
CRITICAL ANALYSIS OF THE CASE: CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LIMITED VS. RAMESH BABU

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ABSTRACT

In the case of Cholamandalam MS General Insurance Company Ltd. v. Ramesh Babu, the very maintainability of the petition is being questioned under the Motor Vehicle Act, 1988 statute. The primary question is whether the claimant can be considered a third party if no other motor vehicle was involved. Secondary question was regarding the personal accident cover, the question raised was if it can be interpreted by the motor accident claims tribunal through the motor vehicle statute or is it a contract that should be interpreted by the Indian contract act 1872 under the jurisdiction of a consumer court. The judgment passed in favour of the insurance company and it was held that a statutory liability cannot be equated with contractual liability as the injuries sustained by the claimant were not agreed upon by the terms and conditions of the parties. This research paper analysed the case through similar cases held in judicial court and the author's interpretation of the statute. The crux of the case deals with familiar issues raised previously in the judiciary while adjudicating motor accident cases.

Keywords: Motor Vehicles Act, 1988; Third-Party; Motor Accident Claims Tribunal

Introduction

The first motor vehicle act was passed in 1914 which was later replaced by the act in 1939. Like most statutes to keep pace with changing times, the law was amended. Despite these amendments, there was a need to bring a comprehensive legislature inclusive of all these changes in transport technology, development of infrastructure and road transportation, freight movement, road safety, pollution control, etc. the law committees and other such committees have investigated different aspects of road transport and due to further urge from the members of the parliament as well, the motor vehicle act 1939 was to undergo a comprehensive review.

A working group was constituted in the month of January 1984 which took recommendations and suggestions from various bodies and institutions. A meeting was held with transport ministers of India's states and union territories. From the meeting arose various comments and inclusive of the all the comments and suggestions a motor vehicle bill was introduced in the parliament. There were numerous changes being introduced by the bill, for example, higher compensation for "hit and run" and "no-fault liability", etc. The bill was passed by both houses of parliament and is now Motor Vehicles Act, 1988. (Hereinafter MVA, 1988)

The motor vehicles act is a welfare legislation and the intention is to place the aggrieved party in a position before the accident in a manner that is fair and just to all parties.

Types of Insurance and Third Party Insurance

Motor insurance protects the insurance holder from losses faced by him in the events of accidents, theft, and liability to a third party. It greatly depends upon the kind of insurance policy that is being paid premium for. There are two types of insurance policy, a liability-only policy which is third party insurance, and a comprehensive package policy which includes third party Insurance and personal accident cover.

In Third party insurance, the first party is the insured, the second party is the insurance company and the third party is the person claiming damages. *In cases Govindan v. New India Assurance Co. L¹ and New India Assurance Co. Ltd. v. Sheela Rani (Smt.) & Ors²*. Supreme Court

¹ G GOVINDAN V NEW INDIA ASSURANCE CO LTD & ORS LNIND 1999 SC 368

² New India Assurance Co. Ltd. v. Sheela Rani (Smt.) & Ors [1998] 6 SCC 599.

interpreted the MVA act and held that the government made third party insurance compulsory. Section 145-164 covers the laws regarding third party insurance.

Personal Accident cover

A personal accident Insurance cover protects the policyholder in the event of an accident causing death or disability. When Commuting on road, safety is not always guaranteed, and to protect the policyholder from an accident a personal accident cover is taken. It covers medical bills when the injured is suffering from permanent disability and compensates the family in case of death. The personal Accident cover is mandatory.

Important sections of the Motor Vehicles Act:

Section 146- Necessity of insurance against third parties

Section 147- Requirement of policies and limits of liability

Section 163- Scheme for payment of compensation in case of hit and run motor accidents.

Section 163A- Special provisions as to payment of compensation on a structured formula basis

Section 165- Claims Tribunals

Section 166- Application for compensation

Literature Review

The researcher while conducting the research found no literature work analyzing the case of Cholamandolam MS General Insurance Company Limited Vs. Ramesh Babu. The current case deals with Motor Vehicles Act, 1988 and more specifically a comprehensive package policy including Third Party Insurance joint with a Personal Accidents cover. The researcher refers to the bare act of **THE MOTOR VEHICLES ACT, 1988**³ specifically chapter 11 (Insurance of Motor Vehicles against third party risks) and chapter 12 (Claims Tribunal). The research was further supported by the **MOTOR VEHICLES ACT, 1988 BOOK**⁴ published by EBC Reader providing comprehensive information and clarification on the MVA, 1988 along with case laws

³ MOTOR VEHICLES ACT, 1988, NO. 59, ACTS OF PARLIAMENT, 1988 (INDIA).

⁴ MOTOR VEHICLES ACT, 1988 (EBC 2021)

and comparative table between the predecessor of this legislative statute. The **SCC ONLINE BLOG**⁵ provided important news not only on the present case but also important judgments from courts on similar issues raised in the present case. **The Motor Vehicle Act 1988: A Critical Evaluation**⁶ is a paper published in the International Journal of Innovative Research and Advanced Studies (IJIRAS) which shares the researcher's opinion on the statute of Motor Vehicles Act, 1988.

Research Objectives

- To interpret and use the applicable sections of the motor vehicle act
- To understand the case of Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu
- To analyse the case with reference to pronouncements of judicial courts on similar issues

Research Question

- Can the Claim petition be maintained under section 163,163-A ,166 of MVA?
- Can the respondent seek compensation from personal accident cover?
- Was the Judgment by the Tribunal liable to be set aside?
- Was the Claimant a third party?

THE CASE

Cholamandalam MS General Insurance Company Limited (Appellant)

VS.

Ramesh Babu (Respondent)

THE FACTS OF THE ACCIDENT

On 15 June of 2011 at 6 a.m., A Tata Indica Tourist Taxi dashed against a palm tree on the

⁵ Devika Sharma, <https://www.scconline.com/blog/post/tag/personal-accident-cover/> (last visited Jan.3,2022)

⁶ Dr. Jai Shankar Sing, Karthikeya Kumar, The Motor Vehicle Act 1988: A Critical Evaluation, Volume 5 Issue 2, International Journal of Innovative Research and Advanced Studies (IJIRAS),308-312,2018

roadside which resulted in a road traffic accident. The accident is claimed to have happened due to unavoidable reasons in Kallakurchi main road while driving from Tiruvannamalai. The owner/driver was the policyholder of Chola mandalam Motor insurance at that time. The owner/driver of the vehicle claims compensation by means of third-party insurance and the case was first heard in the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi and the Insurance Company dissatisfied with the judgment filed another civil appeal in the high court of Madras.

The claimant seeks compensation of Rs 2,00,000 from the Insurance Company under section 163 of the Act. The claimant and the counsel contend that the claimant has sustained grave injuries at the time of the accident. The learned counsel for the insurance company holds that under section 147(1) of MVA, 1988 The Claimant cannot be said to be a third party and therefore cannot avail any compensation under a statutory provision. The tribunal after adjudicating the case, without any reference to the statute awarded compensation of 2,16,500 Rs under personal accident cover when the policy had a monetary limit of Rs. 2,00,000. The case in the tribunal was scrapped because the tribunal failed to adjudicate the maintainability of the petition and an appeal is filed in the High court of Madras.

This paper analyses the appeal, proceedings, and the judgment passed by the High court.

The insurance policy held by the Respondent:

The policy covered only two types of risks:

- 1) Own damages
- 2) Third-party Liability

The premium was paid for

- 1) Own damages
- 2) Third-party Liability
- 3) Personal Accident Cover

Issues of the case

- Can the Claim petition be maintained under section 163-A of MVA?

- Can the respondent seek compensation from personal accident cover?
- Was the Judgment by the Tribunal liable to be set aside?

CAN THE CLAIM PETITION BE MAINTAINED UNDER SECTION 163-A OF MVA?

The Claimant has filed a petition under section 163 of MVA but the tribunal has referred to the petition under section 163-A, but the misquoting provision of the act doesn't bar the claimant from receiving compensation if it is deserving. The learned counsel for the respondent is of the opinion that since the owner had personal accident cover and has sustained injuries and the owner should receive compensation under disability, loss of earning power, bills for hospitalization, and any other monetary and non-monetary losses.

The learned counsel has made reference to the case of Bajaj Alliance v. C. Ramesh in which there was a further reference made to Ningamma v. United India Insurance Co. Ltd which gave the court's interpretation of section 163-A and section 166. Paragraph 21 of the judgment in the Ningamma v. United India Insurance Co. Ltd is provided hereunder:

“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.”

So in this case, as there was no permanent disablement nor death and the claimant being the owner of the vehicle cannot claim compensation under Section 163-A.

CAN THE RESPONDENT SEEK COMPENSATION UNDER PERSONAL ACCIDENT COVER?

A personal accident cover grants the policyholder compensation in case of an accident.

<i>Sl. No.</i>	<i>Nature of Injury</i>	<i>Scale of Compensation</i>
i)	Death	100%

ii)	Loss of Two limbs or sight of two eyes or one limb or sight of one eye	100%
iii)	Loss of one limb or sight of one eye	50%
iv)	Permanent total disablement other than named above	100%

(THE POLICY'S SCHEDULE FOR COMPENSATION OF PERSONAL ACCIDENT COVERAGE)

“Provided always that

- 1) The Compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the Insurer shall not in the aggregate exceed the sum of Rs. 2 lakhs during any one period of Insurance.*
- 2) No compensation shall be payable in respect of death or bodily injury, directly or indirectly, wholly or in part, arising or resulting from or traceable to (a) intentional self-injury, suicide or attempted suicide, physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.*
- 3) Such compensation shall be payable directly to the Insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the Insured.*
- 4) This cover is subject to*
 - (a) The owner-driver is the registered owner of the vehicle insured herein; (b) The owner-driver is the Insured named in this policy.*
 - (c) The person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.*

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

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

The respondent explained the nature of injuries sustained:

Fractures of ribs 3,4,5 (left)
Haemothorax
Surgical Emphysema
Left ICD done to remove blood collected from thorax region

The court is of the opinion that, when the package policy (third party liability + personal accident cover), more specifically speaking the personal accident policy is claimed by the petitioner, the nature of the policy should be looked into. All claims cannot be adjudicated by the tribunal. The ones that fall under the purview of the tribunal should be in reference to the act. When there is a contractual agreement that was violated, the aggrieved party must approach the appropriate forum. This agreement reduced to writing comes under the provision of the Indian Contract Act which is not dealt with motor accident claims tribunal and should be dealt with in the competent court. Compensation under contractual policies can be claimed in consumer courts or civil courts. Contractual liability cannot be equated with statutory liability. When a petition is made in the motor accident claims tribunal, it should align with section 147 of MVA.

The court said referring to the table of compensation for the personal accident of the insurance policy it can be clearly identified that it is contractual in nature and compensation can only be claimed after the conditions are met. There is no third-party involvement in personal accident covers. Only when the conditions are met in the personal accident policy, the policyholder can seek compensation. The terms and conditions are of paramount importance and if there is no coverage under the policy, compensation cannot be claimed, and yet the tribunal has granted Rs 2,16,500 to the respondent when the terms and conditions of the policy specifically give a maximum compensation of Rs 2,00,0000. The contractual liability cannot be brought into the ambit of statutory liability. For monetary compensation of the personal accident cover, the

claimant has to establish the factum of disablement and it has to be done in the competent forum and not the tribunal.

So, the court denied the claimant from receiving compensation from personal accident cover.

WAS THE JUDGMENT SET BY THE TRIBUNAL LIABLE TO BE SET ASIDE?

The appellant has raised the issue of the maintainability of the claim petition by the respondent and if statutory coverage is even provided by the motor claims tribunal under section 147(1) of MVA, 1988. During the course of judicial proceedings in the tribunal court, the respondent while claiming compensation under personal accident cover has not provided the original policy of insurance and neither was examined by the doctor to establish the factum of “Disablement” from the injuries of the motor accident according to the terms and conditions of the policy. The two parties have agreed to the terms and conditions including the monetary liability of the insurer in case of an accident falling under personal accident coverage which is 2,00,000 Rs. The tribunal has granted a compensation of Rs. 2,16,500 completely overlooking the contract policy between the insurer and the insured. The terms and conditions being contractual in nature cannot be adjudicated by the motor accidents claim tribunal as it is not in the ambit of statutory liability.

So considering these factors, the court is of the opinion that the legal issues raised by the appellant and the terms and conditions and its binding nature on compensation were not adjudicated properly, and on these grounds the judgment of the tribunal is perverse.

PRECEDENT SET BY THE CASE

- The Madras HC in the case of Iffco Tokiyo General Insurance Co. Ltd. Versus Chinnathambi and Others has elaborately discussed this case to ascertain the liability to fix against the Insurance company with regards to policy coverage.
- In the case of The National Insurance company ltd V. Munusamy, the Insurance company (appellant) has referred to this case to argue that the tribunal failed to consider the terms and conditions of the policy and issued compensation.
- In the case of Tata Aig General Insurance Company Ltd v. Govindarajan and others was referred due to the tribunal granting the compensation overlooking the terms and conditions and granting the award based on statutory provisions.

From the above, it can be said that the case has set precedence for fixing liability based on the policy agreed by the parties and giving importance to the same while granting compensation.

CRITICAL ANALYSIS

In the author's view The case of Ms. Cholamandalam Ms. General Limited (Appellant) V. Ramesh Babu (Respondent) accurately represents the changing situations of road transport and how the motor vehicles act,1988 was far from being the statute we needed to protect and rightfully compensate victims. The court failed to properly state why the petition isn't maintainable under 163-A and 166 and solely focused on personal accident cover and whether it comes under the jurisdiction of motor accidents claims tribunal.

In the present case, Ramesh Babu the owner of Tata Indica Tourist Taxi dashed against a palm tree and had sustained injuries with no involvement of a third party. A Claim Petition is filed seeking 2,00,000 Rs in damages. The claim petition was strongly contested by the Insurance company (appellant) that the owner is not a third party and therefore doesn't get statutory coverage under section 147(1) of MVA.

WHETHER THE CLAIMANT IS A THIRD PARTY?

In the case of Oriental Insurance Company v. Mrs. Kempamani & Another it was held that "*the term third party must refer to a party other than those, who are parties to the contract of insurance. If a party to the contract of insurance is regarded as a third party within the meaning of that term, it would offend the natural and ordinary meaning of the term 'third party'. It is trite, the insurer is one party while the insured is the other party for a contract of insurance. Therefore, it is unreasonable to construe that any person other than the said two party parties would also be a third party.*"⁷ So in this case the owner-driver cannot be a third party.

Claim compensation were considered under section 163, section 163-A, section 166

SECTION 163

Section 163(Scheme for payment of compensation in case of hit and run motor accidents). But section 161 defines hit and run motor accident as "an accident arising out of the use of a motor

⁷ Oriental Insurance Co. Ltd. vs. Kempamani and Ors. (23.06.2003 - KARHC) : MANU/KA/0910/2003

vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose.”⁸The claimant is not a victim of a hit and run just by looking at the facts of the case. The tribunal however considered the petition under section 163-A.

SECTION 163-A

Section 163-A was to provide is a social security measure that provides compensation based on age and income. But this section is often taken advantage of when there is no third-party involvement. In the case of **UNITED INDIA INSURANCE CO LTD VERSUS ARUN KUMAR SHETTY & ANOTHER LNIND 2010 KANT 886** refers to Justice T.S Thakur who mentions the legislative intention of section 163-A and who is not applicable to avail compensation :

“It is evident from the above that section 163-A was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them.”⁹

This case is one where section 163-A can be seen taken advantage of. 163-A(1) clearly states that compensation is given only in the case of death and permanent disablement which was not incurred by the claimant in this case.

But the claimant won't receive any compensation under section 163-A due to what was held in **Oriental Insurance Company Ltd. v. Rajni Devi and Others**, In an accident where the owner only himself was involved cannot claim compensation as he cannot be both liable and recipient of compensation¹⁰. So the respondent is not going to be compensated by the way of this provision.

In **Bajaj Alliance v. C. Ramesh**, while making a reference to the what the apex court held in **Oriental Insurance Company Ltd. v. Rajni Devi and Others** said in para 30 that,

“34. Undoubtedly, Section 166 of the MVA deals with “just compensation” and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our

⁸ MOTOR VEHICLES ACT, 1988, §161, No. 59, ACTS OF PARLIAMENT, 1988 (INDIA).

⁹ UNITED INDIA INSURANCE CO LTD VERSUS ARUN KUMAR SHETTY & ANOTHER LNIND 2010 KANT 886

¹⁰ Oriental Insurance Co. Ltd. Versus Rajni Devi and Others LNIND 2008 SC 935

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.¹¹

So, the court has to adjudicate the case on the basis of section 166 of the MVA.

SECTION 166

provides for who can apply for compensation but it should be compliant with section 165(1)- the nature of the injury sustained. Section 165(1) reads as:

“A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”¹²

In the case of Smt Sangeetha vs Sri Krishna Chari, a brief difference between section 166 and section 163-A had been talked about and it was held that both section 166 and 163-A would be maintainable provided under section 147(1). Under section 147(1) the claimant, in this case, cannot avail any compensation.

It was held in the supreme court when the owner of the vehicle where the claim petition was filed under section 166 and section 147 where the deceased was also the owner of the vehicle and the accident occurred due to rash and negligent driving of the vehicle and no third party was involved. The deceased cannot be considered as a third party and therefore the claim petition cannot be maintained under section 166. When the owner is not liable then the insurance company doesn't have liability to pay

¹¹ Bajaj Allianz General Insurance Co. Ltd. v. C. Ramesh, 2013 SCC OnLine Mad 135

¹² MOTOR VEHICLES ACT, 1988, §165(1), NO. 59, ACTS OF PARLIAMENT, 1988 (INDIA).

compensation. The present court while considering the present case had similar reasoning to the issue.¹³

WHETHER THE CLAIM PETITION CAN BE AWARDED BY PERSONAL ACCIDENT COVER BY THE TRIBUNAL AND WHETHER THE CLAIMANT IS ENTITLED?

In the case of Mangala v. National Insurance Company Limited, the judge is of the opinion that personal accident cover should be entertained by the tribunals. It was held that section 165 of MVA, 1988 states :

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

Section 165 doesn't say only when the policy is obtained under section 147, the tribunal gets jurisdiction. So if the policy holds the personal accident clause, it will be maintainable by the tribunal. It was also said that since the motor vehicles act, 1988 is a special statute, and the consumer protection act and court deals with grievances of the consumer. With reference to the definition of complaint and service under the consumer protection act, it was said that the insurance company not accepting the claim doesn't amount to deficiency of service because the injury sustained doesn't fall under the service rendered by the insurance company.¹⁴

But the present court subject to the current case is of the opinion that personal accidents are terms and conditions agreed between two parties and agreed by them hence a contract is formed and motor claims tribunal cannot adjudicate. Contractual liability cannot be equated with statutory liability. The contractual policies are unrelated to the motor vehicles act and more specifically section 147. The claimant however did not receive compensation, as the injury sustained, wasn't under the purview of the personal accident coverage offered by the company.

The reasoning of the courts on whether the claim on personal accident can be maintained in motor accident claims tribunal is inconsistent. But the author is of the opinion that since section 165 of MVA, 1988 comes under chapter XII CLAIMS TRIBUNALS, and is no longer under third party insurance and it states section 165 states "*for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,*

¹³ Sangeetha and Ors. vs. Krishna Chari and Ors. (24.09.2018 - KARHC) : MANU/KA/4405/2018

¹⁴ Mangala v. National Insurance Company Limited, 2020 SCC OnLine Bom 974

persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both”¹⁵

The researcher is of the opinion that the claims tribunal have power to adjudicate in the event of death and bodily injury to any person but only damage of the property of a third party so, the courts have the power to adjudicate the case on personal accident and it should have been done in the appeal.

CONCLUSION

The Motor Vehicle Act, 1988 is an important legislation and it is not limited to offering compensation to road accident victims but also establishing the procedure for a multitude of things for a smooth road transport system. It lays down procedures for granting a motor license, issuing fitness certificates to vehicles, anti-pollution devices, etc. The need for a reformed motor vehicle legislation arises for better road safety, simpler procedures, less contribution to pollution, and a rise in the number of vehicles. It is advised to interpret the statute liberally so the victims can be compensated. In this research paper the case of *Cholamandalam MS General Insurance Company Ltd. v. Ramesh Babu*, the appeal was initially filed in the tribunal and later in Madras High court, the appeal stood allowed and was in favour of the insurance company. No compensation was given to the road transport victim as the personal accident cover didn't offer compensation for the nature of injuries sustained by the claimant.

¹⁵ MOTOR VEHICLES ACT, 1988, §165(1), NO. 59, ACTS OF PARLIAMENT, 1988 (INDIA).