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 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.

17. Admittedly, a sum of Rs.100/- has been received by the Insurance Company, as an additional premium, towards the personal accident cover. Now let me consider some of the decisions relied on by the learned counsel for the respondent/owner-cum-driver. As stated supra, in the case on hand, incidently, the occupant, at the time of accident, is the owner of the vehicle and he is the claimant.

18. In National Insurance Company Ltd., v. Komalam reported in 2008 (1) TNMAC 439, compensation was claimed for the death of an occupant of a private car. The company disputed its liability, on the ground that no additional premium was paid to cover the bodily injury or death of an occupant. The Claims Tribunal awarded compensation of Rs.3,30,000/-. Challenging the liability fastened on the Company, an appeal has been filed, contending inter alia that in the absence of any payment of additional premium to cover the insured, the Company cannot be fastened with the liability. It was also contended that that to cover an unnamed passenger, other than the Insured and his paid driver or cleaner, an additional premium has to be paid under ENDT 5. IMIT 5 extracted in the above reported case, is worth reproduction, "IMIT -5 ACCIDENT TO UNNAMED PASSENGERS OTHER THAN THE INSURED AND HIS PAID DRIVER OR CLEANER: In consideration of the payments of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the Insured and/or his paid driver attendant or cleaner and/or a person in the employ of the Insured coming with the scope of 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 in sustained whilst mounting or dismounting from or travelling in the Motor Car and caused by violent accident external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury."

Accepting the said contention, this Court, following the judgment of the Supreme Court in New India Assurance Company Ltd., v. C.M.Jaya reported in 2002 AIR SCW 259, at Paragraph 20, observed as follows:

"Admittedly, there is no statutory liability over the appellant insurer to cover the risk of an occupant of a private car. However, there is nothing in Section 147 prohibiting the parties from contracting to cover wider risk. In the absence of such a term or clause in the insurance policy, pursuant to the contract of insurance or paying additional premium, limit of statutory liability cannot be expanded to make it higher. In the present case, insurer has not covered higher risk by paying additional premium to cover the risk of an occupant of the car. Therefore, the Insurance Company cannot be saddled with the liability."

Ultimately, this Court has reversed the finding, fastening the liability on the Insurance Company. One of the judgments relied on by the respondents therein that the claimants are entitled to compensation, more than the limited liability under the Contract of Insurance, is also worth consideration, insofar as the question regarding the assessment of quantum of compensation is concerned. As stated supra, in the case on hand, one of the grounds urged by the appellant-Insurance Company is that even taking it for granted, that the contract of Insurance Policy covers the occupant of the vehicle, who happened to be the owner of the vehicle, but was not, on the wheels as driver, the quantum can be only, as per the maximum limit provided under the Policy.

19. In National Insurance Co. Ltd., v. Sarojini reported in 2000 ACJ 126 (Karnataka), an additional premium under Clause IMIT 5 was paid. The question for consideration was whether the amount received as per the Personal Accident Benefits, as per ENDT 5 was deductible. Observing that it is not duplication of compensation, but it involves two sets of compensation payable under two different heads under the same policy, the Karnataka High Court held that compensation paid under Clause IMT 5 was not deductible. Dealing with insurance of Motor Vehicles against third party risks, in Oriental Insurance Co. Ltd., v. Meena Varyal and Ors., [2007 (2) TNMAC 9 (SC)], the Supreme Court held as under:

"10. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against Third Party Risks". The definition of 'third party' is an inclusive one since Section 145(g) only indicates that 'third party' includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for Insurance against third party risk". No doubt,t he marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorized insurer; or which insurers the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

20. In Oriental Insurance Co. Ltd., v. Dyaneshwar Laxman Chellikeri & Another reported in 2005 (2) TNMAC 276 (Kar)(DB), the Karnataka High Court held that as per Section 147 of the Motor Vehicles Act, there is no requirement to cover the risk of death or injury to the owner of the vehicle/insured. The statutory policy only covers the risk of third parties. At Paragraphs 7 and 8, the Division Bench held as follows:

"7. It is well-settled law that the liability of the insurer arises only when there is a liability on the insured in respect of the risk of third parties. In other words, provisions of the Act, in particular Chapters X and XI, go to establish that a policy of insurance is required to cover the risk of death or injury of any person of a third party and therefore, there is no requirement under the Act for the insurance company to cover the risk of death or fatal injury to the owner of the vehicle (the insured). This is clear from a bare perusal of Section 147 of the Act. The said section reads as follows:

147. Requirements of policies and limits of liability.-- (1)In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which.--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2).--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required.--

> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee.--
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the vehicle; or
>
> (ii) to cover any contractual liability.
>
> Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.
>
> (2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely.--

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insvirance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

8. .....The only liability of the insurance company, from a reading of the above provisions, is that it has to indemnify the insured against liabilities incurred towards third parties or in respect of damages to property. In other words, if the owner has no liability to third party, the insurance company also cannot be made liable. This is the position in law as has been laid down by the Hon'ble Supreme Court in the case of Dhanraj v. New India Assurance Co. Ltd., [2005 ACJ 1 (SC)]."

The decision in Dyaneshwar Laxman Chellikeri's case, has been tested on the strength of Act Policy, where there was no payment of an additional premium to cover the injured/owner. Therefore, it could be inferred from the above judgment, that if there was a payment of additional premium by the owner, the Insurance Company would be liable to pay the compensation, whether he travelled, as an occupant of the vehicle or on the wheels of the vehicle.

21. In Royal Sundaram Alliance Insurance Co. Ltd., v A.Meenakshi reported in 2009 (1) TNMAC 249 (DB), the deceased was a passenger in the vehicle and on account of negligence of the driver, the

accident occurred. Legal representatives claimed compensation. The Insurance Company disputed the claim on the ground that the passengers, who travelled in the car, were gratuitous passengers and therefore, the Company is not liable to pay any compensation. On the alternative, it was also contended that on payment of an additional premium under the Insurance Policy, coverage can be extended to five unnamed persons, for a capital sum insured of Rs.70,000/- each, in terms of (India Motor Tariff) IMT.16 and therefore, even if the insurance company is liable to pay compensation, its liability can be restricted to only Rs.70,000/- and not more than that. Considering the requirement of policies and the limits of liability, set out in the Motor Vehicles Act, 1988 and after considering a catena of decisions and in particular, to the Tariff Advisory Committee's Circular, this Court held that a comprehensive/package policy, covers the risk of the occupant also and therefore, the Insurance Company cannot escape from its liability to pay compensation. Relevant paragraphs are extracted hereunder:

"6. So the law relating to Requirements of Policies and Limits of Liability is set down in Section 147 of the Motor Vehicles Act, 1988. This corresponds to Section 95 of the Motor Vehicles Act, 1939. Section 147(1)(i) provides that in order to comply with the requirements of the said Chapter, an insurance policy would cover any liability incurred by the insured in respect of the death of or bodily injury to any person, including owner of the goods etc. The section is quite wide in its scope and meaning and the object of the legislature has to be given the widest, most effective and practical meaning so that the net of coverage is extended to as many classes of persons relating to as many types of vehicles without exception. Courts are obliged to ensure that as many classes of motor accident victims receive the benefit of compensation, unless it is specifically restricted by the Act or it is specifically restricted by the contract, without violating the provisions of the Act. The insurer can and may contract to cover risks and liabilities which he is not bound to under the Act. To put it in other words, he can expand his net of coverage far beyond the statute-imposed limits, but he can not restrict his net of coverage contrary to the statute. This is how we must advance the object of the Act. Then again we must understand who is a "third party". A third party is one who is neither the insurer nor the insured. He is simply a third party. By the same logic, third party coverage must include all third parties, unless by doing so we breach the covenants of the Policy, or include specific categories of "third parties" who are excluded by the Section.

8. Motor Insurance in India till date is Tariff driven. Section 64U of the Insurance Act provides for the establishment of the Tariff Advisory Committee to control and regulate the rates, advantages, terms and conditions that may be offered by insurers. Section 14 of the I.R.D.A. Act which deals with the duties, powers and functions of the Authority, provides in sub-section (2)(i) that the powers and functions include the control and regulation of (rates, advantages, terms and conditions), not so controlled by the Tariff Advisory Committee under Section 64U. General Regulation No.1 of IMT states that Motor insurance in India is transacted within the purview of the IMT. The Tariff Advisory Committee has laid down rules and regulations, rates, terms and conditions, advantages for transaction of insurance business in India in accordance with the provisions of Part-2B of the Insurance Act, 1938. It is stated in the IMT that the 2002 Tariff supersedes the provisions of the IMT in existence upto 30.6.2002 and that they are binding on all concerned and that there cannot be any breach of the tariff, especially a breach of the provisions of the Insurance Act, 1938. The insurance companies are also required to issue policies in accordance with the IMT provisions only.

12. Soon thereafter, the Tariff Advisory Committee took a decision which is very important for deciding the present issue and which also totally altered the effect of the decision in Pushpabai's case (supra). This is explained in detail by the Gujarat High Court in 1981 A.C.J. 277 [Harshavardhatiya Rudraditya vs. Jyotindra Chimanlal Parikh]. There, the deceased was a gratuitous passenger. There, as in the present case, the insurance policy was a Comprehensive Policy. At that time, IMT.5 read as follows : "In consideration of the payment of an additional premium, it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employment 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 travelling in but not driving the 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 : Scale of compensation (1) Death ... Rs. 15,000.00 (2) ... ... The counsel for the appellant produced before the Gujarat High Court a communication issued by the Tariff Advisory Committee to the insurers carrying on general insurance business in the Bombay Region, which is in the following terms:

TARIFF ADVISORY COMMITTEE BOMBAY REGIONAL COMMITTEE Circular M.V. No. 1 of 1978 Bombay, 17th March, 1978 INSURANCE COMPANY'S LIABILITY IN RESPECT OF GRATUITOUS PASSENGERS CONVEYED IN A PRIVATE CAR - STANDARD FORM FOR PRIVATE CAR COMPREHENSIVE POLICY - SECTION II - LIABILITY TO THIRD PARTIES.

I am directed to inform insurers that advices have been received from the Tariff Advisory Committee to the effect that since the industry had all these years been holding the view liability (sic) the same practice should continue.

In order to make this intention clear, insurers are requested to amend clause 1(a) of s. II of the Standard Private Car Policy by incorporating the following words after the words 'death of or appearing therein:

'Including occupants carried in the motor car provided that such occupants are not carried for hire or reward.' I am accordingly to request insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant sheet. (Emphasis ours).

All existing policies may be deemed to incorporate the above amendment automatically as the above decision is being brought into force with effect from 25th March, 1977.

Sd.

Regional Secretary. The Gujarat High Court held as follows:

Taking into consideration the spirit underlying the aforesaid instructions issued by the Tariff Advisory Committee all the insurers would be expected to adhere to the policy decision in its true spirit. The policy decision had to be evolved by reason of the fact that for years the insurers were considered to be liable even in cases of gratuitous passengers. The situation came to be altered by virtue of the decision in Pushpabai's case, AIR 1977 SC 1735, rendered on 25th March, 1977. The insurance business having been nationalised it is but reasonable to expect the insurers not to take advantage of the altered situation and to continue to discharge their obligation as hitherto. No doubt, the aforesaid instructions cannot be enforced in an M.A.C.T. proceeding in the sense that we cannot direct that the insurance company shall reimburse the insured fully or that the full decree against the insured may be executed against the insurance company as if it was a decree passed against it. We are given to understand that the insurance companies are discharging their obligation as hitherto notwithstanding Pushpabai's case, AIR 1977 SC 1735. If such is the policy that being followed in other cases no discrimination can be made on principle in the present case. There cannot be a selective application of the policy embodied in the aforesaid resolution. If such a selective application were to be countenanced, it would violate the mandate of art. 14 of the Constitution of India. We have, therefore, no doubt that the insurance company will follow the same policy uniformly and will not clutch at this defence in the present case if the policy decision contained in the aforesaid communication is being adhered to in other cases. In case of necessity, learned counsel for the claimants will be at liberty to apply to the insurance company and make a request for implementing the aforesaid policy decision in the present case. It will be open to him to forward a copy of this judgment in support of this request. Therefore, the Tariff Advisory Committee had brought these instructions into force literally from the date on which the judgment in Pushpabai's case was delivered by the Supreme Court. The Tariff Advisory committee determines the terms and conditions and the limits and liabilities of an insurance policy vide Section 64U of the Insurance Act. A reading of the Circular, though intended for the Bombay Region, indicates that all along, insurance companies had intended that the risk to a gratuitous occupant in a private car was to be covered and was in fact covered by a Package Policy.

13. In 1985 A.C.J. 585 [Sagar Chand Phool Chand Jain v. Santosh Gupta], the Delhi High Court had to consider a similar issue. Before the Delhi High Court, again, the judgment in Pushpabai's case was pressed into service and it was contended that the liability of the insurance company is restricted to the statutory liability under Section 95 of the 1939 Act and no more and that if the risk to the passenger has to be covered, it is to be done by a special contract and since the contract of insurance did not specify risk to the passengers, nor any additional payment or premium was received, the passenger cannot claim to be compensated in an amount exceeding the statutory liability. On the side of the claimants, it was contended that the very concept of a Comprehensive Policy includes the risk to a passenger gratuitously carried. A special contract is necessary for limiting the liability of the insurance company and therefore, the liability is all inclusive, unless specifically limited. The Circular dated 13.3.1978, which has been extracted above, was also brought to the notice of the Delhi High Court. The policy in question was of the year 1970 and when the case came up for hearing before the Tribunal on 31.5.1979, the 1978 Instructions had come into operation. The Delhi High Court held that, Apart from the instructions of the Tariff Advisory Committee, the contract itself provided positive indication that the risk of occupants/passengers is covered by the policy. The contract itself at the top describes it as a contract for 'Private Car

(Comprehensive)'. Section 2 of the contract provides for liability to third party and this paragraph shows that the company will indemnify the insured in the event of an accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the 1939 Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person with the insured . The Delhi High Court also noted that apart from these provisions, the contract itself provides for general exceptions where the company shall not be liable to pay and the exceptions do not include the occupants/passengers. In fact, at the time of arguments, the Delhi High Court was informed that the valuable and important instructions which affect the policy holders are not published either by the Tariff Advisory Committee or by the National Insurance Company.

14. Before the Delhi High Court, the counsel for the insurance company could not produce any material, nor a single policy where in a Comprehensive Policy, special premium was charged to cover the risk of occupants/passengers. Therefore, the Delhi High Court rightly concluded that this would negatively establish that the nationalised insurance companies did not enter into special contract of insurance to cover occupants/passengers and that the Comprehensive Policy covers all the risks and liabilities to which the insured is liable. The Delhi High Court also held that the 1978 Instructions of the Tariff Advisory Committee are in the nature of express clarification of the legal position already obtaining and therefore, no new right was created by the 1978 Circular, but the existing right was only clarified. Even the 1978 Circular specifically mentioned, that this is how it has all along been understood and that in recent times, the insurance companies were taking a different stand which necessitated the Tariff Advisory Committee to come out with explicit instructions. Therefore, these instructions are not declaratory, but only clarificatory and as per Section 64U, govern the insurers.

15. The provisions relating to motor accidents claims in the Motor Vehicles Act form a self-constituted Code and they are intended to benefit the unfortunate legal heirs of an accident victim or the unfortunate injured in an accident and if the rights that these persons are entitled to are not made known to them, it is possible that they are prevented from making the rightful claim or cheated from receiving the rightful compensation.

16. What was then specifically mentioned in the Tariff Advisory Committee Circular in 1978 has now been incorporated in the contract itself in a Package Policy. Therefore, even if the 2002 Tariff regime does not specifically mention that in a Comprehensive Policy, the gratuitous occupant's risk is covered since it is a comprehensive policy, by its own terminology, it includes any person in the car or any type of vehicle except those that are specifically excluded.

.....

27. In Motor Vehicle Laws 13th Edition, 2008 (Lexis Nexis Butterworths Wadhwa, Nagpur), which is a critique on motor vehicle laws by Justice K. Kannan and N.Vijayaraghavan, the learned authors on considering the large scale use of two wheelers with pillion riders and carriage of gratuitous

occupants in private car have given their opinion, referring to various judgments under the head Liability of insurer for death/injury to gratuitous passengers in private car under a Package/Comprehensive Policy , since it is a very serious and sensitive issue that requires examination, They observe as follows :

Motor TP cover is still governed by Tariff. What TAC had directed or expressed in 1977 still holds good and their decision to amend the Policy wording which is in use till date, continues to bind the Insurers.

The Insurers cannot ignore the TAC decision and argue as if the Policy is framed or issued by them independently and there is no cover for occupants.

In our opinion, the 'additional premium' argument cannot be stretched too far by the Insurers, ignoring the Policy wording and the intention to cover as stipulated by TAC. The learned authors also observed as follows:

The liability of insurer to a pillion rider and a gratuitous occupant would depend upon the cover granted by insurer being Act Policy or Package Policy. In respect of an Act Policy such persons are not required to be covered. It is only under a Package Policy such persons are covered by the contract of insurance. Under the earlier dispenseation in Motor Vehicle Act, this position was the same. In Pushpabai's case, the Supreme Court had held that the insurer would not be liable to occupants carried in a private vehicle under a Policy. In K.Gopalakrishnan vs. Sankaranarayanan, 1969 A.C.J. 34 and National Insurance Co. Ltd., v. V.Vasantha 1987 A.C.J. 887, the High Court, Madras had held that insurer was not liable to pillion riders carried on a 2 wheeler under an Act Policy. Similar decisions were delivered by all courts barring a few. We read in this very exhaustive critique that it is not without reason or out of ignorance that insurers were satisfying the awards all along from 1977, it was on account of the fact that as against an Act Policy, the Comprehensive (now Package) Policy, occupants were expressly covered, due to a conscious change in the Policy wording after insurers were held not liable by the Supreme Court in Pushpabai's case; and that as regards the third party coverage under Comprehensive Policy prevailing before 25.3.1977,it is clear that the Comprehensive Policy before 25.3.1977 did not use the words including occupants carried in the motor car provided that such occupants are not carried for hire or reward . These are the words in the 1978 Circular. They further observe thus:

> There is no change in the law Insurers are not required to cover passengers in a private car. The relevant portion of the Policy has also not changed materially ever since 1977. TAC's Circular or the amendment has not become inapplicable or irrelevant when this portion of the Policy wording is being maintained till date even under the 2002 Tariff.
>
> When neither the law nor the relevant wording in the Policy has changed, it would not be open to Insurers to ignore the wording and the amendment brought about by TAC consciously in 1977 itself to argue that there is no liability for occupants, contrary to what is stated in the Policy document.

29. There fore it is clear from the Act itself, the words of the policy and the decision in Amritlal Sood's case (supra) that a Comprehensive Policy covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is driving his car covered by a Comprehensive Policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and children are permanently disabled by the injuries. If we agree with the appellant Insurance Company, those pathetic claimants will not get any compensation. The law never intended this to happen. That is why the TAC explicitly came out with the clarificatory Circular in 1978. We cannot forget that the words used are third party and Comprehensive , so we cannot deny this relief to the third party occupant in a car covered by a Comprehensive Policy.

33. The policy holder should know as to whose risk is being covered. It should be brought to his knowledge that even his family members would be gratuitous passengers travelling in his car and we also hope that in addition to English and Hindi, the insurance companies, both public sector as well as private sector undertakings, would consider publishing the instructions and guidelines in the language of the State. The law governing the insurance policy ultimately is a law of contract and so both parties should understand exactly what are the terms of the contract and for exactly what extent and what type of coverage the policy holder is paying premium.

34. While deciding the claim petition, the Motor Accidents Claims Tribunal should examine the terms of the Policy produced by the insurer, and in the event of denial of liability, a finding should be rendered with regard to the nature of the Policy as to whether it was an 'Act Policy' or a 'Package Policy'.

22. In Royal Sundaram Alliance Insurance Company Ltd., v. A.Pappathi reported in 2009 (1) TNMAC 556, an occupant of the car died, when the driver drove the vehicle in a rash and negligent manner and dashed against a palm tree. Legal representatives made a claim for compensation. Considering the question, as to whether, the occupant in a car, should be construed as a third party and whether the Company, which has issued a package policy, under Section 6 of IMT andwhich is liable to compensate the death or bodily injuries to any person, including the occupants carried in vehicle (provided such occupants not carried for hire or reward) and when the insured in the above case, has also made further payment under IMT-28 of Section 7, a learned Single Judge of this Court, at Paragraphs 19 to 23, held as follows:

9. The Insurance Act, provides for establishment of a Tariff Advisory Committee otherwise known as TAC which lays down the Rules, Regulations, Rates, Advantages, Terms and Conditions, for transaction of motor insurance business in India. For this purpose, the India Motor Tariff, hereinafter referred to as "IMT" and it contains Section 1 to Section 8 and General Regulations G.R.1 to G.R.48 and it is issued from

time to time. As far as the present case is concerned, the India Motor Tariff (IMT) 2002 supersedes the provisions of the India Motor Tariff (IMT) in existence upto 30th June, 2002. It is also stated that it is binding on all concerned and any breach of the Tariff will be a breach of the provisions of the Insurance Act, 1938.

20. Under the Indian Motor Tariff (IMT) different types of policies are issued and they are contained in IMT Section 6(page 107 of IMT). They are:-

(a)Standard form for liability only policy,

(b)Standard form for private car package policy,

(c)Standard form for two wheeler package policy,

(d)Standard form for commercial vehicles package policy,

(e)Standard form for motor trade package policy and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured, Section II Liability to third parties, Section III Personal accident cover for owner-driver There are other conditions and limits. In this appeal we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

21. The first policy in Section 6 of IMT is liability only policy or act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

1. Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of i. death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii. damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured up to the limit specified in the schedule. (emphasis supplied)

22. The next policy in Section 6 of IMT that is relevant to this case is a private car package policy in which Section II (page 119 of IMT) deals with liability to third

parties, which reads as follows:-

> Standard Form for private car package policy. Whereas the insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid the premium mentioned in the schedule as consideration for such insurance in respect of accidental loss or damage occurring during the period of insurance.
>
> Now this policy witnesseth:
>
> That subject to the Terms Exceptions and Conditions contained herein or endorsed or expressed herein;
>
> Section I xxx Section II Liability to third parties
>
> 1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:-
>
> (i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured. (emphasis supplied) The specific terms of the Section II of the package policy casts a liability on the insurance company to compensate the death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward). There is, therefore, a clear distinction in Section II of Act Policy (i.e.) liability only policy and Section II of package policy.

23. Further, Section 1 (Page 1 of IMT) contains General Regulations, in that the provision is made for various types of personal accidents covers. To name a few, the following covers which are available are extracted:-

> Cover is available only in respect of the following persons:-

1. Private Cars including three wheelers rated as Private cars and motorised two wheelers with or without side car (not for hire or reward): For insured or any named person other than the paid driver and cleaner. Endorsement IMT 15 is to be used.

2. Private Cars, three wheelers rated as Private cars and Motorised Two Wheelers (not used for hire or reward) with or without side car: For unnamed passengers limited to the registered carrying capacity of the vehicle other than the insured, his paid driver and cleaner. Endorsement IMT 16 is to be used.

3. In respect of all classes of vehicles: For paid drivers, cleaners and conductors.

Endorsement IMT 17 is to be used.

4..... etc., The various types of endorsements ranging from IMT1 to IMT-65 are contained in Section-7. IMT Endorsements are made in appropriate Section of the policy. Based on the need of the insured, the type of policy with necessary endorsements are made. In the present case, which is a package policy, in addition to third party liability in terms of Section-II as has been extracted in para 22 above, the insured has also taken further endorsement under Section-III, under the head personal accident cover. A premium of Rs.65/- has been paid under IMT-20 and no premium was paid under IMT-16. In the present package policy, in addition to liability cover in respect of occupants of the vehicle, the insured has also made further payment under IMT-28. It is in this background, that the claim of the legal heirs of the deceased has to be considered. If under Section-II of the package policy the claim of passengers, occupants of the car is covered, the question that has to be decided is as to whether any additional premium is required to be paid to cover a claim in respect of risk of occupants of the car and what will be the consequence of such further payment.

23. In a recent decision of the Apex Court in National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC), the Managing Director of the Company travelled in a Car, sustained injuries in an accident, due to the rash and negligent driving of the car driver. A claim for compensation was made. The Claims Tribunal awarded compensation, holding that the owner of the car was a Company and that the injured, Managing Director travelled in the car only as a third party and hence, the Company was liable to pay compensation. The finding of the Tribunal was confirmed by the High Court. Testing the correctness of the judgment, the Insurance Company preferred an appeal to the Supreme Court, contending inter alia, that the claimant, being the Managing Director of the Company, as well as the Signatory in the Registration Certificate, as owner, the liability of the insurer is limited only to the extent stipulated in policy. However, the Managing Director has contended that that he had travelled in the car only as a third party and therefore, the Insurance Company is bound to indemnify the owner. Pointing out the difference in the Act Policy and Comprehensive Policy/Package Policy and taking note of the circulars issued by IRDA, a Statutory Authority, the Supreme Court, held as follows:

7. At this stage, it is apposite to note that when the decision in Bhagyalakshmi and others v. United Insurance Co. Ltd., and another, 2009 (1) TNMAC 659 (SC), was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of comprehensive/package policy had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in Yashpal Luthra and Anr., v. United India Insurance Co. Ltd., and Another [2012 (2) TNMAC 625 (DEL.) =

2011 ACJ 1415], after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. The relevant portion of the circular which has been reproduced by the High Court is as follows:-

IRDA Ref: IRDA/NL/CIR/F&U/073/11/2009 16.11.2009 To CEOs of all general insurance companies Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Insurers attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

Section II - Liability to Third Parties

1. Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured. It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. l of 1978 - dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options

permitted in the erstwhile tariffs. All general insurers are advised to adhere to the afore-mentioned circulars and any non- compliance of the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

Sd/-

(Prabodh Chander) Executive Director [emphasis supplied]

18. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same:-

IRDA IRDA/NL/CIR/F&U/078/12/2009 3.12.2009.

To All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo) Re: Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/2009 in the case of Yashpal Luthra v. United India and Ors., the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;

ii) with respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;

iii) With respect to the appeals pending before the Hon'ble Apex Court, informing, within a period of 7 days, their respective advocates on record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary and effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/-

(Prabodh Chander) Executive Director [emphasis added]

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the comprehensive/ package policy . Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the comprehensive policy and the said position continues to be in vogue till date. It had also admitted that the comprehensive policy is presently called a package policy . It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the comprehensive/package policy irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the

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

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

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an Act Policy or Comprehensive/Package Policy . There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a comprehensive policy but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a package policy to cover the liability of an occupant in a car. Ultimately, while setting aside the finding of the High Court and the Tribunal, regarding the liability of insurer, the Apex Court remitted the matter to the Tribunal to scrutinize whether the Policy was a Comprehensive/Package Policy or not, to cover the liability of the occupant in car.

24. Now in the background of the legal pronouncements stated supra, reverting back, admittedly, in the case on hand, an additional premium of Rs.100/- has been paid by the owner to cover the pecuniary and non-pecuniary losses, for bodily injuries/death to the owner-cum-driver and it has been candidly admitted by RW.1. The accident has occurred due to the negligence of the driver and it is not on account of negligence of the owner. Even assuming that the owner, while driving the vehicle was negligent in causing the accident, yet on that ground, whether his claim for compensation can be negatived, has been considered in a recent decision of this Court, in C.M.A.No.2468 of 2012, dated 08.01.2013, wherein, this Court, after considering the rival submissions, made therein, held as follows:

99. 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.

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.

(4)(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.

(5)Any accidental loss or damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

(6)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 even 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 and 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 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.

Details of Injury		Scale of Compensation
i)	Death	100%
ii)	Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
iii)	Loss of one limb or sight of one eye	50%
iv)	Permanent Total Disablement from injuries other than named above	100%

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.1 Lakh, during any one period of insurance. 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. 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) 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 he time of the accident.

104. What is stated in the beginning of the sentence in 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 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 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 Smt.Rita Devi and others v. New India Assurance Co. Ltd., reported in 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 Dayanu Patil and another v. Vatchala Utham More reported in 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.

108. At Paragraph 56 of the judgment in Deepal Girishbhai Soni v. United India Insurance Company Ltd., reported in 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. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], Indian Handicrafts Emporium and Others vs. Union of India

and Others [(2003) 7 SCC 589], Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. [JT 2003 (9) SC 109 = 2003 (9) SCALE 713 and Ashok Leyland Vs. 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 abovesaid 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 Puliyampatti Road, near Thoppampalayam, due to heavy rain, there was stagnation 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 the 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, in 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 reported in 1974 ACJ 491, Minu B.Mehta v. Balkrishna Ramchandra Nayan reported in 1977 ACJ 118, New India Assurance v. Susamma Varghese reported in 1990 ACJ 521, Kaliathal v. New India Assurance Co. Ltd., reported in 2004 (1) TNMAC 135 and Dhanraj v. New India Assurance Co. Ltd., reported in 2004 (4) CTC 716 = 2004 (2) TNMAC 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, RW.1, an official examined on behalf of the Company, in his cross-examination, has admitted that the owner-cum-driver, has insured himself under a Personal Accident Cover Policy, for a sum of Rs.1,00,000/-, the maximum limit under the Policy.

111. 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 01.11.2005, Ex.P15 X-Ray, dated 29.06.2006 and Ex.P14 Disability Certificate issued by PW.3, Doctor, the respondent/claimant has sustained dislocation of scapula and other injuries. On clinical examination, PW.3, 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.

112. 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 may be, depending upon the nature of injuries, mentioned under Items 1 to 4. Some of the decisions considered by this Court and the relevant passages from the above unreported decision, paragraphs 20 to 40 and 42, are reproduced hereunder:

> 0. In Kaliathal v. New India Assurance Co. Ltd., reported in 2004 (1) TNMAC 135 (DB), owner of the Tractor, died. Legal representatives of the deceased made a claim. The Insurance Company resisted the claim on the ground that the Insurance policy covers only third party risk and not the risk to the life of the insured. The Tribunal came to the conclusion that the owner of the vehicle should be construed as a third party, as he was walking along the road, at the time of accident. Relying on Section 147 of the Motor Vehicles Act, 1988, a learned Single Judge of this Court, came to the conclusion that the insurer is not liable to indemnify the liability of the owner for the death of the person, who himself was the insured. When the said decision was tested on appeal by the claimants, a Division Bench of this Court, following the decisions of the Apex Court in Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance Co. Ltd., [2001 ACJ 8 (SC)], National Insurance Co. Ltd., v. Nicolletta Rohtagi [2002 ACJ 1950 (SC)] and United India Insurance Co. Ltd., v. Lakshmi [1990 ACJ 390 (MAD)], held that the legal representatives cannot maintain a claim petition against the insurer and accordingly, dismissed the appeal. In the above reported case, there was no personal cover for the owner and hence, this Court dismissed the appeal. Going by the defence taken up by the Insurance Company, it could be deduced that had there been a personal cover, the decision of this Court would have been different.
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> 21. In Dhanraj v. New India Assurance Co. Ltd., reported in 2004 (4) CTC 716, the policy was a comprehensive policy and that there was no personal accident cover. Considering the same, the Supreme Court, at Paragraph 10, observed that, In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading own damage is for covering liability towards personal injury. Under the heading owner damage , the words premium on vehicle and non-electrical accessories appear. Therefore, the Supreme Court held that as the premium paid was only towards damage to the vehicle and not for the person, the owner of the vehicle can claim compensation, only if a personal accident insurance is taken. A mere comprehensive policy taken by the owner, does not entitle the owner cum driver, to maintain a claim for compensation, without payment of additional premium to cover the risk of personal injury or death of the owner-cum-driver.
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> 22. In New India Assurance Co. Ltd., v. Meera bai reported in 2006 (9) SCC 174, while considering the scope of statutory liability under Section 147 of the Motor Vehicles Act and on the question as to whether the owner of the vehicle is covered, on the facts of the reported case, the Supreme Court, observed that it was not shown that the particular policy covered any risk of injury to the owner himself and held that the

words paid driver and/or conductor contained in schedule to the policy, did not cover the owner, driving his own vehicle. Again, the inference that could be drawn from the above judgment is that if there was a policy covering the risk of personal injury to the owner or death, the injured or the legal representatives, as the case may be, can always maintain a claim petition.

23. In United India Insurance Co. Ltd. v. Rukiya reported in 2006 (2) TNMAC 177 (Ker.), husband of the first respondent therein, owner of a Maruti Car, was driving the vehicle. It went out of control and hit against a tree, causing his death. A claim petition was made by the legal representatives. The Company objected to the claim, contending inter alia that the policy taken was for indemnifying the liability of the owner of the vehicle to pay compensation for causing injuries to third parties. After considering the objections and placing reliance on a decision in Dhanraj v. New India Assurance Co. Ltd., [2004 (8) SCC 553 = 2004 (4) CTC 716], at Paragraph 4, a Division Bench, observed that comprehensive policy will not cover all risks that is possible. Only statutory liability and liability for risks, for which additional premium is paid, are covered. Since no additional premium was paid to cover the personal accidental risks of the owner, the compensation directed to be paid by the Insurance Company to the legal representatives of the deceased, was set aside. The inference that would emerge from the judgment is that, had there been an additional premium, paid to cover personal risks of the owner, the compensation awarded by the Tribunal would have been sustained.

24. In S.Dhanapal v. A.Jerome and others reported in 2007(1) TN MAC 165, it was held as under:

7. The argument that the insured owner of a motor cycle involved in a motor accident can also claim to be a third party must, therefore, be rejected on first principles alone. The view expressed by the learned Single Judge in New India Assurance Co.Ltd. v. Kaliathal and others, 2002 ACJ 1035 was confirmed by a Division Bench of this Court in Kaliathal and others v. New India Assurance Co.Ltd. And another, 2004 ACJ 51 in which this Court has held as follows:

. A Division Bench of this Court in L.P.A.No.187 of 1999, decided on 26.07.2000, has held that the main purpose of the policy is to indemnify the insured against loss or damage arising out of the use of the motor vehicle owned by the insured; that the policies issued for motor vehicles are not the same as policies of life insurance and that the policy is meant to cover the liabilities arising out of the use of the motor vehicles insofar as the liabilities of the owner are concerned and the owner cannot claim to be treated as third party by becoming a passenger of his own vehicle.

25. In Oriental Insurance Co. Ltd., v. Jhuma Saha reported in 2007 (2) TN MAC 56 (SC) = 2007 ACJ 818, the deceased was the owner of a Maruthi van, and while he was driving the said vehicle, it dashed against a tree. He succumbed to the injuries. A

claim petition was filed by the legal representatives of the deceased for compensation. The Insurance Company contested the claim and denied its liability, on the ground that no additional premium was paid covering the risk of the owner of the vehicle. On the above facts, the Supreme Court, at Paragrah 13, held as follows:

3. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case. Here again, the decision makes it clear that had the owner paid the additional premium, the Insurance Company would have been saddled with a liability to pay compensation to the maximum limit, provided for under the contract of Insurance.

26. In New India Assurance Company Ltd., v. Kendra Devi reported in AIR 2008 SC 490, husband, owner-cum-taxi driver, died, when he lost control over the vehicle, which fell into a river. Legal Representatives made a claim. The Tribunal awarded compensation. Appeal filed by the Insurance before the High Court was dismissed. Before the Supreme Court, the Insurance Company contended that inasmuch as the insurance policy issued was for only paid driver and not for the owner, who happened to be driver of the vehicle, at the time of accident and in the absence of any additional premium/coverage to the owner of the vehicle, the Company is not liable to pay compensation for the death of the deceased. Before the Supreme Court, though the Company heavily relied on Section 147 of the Motor Vehicles Act, which speaks about the statutory liability to third parties and also on the decision in New India Assurance Co. Ltd., v. Meera Bai reported in 2006 (9) SCC 174, taking note of the peculiar facts that the claimants therein, had lost their breadwinner, the Apex Court was not inclined to interfere with the concurrent orders of the Tribunal and High Court.

27. Upon Perusal of the above judgment, it could be deduced that there was an implied admission on the part of the Insurance Company that, had the deceased, owner cum driver, paid an additional premium/coverage, the Company would have been mulcted with a liability to pay compensation, even if the owner happened to drive the vehicle, at the time of accident.

28. In The Divisional Manager, National Insurance Co. Ltd., Anantapur v. Smt.Mahamooda [C.M.A.No.407 of 2000, dated 20.11.2008], the owner of the vehicle was transporting mangoes in a lorry. He lost control and the vehicle turned turtle. He sustained injuries and died on the spot. A police case was registered against him. Wife and sons preferred a claim. The Insurance Company opposed the claim, contending inter alia that the policy covered only third parties and not for the owner's death. The Policy does not contemplate any compensation to the owner from the Company. On the above pleadings, the Tribunal framed following points,

1.Whether the death of the deceased, T.Abdul Rahim is the resultant of the accident due to rash and negligent driving of the vehicle bearing Registration No.AP 02 V 2725 as alleged in the petition?

2.Whether the petitioners are the legal representatives and dependants of the deceased?

3.Whether the petitioners are entitled to the compensation, if so, to what amount and from which of the respondents?

4.To what relief?

Upon evaluation of pleadings and evidence, the Tribunal awarded compensation. Upon perusal of the policy and related cases, the Andhra Pradesh High Court allowed the appeal of the Insurance Company, holding that admittedly, no such additional premium was paid and therefore, the Tribunal was not justified in fastening liability against the Insurance Company.

29. In Ningamma v. United India Insurance Co. Ltd., reported in 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:

4. 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 reported in 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:

4. 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's case (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.

32. In United India Insurance Company Ltd., v. P.Shanthi @ P.Santhamani and others reported in 2011(1) TN MAC 227 (DB), while the owner of the lorry, parked the vehicle on the road side and was attending to the repairs of the vehicle, the driver, suddenly moved the vehicle and due to his negligence, the owner sustained injuries and despite treatment, died. Legal representatives made a claim for compensation. Opposing the same, the Insurance Company contended that the legal representatives have stepped into the shoes of the owner and therefore, they cannot claim compensation for themselves and in such circumstances, no award should be passed. It was also contended that the policy does not cover the owner. Therefore, the Insurance Company prayed for dismissal of the claim petition. The Tribunal recorded a finding that since premium was paid for the owner's risk, the legal representatives are entitled for compensation and accordingly, quantified the amount. Seeking to set aside the award, the Company filed an appeal before this Court, contending inter alia that the Insurance Company would indemnify the insured, owner of the vehicle, on the contract of indemnification and that the deceased could not be treated as a third party to the insurance and hence, the legal representatives were not entitled to make any claim for compensation. The Insurance Company also contended that as per the oral evidence, no additional premium was paid to cover the owner's risk. Per contra, on behalf of the legal representatives, an argument has been advanced that there was nothing wrong in the findings of the Tribunal, when the owner was outside the vehicle, ie., on the road and that he should be considered only as a third party and it was further contended that even though, he was one among the parties to the contract, still, the Insurance Company is liable to pay compensation to the legal representatives.

33. Perusal of the above judgment shows that the main stress of the Insurance Company was that when there was no additional payment of premium, towards the owner's risk, the Company has to be exonerated from its liability from payment of compensation. After referring to Dhanraj v. New India Assurance Co. Ltd., reported in 2004 (4) CTC 716 and Kaliathal v. New India Assurance Co. Ltd., reported in 2004 (1) TNMAC 135 (DB), at Paragraph 7, the Division Bench held as follows:

. When additional premium was not paid towards bodily injury to the person or death of the owner, the Insurance Company could not be held liable to pay compensation.

2. Neither owner nor his Legal Representatives, in case of his death, could claim compensation from the Insurance Company on a contention that the owner is a third party.

3. Since the insured is indemnified by the Insurance Company for the compensation payable to third parties, there is no scope for the direction to the Insurance Company in the case of bodily injury or death, to the owner, in the absence of payment of additional premium for the said purpose.

34. The Division Bench, after scrutiny of the Policy, oral evidence of RW.2, an official from the Company and on the facts and circumstances of the case, at Paragraphs 8 and 9, held as follows:

8. It is worthwhile to mention that on a careful scrutiny of the copy of policy in the name of the deceased would show that no additional premium was paid to cover any liability towards bodily injury or death of the owner of the vehicle. In such circumstance, the contention that additional premium was paid for covering the owner's risk could not be countenanced. R.W.2, the official from the Appellant's Insurance Company has categorically stated that no additional premium was paid to cover the risk for the owner. The Tribunal has observed that additional premium has been paid for owner's risk also as admitted by R.W.2. This observation is wrong. R.W.2 has stated unequivocal terms in his chief-examination that no additional premium was paid. In his cross-examination he has stated that an additional premium of Rs.50/- has been paid for the driver and owner. But the said statement is incorrect in view of the entry contained in Ex.R.2 policy. Rs.50/- additional premium has been collected for the purpose of workmen compensation for 2 employees. This additional premium does not cover the owner of the vehicle.

9. The above referred decisions clearly lay down the principle that the insurer is not liable to indemnify the insured unless additional premium is paid to cover liability towards bodily injury or death of the owner of the vehicle. In such a view of this matter, we are of the opinion that the award passed by the Tribunal is not sustainable by means of which liability was fastened on the present Appellant. The Appellant-Insurance Company is not liable to pay compensation to the Legal Representatives of the deceased/owner of the vehicle.

35. In The Branch Manager, The New India Assurance Co.Ltd. Vs. Mahadev Pandurang Patil and Another, reported in ILR 2011 KAR 850, it is held that, "it is settled law that if the Insurer has not collected extra premium, it is not liable to cover the risk of the occupants of the said Jeep. It is worthwhile to extract the relevant paragraph 17, which reads thus:

"17. In view of the authoritative pronouncement of the Apex Court holding that an occupant/inmate/passenger in a private car, is not a third party, the finding recorded by the tribunal that the insurance policy issued covers the risk of such persons and therefore the insurance company is liable to pay compensation amount is illegal and contrary to the law declared by the Apex Court. In fact, in the policy, no additional premium is received by the insurance company to cover the risk of such persons. It is clear from the terminology used in the policy which fact is not in dispute. In one of the cases, additional premium is collected to loading the risk of third party only, as is clear from the policy that loading was not meant to cover risk of inmates of a private car and therefore, merely because an additional premium is collected under the said policy, it cannot be

inferred that the risk of inmates of a car are covered. The words are specific that the loading is done in order to cover only third party risk, it is not a case of additional premium being collected to cover the risk of inmates along with third parties. Therefore, in the facts of this case, we are satisfied, as the insured has not paid additional premium and the insurance company has not collected any additional premium, the risk of the occupants of a private car was not covered. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set aside." (emphasis supplied) Therefore, it can be seen that, in the instant case, it is not the case of the owner of the offending vehicle that he has paid extra premium to cover the risk of the inmates of the Jeep nor it is established that the Insurer has collected extra premium, covering the risk of the occupants of the Jeep. Hence, having regard to the well settled law laid down in the aforementioned decision, we are of the considered view that the direction issued by Tribunal to the appellant Insurer to indemnify the award cannot be sustained and is liable to be set aside.

36. In Branch Manager, United India Insurance Co. Ltd., v. Ansuiya Devi [M.A.No.480 of 2009, dated 10.05.2011], a claim under Section 166 of the Motor Vehicles Act was made by the legal representatives of the deceased, owner of the motorcycle, which was hit by an unknown truck. Along with the claim under Section 166 of the Act, a petition under Section 140 of the Motor Vehicles Act has also been filed, for interim compensation. The Tribunal passed an order, directing the Insurance Company to pay an interim compensation on 'No Fault Liability'. The Insurance Company preferred an appeal against the interim compensation, on the ground that the deceased was the insured owner and that he cannot be a third party and therefore, the company is not liable to pay compensation, as a third party claim. In the appeal, counter affidavit has been filed by the claimants, stating that though the deceased was the owner of the Motorcycle, the said vehicle was insured, covering the risk of life of the owner. Copy of the Insurance Policy was also annexed to the counter affidavit. It was also contended by the legal representatives of the deceased that inasmuch as an additional premium has been paid, covering the risk of life of the owner, the Company is liable to pay compensation to the legal representatives of the deceased. Drawing the distinction between the statutory third party policy and the contractual liability, the Insurance Company contended that for the insurance of the contract, a claim cannot be made before the Tribunal. Reliance was also placed on a decision made in Arun B.Khanjire v. Ichalkaranji Urban Co-op. Bank Ltd., reported in 2009 (2) SCC 187, wherein, it has been observed that the owner is not a third party and hence, is not entitled to compensation, if the policy is Act Policy, ie., statutory policy. Observing that the owner is entitled to compensation, when extra premium is paid to cover the risk of owner, on the facts and circumstances of the case, the Patna High Court, at Paragraphs 17 and 19, held as follows:

7. Hence the decision relied upon the learned counsel for the appellant is for proposition that if the policy is only act policy it cover the risk of third party only and in such policy the risk of owner is not covered. However, if the policy covering the risk of third party also covered the risk of owner accepting extra premium for covering the risk of owner, the owner is entitled to compensation as third policy claim under Section 147(1)B. However, under the facts and circumstances of the case at hand the policy is not an act policy but also cover the risk of owner to the extent of Rs. 1,00,000/- and extra premium has been paid for covering the risk of owner.

18. However, learned counsel for the respondent has relied upon decision reported in 2008 (3) TAC page 483 in which the question for consideration was whether Insurance Company is liable for compensation in respect of the claim made by the owner or the representative of the owner as third party claim. Taking into consideration Dhanraj V. New India Assurance Company Limited 2004 (8) SCC 553, 2007 A.C.J. 821 (New India Assurance Company Limited V. Meera Bai and others, 2007 A.C.J. 818 (Oriental Insurance Company Limited V. Jhuma Saha and 1998 A.C.J. 531 held that these cases the policy was act policy and in the act policy the risk of owner and representative or pillion rider is not covered (Amrit Lal Sood and another V. Vaushalya Devi Thapar and others) However it is open to the Insurance Company and insurer to the extent coverage of the Act or statutory policy to bodily injury or death of the insured or even driver or pillion rider. It has further been held that policy is not merely a statutory policy, term of the policy cover the risk of the owner and their legal representative and the claim by kith and kin of the insured regarding death have to be treated as third party cover under Section 147 of the Motor Vehicle Act. covers liability incurred by the insured in respect of death or bodily injured to any other person including the owner. Hence the decision relied upon by claimant respondent held that if policy covered the risk of owner to the extent treated as third party cover.

19. Hence coming to the facts and circumstances of the case, since the policy is admittedly covering the risk of third party also covers the risk of owner of the vehicle and hence cover under Section 147 1 (b) 1 and since it is a beneficial legislation for benefit of the victims and members of their family therefore such provisions are required to be liberally construed and hence I find and hold that since the policy covers the risk of third party as well as also cover the risk of the owner, hence covered under Section 147 (1) b(1) and the claimant are covered under the third party claims and the Tribunal has jurisdiction to grant relief.

37. In Smt.Bhagwati Rawat v. National Insurance Company [A.O.No.102 of 2009, dated 28.07.2011], husband of the 1st appellant lost his life in a Motor Vehicle accident. He was the owner of the vehicle and while he was driving the same, the accident occurred. The vehicle fell into a river due to a technical failure. Legal representatives filed a petition under Section 166 of the Motor Vehicles Act, claiming a sum of Rs.11,00,000/-, against the insurer of the Car, National Insurance Company Ltd. The claim was opposed on the grounds, inter alia, that since the deceased himself was driving the vehicle, the Company need not pay any compensation. The Tribunal framed the following three questions of law, . Whether the deceased Ramesh Chandra Singh died in a motor accident caused by rash and negligent driving of vehicle no. UA.07P-6377 by its driver on 22.12.06 at about 7-7.30 a.m. at Paduli, situated within the boundary of P.S. Karanprayag? If so, its effect?

2. Whether the vehicle in question was not being driven in accordance with the terms & conditions of insurance contract, as alleged by O.P. No. 1 in its W.S.? If so, its effect?

3. Whether the claimants are entitled to get any relief or compensation? If so, from whom and to what amount?

38. Upon perusal of the evidence that the owner was insured with the Company for his Personal Accident Cover and paid compulsory personal accident cover premium of Rs.100/-, besides

additional personal accident cover premium of Rs.250/-, the Tribunal awarded Rs.2,00,000/-, limited liability, for personal accident cover to the owner-cum-driver. Not satisfied with the quantum of compensation, the Legal Representatives of the deceased preferred an appeal. Upon considering the pleadings and submissions, the High Court of Uttarakhand at Naintal, held as follows:

Undisputedly in case of owner-cum-driver, it is a contractual liability between the insurer and the insured. As per Insurance Cover Note, the learned Tribunal has given a categorical finding that the risk was covered upto the amount of Rs. 2,00,000/-. Learned counsel for the appellant has argued that the car was also insured for five passengers for which premium was also paid. So far as the risk towards passengers is concerned, the liability of the insurance company to pay the compensation is upto Rs. 1,00,000/- only.

39. In Komeravel Gounder v. Bajaj Allianz General Insurance Company reported in CDJ 2012 MHC 5141, when the owner of a Maruti Car, was driving a vehicle, a dog suddenly crossed the road and in order to avoid the accident, the owner swerved the car on to the right side of the road, lost control, the vehicle hit against a tamarind tree and that, he sustained grievous injuries and despite treatment, succumbed to the same. Legal representatives claimed compensation. The company objected to the claim, contending inter alia that the policy covered only third party risks and that therefore, as per the terms of contract, the Insurance Company is not liable to pay compensation to the claimants. Ex.P2 Policy has been filed. Evidence to that effect has been adduced on behalf of the Company. Since no extra premium was paid for personal accident coverage for the owner, the Tribunal held that the Insurance Company was not liable to pay compensation for the death of the injured. However, the Tribunal directed the insurer to pay Rs.50,000/- towards No Fault Liability . Being aggrieved by the same, legal representatives of the deceased preferred an appeal to this Court. On the above pleadings and evidence, a Division Bench of this Court framed two issues for consideration,

1.Whether the Insurance Company is liable to pay compensation for the death of owner-cum-driver?

2.Whether the Insurance Company is right in contending that Ex.B2 Policy does not cover personal accident to the insurer/owner?

> 40. In the above reported judgment, as per Ex.B2 Insurance Policy, premium of Rs.6,429.81 has been paid towards own damage. Rs.340/- has been paid towards basic TP and Rs.50/- towards TPPD Extension has also been paid. A Division of this Court, at Paragraph 15, held as follows:
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> 5. Any policy in terms of Section 147 of Motor Vehicles Act covers the liability incurred by the insured in respect of death or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 of the Act does not require an Insurance Company to assume the risk for the death or bodily injury to any person including the occupants carried in the motor

car.

42. In the above reported case, after considering IMT 15, the Division Bench, at Paragraph 17, observed as follows:

7. By careful perusal of Ex.B2-Policy, it is seen that no such additional premium was paid covering death or bodily injury of owner-cum-driver. As per IMT. 15 only if additional premium was paid, as per the printed clause in Ex.B2, the insurer is liable to pay compensation. Without paying such an additional premium, Claimants cannot invoke the clause printed in Ex.B2-Policy.

25. Though the learned counsel for the appellant-Insurance Company, contended that the coverage for payment of additional premium for owner-cum-driver , cannot be extended to the occupant of the car, this Court is not inclined to accept the said contentions, in view of the recent decision of the Supreme Court in National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC) and taking note of payment of additional premium, this Court is of the view that when the owner-cum-driver has paid an additional premium of Rs.100/-, taking a coverage for the pecuniary and non-pecuniary losses, suffered by him, in an accident, arising out of the use of the vehicle, then he is entitled to seek for compensation.

26. A owner may travel in a vehicle, either driving the vehicle or as an occupant. He has taken a policy to cover himself for the bodily injuries or death, due to an accident, arising out of and use of the vehicle. The policy is to cover him in both the capacities, either as a owner of the vehicle or as a driver. Merely because, at the time of accident, he did not drive the vehicle, it cannot be contended that the contract of insurance cannot be extended to cover the owner of the vehicle. When he travels in the vehicle, not actually driving the vehicle, but as an occupant, there is no alteration in his status, as the owner of the vehicle. The performance of an act, ie., driving the vehicle, alone is not the criteria, to determine the enforceability of the contract of Insurance. So long as there is a payment of additional premium for the owner cum driver and during the period of validity, an accident has occurred, the policy would cover the owner also, even if he was not on the wheels, at the time of accident. The expression owner cum driver cannot be split up to narrow down the enforceability of the policy to the driver only, if he is also the owner of the vehicle. When an occupant in the vehicle is covered by the judgment in Balskrishnan's case, cited supra, then the owner of the vehicle, who travelled in the offending vehicle, as an occupant, is also entitled to seek for just compensation, when the vehicle is covered by a comprehensive/package policy. If the policy is comprehensive/package policy and whem additional premium has been paid to cover any loss, then the Insurance Company is liable to pay compensation.

27. An occupant in a vehicle, may include all the persons, including the owner. When there are different kinds of policies, for the owner-cum-driver, employee, unnamed

passengers, etc., for which, different rates of premium is prescribed under the Indian Motor Tariff, it cannot be contended that the claim for compensation is maintainable, only when the owner is on the wheels and not when he travelled in the vehicle, as an occupant. In the light of the decisions, stated supra, this Court is of the view that the respondent is entitled to maintain a claim for compensation, against the insurer alone.

28. The next question to be considered is whether the Claims Tribunal is right in awarding a compensation of Rs.3,13,934/- with interest at the rate of 7.5% per annum. In this context, objections of the appellant-Insurance Company are two fold. They are, (1) the injuries and disablement, said to have been suffered by the respondent do not fall within the category mentioned in the policy, and (2) Even taking it for granted that the respondent is entitled to be compensated, yet the quantum of compensation should be restricted only to the amount covered under the Personal Accident Cover Policy, which in the case on hand, is restricted to Rs.1,00,000/-.

29. Before adverting to the said question, this Court deems it fit to consider the nature of injuries, period of treatment, expenses incurred and other aspects of pecuniary and non-pecuniary losses pleaded. According to the respondent, he has sustained grievious injuries in the chest and head, and immediately thereafter, he was treated in GMCH hospital, Coimbatore and thereafter, referred to C.M.Hosiptal, Namakkal. Subsequently, he has taken treatment in LKM Hospital, Erode and hospitalised in Gokulam Hospital. He was also hospitalised in Ganga Hospital, between 10.11.2007 and 26.11.2007. According to him, prior to the accident, as a Rig and Granite owner, he earned Rs.10,000/- per month. To prove the injuries and the treatment in different Hospitals, he has marked Ex.P18 Wound Certificate, Ex.P19 Discharge Summary, Ex.P20 C.T.Scan Report, Ex.P21 Medical Bills and Exs.39 and 40, X-Rays and its receipts.

30. PW.6, Doctor, who clinically examined the respondent/claimant, with reference to the medical records, has noticed that there was a scar, measuring 19= cms, near the right hip. There was swelling and during examination, the respondent/claimant had complained of pain. The circumference of the right thigh muscles has been reduced by 1cm. There was a reduction in the movement, flex and rotation of right hip by 20 Degrees. The respondent/claimant complained of pain, when the hip was rotated. There was swelling on both sides of the chin and pain when touched. Implants, steel plates and screws were not intact and that the injured had complained of pain, when the Doctor touched, at the situs of the injury. As there was a damage to the bone in the right hip, the injured has difficulty in chewing and eating. There was swelling in the right hip. There was reduction in the expansion of chest by 1cm. Swelling in the lumbar area, leading to restriction of movement. Considering the physical infirmities noticed and the discomfort expressed, PW.6, Doctor, has deposed that the cheek bones, right rib 4 and L12 vertibra were damaged and on the basis of

medical records and observation, he has assessed the disability at 49% and issued Ex.P38 Disability Certificate. However, considering the objections of the appellant-Insurance Company that PW.6, Doctor, did not treat the injured, the Claims Tribunal has reduced the extent of disability to 42% and awarded Rs.84,000/- as disability compensation.

31. For pain and suffering, a sum of Rs.25,000/- has been awarded. For nutrition, a sum of Rs.15,000/- has been awarded. Rs.10,000/- has been awarded towards attendant charges and Rs.5,000/- for discomfort. Though the respondent has claimed a sum of Rs.2,70,000/- towards medical expenses, on the basis of Ex.P21 Medical Bills, the Claims Tribunal has awarded only Rs.1,15,934/-, as medical expenses. The Claims Tribunal has failed to assess the future loss of earning. However, after determining the monthly income of the injured at Rs.4,500/-, awarded a sum of Rs.54,000/- for 12 months. Though the total compensation has been worked out to Rs.3,13,934/-, the Claims Tribunal has restricted the award only to Rs.3,00,000/-.

32. From the above oral and documentary evidence, it could be seen that the respondent had sustained injuries, both in the upper and lower limbs of the body. PW.6, Doctor, has deposed that there was damage to the bone in the right hip and that there was swelling in the right hip guage and in lumbar area, and that the respondent/claimant had complained of pain, during clinical examination. However, the Claims Tribunal has reduced the percentage of disability assessed by PW.6 Doctor, at 49% to 42%, on the ground that assessment has been made even for pain. In the light of the medical evidence, available on record, the extent of disablement assessed by PW.6, Doctor, cannot be said to be excessive. The medical expenses of Rs.1,15,934/- incurred by the respondent/claimant is not seriously disputed, in this appeal.

33. At the time of accident, the respondent/claimant was aged about 42 years. He claimed to be a rig owner and granite contractor, and earned Rs.10,000/- per month. At that age, he would have been certainly engaged in some avocation to maintain his family. When the extent of disablement has been assessed to 42%, due to the injuries and there was also a physical informity, in the lumbar area and rib guage, the Claims Tribunal ought to have adverted to the issue, as to whether, the functional disability noticed and assessed by the Doctor, should be taken into consideration, for the purpose of assessing the whole body disability and whether the extent of disability in the limbs, would have an impact on his employment and likelihood of affecting the loss of earning capacity.

34. When the Claims Tribunal has awarded Rs.54,000/- for loss of earning, during the period of treatment, by fixing the monthly income of the respondent/claimant at Rs.4,500/-, the Claims Tribunal ought to have addressed the issue, as to whether the disablement would have affected his future earning capacity, as well. The challenge in

this appeal, as to whether the nature of injuries and extent of disablement, do not fall within the specified injuries, as provided for, under the Personal Accident Cover Policy, has already been considered in a decision of this Court in M/s.Bajaj Allianz General Insurance Co. Ltd., v. C.Ramesh [C.M.A.No.2468 of 2012, dated 08.01.2013].

35. The last question to be considered is whether the Claims Tribunal is empowered to award a compensation more than the limit, provided for, in the Personal Accident Cover Policy. When the respondent/claimant has sustained multiple injuries, resulting in huge medical expenditure of Rs.1,15,934/-, restricting the quantum of compensation to the maximum amount of Rs.1,00,000/-, as per the policy, would defeat the principles of Just Compensation . Few decisions on the principles of just compensation is reproduced hereunder:

(i) In R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

(ii) In Common Cause, A Registered Society v. Union of India reported in 1999 (6) SCC 667, at Paragraph 128, held as follows:

The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups : pecuniary and non- pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what Mcgregor says, is generally more important than money: it is the best that a court can do. In Re: The Medianna (1900) A.C. 1300, Lord Halsbury L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But nevertheless the law recognises that as a topic upon which damages may be given."

(iii) In yet another decision in Divisonal Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197, at Paragraph 12, the Supreme Court has held that, "Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes

pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

At Paragraph 15 of the said judgment, the Supreme Court has held that, "Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

> (iv) In Nizam Institute of Medical Sciences v. Prasanth S.Dhananka reported in (2009) 6 SCC 1 = 2010 ACJ 38 (SC), the Supreme Court, comprising of three Hon'ble Judges Bench was dealing with a case arising out of a complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Hon'ble Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:
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> We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The adequate compensation that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. ...At the same time we often find that a person injured in an accident leaves his family in greater distress vis-`-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity. (emphasis supplied)

(v) In Reshma Kumari and others v. Madan Mohan reported in (2009) 13 SCC 422, the Apex Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Co. Ltd. v. Jashuben, 2008 ACJ 1097 (SC), held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor. (emphasis supplied)

36. If the contention of the appellant-Insurance Company has to be accepted, then no compensation can be awarded under other heads, viz., disability, loss of earning, pain and suffering or under any other pecuniary and non-pecuniary losses. Even the respondent/claimant will not be in a position to get back Rs.1,15,934/-, incurred by him, towards medical expenses. Such a narrow construction of limiting the compensation only to Rs.1 Lakh, cannot be made, when sufficient oral and documentary evidence, has been adduced to prove that the pecuniary and non-pecuniary losses suffered by the injured, exceeds the maximum limit. Restricting the compensation to only Rs.1 Lakh, would defeat the very intention of the legislature, to award, just compensation to the accident victim, and it will not be in conformity with the judgments of the Apex Court, stated supra.

37. On the facts and circumstances of the case, this Court is of the view that the overall quantum of compensation awarded to the respondent/claimant cannot be said to be grossly excessive. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount with accrued interest and costs, to the credit of M.C.O.P.No.459 of 2008, on the file of the Motor Accidents Claims Tribunal (Sub Court), Sankari, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal.

skm To The Motor Accidents Claims Tribunal (Sub Court) Sankari