(2013) 01 MAD CK 0003

In the Madras High Court

Case No : C.M.A. No. 2468 of 2012 and M.P. No. 1 of 2012

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

C. Ramesh RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2014) ACJ 721

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Liability fastened on the insurance company to pay compensation to the respondent-claimant, an owner-cum-driver,

under personal accident cover policy is challenged in this appeal. It is the case of the respondent that on 31.10.2005, about 1830 hours, when he

was riding a motor cycle, bearing registration No. TN 40-Y 4883, on Bhavani Sagar to Puliyampatti Road, near Thoppampalayam, from north to

south, due to heavy rain, there was stagnation of water and, therefore, he drove the motor cycle at a moderate speed and while applying brakes,

the vehicle skidded, he fell down, along with the pillion rider. He sustained injuries in the left shoulder and other parts of the body. He was admitted

in Ganga Hospital, Coimbatore. A case in Cr. No. 218 of 2005 was registered for offences under sections 279 and 337, Indian Penal Code, on

the file of Bhavani Sagar Police Station. At the time of accident, respondent-claimant was working as a driver and earned Rs. 6,000 per month.

For medical and other expenses, disability and under other heads, he claimed compensation of Rs. 3,00,000.

2. The appellant insurance company opposed the claim petition, contending, inter alia, that the contract between the owner of the vehicle and the

insurance company is only to indemnify the insured, for the loss or damage to the vehicle and that the policy taken is only to cover the schedule

mentioned injuries in the policy. The insurance company also submitted that section 147 of the Motor Vehicles Act, 1988, does not require the

insurer to indemnify the owner, who himself is the tortfeasor. Before the Claims Tribunal, without prejudice to the above, the quantum of

compensation claimed under different heads was also questioned.

3. To prove that he sustained injuries, which led to permanent disablement, the respondent-claimant has marked wound certificate dated

17.2.2007, Exh. P2; copy of discharge summary dated 1.11.2005, Exh. P7; disability certificate, Exh. P14. Exh. P9 is the policy, in respect of

personal accident cover to the insured or any named person, other than the paid driver or cleaner. The policy was in force between 29.3.2005 and

28.3.2006. As the accident occurred on 31.10.2005, taking note of policy, Exh. P9, personal accident cover for the owner-cum-driver for Rs.

1,00,000 and on the basis of medical evidence, the Tribunal has awarded compensation of Rs. 43,400 with interest, at the rate of 7.5 per cent per

annum, as hereunder:

4. Inviting the attention of this court to the tabular column in the personal accident cover policy, categorising the nature of injuries and the scales of

compensation, Mr. K.S. Narasimhan, learned counsel for the appellant insurance company, submitted that the injuries sustained by respondent-

claimant do not fall under the scope of personal accident cover. According to him, as per the provisions of Motor Vehicles Act, personal accident

cover policy is intended to cover and indemnify the owner only against third party claims and it cannot be construed to confer any benefit on the

tortfeasor, who is the owner-cum-driver and in that context, placed reliance on a decision of the Supreme Court in National Insurance Co. Ltd. v.

Laxmi Narain Dhut, 2007 ACJ 721 (SC). He also placed reliance on a judgment in Royal Sundaram Alliance Insurance Co. Ltd. v. Gangadevi,

2012 (2) TN MAC 388.

5. Per contra, to sustain the award, Mr. Ma. Pa. Thangavel, learned counsel for the respondent-claimant, submitted that personal accident cover is

intended not to indemnify the owner-cum-driver, for the claim made by a third party, but it is a personal claim and compensation has to be paid to

the owner-cum-driver, who sustains injuries or to the legal representatives of the deceased, as the case may be and, therefore, the injured is

entitled to receive the compensation, as per the policy, irrespective of the fact as to whether he was negligent or not in causing the accident.

According to him, on facts, there was no negligence on the part of the respondent-claimant and that therefore, he cannot be termed as a tortfeasor,

to deny the benefit of the personal accident cover policy. He further submitted that the injuries caused to the respondent resulted in permanent

disablement to the extent of 18 per cent, assessed by doctor, PW 3, who has issued disability certificate, Exh. P14 and, therefore, the insured is

entitled to maintain a claim for compensation.

6. Inviting the attention of this court to an unreported judgment in National Insurance Co. Ltd. v. Saravanan, C.M.A. No. 605 of 2008; decided

on 17.4.2012, learned counsel for the respondent-claimant further submitted that a similar objection regarding maintainability of the claim petition

before the Tribunal, as well as the liability fixed on the insurance company to pay compensation, has been considered and rejected in the above

said unreported judgment and, therefore, prayed that the judgment in C.M.A. No. 605 of 2008, dated 17.4.2012, be applied to the facts of this

case. For the above said reasons, he prayed for dismissal of the appeal.

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

7. Chapter X of the Motor Vehicles Act, 1988 (in short, ''the Act'') speaks about the liability without fault in certain cases. Reading of section 140

makes it clear that where death or permanent disablement of any person has resulted from an accident arising out of a motor vehicle or motor

vehicles, the owner of the vehicle or the owners of the vehicles as the case may be, shall jointly and severally be liable to pay compensation in

respect of such death or disablement in accordance with the provisions of this section.

8. As per sub-section (4) of section 140 of the Act, a claim for compensation under sub-section (1) shall not be defeated by reason of any

wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum

of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the

responsibility for such death or permanent disablement.

9. The effect of the above said section is that the liability to pay compensation of Rs. 50,000 in respect of death or Rs. 25,000 in respect of

permanent disablement, to any person, is absolute. In other words, section 140 is attracted, irrespective of the fault of the person driving the

vehicle, even if he was negligent or responsible for the accident, causing permanent disablement or death. When section 140 of the Act is invoked,

the legal representatives of the deceased are entitled to a sum of Rs. 50,000 under no fault liability and there is no need to adjudicate the issue of

negligence.

10. The principles underlying no fault liability is that the words ''no fault'' suggest that compensation u/s 140 of the Act should be granted regardless

of the wrongful act, neglect or default of the deceased. Reference can be made to a decision of the Apex Court in Indra Devi v. Bagada Ram,

2010 ACJ 2451 (SC).

11. Section 142 of the Motor Vehicles Act states that for the purpose of Chapter X, permanent disablement of a person shall be deemed to have

resulted from an accident of the nature referred to in sub-section (1) of section 140, if such person has suffered, by reason of the accident, any

injury or injuries, involving (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or (b)

destruction or permanent impairing of the powers of any member or joint; or (c) permanent disfiguration of the head or face.

12. Chapter XI of the Motor Vehicles Act deals with insurance of the motor vehicles against third parties. As per subsection (b) of section 145,

''certificate of insurance'' means a certificate issued by an authorised insurer, in pursuance of subsection (3) of section 147 and includes a cover

note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or

where a copy of a certificate has been issued, all those certificates or that copy, as the case may be. As per sub-section (d) of section 145, ''policy

of insurance'' includes ''certificate of insurance''.

13. Section 147 of the Motor Vehicles Act deals with requirements of policies and limits of liability and the same reads as follows:

(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 insurance 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.

14. Section 149 of the Motor Vehicles Act speaks about the duties of the insurer to satisfy the judgments and awards against persons insured in

respect of a third party risk.

15. Section 163-A of the Motor Vehicles Act deals with special provisions, as to payment of compensation on structured formula basis, which is

extracted below:

163-A. Special provisions as to payment of compensation on structured formula basis.--(1) Notwithstanding anything contained in this Act or in

any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be

liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in

the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.--For the purposes of this sub-section, ''permanent disability'' shall have the same meaning and extent as in the Workmen''s

Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles

concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second

Schedule.

16. In National Insurance Co. Ltd. v. Sinitha, 2012 ACJ 1 (SC), the Supreme Court explained the scope, meaning and the difference between

sections 140 and 163-A, the nature of liability, i.e., whether the insurance company can take up a defence of fault or negligence on the part of the

claimant, when a claim u/s 163-A of the Act is made. At paras 10 to 16, the Apex Court held as follows:

(10) We find merit in the aforesaid contention of learned counsel for the appellant, insofar as the first aspect of this matter is concerned. There can

be no dispute whatsoever that the issues of law arising for consideration in the present controversy as against the matter adjudicated upon by this

court in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, 2001 ACJ 827 (SC), are separate and distinct. In fact, there is hardly any grey

area which may be considered as common between the issues involved. We are also satisfied that the second contention advanced at the hands of

the learned counsel for the petitioner cannot be brushed aside. Sub-section (4) of section 140 of the Act was not referred to nor taken into

consideration while adjudicating upon the controversy arising in Oriental

Insurance Co. Ltd. v. Hansrajbhai V. Kodala (supra). Absence of

reference to sub-section (4) of section 140 of the Act was because the same was wholly irrelevant for the purpose of the controversy settled in the

aforesaid case. We also find merit in the last contention advanced at the hands of the learned counsel for the petitioner, namely, the overriding

effect of section 163-A by the use of the words ''Notwithstanding anything contained in this Act or in any other law for the time being in force or

instrument having the force of law...''. In this behalf, it would be pertinent to mention that section 163-A was introduced into the Motor Vehicles

Act, 1988, by way of an amendment carried out with effect from 14.11.1994. As against the aforesaid, it is necessary to mention that section 144

of the Act was incorporated into the Motor Vehicles Act, 1988 from the very beginning. Section 144, it may be pointed out, is a part of Chapter

X of the Motor Vehicles Act, 1988, which includes section 140. Section 144 of the Motor Vehicles Act is being extracted herein:

144. Overriding effect.--The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of

any other law for the time being in force.

Even though section 144 of the Act mandates that the provisions of Chapter X (which includes section 140) have effect notwithstanding anything to

the contrary contained in any other provision of the Act or in any other law for the time being in force. Section 144 of the Act would not override

the mandate contained in section 163-A, for the simple reason that section 144 provided for such effect over provisions ''for the time being in

force'', i.e., the provisions then existing, but section 163-A was not on the statute book at the time when section 144 was incorporated therein.

Therefore, the provisions contained in Chapter X would not have overriding effect over section 163-A of the Act. As against the aforesaid, at the

time of incorporation of section 163-A of the Act, sections 140 and 144 of the Act were already subsisting, as such, the provisions of section 163-

A which also provided, by way of a non obstante clause, that it would have by a legal fiction overriding effect over all existing provisions under the

Act, as also any other law or instrument having the force of law ''for the time being in force'' would have overriding effect, even over the then

existing provisions in Chapter X of the Act because the same was already in existence when section 163-A was introduced into the Act.

Importance of the instant aspect of the matter is that section 163-A of the Act has overriding effect over all the provisions/sections taken into

consideration by this court while deciding the controversy in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala (supra). It is, therefore, clear

that none of the provisions taken into consideration in the decision relied upon by the learned counsel for the respondents can override the legal

effect of the mandate contained in section 163-A of the Act. We are, therefore, satisfied that it would be incorrect to hold that controversy raised

in the instant case can be deemed to have been settled by this court in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala (supra). We have

delineated the inferences drawn by us from the observations recorded in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, in extenso

hereinabove. We have also reproduced, hereinabove, para. 23 of the judgment in Oriental Insurance Co. Ltd. v. Hansrajbhai V, Kodala, so as to

determine with some sense of exactitude the conclusions drawn in the aforesaid judgment. It cannot be stated that the issue arising in the present

controversy has been dealt with or adjudicated upon in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala (supra). Additionally, the

contentions advanced at the hands of the learned counsel for appellant, more particularly reliance placed by him on sub-section (4) of section 140,

has certainly not been dealt with in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala (supra). Thus viewed, it is not possible for us to

conclude that the issue arising in this case can be stated to have been settled. The assertion made by the learned counsel for the respondents that

the issue raised in the instant case by the learned counsel for the petitioner is no longer res integra, cannot, therefore, be accepted.

(11) Having arrived at the conclusion that the issue in hand has to be decided independently, we will now venture to determine whether a claim

made u/s 163-A of the Act is a claim under the ''fault'' liability principle, or under the ''no fault'' liability principle. We are satisfied that if a claim for

compensation under a provision is not sustainable for reason of a ''fault'' on account of any one or more of the following, i.e., ''wrongful act'',

''neglect'' or ''default'', the provision in question would be governed by the ''fault'' liability principle. Stated differently, where the claimant in order to establish his right to claim compensation (under a particular provision) has to establish that the same does not arise out of ''wrongful act'' or

''neglect'' or ''default'', the said provision will be deemed to fall under the ''fault'' liability principle. So also, where a claim for compensation can be

defeated on account of any of the aforesaid considerations on the basis of a ''fault'' ground, the same would also fall under the ''fault'' liability

principle. On the contrary, if under a provision, a claimant does not have to establish that his claim does not arise out of ''wrongful act'' or ''neglect''

or ''default''; and conversely, the claim cannot be defeated on account of any of the aforesaid considerations; then most certainly, the provision in

question will fall under the ''no fault'' liability principle.

(12) For determination of the issue under consideration, namely, whether section 163-A of the Act is governed by the ''fault'' or the ''no fault''

liability principle, it is first relevant for us to examine section 140 of the Act, so as to determine whether it has any bearing on the interpretation of

section 163-A of the Act. Section 140 aforesaid is being extracted hereunder:

140. Liability to pay compensation in certain cases on the principle of no fault.--(1) Where death or permanent disablement of any person has

resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the

owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a

fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is

liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under

this section or u/s 163-A.

For the instant determination, only subsections (3) and (4) are relevant. A perusal of sub-section (3) reveals that the burden of ''pleading and

establishing'', whether or not ''wrongful act'', ''neglect'' or ''default'' was committed by the person (for or on whose behalf) compensation is claimed

u/s 140, would not rest on the shoulders of the claimant. In other words, the onus of proof of ''wrongful act'', ''neglect'' or ''default'' is not on the

claimant. The matter, however, does not end with this. A perusal of sub-section (4) of section 140 of the Act further reveals that the claim of

compensation u/s 140 of the Act cannot be defeated because of any of the ''fault'' grounds (''wrongful act'', ''neglect'' or ''default''). This additional

negative bar, precluding the defence from defeating a claim for reasons of a ''fault'', is of extreme significance for the consideration of the issue in

hand. It is apparent that both sides are precluded in a claim raised u/s 140 of the Act from entering into the arena of ''fault'' (''wrongful act'' or

''neglect'' or ''default''). There can be no doubt, therefore, that the compensation claimed u/s 140 is governed by the ''no fault'' liability principle.

(13) In the second limb of the present consideration, it is necessary to carry out a comparison between sections 140 and 163-A of the Act. For

this, section 163-A of the Act is being extracted hereunder:

Section 163-A. Special provisions as to payment of compensation on structured formula basis.--(1) Notwithstanding anything contained in this Act

or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be

liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in

the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.--For the purposes of this sub-section, ''permanent disability'' shall have the same meaning and extent as in the Workmen''s

Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles

concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second

Schedule.

A perusal of section 163-A reveals that sub-section (2) thereof is in pari materia with sub-section (3) of section 140. In other words, just as in

section 140 of the Act, so also u/s 163-A of the Act, it is not essential for a claimant seeking compensation to ''plead or establish'' that accident out

of which the claim arises suffers from ''wrongful act'' or ''neglect'' or ''default'' of the offending vehicle. But then, there is no equivalent of sub-

section (4) of section 140 in section 163-A of the Act. Whereas, under sub-section (4) of section 140, there is a specific bar, whereby the

concerned party (owner or insurance company) is precluded from defeating a claim raised u/s 140 of the Act, by ''pleading and establishing'',

''wrongful act'', ''neglect'' or ''default'', there is no such or similar prohibiting clause in section 163-A of the Act. The additional negative bar,

precluding the defence from defeating a claim for reasons of a ''fault'' (''wrongful act'', ''neglect'' or ''default''), as has been expressly incorporated in

section 140 of the Act [through subsection (4) thereof], having not been embodied in section 163-A of the Act, has to have a bearing on the

interpretation of section 163-A of the Act. In our considered view the legislature has designedly included the negative clause through sub-section

(4) in section 140, yet consciously did not include the same in the scheme of section 163-A of the Act. The legislature must have refrained from

providing such a negative clause in section 163-A intentionally and purposefully. In fact, the presence of subsection (4) in section 140, and absence of a similar provision in section 163-A, in our view, leaves no room for any doubt, that the only object of the legislature in doing so was that the

legislature desired to afford liberty to the defence to defeat a claim for compensation raised u/s 163-A of the Act, by pleading and establishing

''wrongful act'', or ''neglect'' or ''default''. Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised u/s 163-A of

the Act, by pleading and establishing any one of the three ''faults'', namely, ''wrongful act'', or ''neglect'' or ''default''. But for the above reason, we

find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defence from defeating a claim for

compensation in section 140 of the Act, and in avoiding to include a similar negative bar in section 163-A of the Act. The object for incorporating

sub-section (2) of section 163-A of the Act is, that the burden of pleading and establishing proof of ''wrongful act'', or ''neglect'' or ''default'' would

not rest on the shoulders of the claimant. The absence of a provision similar to sub-section (4) of section 140 of the Act from section 163-A of the

Act, is for shifting the onus of proof on the grounds of ''wrongful act'', or ''neglect'' or ''default'' onto the shoulders of the defence (owner or the

insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the ''fault'' liability

principle. We have no hesitation, therefore, to conclude that section 163-A of the Act is founded on the ''fault'' liability principle.

(14) There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the Motor Vehicles Act,

1988. Chapter X of the Motor Vehicles Act, 1988 is titled as ''Liability Without Fault in Certain Cases''. The title of the Chapter in which section

140 falls leaves no room for any doubt that the provisions under the Chapter have a reference to liability ''...without fault...'', i.e., are founded under

the ''no fault'' liability principle. It would, however, be pertinent to mention that section 163-A of the Act does not find place in Chapter X of the

Act. Section 163-A falls in Chapter XI which has the title ''Insurance of Motor Vehicles against Third Party Risks''. The Motor Vehicles Act,

1988 came into force w.e.f. 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the

Act was included in the original enactment under Chapter X. As against the aforesaid, section 163-A of the Act was inserted therein w.e.f.

14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides section 140 of the Act)

under the ''no fault'' liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall

within the ambit of the title of Chapter X of the Act ''Liability Without Fault in Certain Cases'', it was purposefully and designedly not included

thereunder.

(15) The heading of section 163-A also needs a special mention. It reads, ''Special Provisions as to Payment of Compensation on Structured

Formula Basis''. It is abundantly clear that section 163-A introduced a different scheme for expeditious determination of accident claims.

Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of section 163-A of the

Act) being long-drawn. The only such situation (before insertion of section 163-A of the Act) wherein the litigation was long-drawn was under

Chapter XII of the Act. Since the provisions under Chapter XII are structured under the ''fault'' liability principle, its alternative would also

inferentially be founded under the same principle. Section 163-A of the Act catered to shortening the length of litigation, by introducing a scheme

regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only the proof of age and income

need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of

other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that the claims made u/s 163-A can result in

substantial compensation. When taken together the liability may be huge. It is difficult to accept that the legislature would fasten such a prodigious

liability under the ''no fault'' liability principle, without reference to the ''fault'' grounds. When compensation is high, it is legitimate that the insurance

company is not fastened with the liability when the offending vehicle suffered a ''fault'' (''wrongful act'', ''neglect'' or ''defect'') under a valid Act only

policy. Even the instant process of reasoning leads to the inference that section 163-A of the Act is founded under the ''fault'' liability principle.

(16) At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that section 163-A of the Act has an

overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act

which is in conflict with section 163-A of the Act will negate the mandate contained therein (in section 163-A of the Act). Therefore, no matter

what, section 163-A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination

including the inferences and conclusions drawn by us from the judgment of this court in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala,

2001 ACJ 827 (SC), as also the statutory provisions dealt with by this court in its aforesaid determination, we are of the view that there is no basis

for inferring that section 163-A of the Act is founded under the ''no fault'' liability principle. Additionally, we have concluded hereinabove, that on

the conjoint reading of sections 140 and 163-A, the legislative intent is clear, namely, that a claim for compensation raised u/s 163-A of the Act

need not be based on pleadings or proof at the hands of the claimants showing absence of ''wrongful act'', being ''neglect'' or ''default''. But that is

not sufficient to determine that the provision falls under the ''fault'' liability principle. To decide whether a provision is governed by the ''fault'' liability

principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or

insurance company) by pleading and proving ''wrongful act'', ''neglect'' or ''default''. From the preceding paras (commencing from para. 12), we

have no hesitation in concluding that it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163-A of the Act by

pleading and establishing through cogent evidence a ''fault'' ground (''wrongful act'' or ''neglect'' or ''default''). It is, therefore, doubtless that section

163-A of the Act is founded under the ''fault'' liability principle. To this effect, we accept the contention advanced at the hands of the learned

counsel for the petitioner.

17. A claim u/s 166 of the Motor Vehicles Act is based on tort, which flows from wrongful act or negligence or default. The said section is

extracted hereunder:

166. Application for compensation.-- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of

section 165 may be made--

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) 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:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be

made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives, who have not so joined, shall be

impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the

area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business

or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect

immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation

under this Act.

18. As we have now seen the difference in the scope and applicability of sections 140, 163-A and 166 to claims under the Motor Vehicles Act,

1988, let me consider some of the cases relating to Personal Accident Cover.

19. In Kaliathal v. New India Assurance Co. Ltd., 2004 ACJ 51 (Mad), 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 & Genl. Ins. 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 (Madras), 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.

20. In Dhanraj v. New India Assurance Co. Ltd., 2005 ACJ 1 (SC), the policy was a comprehensive policy and that there was no personal

accident cover. Considering the same, the Supreme Court, at para. 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 ''own damage'', the words ''premium on vehicle and non-electrical

accessories'' appear"". Therefore, the Apex 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.

21. In New India Assurance Co. Ltd. v. Meera Bai, 2007 ACJ 821 (SC), while considering the scope of statutory liability u/s 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.

22. In United India Insurance Co. Ltd. v. Rukiya, 2007 ACJ 698 (Kerala), husband of the respondent No. 1 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

insurance 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. 2005 ACJ 1 (SC), at para. 4, the 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.

23. In S. Dhanapal v. A. Jerome, 2008 ACJ 2480 (Madras), it was held as under:

(17) The argument that insured-owner of a motor vehicle involved in a motor accident can also claim to be a third party must, therefore, be

rejected on first principle alone.

The view expressed by the learned single Judge in New India Assurance Co. Ltd. v. Kaliathal, 2002 ACJ 1035 (Madras), was confirmed by a

Division Bench of this court in Kaliathal v. New India Assurance Co. Ltd., 2004 ACJ 51 (Madras), in which this court has held as follows:

(3) A Division Bench of this court in L.P.A. No. 187 of 1999; decided on 26.7.2000, has held that the main purpose of the policy is to indemnify

the insured against loss or damage arising out of the use of 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 vehicle 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.

24. In Oriental Insurance Co. Ltd. v. Jhuma Saha, 2007 ACJ 818 (SC), the deceased was the owner of a Maruti 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 para. 13, held 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(1)(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.

25. In New India Assurance Co. Ltd. v. Kendra Devi, 2008 (1) TN MAC 67 (SC), 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

company 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 insurance company is not liable to pay compensation for the death of the

deceased. Before the Supreme Court, though the insurance 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, 2007 ACJ 821 (SC), 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.

26. 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 insurance 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.

27. In Divisional Manager, National Insurance Co. Ltd. v. Mahamooda, 2010 ACJ 1129 (AP), 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 insurance 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, 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.

28. In Ningamma v. United India Insurance Co. Ltd., 2009 ACJ 2020 (SC), the deceased borrowed a motor cycle from the owner and dashed

against the bullocks, without involving any other vehicle. A claim u/s 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 u/s 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 u/s 166 of the Motor Vehicles Act and on the above facts of the case, remitted the matter to the High Court. At paras 14, 18

to 20, the Supreme Court observed as follows:

(14) Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is

a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road

accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said

section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstinate 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.

(18) ...In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. v. Rajni Devi, 2008 ACJ 1441 (SC), is clearly applicable

to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said

motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive

the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike.

(19) 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. 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 compensation

is on the insurance company or the owner, as the case may be, as provided u/s 163-A. But if it is proved that 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 u/s 163-A of the MVA.

(20) When we apply the said principle to the facts of the present case, we are of the view that the claimants were not entitled to claim

compensation u/s 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not

applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of

compensation could have been made by the legal representatives of the deceased as provided in section 166 of the MVA. The said provision

specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be

made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of

the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the

deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of section 166 is received,

the Tribunal is required to hold an inquiry 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 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...

(Emphasis added)

29. On the aspect of ''just compensation'', the Supreme Court, at paras 25 and 26, held as follows:

(25) Undoubtedly, section 166 of the MVA deals with ''just compensation'' and even if in the pleadings no specific claim was made u/s 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. 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.

(26) 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 to the High Court to give its decision on the aforesaid issues. The High Court was required to

consider the aforesaid issues even if it found that the provision of section 163-A of 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.

30. Reading of the above judgment in Ningamma v. United India Insurance Co. Ltd., 2009 ACJ 2020 (SC), makes it clear that even if a claim

petition is made u/s 163-A of the Act, as Motor Vehicles Act, 1988, is a beneficial legislation, an injured/legal representative of the deceased

should not be deprived of 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.

31. In United India Insurance Co. Ltd. v. P. Shanthi, 2011 (1) TN MAC 227, while the owner of the lorry parked the vehicle on the roadside 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 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, 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 insurance 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 contract 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 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, i.e., 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.

32. 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 insurance company has to be exonerated from its liability from payment of compensation. After referring to

Dhanraj v. New India Assurance Co. Ltd., 2005 ACJ 1 (SC) and Kaliathal v. New India Assurance Co. Ltd., 2004 ACJ 51 (Madras), at para.

7, the Division Bench held as follows:

(1) 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 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.

33. The Division Bench, after scrutiny of the policy, oral evidence of RW 2, an official from the insurance company and on the facts and

circumstances of the case at paras 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 circumstances, the contention that additional

premium was paid for covering the owner''s risk could not be countenanced. RW 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 RW 2. This observation is wrong. RW 2 has stated in 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 Exh. R2 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.

34. In The Branch Manager The New India Assurance Co. Ltd Vs. Mahadev Pandurang Patil and Abdulrajak Hussainjamakhanwale, Owner of

Jeep, , 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 para. 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 is 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.

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.

35. In Branch Manager, United India Insurance Co. Ltd. v. Ansuiya Devi, 2013 ACJ 91 (Patna), a claim u/s 166 of the Motor Vehicles Act was

made by the legal representatives of the deceased, owner of the motor cycle, which was hit by an unknown truck. Along with the claim u/s 166 of

the Act, a petition u/s 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 insurance 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 motor cycle, 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 legal representatives of the deceased that inasmuch as an additional premium has

been paid, covering the risk of life of the owner, the insurance 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 under the

contract of insurance a claim cannot be made before the Tribunal. Reliance was also placed on a decision made in Shri Arun B. Khanjire Vs. The

Ichalkaranji Urban Co-op. Bank Ltd. and Others, , 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, i.e., 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, Patna High Court, at paras 17 to 19, held as follows:

(17) Hence the decision relied upon by the learned counsel for the appellant is for proposition that if the policy is only Act policy it covers 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 u/s 147(1)(b).

However, under the facts and circumstances of the case at hand the policy is not an Act policy but also covers 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 in Jayavarapu Rajamma v. Jayavarapu Laxminarayana, 2009 ACJ 985

(AP), in which the question for consideration was whether the 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 Co. Ltd., 2005 ACJ 1

(SC); New India Assurance Co. Ltd. v. Meera Bai, 2007 ACJ 821 (SC); Oriental Insurance Co. Ltd. v. Jhuma Saha, 2007 ACJ 818 (SC);

Amrit Lal Sood v. Kaushalya Devi Thapar, 1998 ACJ 531 (SC); held that in these cases the policy was Act policy and in the Act policy the risk

of owner and representative or pillion rider is not covered. However, it is open to the insurance company and insured to extend 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 covers 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 u/s 147 of the Motor Vehicles Act covers liability incurred by the insured in respect of death or

bodily injury to any other person including the owner. Hence the decision relied upon by the 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 u/s 147(1)(b)(i) 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 covers the risk of the owner, hence covered u/s 147(1)(b)(i) and the claimants are covered under the third party claims and the Tribunal

has jurisdiction to grant relief.

36. In Bhagwati Rawat v. National Insurance Co. Ltd., A.O. No. 102 of 2009; decided on 28.7.2011, the husband of the appellant No. 1 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 mechanical failure. Legal representatives filed a petition u/s 166 of the Motor Vehicles Act, claiming a sum of Rs. 11,00,000, against

the insurer of the car, National Insurance Co. Ltd. The claim was opposed on the ground, inter alia, that since the deceased himself was driving the

vehicle, the insurance company need not pay any compensation. The Tribunal framed the following three questions of law:

(1) Whether the deceased Ramesh Chandra Singh died in a motor accident

caused by rash and negligent driving of vehicle No. UA 07-P 6377 by

its driver on 22.12.2006 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 and 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?

37. Upon perusal of the evidence that the owner was insured with the insurance 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 Claims 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 Nainital

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 up to 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 up to Rs. 1,00,000 only.

38. In Komeravel Gounder v. Bajaj Allianz General Ins. Co. Ltd., 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 he sustained grievous injuries and despite treatment, succumbed to the same. The legal representatives

claimed compensation. The insurance 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. Policy, Exh. P2, has been filed.

Evidence to that effect has been adduced on behalf of the insurance company.

Since no extra premium was paid towards 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 the ''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 policy, Exh. B2, does not cover personal accident to the insured/owner?

39. In the above reported judgment, as per insurance policy, Exh. B2, 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 Bench of this court, at para. 15, held as follows:

(15) 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.

40. In the above reported judgment, the Division Bench observed that as per India Motor Tariff (IMT) Endorsements for ''personal accident

coverage'' to the insured or any named person other than paid driver or cleaner, an additional premium has to be paid. IMT 15, as extracted in

Komeravel Gounder v. Bajaj Allianz General Ins. Co. Ltd., CDJ 2012 MHC 5141, reads as hereunder:

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:

Provided always that--

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence

and total liability of the insurer shall not in the aggregate exceed the sum of Rs. ... during any one period of insurance in respect of any such person.

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

41. In the above reported case, after considering IMT 15, extracted above, the Division Bench, at para. 17, observed as follows:

(17) By careful perusal of policy, Exh. B2, 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 Exh. B2, the insurer is liable to pay the compensation.

Without paying such an additional premium, claimants cannot invoke the clause printed in policy, Exh. B2.

42. Needless to state that in the above judgment, the compensation, restricting to Rs. 50,000 under no fault liability, has been awarded, only on the

ground that there was no additional premium paid, as per IMT 15. Had the premium been paid, the compensation amount that would have been

awarded to the legal representatives would be as per the limit provided for in the personal accident cover.

43. A reading of the Division Bench judgment in United India Insurance Co. Ltd. v. P. Shanthi, 2011 (1) TN MAC 227, makes it clear that had

the owner of the vehicle taken a contract of insurance, paid additional premium to cover the owner''s risk towards bodily injuries to the person or

death of the owner, the insurance company cannot escape from its liability to pay compensation to the owner or the legal representatives of the

deceased, as the case may be.

44. Reverting back to Komeravel Gounder v. Bajaj Allianz General Ins. Co. Ltd., CDJ 2012 MHC 5141, upon perusal of policy, Exh. B2, the

Division Bench has also found that the premium paid was only for the own damage of the vehicle. Under Act only policy, the liability to the third

party is unlimited. But under comprehensive insurance policy, the owner can claim the amount, towards the loss or damage suffered, to be the

estimated value, calculated under the Rules and Regulations and in so far as the owner is concerned, a separate premium has to be paid and since

no additional premium was paid, for payment of compensation under the policy taken, the owner, who met with an accident, due to negligence of

the driver, was paid only Rs. 50,000 u/s 140 of the Motor Vehicles Act (no fault liability).

45. From the judgments extracted supra, it is manifestly clear that if the owner-cum-driver takes a personal accident cover policy, then he can

maintain a claim against the insurer for compensation and in the event of death, the legal representatives can maintain a claim for compensation,

provided they satisfy the terms and conditions of the personal accident cover policy.

46. Reverting back to the case on hand, Exh. P9 is the policy for the vehicle, Bajaj Pulsar, bearing registration No. TN 40-Y 4883, driven by the

respondent-claimant. Perusal of the same shows that a sum of Rs. 160 has been paid towards basic third party liability and Rs. 50 has been paid

as premium towards personal accident cover. As per the policy, limit for liability is as follows:

Under section II-1(i) of the policy-- Death of or bodily injury: Such amount as is necessary to meet the requirements of the Motor Vehicles Act,

1988. u/s II-1(ii) of the policy--Damage to third party property: Rs. 1,00,000.

47. Limitations as to use of the vehicle, as per the policy, are as follows:

The policy covers use of the vehicle for any purpose other than: Hire or reward, carriage of goods (other than samples or personal luggage),

organised racing, pace making, speed testing, reliability trials, any purpose in connection with motor trade.

48. ''Driver'' as per the policy is, ""Any person including the insured provided that a person driving holds an effective driving licence at the time of

accident and is not disqualified from holding or obtaining such a licence"". Provided also that the person holding an effective learner''s licence may

also drive the vehicle and that such a person satisfies the requirements of rule 3 of Central Motor Vehicles Rules, 1989. As per the policy, insured

is not indemnified, if vehicle is used or driven otherwise than in accordance with the Schedule.

49. Section I of the two-wheeler insurance policy deals with the loss or damage to the vehicle. Section II deals with the liability to third parties. As

per the policy, applications of limits of indemnity are as follows:

In the event of any accident involving indemnity to more than one person any limitation by the terms of this policy and/or of any endorsement

thereon of the amount of any indemnity shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in

priority to the insured.

50. Section III of the policy deals with the personal accident cover for the owner-driver and it reads as follows:

Subject otherwise to the terms, exceptions, conditions and limitations of this policy, the company undertakes to pay compensation as per the

following scale for bodily injury/death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured whilst mounting

into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent

of any other cause shall within six calendar months of such injury result in:

Provided always that--

(a) the compensation shall be payable under only one of 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. 1,00,000 during any one period of insurance.

(b) no compensation shall be payable in respect of the 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

(c) 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.

(1) 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 owner-driver holds an effective driving licence, in accordance with the provisions of rule 3 of the Central Motor Vehicles Rules, 1989, at

the time of the accident.

51. Let me now consider the unreported judgments relied on by both parties, regarding jurisdiction.

52. In Royal Sundaram Alliance Insurance Co. Ltd. v. Gangadevi, 2012 (2) TN MAC 388, one Gangadevi, wife of Jagadish Babu, was travelling

in a two-wheeler owned by her. The vehicle was insured. It met with an accident and she suffered injuries. When a claim was made, Claims

Tribunal granted Rs. 25,000 with 7.5 per cent interest. Challenging the same, the insurance company filed an appeal. Assailing the award, the

insurance company, inter alia, contended that as per policy of insurance, a claim petition made under personal accident cover for owner/driver

cannot be decided before the Claims Tribunal and that the appropriate remedy is only before the Consumer Forum. Reliance has been placed on

the decisions of the Supreme Court in Dhanraj v. New India Assurance Co. Ltd., 2005 ACJ 1 (SC) and Oriental Insurance Co. Ltd. v. Sunita

Rathi, 1998 ACJ 121 (SC). By observing that insofar as section III of the policy is concerned, the contract between the owner of the vehicle and

the insurance company is, inter se and, therefore, the right to claim compensation u/s III of the contract of the policy will not fall within the provisions of the Motor Vehicles Act and holding that the owner of the vehicle is entitled to enforce the terms of section III of the contract of the

policy only before the Consumer Forum, and taking note of the details of the injury and the schedule of compensation to be paid, as per section III

of the two-wheeler package policy, this court allowed the appeal filed by the appellant insurance company.

53. Whereas, in National Insurance Co. Ltd. v. Saravanan, C.M.A. No. 605 of 2008; decided on 17.4.2012, personal accident cover has been

taken by the owner-cum-driver. He sustained injury in the accident. The Claims Tribunal awarded Rs. 90,000. While challenging the same in the

appeal, maintainability of the petition before the Claims Tribunal was one of the issues. But that was not the objection before the Tribunal. Holding

that an objection regarding jurisdiction, without a specific plea, before the Claims Tribunal cannot be permitted to be raised at the time of final

disposal of the appeal, another learned Judge of this court, by observing that the injured cannot be deprived of the benefit of the personal accident

cover policy, confirmed the award and dismissed the appeal preferred by the insurance company.

54. Perusal of the unreported judgment shows that the learned Judge has also rejected the defence put up by the insurance company regarding its

liability to pay compensation under personal accident cover.

55. Consumer Protection Act, 1986 (Act 68 of 1986) has been enacted to provide for better protection of the interests of consumers and for the

purpose, to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matter

connected therewith. Inter alia, it seeks to promote and protect the rights of consumers such as--

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade

practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumer''s interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

56. In Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Councel, , the question which arose for consideration before the

Supreme Court was, whether the National Consumer Disputes Redressal Commission constituted u/s 20 of the Consumer Protection Act, 1986,

had the jurisdiction to adjudicate upon a claim for compensation arising out of a motor vehicle accident, notwithstanding the jurisdiction conferred

upon a Claims Tribunal, constituted under the Motor Vehicles Act, 1988. After considering the statutory provisions of the Consumer Protection

Act, vis-ï¿½-vis, Motor Vehicles Act, 1988, the Supreme Court, at paras 4, 5, 6 and 8, held as follows:

(4) From the preamble and the various provisions of the 1986 Act it becomes clear that whenever a complaint in relation to any goods sold or

delivered or agreed to be sold or delivered or any service provided or agreed to be provided arises, the complainant, i.e., the consumer or any

voluntary consumer association or the Central or any State Government can move the appropriate forum under the statute for redressal. If the

amount claimed by way of compensation exceeds the minimum stated in section 21, the National Commission can take jurisdiction, hear and

dispose of the complaint. The limit of Rs. 20 lakhs was substituted for Rs. 10 lakhs by Amendment Act 50 of 1993. In the present case, it is an

admitted fact that no petition was filed on behalf of the legal representatives of the deceased victim of the accident before the Motor Accidents

Claims Tribunal constituted under the 1988 Act. After the lapse of the period of six months which is the period of limitation for preferring such a

claim expired, the respondent preferred an application claiming Rs. 20 lakhs before the National Commission. It is, therefore, obvious that the

claim was preferred before the National Commission since the legal representatives of the deceased had failed to prefer the claim before the

Tribunal under the 1988 Act. It would, therefore, be proper at this stage to refer to a few provisions of the 1988 Act.

(5) The said Act was enacted to consolidate and amend the law relating to motor vehicles. Section 2(28) defines a ''motor vehicle'' or ''vehicle'' to

mean any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or

internal source and includes a chassis to which a body has not been attached and a trailer. The vehicle which was involved in accident was

indisputably a vehicle within the meaning of the said provision. Chapter XII refers to Claims Tribunals. Section 165 provides that a State

Government may, by Notification in Official Gazette, constitute one or more Motor Accidents 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. Section 166 next provides that an

application for compensation 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 Section 168 then says that on receipt of an application for compensation, the Claims

Tribunal shall, after giving notice of the application to the insurer and after giving the parties an opportunity of being heard, hold an inquiry and

make an award determining the amount of compensation which appears to be just. Section 175 next provides that where any Claims Tribunal has

been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be

adjudicated upon by the Claims Tribunal for that area. In the present case the death had occurred due to the injury suffered in the accident arising

out of the use of a motor vehicle. Legal representatives of the deceased did not prefer any claim before the Claims Tribunal for the area in which

the accident occurred but instead the respondent Council preferred the claim before the National Commission which without examining the

question whether or not it had jurisdiction awarded a sum of Rs. 5.10 lakhs by way of compensation.

(6) The question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and

award compensation in respect of an accident involving the death of K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal

constituted for the area in question had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim

application would clearly fall within the ambit of section 165 of the 1988 Act. The 1988 Act can be said to be a special Act in relation to claims of

compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in

general, could, however, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor

vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot

be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the

deceased. The expression ''service'' as defined by the 1986 Act means service of any description which is made available to potential users and

includes the provision of facilities, inter alia, in connection with transport. Accident that occurred had nothing to do with service provided to the

deceased. This becomes obvious when one reads the provision along with the definition of complaint in section 2(1)(c) and service in section 2(1)

(c) of the 1986 Act. Complaint according to section 2(1)(c) means any application in writing in relation to an unfair trade practice or as a restrictive

trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these clauses have no application

whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore, at best it can

be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be

in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service

provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and

dashed against an iron handle of the seat in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As

pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a forum before which the claim can be laid if it

arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the

1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of

the National Commission whatsoever and the National Commission has not shown how it had jurisdiction. The issue was pointedly raised and for

reasons best known to National Commission it failed to come to grips with it. Surprisingly, there is no discussion whatsoever in the order of

National Commission in this behalf. We are, therefore, of the opinion that the National Commission did not have jurisdiction and, as the counsel for

the appellant put it, this was a case of unwarranted exercise of jurisdiction.

(8) ...The main emphasis was to decide the question of law as it was apprehended that similar cases which have become time-barred under the

1988 Act may be taken to the National Commission under the 1986 Act even though that body had no jurisdiction whatsoever. We should,

therefore, rest content by deciding the question of jurisdiction and holding that National Commission had no jurisdiction whatsoever and was

entirely wrong in exercising jurisdiction and awarding compensation.

57. Motor Vehicles Act, 1988, recognises different kinds of insurance. Comprehensive, third party, coverage for employees in a goods vehicle

and such other policies under the Public Liability Insurance Act, 1991 (6 of 1991). Section 146 of the Act mandates compulsory insurance in

respect of third parties and all other policies are optional. If the insured opts for a different kind of policy and seeks for protection, subject to the

terms and conditions of that policy, he can always take a policy, in addition to compulsory insurance. The object of compulsory insurance is to

grant relief to third party victims and in all other cases, the insurer has no obligation to indemnify the insured, unless a specific policy is taken by the

insured.

58. The word ''personal'' specifically mentioned in the policy, for an owner-cum-driver, is only to pay the owner-insured, in case of personal injury

or to the legal representatives of the deceased, subject to the entitlement/ disqualification, mentioned in such policy. When personal accident policy

is taken to cover the risks of personal injury or death of the insured in an accident, caused due to the use of vehicle in a public place, there is

absolutely no need for the injured/legal representatives of the deceased to approach the Consumer Forum to claim compensation. Like any other

claim arising out of motor policies under Motor Vehicles Act, 1988, a claim under personal accident cover would also lie before the Motor

Accidents Claims Tribunal and that the injured/legal representatives of the deceased, as the case may be, need not be driven to Consumer Forum.

59. Motor Vehicles Act is a beneficial legislation and it is a measure of social security. Every vehicle has to be compulsorily insured under the Act

to cover the risk of third parties, shortly called as Act policy. There are other policies, issued by the insurance companies, under the Insurance Act,

1938, as per the directions and regulations of the Tariff Advisory Committee, a statutory body. As per the decisions in Daljit Sawhney v. Jagtar

Singh, 1986 ACJ 381 (Delhi) and Kailash Kumar v. Bhola, 1989 ACJ 845 (P & H), the instructions are binding on all the insurance companies.

60. Chapter XI of the Motor Vehicles Act deals with the nature of insurance policies, that covers the risk of personal injury or death of a person,

arising out of an accident, where there is use of vehicle. A policy of insurance is expected to cover the following categories:

(1) Liability that would be incurred by the owner of the vehicle, in respect of death or bodily injury or damage to the property of a third party,

caused due to the use of the vehicle, in a public place, under the Act policy;

(2) Liability in respect of a passenger of a public service vehicle;

(3) Liability arising out of death or bodily injury of a person engaged in driving the vehicle or other employees, depending upon the category of the

vehicle, private or commercial, as the case may be;

(4) Liability of the insurer, to cover the occupants of a vehicle, due to an accident.

61. The first category is covered u/s 147(1)(b)(i) and (ii). Driver of a vehicle, conductor of a public transport vehicle or any other employee in a

goods vehicle, are covered under proviso (i)(a), (b) and (c) to section 147(1). As per the instructions of the Motor Tariff Committee, the insurance

companies are bound to indemnify the insured, whenever policies are issued under the Insurance Act. The policies can be broadly classified into

two categories, viz., (1) liability only policy; and (2) comprehensive/package policy. The latter can be again classified as, (1) package policy--

private car, (2) package policy--two-wheeler, (3) package policy--commercial vehicle, and (4) package policy--motor trade.

62. Third party insurance is also known as ''Act policy'', which is compulsory as per section 146 of the Motor Vehicles Act, which reads that no

person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in

relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of

Chapter XI of the Motor Vehicles Act. The section provides for a proviso and an Explanation, extracted supra.

63. Under Act policy, when the owner sustains an injury or dies, he cannot claim compensation against himself. So also, under the same policy, the

legal representatives cannot maintain a claim against the deceased. It is well settled that compulsory coverage under Act policy, arising out of the

use of vehicle in a public place is not intended to cover the insurance of all and every type of risks, in respect of personal injury or death, but the

very purpose of taking a personal accident cover for the owner-cum-driver or any other package policy, by making an additional premium, is to

cover the risks to the insured. If a package/comprehensive policy is taken by the insured to cover the personal risk of the owner-cum-driver and

an additional premium is paid, then the owner-cum-driver of the vehicle, in case of injury or the legal representatives of the deceased, in the case of

death, can certainly claim compensation from the insurer, and the insurance companies cannot disown their liability to pay compensation. Act

policy or statutory compulsory policy covers certain persons and the contract of insurance, i.e., other policies issued under the instructions and

regulations of the Motor Tariff Committee, cover certain persons, depending upon the terms and conditions of such policies, where additional

premium is paid.

64. From the language of section 147 of the Act, it can be understood that the intention of the legislature is only to cover the risk of third parties.

The expression ''any person'' used in section 147 does not include the owner of the vehicle or a gratuitous passenger. It is not the mandate of

section 147 that the Act policy shall include the risk of the owner or any other persons who are being carried in the vehicle with the permission of

the owner. However, the insurance company may enter into a contract with the insured, even to cover the risk of the owner or driver of the vehicle

or the inmates of the car by collecting additional premium from the owner for the said purpose, thereby widening the scope of statutory contract. In

such an event, if the owner pays an extra premium to cover any such risk, the insurance company is liable to indemnify the owner to the said extent.

But, it is strictly in accordance with the terms of contract entered into between the insured and the insurer. It is, therefore, apparent that even if the

policy is Act only policy, it does not cover the risk of the owner, driver or any other inmates of the car.

65. Section 147 of the Motor Vehicles Act envisages a compulsory policy, which insures the owner against any liability that may be incurred by

him, in respect of death or bodily injury or damage to any property of a third party caused due to the use of vehicle in a public place and that the

said statutory provision is very clear that the Act or statutory policy is not intended to cover the risk of persons carried in the vehicle for hire or

reward. But at the same time, provisions of the Motor Vehicles Act do not restrain or prevent an owner of the vehicle from entering into a contract

of insurance, as per the instructions and regulations of the Motor Tariff Committee, to cover risks, wider than, Act policy.

66. Claims made by others against the owner of the vehicle, for the negligence of his driver, or owner-cum-driver, which in other words third party

risks, as defined in Strouds Judicial Dictionary, as Third Party Risks--Road Traffic Act, 1930 [clause 43, section 35 of Road Traffic Act, 1972

(clause 20), (2.143)], the policy holder is another party and that the claims made by others in respect of the negligent use of the car may be

naturally described as claims by third parties. Reference can be made to Digby v. General Accident Fire and Life Insurance Corporation, (1943)

AC 121. In the case of personal accident cover, there is no question of indemnifying the insured, as if it is a third party claim.

67. As per Wharton''s Dictionary, ''indemnify'' means, to guarantee against any loss which the other suffers. When a person has a contract to

''indemnify'' him against that will lie upon him, that the contracted himself pay before he sues on the contract: Collinge v. Haywood, 8 LJQB 98.

68. An ''indemnity'' is a contract, express or implied, to indemnify against any liability under which, it is coterminous with the liability, it is intended

to cover, and is independent of the question whether somebody else makes the default or not: Pont if ex v. Foord, (1884) 12 QBD 152.

69. Contract of insurance under the personal accident cover is direct and personal and it is between the insured and the insurer, and unlike the

claim by the third parties, the question of indemnifying the insured to pay compensation, on his behalf to third parties, does not arise. As personal

accident cover policy is intended for the personal risks of the owner-cum-driver, in the event of injury or death, the insurance company is obligated

to pay compensation, directly to the owner-cum-driver or the legal representatives, as the case may be. Therefore, the principles of law applicable

to third party claims cannot be made applicable when there is a personal accident cover policy and that the insured, owner-cum-driver or the legal

representatives, as the case may be, are entitled to receive compensation, if the terms and conditions of the policy are satisfied and when he has

not suffered any disqualification. Personal accident cover policy is not intended to cover third party claims and, therefore, expression ""against any

liability which may be incurred by him"" occurring in section 147(1)(b)(i) is not applicable to personal accident cover policy, as it is not a liability

incurred by the owner to pay compensation. But, it is the liability of the insurer to pay directly to the insured or the legal representatives, as the case

may be.

70. Policies insuring motor vehicles are to be issued only as per the standard form(s) given in section 6 of the India Motor Tariff.

A. Types of policies:

There are two types of policies:

(i) Liability only policy: This covers third party liability for bodily injury and/or death and property damage. Personal accident cover for owner-

driver is also included.

(ii) Package policy: This covers loss or damage to the vehicle insured in addition to (i) above.

71. Restricting the scope of cover under section-I (loss of or damage to the

vehicle insured) of the package policy without any reduction in tariff

rates, is permitted. Excepting this, no alteration or extension of any of the covers, terms, conditions, exclusions, etc. of any of the

policies/endorsements laid down in this tariff is permitted without prior approval of the TAC.

72. GR. 36. Personal accident (P.A.) cover under motor policy (not applicable to vehicles covered under sections E, F and G of tariff for

commercial vehicles).

A. Compulsory personal accident cover for owner-driver:

Compulsory personal accident cover shall be applicable under both liability only and package policies. The owner of insured vehicle holding an

''effective'' driving licence is termed as owner-driver for the purposes of this section.

Cover is provided to the owner-driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a

co-driver.

NB. This provision deals with personal accident cover and only the registered owner in person is entitled to the compulsory cover where he/she

holds an effective driving licence. Hence, compulsory P.A. cover cannot be granted where a vehicle is owned by a company, a partnership firm or

a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory P.A. cover

cannot be granted, the additional premium for the compulsory P.A. cover for the owner-driver should not be charged and the compulsory P.A.

cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, the compulsory P.A. cover can be

granted for only one vehicle as opted by him/her. The scope of the cover, capital sum insured (CSI) and the annual premium payable under this

section are as under:

73. 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 travelling 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:

74. From the reading of the general exceptions in the package policy, it is clear that it refers to accidental loss or damage or liability, arising out of

an accident by use of the vehicle. Package or comprehensive policy deals with liability to pay compensation to third party claims, damage to the

vehicle insured and in addition to the above, covers the personal risk of the owner, if additional premium is paid. The conditions set out in the

policy are as follows:

This policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this

policy or of the Schedule shall bear the same meaning wherever it may appear.

(1) Notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage and in the event of any claim

and thereafter the insured shall give all such information and assistance as the company shall require. Every letter, claim, writ, summons and/or

process or copy thereof shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the

company immediately the insured shall have knowledge of any impending prosecution, inquest or fatal injury in respect of any occurrence which

may give rise to a claim under this policy. In case of theft or other criminal act which may be the subject of a claim under this policy the insured

shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.

(2) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the insured without the written consent of the

company which shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim or to

prosecute in the name of the insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the

conduct of any proceedings or in the settlement of any claim and the insured shall give all such information and assistance as the company may

require.

(3) The company may at its own option repair, reinstate or replace the vehicle or part thereof and/or its accessories or may pay in cash the amount

of the loss or damage and liability of the company shall not exceed:

(A) for total loss/constructive total loss of the vehicle--the insured''s declared value (IDV) of the vehicle (including accessories thereon) as

specified in the

Schedule less the value of the wreck.

(B) for partial losses, losses other than total loss/constructive total loss of the vehicle--actual and reasonable costs of repair and/or replacement of

parts lost/damaged subject to depreciation as per limits specified.

(4) The insured shall take all reasonable steps to safeguard the vehicle from loss or damage and to maintain it in efficient condition and the

company shall have at all times free and full access to examine the vehicle or any part thereof or any driver or employee of the insured. In the event

of any accident or breakdown the vehicle shall not be left unattended without proper precautions being taken to prevent further damage or loss and

if vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the vehicle shall be entirely at

the insured''s own risk.

(5) The company may cancel the policy by sending seven days'' notice by recorded delivery to the insured at insured''s last known address and in

such event will return to the insured the premium paid less the pro rata portion thereof for the period the policy has been in force or the policy may

be cancelled at any time by the insured on seven days'' notice by recorded delivery and provided no claim has arisen during the currency of the

policy, the insured shall be entitled to a return of premium less premium at the company''s short period rates for the period the policy has been in

force. Return of the premium by the company will be subject to retention of the minimum premium of Rs. 100 (or Rs. 25 in respect of vehicles

specifically designed/modified for use by blind/handicapped/mentally challenged persons). Where the ownership of the vehicle is transferred, the

policy cannot be cancelled unless evidence that the vehicle is insured elsewhere is produced.

(6) If at the time of occurrence of an event that gives rise to any claims under this policy there is in existence any other insurance covering the same

liability, the company shall not be liable to pay or contribute more than its rateable proportion of any compensation, cost or expense.

(7) If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted), such difference shall

independent of all other questions be referred to the decision of a sole arbitrator, to be appointed in writing by the parties to the dispute or, if they

cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators

comprising two arbitrators--one to be appointed by each of the parties to the dispute/difference, and the third arbitrator to be appointed by such

two arbitrators who shall act as a presiding arbitrator and arbitration shall be conducted under and in accordance with the provisions of the

Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the company has

disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by

such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained:

It is also hereby further expressly agreed and declared that if the company shall disclaim liability to the insured for any claim hereunder and such

claim shall not, within twelve calendar months from the date of such disclaimer have been made the subject-matter of a suit in a court of law, then

the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

(8) The due observance and fulfillment of the terms, conditions and endorsements of this policy insofar as they relate to anything to be done or

complied with by the insured and the truth of statements and answers in the said proposal shall be condition precedent to any liability of the

company to make any payment under this policy.

(9) In the event of the death of the sole insured, this policy will not immediately

lapse but will remain valid for a period of three months from the

date of the death of insured or until the expiry of this policy (whichever is earlier). During the said period legal heirs of the insured to whom the

custody and use of the motor vehicle passes may apply to have this policy transferred to the names of the heirs or obtain a new insurance policy for

the motor vehicle.

Where such legal heirs desire to apply for a transfer of this policy or obtain a new policy for the vehicle such heirs should make an application to

the company accordingly within the aforesaid period. All such applications should be accompanied by:

(a) Death certificate in respect of the insured

(b) Proof of title to the vehicle

(c) Original policy

The company reserves its right to abide by any order of the court in regard to declaration about the legal heir/heiress and ownership of the vehicle

and the nominee will not have any right to dispute such order of the court.

75. The question as to whether the insurance company is liable to pay compensation only for the injuries specified, i.e., death or permanent

disablement, as per the Table provided in the personal accident cover policy and not in respect of any other injuries and whether a claim under the

personal accident cover policy before the Motor Accidents Claims Tribunal is maintainable or not, came to be considered by a learned Judge of

this court in New India Assurance Co. Ltd. v. M. Subramanian, CDJ 2012 MHC 3122. The contentions that were raised by the insurance

company in the above appeal are as follows:

(1) The petition by a tortfeasor is not maintainable under the provisions of the Motor Vehicles Act.

(2) The Claims Tribunal has no jurisdiction to decide the claim arising out of personal accident claim of the owner/injured.

(3) Personal accident policy covers only the cases of death and injuries of specified nature and it will not be applicable in respect of any other

injuries.

76. The issues framed by this court in the above reported case are as follows:

(1) Whether a tortfeasor can make the claim for compensation against himself

and the insurance company under the provisions of Motor Vehicles

Act? and

(2) Whether the tortfeasor can make a claim based upon personal accident policy under the provisions of Motor Vehicles Act are the remaining

issues to be considered?

77. The Hon''ble Mrs. Justice Vimala in the above said appeal has posed the following questions:

The question is when the owner of the vehicle himself drives the vehicle and when there is an accident, not involving any other vehicle, on whom

does the fault lie? Who could be faulted with for the accident? Against whom does the claim lie? When the driver is at fault, the owner becomes

vicariously liable and the insurer becomes statutorily liable to answer the claim of the third parties/injured/legal representatives of the deceased (in

case of death). In other words, the liability to pay the compensation is based on ''fault'' theory except where the claim itself is made under ''no fault

liability theory''. Now, the question is when the driver/owner himself is at fault and the driver/owner himself suffers as a victim due to

invited/imposed/unanticipated/unwanted consequences, who will be answerable and who can be made answerable legally?

78. After considering the decisions in New India Assurance Co. Ltd. v. Meenal, 1993 ACJ 522 (Madras); National Insurance Co. Ltd. v. Sinitha,

2012 ACJ 1 (SC); and Oriental Insurance Co. Ltd. v. Manorama Devi, 2012 ACJ 23 (Chhattisgarh), the learned Judge, at para. 7.3, held as

follows:

Factually this decision has additional set of facts but the basic principle underlying this case is that when an accident had taken place arising out of

''use of motor vehicle'' then the claim petition is maintainable before the Tribunal. It has been held that jurisdiction of Tribunal to entertain an

application for compensation in respect of an accident arising out of the use of motor vehicle depends essentially on the fact, whether there had

been any use of motor vehicle and once that is established the Tribunal''s jurisdiction cannot be held to be ousted, on a finding being arrived at a

later point of time, that is negligence of the other joint tortfeasor and not the negligence of motor vehicle in question. Based on the two decisions

court held that the Tribunal has jurisdiction to try the issue. Just because there is an ultimate finding that the accident arose out of the negligence of

deceased himself and that he is not entitled to get any compensation will not shut out the jurisdiction of the court for the initial entry of the claimant.

Therefore, the contention that the Claims Tribunal has no jurisdiction is not acceptable.

79. In the above reported case, the injured sustained fracture in the left tail bone, which resulted in 50 per cent disablement. Holding that the

disablement in the leg is equivalent to loss of limb, i.e., matching/fitting into one of the scheduled injury in the policy, this court held that the injured

therein was entitled to 50 per cent of the assured amount.

80. In the light of the provisions of the Insurance Act and the directions of the Motor Tariff Committee, it cannot be disputed that a personal

accident policy is not a contract of insurance, under the Motor Vehicles Act. The personal accident cover policy taken by the owner-cum-driver is

a contract of insurance, an optional policy, to cover himself in the case of death or personal injury and it is not to indemnify the owner against any

third party claim. The disqualification from claiming compensation, under personal accident cover policy, are: (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.

The case on hand does not fall under the above said circumstances.

81. From the language of the personal accident cover policy, it is also manifestly clear that the contract of insurance is only to the person named in

the policy and not to any other person. As per Corpus Juris Secundum, Vol. LXX, the word ''personal'' is in common use, and it has been said

that the conclusion is inescapable that in its common, usual, and generally accepted meaning the word relates either to the physical body of a

person or the character, conduct, manner, and habits of a person, or both; and that such has been the meaning of the term from time immemorial.

Ohio-Smith v. Buck, 162 NE 382, 119 Ohio St 101.

82. As per ''Words and Phrases: Permanent Edition'', the word ''personal'' means pertaining to the person or bodily form. Terre Haute Electric Ry.

Co. v. Lauer, 52 NE 703, 706: 21 Ind. App. 466. ''Personal'' pertains to a particular person or relates to an act done in person without the

intervention of another. Prete et al v. Finkelstein, 83 NYS 2d 353, 355: 193 Misc.

24.

83. The adjective ''personal'' is defined by Webster as pertaining to the external or bodily appearance. It is defined in the Century Dictionary as

thing of or pertaining to the person.

84. ''Personal'' means anything connected with person as distinguished from that, connected with land, any movable thing. Reference can be made

to the decision made in Chander Sekhar Singh Bhoi Vs. State of Orissa, .

85. While considering the expression ''accident'', the Supreme Court in Regional Director, Employees'' State Insurance Corporation v. Francis De

Costa, 1992 ACJ 636 (SC), held that, ""The popular and ordinary sense of the word ''accident'' means mishap or an untoward happening not

expected and designed to have an occurrence is an accident"".

86. An accident is an occurrence or an event which is unforeseen and startles one when it takes place but does not startle one when it does not

take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words, an event or

occurrence the happening of which is ordinarily expected in the normal course by almost every one undertaking a rail journey cannot be called an

''accident''. Union of India v. Sunil Kumar Ghosh, 1984 ACJ 719 (SC). (Railways Act, 1890, section 82-A) Accident means, an untoward

mishap which is not expected or designed. Jyothi Ademma v. Plant Engineer, Nellore Thermal Station, 2006 ACJ 2165 (SC).

87. Accident is not the same as an occurrence, but something that happens out of the normal or ordinary course of things. An effect is said to be

accidental when the act is not done with the intention of causing it, and its occurrence as a consequence of such act is not so probable that a

person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it. The idea of something

fortuitous and unexpected is involved in the word ''accident'', Sukhdev Singh Vs. Delhi State (Govt. of NCT of Delhi), .

88. An accident may occur, with or without involvement of two vehicles; due to technical failure of the vehicle; due to unanticipated crossing of

animals, like stray dog, cow, etc.; due to stagnation of water covering the pit in the road; due to accidental fall of a livewire or branch of a tree,

during rainy season, an object hitting the windscreen; or even due to a diligent act of the driver, trying to avert hitting against a vehicle or person or

animal and many such unanticipated events, with no intention of causing the accident and its occurrence as a consequence of such act is not so

probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.

89. In an accident involving two vehicles, if the owner-cum-driver is not negligent in causing the accident, then he gets a right to make a claim

against the owner of the other vehicle and its insurer, as a third party, to the latter. If the owner-cum-driver is at fault or negligent, then certainly, he

cannot make any claim against the other vehicle''s owner or its insurer.

90. Though the contract of insurance, i.e., personal accident cover policy, contains specific clauses, defining eligibility to make a claim and also

specific clauses of disqualification, from the terms and conditions, there is nothing to indicate that the injured or the legal representatives of the

deceased, as the case may be, have to prove that there was no negligence or neglect or fault on the part of the owner-cum-driver. At this juncture,

it should be noted that similar to the maximum limit, as provided for, u/s 140 of the Motor Vehicles Act, the maximum amount that could be

claimed under the personal cover is only Rs. 1,00,000. When there is no involvement of two vehicles, but the owner-cum-driver sustains injuries or

disablement, on account of grievous injuries, not on account of his negligence, and when there is a use of vehicle, can he be denied of just

compensation? In the humble opinion of this court, the injured or the legal representatives of the deceased, as the case may be, are entitled to

maintain a claim for compensation to the maximum of Rs. 1,00,000 as per the terms and conditions of the personal accident cover policy. If the

contentions of the insurance company that even if the owner-cum-driver had taken a personal accident cover and paid an additional premium, still

he or legal representatives, as the case may be, are not entitled to claim compensation to cover the personal injury or death, as the case may be, if

there is negligence on the part of the owner-cum-driver, then there is no need to take a personal accident cover. As stated supra, the policy is

personal to the holder and it is not to indemnify the loss sustained by others.

91. While that be the case, it cannot be contended that in the case of personal accident cover, the owner of the vehicle is not entitled to any

compensation. As per the policy, the owner or the legal representatives of the deceased shall be paid compensation, subject to the ceiling of Rs.

1,00,000. Whenever two or more vehicles are involved in the accident, and if one of the drivers involved in the accident, or both the drivers are

found negligent in causing the accident, then the liability of the insurer or insurers of both vehicles is fixed, depending upon the extent of negligence,

if it is an Act policy. When an owner of the vehicle has taken a policy, to cover the employees in a private vehicle and pays an additional premium

under IMT 15, then the insurer is bound to pay compensation to the victim, employee and indemnify the insured, as per the contract of insurance,

even though the driver of the vehicle owned by the insured is negligent.

92. At this juncture, it is also worthwhile to extract different kinds of policies covered under the Motor Vehicles Act, other than the statutory

policy, where additional premium is paid to cover various risks of the insured:

Section 7

INDIA MOTOR TARIFF - ENDORSEMENTS

IMT. 1. Extension of Geographical Area

In consideration of the payment of an additional premium of Rs. ....it is hereby understood and agreed that notwithstanding anything contained

in this policy to the contrary the geographical area in this policy shall from the .... to the .... (both days inclusive) be deemed to include*

It is further specifically understood and agreed that such geographical extension excludes cover for damage to the vehicle insured/injury to its

occupants/third party liability in respect of the vehicle insured during sea voyage/ air passage for the purpose of ferrying the vehicle insured to the

extended geographical area.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

Note: Insert Nepal/Sri Lanka/Maldives/Bhutan/Pakistan/Bangladesh as the case may be.

IMT. 2. Agreed Value Clause

(Applicable only to vintage cars)

It is hereby declared and agreed that in case of total loss/constructive total loss of the vintage car insured hereunder due to a peril insured against, the amount payable will be the insured''s declared value (IDV) of the vehicle as mentioned in the policy without deduction of any depreciation.

It is further declared and agreed that in case of partial loss to the vehicle, depreciation on parts replaced will be as stated in section I of the policy.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 3. Transfer of Interest

It is hereby understood and agreed that as from .... the interest in the policy is transferred to and vested in .... of .... carrying on or

engaged in the business or profession of ..... who shall be deemed to be the insured and whose proposal and declaration dated .... shall be

deemed to be incorporated in and to be the basis of the contract.

Provided always that for the purpose of the no claim bonus, no period during which the interest in this policy has been vested in any previous

insured shall accrue to the benefit of.......

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 4. Change of Vehicle

It is hereby understood and agreed that as from .... the vehicle bearing registration number .... is deemed to be deleted from the Schedule

of the policy and the vehicle with details specified hereunder is deemed to be included therein.

In consequence of this change, an extra/refund premium of Rs. ......is charged/ allowed to the insured.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 5. Hire Purchase Agreement

It is hereby understood and agreed that .... (hereinafter referred to as the owners) are the owners of the vehicle insured and that the vehicle

insured is subject of an hire-purchase agreement made between the owners on the one part and the insured on the other part and it is further

understood and agreed that the owners are interested in any monies which but for this endorsement would be payable to the insured under this

policy in respect of such loss or damage to the vehicle insured as cannot be made good by repair and/or replacement of parts and such monies shall be paid to the owners as long as they are the owners of the vehicle insured and their receipt shall be a full and final discharge to the insurer in

respect of such loss or damage.

It is further declared and agreed that for the purpose of the personal accident cover for the owner-driver granted under this policy, the insured

named in the policy will continue to be deemed as the owner-driver subject to compliance of provisions of the policy relating to this cover.

Save as by this endorsement expressly agreed nothing herein shall modify or affect the rights and liabilities of the insured or the insurer respectively

under or in connection with this policy.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 6. Lease Agreement

It is hereby understood and agreed that .... (hereinafter referred to as the lessors) are the owners of the vehicle insured and that the vehicle

insured is the subject of a lease agreement made between the lessor on the one part and the insured on the other part and it is further understood

and agreed that the lessors are interested in any monies which but for this endorsement would be payable to the insured under this policy in respect

of such loss or damage to the vehicle insured as cannot be made good by repair and/or replacement of parts and such monies shall be paid to the

lessors as long as they are the owners of the vehicle insured and their receipt shall be a full and final discharge to the insurer in respect of such loss

or damage. It is also understood and agreed that notwithstanding any provision in the leasing agreement to the contrary, this policy is issued to the

insured, namely................as the principal party and not as agent or trustee and nothing herein contained shall be construed as constituting the

insured an agent or trustee for the lessors or as an assignment (whether legal or equitable) by the insured to the lessors, of his rights, benefits and

claims under this policy and further nothing herein shall be construed as creating or vesting any right in the owner/lessor to sue the insurer in any

capacity whatsoever for any alleged breach of its obligations hereunder.

It is further declared and agreed that for the purpose of the personal accident cover for the owner-driver granted under this policy, the insured

named in the policy will continue to be deemed as the owner-driver subject to compliance of provisions of the policy relating to this cover.

Save as by this endorsement expressly agreed nothing herein shall modify or affect the rights and liabilities of the insured or the insurer respectively

under or in connection with this policy.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 7. Vehicles Subject to Hypothecation Agreement

It is hereby declared and agreed that the vehicle insured is pledged to/ hypothecated with .... (hereinafter referred to as the ''pledgee'') and it

is further understood and agreed that the pledgee is interested in any monies which but for this endorsement would be payable to the insured under

this policy in respect of such loss or damage to the vehicle insured as cannot be made good by repair and/or replacement of parts and such monies

shall be paid to the pledgee as long as they are the pledgee of the vehicle insured and their receipt shall be a full and final discharge to the insurer in

respect of such loss or damage.

It is further declared and agreed that for the purpose of the personal accident cover for the owner-driver granted under this policy, the insured

named in the policy will continue to be deemed as the owner-driver subject to compliance of provisions of the policy relating to this cover.

Save as by this endorsement expressly agreed that nothing herein shall modify or affect the rights or liabilities of the insured or the insurer

respectively under or in connection with this policy or any term, provision or condition thereof.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 8. Discount for Membership of Recognised Automobile Associations

(Private cars and motorised two-wheelers only)

It is hereby understood and agreed that in consideration of insured''s membership of

............** a discount in premium of Rs..........* is allowed to the insured hereunder from.................

It is further understood and agreed that if the insured ceases to be a member of the above-mentioned association during the currency of this policy the insured shall immediately notify the insurer accordingly and refund to the insurer a proportionate amount of the discount allowed on this account

for the unexpired period of the cover.

Subject otherwise to the terms, exceptions, conditions and limitations of the policy.

*For full policy period, the full tariff discount to be inserted. For mid-term membership, pro rata proportion of the tariff discount for the unexpired

policy period is to be inserted.

**Insert name of the concerned Automobile Association.

IMT. 9. Discount for Vintage Cars

(Applicable to private cars only)

It is hereby understood and agreed that in consideration of the insured car having been certified as a vintage car by the Vintage and Classic Car

Club of India, a discount of Rs..........* is allowed to the insured from................

Subject otherwise to the terms, exceptions, conditions and limitations of the policy.

*Amount calculated as per tariff provision is to be inserted. For mid-term certification as vintage car pro rata proportion of tariff discount for the

unexpired period is to be inserted.

IMT. 10. Installation of Anti-Theft Device

(Not applicable to Motor Trade Policies)

In consideration of certification by ....* that an anti-theft device approved by Automobile Research Association of India (ARAI), Pune

has been installed in the vehicle insured herein a premium discount of Rs............. ** is hereby allowed to the insured.

It is hereby understood and agreed that the insured shall ensure at all times that this anti-theft device installed in the vehicle insured is maintained in

efficient condition till the expiry of this policy.

Subject otherwise to the terms, exceptions, conditions and limitations of the policy.

*The name of the certifying automobile association is to be inserted.

**Premium discount calculated as per tariff provision is to be inserted. For midterm certification of installation of anti-theft device pro rata proportion of tariff discount for the unexpired period is to be inserted.

IMT. 11-A. Vehicles Laid Up (Lay up period declared)

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed that from .... to .... the vehicle insured is

laid up in garage and not in use and during this period all liability of the insurer under this policy in respect of the vehicle insured is suspended save

only in respect of loss or damage to the said vehicle caused by fire, explosion, self-ignition or lightning or burglary, housebreaking, theft or riot,

strike, malicious damage, terrorism or storm tempest, flood inundation or earthquake perils, in consideration whereof--

(a) # the insurer will deduct from the next renewal premium the sum of Rs. ....* and the no claim bonus (if any) shall be calculated on the next

renewal premium after deduction of such sum.

(b) # the period of insurance by this policy is extended to .... in view of the payment of an additional premium of Rs. ....**

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

NB. 1. # To delete (a) or (b) as per option exercised by the insured.

NB. 2. * The proportionate full policy premium for the period of lay up less the proportionate premium for the fire and/or theft risks for the laid-up

periods is to be inserted.

NB. 3. ** The proportionate premium required for fire and/or theft cover for the vehicle for the laid-up period is to be inserted.

NB. 4. In case of liability only policies the words in italics should be deleted.

NB. 5. In case of policies covering liability only; and

(a) Fire risks, the words ''burglary, housebreaking or theft'' are to be deleted;

(b) Theft risks, the words, ''fire, explosion, self ignition or lightning'' are to be deleted.

(c) Fire and theft risks, no part of the words in italics are to be deleted.

IMT. 11-B. Vehicles Laid Up (Lay up period not declared)

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed that as from .... the vehicle No. ....

insured hereunder is laid up in garage and not in use and liability of the insurer under this policy in respect of the said vehicle is suspended save only in respect of loss or damage to the said vehicle caused by fire, explosion, self ignition or lightning or burglary, housebreaking, theft or riot, strike,

malicious damage, terrorism or storm tempest, flood inundation or earthquake perils.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

NB. 1. In case of liability only policies, the words in italics should be deleted.

NB. 2. In case of policies covering liability only and--

(a) Fire risks, the words ''burglary, housebreaking or theft'' are to be deleted;

(b) Theft risks, the words, ''fire, explosion, self ignition or lightning'' are to be deleted.

(c) Fire and theft risks, no part of the words in italics are to be deleted.

IMT. 11-C. Termination of the Undeclared Period of Vehicle Laid Up

It is hereby understood and agreed that the insurance by this policy in respect of vehicle No. .... insured hereunder is reinstated in full from

.... and the endorsement IMT 11-B attaching to this policy shall be deemed to be cancelled. It is further agreed that in consideration of the

period during which the vehicle No. .... has been out of use.

(a) # The insurer will deduct from the next renewal premium the sum of Rs. ....* and the no claim bonus (if any) shall be calculated on the next

renewal premium after deduction of such sum.

(b) # the period of insurance by this policy is extended to............in view of the payment of an additional premium of Rs. ....**

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

NB. 1. # To delete (a) or (b) as per option exercised by the insured.

NB. 2. * The proportionate full policy premium for the period of lay up less the proportionate premium for the fire and/or theft risks for the laid-up

periods is to be inserted.

NB. 3. ** The proportionate premium required for fire and/or theft cover for the vehicle for the laid-up period is to be inserted.

IMT. 12. Discount for Specially Designed/Modified Vehicles for the Blind, Handicapped and Mentally Challenged Persons

Notwithstanding anything to the contrary contained in the policy, it is hereby understood and agreed that the vehicle insured being specially

designed/modified for use of blind, handicapped and mentally challenged persons and suitable endorsement to this effect having been incorporated

in the registration book by the registering authority, a discount of 50 per cent on the own damage premium for the vehicle insured is hereby allowed

to the insured.

Subject otherwise to the terms, exceptions, conditions and limitations of the policy.

IMT. 13. Use of Vehicle within Insured''s Own Premises

(Applicable to all classes except as otherwise provided in the tariff)

It is hereby understood and agreed that the insurer shall not be liable in respect of the vehicle insured while the vehicle is being used elsewhere than

in the insured''s premises except where the vehicle is specifically required for a mission to fight a fire.

For the purposes of this endorsement ''Use confined to own premises'' shall mean use only on insured''s premises to which public have no general

right of access.

IMT. 14. Use of Vehicle Confined to Sites

(Applicable to Goods Carrying Vehicles)

It is hereby understood and agreed that the insurer shall not be liable in respect of the vehicle insured while it is being used elsewhere than on site to

which the public have no general right of access and the vehicle is not required to be registered under the Motor Vehicles Act, 1988.

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 motorised 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 travelling 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--

Provided always that--

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence

and total liability of the insurer shall not in the aggregate exceed the sum of Rs. ....* during any one period of insurance in respect of any such

person.

(2) No compensation shall be payable in respect of death or 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 inured 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 travelling 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:

Provided always that--

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence

and total liability of the insurer shall not in the aggregate exceed the sum of Rs. ....* during any one period of insurance in respect of any such

person.

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

(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 seating capacity of the vehicle insured is to be inserted.

IMT. 17. Personal Accident Cover to Paid Drivers, Cleaners and Conductors

(Applicable to all classes of vehicles)

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 injury as hereinafter defined sustained by the paid driver/cleaner/conductor in the employ of the insured in

direct connection with the vehicle insured whilst mounting into/dismounting from or travelling in the insured vehicle 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--

Provided always that--

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence

and total liability of the insurer shall not in the aggregate exceed the sum of Rs. ....* during any one period of insurance in respect of any such

person.

(2) No compensation shall be payable in respect of death or 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 person is to be inserted.

IMT. 18. Personal Accident to Unnamed Hirer and Unnamed Pillion Passengers

(Applicable to motorised two-wheelers 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 to

any unnamed hirer/driver/any unnamed pillion/sidecar passenger* on the scale provided below for bodily injury caused by violent, accidental,

external and visible means whilst mounting into/onto and/or dismounting from or travelling in/on the vehicle insured which independently of any

other cause shall within three calendar months of the occurrence of such injury result in:

Provided always that--

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence

and total liability of the insurer shall not in the aggregate exceed the sum of Rs. ....** during any one period of insurance in respect of any such

person.

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

(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.

*Delete if P.A. cover for unnamed pillion/side car passenger is not taken.

**The capital sum insured (CSI) per passenger is to be inserted.

IMT. 19. Cover for Vehicles Imported Without Customs Duty

Notwithstanding anything to the contrary contained in this policy, it is hereby understood and agreed that in the event of loss or damage to the

vehicle insured and/or its accessories necessitating the supply of a part not obtainable from stocks held in the country in which the vehicle insured is

held for repair or in the event of the insurer exercising the option under........* to pay in cash the amount of the loss or damage the liability of the

insurer in respect of any such part shall be limited to:

(a) (i) the price quoted in the latest catalogue or the price list issued by the manufacturer or his agent for the country in which the vehicle insured is

held for repair less depreciation applicable;

OR

(ii) if no such catalogue or price list exists, the price list obtaining at the manufacturer''s works plus the reasonable cost of transport otherwise than

by air to the country in which the vehicle insured is held for repair and the amount of the relative import duty less depreciation applicable under the

policy; and

(b) the reasonable cost of fitting such parts.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*Insert ''condition 3'' in the case of the private car and motorised two-wheeler policies and ''condition 4'' in the case of commercial vehicles policy.

IMT. 20. Reduction in the Limit of Liability for Property Damage

It is hereby understood and agreed that notwithstanding anything to the contrary contained in the policy, the insurer''s liability is limited to Rs. 6,000

(rupees six thousand only) for damage to property other than the property belonging to the insured or held in trust or in custody or control of the

insured.

In consideration of this reduction in the limit of liability a reduction in premium of Rs. ....* is hereby made to the insured.

Subject otherwise to the terms, conditions, limitations and exceptions of the policy.

*To insert Rs. 50 for two-wheelers, Rs. 100 for private cars, Rs. 150 for commercial vehicles--three-wheelers and taxis--or Rs. 200 for

commercial vehicles (excluding three-wheelers and taxis).

IMT. 21. Special Exclusions and Compulsory Deductible

(Applicable to all commercial vehicles excluding taxis and motorised two-wheelers carrying passengers for hire or reward)

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed that

(a) Special Exclusions:

Except in the case of total loss of the vehicle insured, the insurer shall not be liable u/s I of the policy for loss or damage to lamps, tyres, tubes,

mudguards, bonnet, side parts, bumpers and paint work.

(b) Compulsory Deductible:

In addition to any amount which the insured may be required to bear under para. (a) above the insured shall also bear u/s I of the policy in respect

of each and every event (including event giving rise to total loss/constructive total loss) the first

Rs........* of any expenditure (or any less expenditure which may be incurred) for which provision is made under this policy and/or of any

expenditure by the insurer in the exercise of its discretion under condition No. 4 of this policy.

If the expenditure incurred by the insurer shall include any amount for which the insured is responsible hereunder, such amount shall be repaid by

the insured to the insurer forthwith.

For the purpose of this endorsement the expression ''event'' shall mean an event or series of events arising out of one cause in connection with the

vehicle insured in respect of which indemnity is provided under this policy.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*to insert amount as appropriate to the class of vehicle insured as per G.R. 40 of the tariff.

IMT. 22. Compulsory Deductible

(Applicable to private cars, three-wheelers rated as private cars, all motorized two-wheelers, taxis, private car type vehicle plying for

public/private hire, private type taxi let out on private hire)

Notwithstanding anything to the contrary contained in the policy, it is hereby understood and agreed that the insured shall bear u/s 1 of the policy in

respect of each and every event (including event giving rise to a total loss/ constructive total loss) the first Rs. ....* (or any less expenditure which

may be incurred) of any expenditure for which provision has been made under this policy and/or of any expenditure by the insurer in the exercise of

his discretion under condition No. ......** of this policy.

If the expenditure incurred by the insurer shall include any amount for which the insured is responsible hereunder, such amount shall be repaid by

the insured to the insurer forthwith.

For the purpose of this endorsement the expression ''event'' shall mean an event or series of events arising out of one cause in connection with the

vehicle insured in respect of which indemnity is provided under this policy.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*(i) to insert amount as appropriate to the class of vehicle insured as per G.R. 40 of the tariff.

(ii) in respect of a vehicle rated under the tariff for private car and in respect of a motorised two-wheeler not carrying passengers for hire or

reward, if any deductible in addition to the compulsory deductible provided in this endorsement is voluntarily borne by the insured, the sum representing the aggregate of the compulsory and the voluntary deductibles is to be inserted.

**to insert condition No. 3 in respect of a vehicle rated under tariff for private car/two-wheelers or condition No. 4 in respect of a vehicle rated

under the tariff for commercial vehicles.

IMT. 22-A. Voluntary Deductible

(For private cars/motorised two-wheelers other than for hire or reward)

It is hereby declared and agreed that the insured having opted a voluntary deductible of Rs. .....* a reduction in premium of Rs. ....** u/s 1 of

the policy is hereby allowed.

In consideration of the above, it is hereby understood and agreed that the insured shall bear u/s 1 of the policy in respect of each and every event

(including event giving rise to a total loss/constructive total loss) the first Rs. ....*** (or any less expenditure which may be incurred) of any

expenditure for which provision has been made under this policy and/or of any expenditure by the insurer in the exercise of his discretion under

condition No. ......# of this policy.

If the expenditure incurred by the insurer shall include any amount for which the insured is responsible hereunder, such amount shall be repaid by

the insured to the insurer forthwith.

For the purpose of this endorsement the expression ''event'' shall mean an event or series of events arising out of one cause in connection with the

vehicle insured in respect of which indemnity is provided under this policy.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*To insert voluntary deductible amount opted by the insured under tariff for private car/tariff for motorised two-wheelers.

**To insert appropriate amount relating to the voluntary deductible opted as per the provision of tariff for private car/tariff for motorised two-

wheelers.

***To insert aggregate amount of voluntary deductible opted and the compulsory deductible applicable to the vehicle insured as in G.R. 40.

#To insert policy condition No. 3 of the tariff for private car/tariff for motorised two-wheelers.

IMT. 23. Cover for Lamps, Tyres/Tubes, Mudguards, Bonnet/Side Parts, Bumpers, Headlights and Paintwork of Damaged Portion Only

(For all commercial vehicles)

In consideration of payment of an additional premium of Rs. ......*, notwithstanding anything to the contrary contained in the policy, it is hereby

understood and agreed that subject to conditions (a), (b) and (c) hereunder loss of or damage (excluding theft under any circumstances) to lamps,

tyres/tubes, mudguards, bonnet/side parts, bumpers, headlights and paintwork of damaged portion only is covered provided the vehicle is also

damaged at the same time.

Subject to:

(a) Depreciation as per schedule provided in section 1 of the policy. It is further understood and agreed that in respect of paintwork for the

damaged portion only (as referred to above) shall also be as per Schedule provided in section 1 of the policy.

(b) In addition to any amount which the insured may be required to bear under para. (a) above, the insured shall also bear 50 per cent of the

assessed loss in respect of each and every claim under this endorsement.

(c) It is also understood that no deductible other than those mentioned in (a) and (b) above shall be applicable in respect of a claim which becomes

payable under this endorsement.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*To insert the sum arrived at as per the provisions of G.R. 40. NB. 3 of the Tariff.

IMT. 24. Electrical/Electronic Fittings

(Items fitted in the vehicle but not included in the manufacturer''s listed selling price of the vehicle--Package policy only)

In consideration of the payment of additional premium of Rs. ...., notwithstanding anything to the contrary contained in the policy, it is hereby

understood and agreed that the insurer will indemnify the insured against loss of or damage to such electrical and/or electronic fitting(s) as specified

in the Schedule whilst it/these is/are fitted in or on the vehicle insured where such loss or damage is occasioned by any of the perils mentioned in

section 1 of the policy.

The insurer shall, however, not be liable for loss or damage to such fitting(s) caused by/as a result of mechanical or electrical breakdown:

Provided always that the liability of the insurer hereunder shall not exceed the insured''s declared value (IDV) of the item.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 25. CNG/LPG Kit in Bi-Fuel System

(Own damage cover for the kit)

In consideration of the payment of premium Rs. ....* notwithstanding anything to the contrary contained in the policy, it is hereby understood

and agreed that the insurer will indemnify the insured in terms, conditions, limitations and exceptions of section 1 of the policy against loss and/or

damage to the CNG/LPG kit fitted in the vehicle insured arising from an accidental loss or damage to the vehicle insured, subject to the limit of the

insured''s declared value of the CNG/LPG kit specified in the schedule of the policy.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*To insert sum arrived at in terms of G.R. 42.

IMT. 26. Fire and/or Theft Risks Only

(Not applicable for miscellaneous and special types of vehicles rateable under class-D and motor trade policies under classes-E, F & G of the

commercial vehicles tariff)

Notwithstanding anything to the contrary contained in the policy, it is hereby understood and agreed that section II of the policy is deemed to be

cancelled and u/s I thereof the insurer shall only be liable to indemnify the insured against loss or damage by fire, explosion, self ignition, lightning

and/or burglary, housebreaking, theft and riot, strike, malicious damage, terrorism, storm tempest, flood inundation and earthquake perils whilst the

vehicle is laid up in garage and not in use.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

NB. (i) In case of fire risk only, the words ''burglary, housebreaking, theft'' are to be deleted.

NB. (ii) In case of theft risk only, the words ''fire, explosion, self ignition, lightning riot, strike, malicious damage, terrorism, storm tempest, flood

inundation and earthquake perils'' are to be deleted.

IMT. 27. Liability and Fire and/or Theft

(Not applicable for miscellaneous and special types of vehicles rateable under class-D of the tariff for commercial vehicles)

Notwithstanding anything to the contrary contained in the policy, it is hereby understood and agreed that section I of the policy the insurer shall not

be liable thereunder except in respect of loss or damage by fire, explosion, self ignition, lightning and/or burglary, housebreaking, theft and riot,

strike, malicious damage, terrorism, storm tempest, flood inundation and earthquake perils.

Subject otherwise to the terms, conditions, limitations and exceptions of the policy.

NB. (i) In case of liability and fire risks only, the words ''burglary, housebreaking, theft'' are to be deleted.

NB. (ii) In case of liability and theft risks only, the words ''fire, explosion, self ignition, lightning, riot, strike, malicious damage, terrorism, storm

tempest, flood inundation and earthquake perils'' are to be deleted.

IMT. 28. Legal Liability to Paid Driver and/or Conductor and/or Cleaner Employed in Connection with the Operation of Insured Vehicle

(For all classes of vehicles)

In consideration of an additional premium of Rs. 25 notwithstanding anything to the contrary contained in the policy, it is hereby understood and

agreed that the insurer shall indemnify the insured against the insured''s legal liability under the Workmen''s Compensation Act, 1923, the Fatal

Accidents Act, 1855 or at common law and subsequent amendments of these Acts prior to the date of this endorsement in respect of personal

injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the

vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that--

(1) this endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any

insurer or group of insurers a policy of insurance in respect of liability as herein defined for insured''s general employees;

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

*(3) the insured shall keep record of the name of each paid driver, conductor, cleaner or persons employed in loading and/or unloading and the

amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) in the event of the policy being cancelled at the request of the insured no refund of the premium paid in respect of this endorsement will be

allowed.

Subject otherwise to the terms, conditions, limitations and exceptions of the policy except so far as necessary to meet the requirements of the

Motor Vehicles Act, 1988.

*In case of private cars/motorised two-wheelers (not used for hire or reward) delete this para.

IMT. 29. Legal Liability to Employees of the Insured other than Paid Driver and/or Conductor and/or Cleaner who may be Travelling or Driving in

the Employer''s Car

[Private cars only/motorised two-wheelers (not for hire or reward)]

In consideration of the payment of an additional premium of Rs. 25 per employee insured notwithstanding anything to the contrary contained in the

policy, it is hereby understood and agreed that the insurer will indemnify the insured against the insured''s liability at common law and statutory

liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee

(other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle

insured:

Provided that in the event of an accident whilst the vehicle insured is carrying more than......* employees of the insured (including the driver) the

insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of

accident in connection with such vehicle insured.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

NB. * To insert the number of employees for which the premium has been paid.

IMT. 30. Trailers

(Applicable to private cars only)

In consideration of the payment of an additional premium it is hereby understood and agreed that the indemnity granted by this policy shall extend

to apply to the trailer (registration No...........)

Provided always that--

*(a) the IDV of such trailer shall be deemed not to exceed.............**

(b) the term ''trailer'' shall not include its contents or anything contained thereon.

(c) such indemnity shall not apply in respect of death or bodily injury to any person being conveyed by the said trailer otherwise than by reason of

or in pursuance of a contract of employment.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*Delete in the case of liability to the public risks only policies.

**Insert value of trailer as declared at inception of insurance or any renewal thereof.

IMT. 31. Reliability Trials and Rallies

(Private cars and motorised two-wheelers)

In consideration of the payment of an additional premium it is hereby understood and agreed that the indemnity granted by this policy is extended

to apply whilst the vehicle insured is engaged in ....* to be held at ....**..... on or about the date of ....../......./............ under the

auspices of ....#

Provided that--

(a) No indemnity shall be granted by this endorsement to ....#

(b) This policy does not cover use for organised racing, pace making or speed testing.

(c) During the course of the ....* the insurer shall not be liable in respect of death of or bodily injury to any person being carried in or upon

or entering or getting on to or alighting from the vehicle insured at the time of the occurrence of the event out of which any claim arises.

It is further understood and agreed that while the vehicle insured is engaged in ....* the insured shall bear the first Rs. ....@ (or any less

amount for which the claim may be assessed) of each and every claim u/s I of this policy:

Provided that if the insurer shall make any payment in exercise of its discretion under condition No. 3 of the policy in settlement of any claim and

such payment includes the amount for which the insured is responsible by reason of this endorsement the insured shall repay to the insurer forthwith

the amount for which the insured is so responsible.

For the purpose of this endorsement the expression ''claim'' shall mean a claim or series of claims arising out of one event.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*To insert the name of the event.

@To insert Rs. 5,000 for private cars or Rs. 2,500 for motorised two-wheelers. For the duration of the event the deductible u/s 1 of the policy for

the purpose of IMT 22 will be the amount stated in IMT 22 or the amount stated herein, whichever is higher.

**To insert the venue of the event.

#To insert the name of the promoters of the event.

##To delete this entire para in case of liability only policies.

IMT. 32. Accidents to Soldiers/Sailors/Airmen Employed as Drivers

In consideration of the payment of an additional premium of Rs. 100* it is hereby understood and agreed that in the event of any

soldier/sailor/airman employed by the insured to drive the vehicle insured being injured or killed whilst so employed, this policy will extend to

relieve the insured of his liability to indemnify Ministry of Defence under the respective Regulations.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*This additional premium is flat and irrespective of period of insurance not exceeding 12 months. Any extension of the policy period beyond 12

months will call for payment of further additional premium under this endorsement.

IMT. 33. Loss of Accessories

(Applicable to motorised two-wheeler policies only)

In consideration of the payment of an additional premium of Rs. ....it is hereby understood and agreed that as from ..../......./.......

notwithstanding anything to the contrary contained in section I but subject otherwise to the terms, exceptions, conditions and limitations of this

policy, the insurer will indemnify the insured in respect of loss of or damage to accessories the property of the insured, specifically declared by the

insured caused by burglary, housebreaking or theft.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 34. Use of Commercial Type Vehicles for both Commercial and Private Purposes

(Applicable to commercial vehicle policies only)

In consideration of the payment of an additional premium of Rs. ....and notwithstanding anything to the contrary contained herein, it is hereby

understood and agreed that--

(i) The insurer will indemnify the insured against his legal liability under common law and statutory liability under the Fatal Accidents Act, 1855 in

respect of death of or bodily injury to any person not being an employee of the insured nor carried for hire or reward, whilst being carried in or

upon or entering or mounting or alighting from any motor vehicle described in the Schedule to this policy.

(ii) This policy shall be operative whilst any vehicle described in the Schedule hereto is being used by the insured or by any other person with the

permission of the insured for social, domestic, or pleasure purposes.

Whilst any such vehicle is being so used the insurer will in terms and subject to the limitations of and for the purposes of section II of this policy

treat as though he were the insured person using such vehicle provided that such person--

(1) is not entitled to indemnity under any other policy,

(2) shall as though he were the insured observe, fulfil and be subject to the terms, provisions, conditions and endorsements of this policy in so far

as they apply.

(3) has not been refused any motor vehicle insurance or continuance thereof by any insurer.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

Note: In case of liability only policies delete (1) above.

IMT. 35. Hired Vehicles--Driven by Hirer*

(Applicable to four-wheeled vehicles with carrying capacity not exceeding 6 passengers and motorised two-wheelers)

It is hereby understood and agreed that notwithstanding anything to the contrary contained in this policy unless the vehicle insured is being driven

by or is for the purpose of being driven by the insured in the charge of the within named insured or a driver in the insured''s employment, the policy

shall only be operative whilst the vehicle insured is let on hire by the insured to any person (hereinafter called the hirer) who--

(i) shall have entered into a hire contract with the insured and who prior to such hiring shall have satisfactorily completed and signed a

supplementary proposal form**.

(ii) shall have satisfied the insured--

(a) that the vehicle insured will only be driven by a duly licensed driver whose licence has not been endorsed;

(b) that such driver has not been refused motor insurance nor had his/her insurance policy been cancelled nor had special conditions imposed nor

had increased premium demanded from him/her by reason of claims experience.

It is also understood and agreed that whilst the vehicle insured is let on hire to the hirer the insurer shall not be liable--

(1) for any loss, damage or liability due to or arising from theft or conversion by the hirer unless covered by payment of additional premium at the

rate of 1.50 per cent on IDV. (Endorsement IMT 43 is to be used).

(2) To pay the first Rs. ....of each and every claim in respect of which indemnity would but for this endorsement have been provided by section I

of this policy.

If the expenditure incurred by the insurer shall include the amount for which the insured is responsible hereunder, such amount shall be repaid by the insured to the insurer forthwith.

For the purpose of this endorsement the expression ''claim'' shall mean a claim or series of claims arising out of one cause in respect of the vehicle.

(3) If the vehicle is used by the hirer for carriage of passengers for hire or reward.

*For the purposes of this endorsement the insurer will, in terms of and subject to the provisions contained in item I of section II of this policy, treat

the hirer as a person who is driving the two-wheeler.

Further it is agreed that the insured shall forward to the insurer the supplementary proposal referred to above, completed by the hirer immediately

after receipt thereof which proposal as well as that referred to in this policy shall be the basis of the contract expressed in this endorsement so far

as it relates to the indemnity which is operative whilst the vehicle is let on hire to such hirer.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

Note: For liability only policies delete the whole of items (1) and (2) and the para in bold marked with*.

** Insurer to devise a suitable supplementary proposal form.

IMT. 36. Indemnity to Hirer - Package Policy - Negligence of the Insured or Hirer

It is hereby declared and agreed that the company will indemnify any hirer of the vehicle insured against loss, damage and liability as defined in this

policy arising in connection with the vehicle insured by reason of the negligence of the within named insured or of any employee of such insured

while the vehicle insured is let on hire:

Provided that any such hirer shall as though he/she were the insured observe, fulfil and be subject to the terms, exceptions, conditions and

limitations of this policy in so far as they apply.

IMT. 37. Legal Liability to Non-Fare Paying Passengers other than Statutory Liability except the Fatal Accidents Act, 1855

(Commercial vehicles only)

In consideration of the payment of an additional premium of Rs. .... and notwithstanding anything to the contrary contained in section II-1(b)

and (c), it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under the statute

(except the Fatal Accidents Act, 1855) in respect of death of or bodily injury to--

(i) Any employee of the within named insured who is not a workman within the meaning of the Workmen''s Compensation Act prior to date of this

endorsement and not being carried for hire or reward.

(ii) Any other person not being carried for hire or reward provided that the person

is--

(a) Charterer or representative of the charterer of the truck.

(b) Any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from

any motor vehicle described in the Schedule of the policy.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 37-A. Legal Liability to Non-Fare Paying Passengers who are Not Employees of the Insured

(Commercial vehicles only)

In consideration of the payment of an additional premium of Rs. .... and notwithstanding anything to the contrary contained in section II-1(c),

it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except

Fatal Accidents Act, 1855) in respect of death or bodily injury to any person not being an employee of the insured and not carried for hire or

reward provided that the person is--

(a) Charterer or representative of the charterer of the truck.

(b) Any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from

vehicle insured described in the Schedule of this policy.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 38. Legal Liability to Fare Paying Passengers Excluding Liability for Accidents to Employees of the Insured Arising out of and in the Course

of their Employment

(Commercial and motor trade vehicles only)

(I) For use with package policies.

In consideration of an additional premium of Rs......and notwithstanding anything to the contrary contained in section II-1(c) but subject otherwise

to the terms, exceptions, conditions and limitations of this policy, the insurer will indemnify the insured against liability at law for compensation

(including law costs of any claimant) for death of or bodily injury to any person other than a person excluded u/s II-1(B) being carried in or upon

or entering or mounting or alighting from the motor vehicle:

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than the number of persons mentioned in the

Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the insurer

rateable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of

persons were carried in the motor vehicle:

Provided further that in computing the number of persons for the purpose of this endorsement any three children not exceeding 15 years of age will

be reckoned as two persons and any child in arms not exceeding 3 years of age will be disregarded:

Provided also that the provisions of condition 3 of the policy are also applicable to a claim or series of claims under this endorsement:

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement

will be allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

(II) For use with liability only policy

In consideration of an additional premium of Rs. .....and subject otherwise to the terms, exceptions, conditions and limitations of this policy, the

insurer will indemnify the insured against liability at law for compensation (including law costs of any claimant) for death of or bodily injury to any

person other than a person excluded under general exception being carried in or upon or entering or mounting or alighting from the motor vehicle:

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than the number of persons mentioned in the

Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the insurer

rateable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of

persons were carried in the motor vehicle:

Provided further that in computing the number of persons for the purpose of this endorsement any 3 children not exceeding 15 years of age will be

reckoned as two persons and any children in arms not exceeding 3 years of age will be disregarded:

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement

will be allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 39. Legal Liability to Persons Employed in Connection with the Operation and/or Maintaining and/or Loading and/or Unloading of Motor

Vehicles

(For goods vehicle)

In consideration of the payment of an additional premium of *....... it is hereby understood and agreed that notwithstanding anything contained

herein to the contrary, the insurer shall indemnify the insured against his legal liability under the Workmen''s Compensation Act, 1923 and

subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at common law in respect of personal

injury to any paid driver (or cleaner or conductor or person employed in loading/ or unloading but in any case not exceeding seven in number

including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the... and not exceeding seven in

number and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that:

(1) this endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any

insurer or group of underwriters a policy of insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver, cleaner, conductor or person employed in loading and/or unloading and the amount

of wages, salary and other earnings paid to such employees and shall at times allow the insurer to inspect such record.

(4) in the event of the policy being cancelled at the request of the insured no refund of the premium paid in respect of this endorsement will be

allowed.

The premium to be calculated at the rate of Rs. 25 per driver and/or cleaner or conductor and/or person employed in loading and/or unloading but

not exceeding the number permitted by the Motor Vehicles Act, 1988 including driver and cleaner.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy except so far as necessary to meet the requirements of the

Motor Vehicles Act, 1988.

IMT. 39-A. Legal Liability under the Workmen''s Compensation Act, 1923 in respect of the Carriage of More Than Six Employees (excluding the

driver) in Goods Carrying Vehicles

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything to the contrary

contained herein the company shall indemnify the insured against his legal liability under the Workmen''s Compensation Act, 1923 and subsequent

amendments to that Act prior to the date of this endorsement in respect of death of or bodily injury to any person (other than the paid driver)

exceeding six in number whilst being carried in the motor vehicle and will in addition be responsible for all costs and expenses incurred with its

written consent:

Provided always that--

(1) the company shall not be liable by virtue of this endorsement to indemnify the insured in respect of any liability in cases where the insured holds

or subsequently effects with any insurance company or group of underwriters a policy of insurance in respect of liability as herein defined for his

general employees and where the insured has not obtained special permission from the registration authorities for carriage of more than six such employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each person employed in connection with the loading and unloading of the vehicles and the

amount of wages, salary and other earnings paid to such employees and shall at all times allow the insurer to inspect such record.

(4) in the event of the policy being cancelled at the request of the insured no refund of the premium paid in respect of this endorsement will be

allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 40. Legal Liability to Paid Driver and/or Conductor and/or Cleaner Employed in connection with the Operation of Motor Vehicle

(For buses, taxis and motorised three/four-wheelers under commercial vehicles tariff)

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the

contrary, the insurer shall indemnify insured against his legal liability under the Workmen''s Compensation Act, 1923 and subsequent amendments

of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at common law in respect of personal injury to any paid driver

and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured and will in

addition be responsible for all costs and expenses incurred with its written consent.

The premium to be calculated and paid while taking insurance of the vehicle concurred at the rate of Rs. 25 per driver and/or conductor and/or

cleaner:

Provided always that--

(1) this endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any

insurer or group of underwriters a policy of insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall

comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver, cleaner, conductor or person employed in loading and/or unloading and the amount

of wages, salary and other earnings paid to such employees and shall at all times allow the insurer to inspect such record.

(4) in the event of the policy being cancelled at the request of the insured no refund of the premium paid in respect of this endorsement will be

allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy except so far as necessary to meet the requirements of the

Motor Vehicles Act, 1988.

IMT. 41. Motor Trade Policy - Class ''F'' - Road Risk Only

It is hereby declared and agreed that notwithstanding anything contained herein to the contrary that in respect of any new vehicle and/or chassis

bearing a trade certificate number specified in the Schedule of the policy, the geographical area for the purpose of this policy shall be as defined

hereunder and not as stated in the Schedule hereto.

Geographical area

Under section II - (i) - INDIA

Under all other sections - within a radius of.........* kilometres from the insured''s

address as stated in the Schedule hereto.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*to insert ''80'' or ''120'' as opted for by insured and premium paid accordingly.

IMT. 42. Private Carriers

(Goods carrying commercial vehicles only)

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed that the insurer shall not be liable for any loss or

damage to the vehicle insured and/or for any third party liability in respect thereof if at the time of accident the vehicle insured under this policy is

carrying goods not belonging to the insured.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

Article II.

NOTE: For liability only policies delete the words ""for any loss or damage to the vehicle insured and/or"".

IMT. 43. Theft and Conversion Risk

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed in this policy in consideration of the payment of

additional premium at the rate of 1.50 per cent of IDV, clause (ii)(b)(1) of Endorsement IMT-35 is hereby deemed to be deleted.

It is further understood and agreed that the indemnity in respect of theft and/or conversion by the hirer is applicable only in case of theft and/or

conversion of the entire vehicle.

It is further understood and agreed that no claim bonus will not be applicable to the additional premium charged hereunder.

IMT. 44. Indemnity to Hirer - Package Policy - Negligence of the Owner or Hirer

It is hereby declared and agreed that in consideration of payment of an additional premium of Rs.......the insurer will indemnify any hirer of the

vehicle insured against loss, damage and liability as defined in this policy arising in connection with the vehicle insured while let on hire:

Provided that any such hirer shall as though he/she were the insured observe, fulfil and be subject to the terms, exceptions, conditions and

limitations of this policy in so far as they apply.

IMT. 45. Indemnity to Hirer - Liability Only Policy - Negligence of the Owner or Hirer

(Negligence of the hirer)

It is hereby declared and agreed that in consideration of payment of an additional premium of Rs. ....the insurer will indemnify any hirer of the

motor vehicle against liability as defined in this policy arising in connection with the motor vehicle while let on hire:

Provided that any such hirer shall as though he were the insured observe, fulfil and be subject to the terms, exceptions, conditions and limitations of

this policy in so far as they apply.

IMT. 46. Legal Liability to Passengers excluding Liability for Accidents to Employees of the Insured arising out of and in course of their

Employment

(Applicable to ambulance/hearses under class D of commercial vehicles and to motor trade vehicles)

In consideration of an additional premium of Rs. ......and notwithstanding anything to the contrary contained in section II-I(c) but subject otherwise

to the terms, exceptions, conditions and limitations of this policy the insurer will indemnify the insured against liability at law for compensation

(including legal costs of any claimant) for death of or bodily injury to any person other than a person excluded u/s II-I(B) being carried in or upon

or entering or mounting or alighting from the vehicle insured:

Provided always that in the event of an accident occurring whilst the vehicle insured is carrying more than the number of persons mentioned in the

Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the insurer

ratable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of

persons were carried in the vehicle insured:

Provided further that in computing the number of persons for the purpose of this endorsement any three children not exceeding 15 years of age will

be reckoned as two persons and any child in arms not exceeding 3 years of age will be disregarded:

Provided also that the provisions of condition 3 of the policy are also applicable to a claim or series of claims under this endorsement:

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement

will be allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

(For use with ''liability only'' policy)

In consideration of an additional premium of Rs. ...... and subject otherwise to the terms, exceptions, conditions and limitations of this policy the

insurer will indemnify the insured against liability at law for compensation (including legal costs of any claimant) for death of or bodily injury to any

person other than a person excluded under general exception being carried in or upon or entering or mounting or alighting from the vehicle insured:

Provided always that in the event of an accident occurring whilst the vehicle insured is carrying more than the number of persons mentioned in the

Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the insurer

ratable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of

persons were carried in the vehicle insured:

Provided further that in computing the number of persons for the purpose of this endorsement any 3 children not exceeding 15 years of age will be

reckoned as two persons and any children in arms not exceeding 3 years of age will be disregarded:

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement

will be allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

IMT. 47. Mobile Cranes/Drilling Rigs/Mobile Plants/Excavators/Navvies/Shovels/ Grabs/Rippers

It is hereby declared and agreed notwithstanding anything to the contrary contained in this policy that in respect of the vehicle insured * the insurer

shall be under no liability--

(a) u/s I of this policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant

forming part of such vehicle or attached thereto except for loss or damage arising directly from fire, explosion, self ignition or lightning or burglary,

housebreaking or theft.

(b) u/s II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured

arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

N.B.: Omit para. (a) for--

(i) Liability only policies.

(ii) Package policies where an additional premium has been paid for inclusion of damage by overturning.

Note: * Insert make, number or some other means of identification. Where a premium reduction is allowed for exclusion of damage when in use as

a tool of trade omit from paragraph (a) the words ''resulting from overturning'' and ''except for loss..... or theft''.

IMT. 48. Agricultural and Forestry Vehicles and other Miscellaneous Vehicles with Trailers attached - Extended Cover

It is hereby declared and agreed that in consideration of an additional premium of Rs. ...., the indemnity provided by this policy shall apply in

respect of any trailer (including agricultural implements such as ploughs, harrows and the like) described in the under noted Schedule of trailers as

though it were a vehicle described in the Schedule and had set against it in the Schedule the value set against it in the under-noted Schedule of

trailers:

Provided that the insurer shall be under no liability u/s I of the policy in respect of breakage of any part of the agricultural trailer or implements

caused by ground obstructions.

*Insert make, number or some other means of identification. Threshing machines, drums, bailing machines, trusses and tiers must be identified as

such.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

Note: In the case of liability only policies, the endorsement must be suitably amended.

IMT. 49. Exclusion of liability to the Public Working Risk

(Except as required by the Motor Vehicles Act, 1988)

It is hereby declared and agreed that except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, the insurer shall be

under no liability u/s II of this policy in respect of liability incurred by the insured arising out of the operation as a tool of the motor vehicle or of

plant forming part of the motor vehicle or attached thereto.

IMT. 50. Cinema Film Recording and Publicity Vans

It is hereby understood and agreed that notwithstanding anything to the contrary contained in this policy, the insurer shall be under no liability in

respect of loss or damage to cinematic photographic or sound equipment costumes or any other technical property fixtures and fittings on the motor vehicle, unless they are firmly and permanently fixed to the body of the vehicle and are not detachable from time to time.

IMT. 51. Mobile Shops/Canteens and Mobile Surgeries/Dispensaries

It is hereby understood and agreed that notwithstanding anything to the contrary contained in this policy the insurer shall be under no liability in

respect of--

*(a) loss of or damage to........** on the motor vehicle

(b) death of or bodily injury to or illness of any person caused by or through or in connection with or arising from--

(i) poisoning of any kind or foreign or deleterious matter in food or drink.

(ii) anything harmful in the condition of any goods supplied at or from the motor vehicle or the defective condition of the container of such goods.

(iii) anything harmful in the condition of any goods supplied at or from the motor vehicle or defective in any treatment given at or from the motor

vehicle.

NOTES:

*For liability only policies omit proviso (a)

**(1) In the case of ''mobile shops and canteens'' insert the words ''utensils or stock-in-trade'' and omit (iii).

(2) In the case of ''mobile surgeries/dispensaries'' insert the words ''surgical instruments, medical appliances or supplies''.

IMT. 52. Exclusion of Damage while in use as a Tool of Trade

It is hereby declared and agreed that except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, the insurer shall be

under no liability u/s II of this policy in respect of liability incurred by the insured arising out of the operation as a tool of the motor vehicle or of

plant forming part of the vehicle insured or attached thereto.

IMT. 53. Specified Attachments (Special Type Vehicles)

It is hereby declared and agreed that while any attachment in the under noted ''Schedule of attachments'' is attached to the motor vehicle or is

detached and out of use the indemnity provided by this policy shall apply in respect of any such attachment as though it were the motor vehicle and

had set against it in the Schedule the value set against it in the under noted ''Schedule of Attachments''

*Insert make, number or some other means of identification.

Note: In the case of pedestrian controlled tractors insert in ''Description'' in the Schedule of attachments ""any standard attachment of the...tractor

supplied by the makers"".

IMT. 54. Mobile Plant--Inclusion of Liability to the Public Working Risk where Tool of Trade is used only for Work Performed in or upon the

Vehicle or Trailer

It is hereby declared and agreed that except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, the insurer shall be

under no liability u/s II of this policy in respect of liability arising out of--

(a) the explosion of any vessel under pressure being part of plant attached to or forming part of the motor vehicle.

(b) the operation other than in or upon the motor vehicle forming part of or attached to the motor vehicle.

IMT. 55. Mobile Plant - Inclusion of Liability to the Public Working Risk

(All other cases)

It is hereby understood and agreed that notwithstanding anything to the contrary contained in this policy the insurer shall be under no liability u/s II

in respect of

(a) death, injury or damage caused by or resulting from

(i) subsidence flooding or water pollution

(ii) damage to pipes or cables

arising out of the operation as a tool of the vehicle insured or of any plant forming part of vehicle insured or attached thereto.

(b) damage to property resulting from the manufacture, construction, alteration, repair or treatment of such property by the insured.

(c) death, injury or damage caused by or through property on which the insured has carried out any process of manufacture, construction,

alteration or repair or treatment.

It is further understood and agreed that except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, the insurer shall

be under no liability u/s II of this policy in respect of liability incurred by the insured arising out of the explosion of any vessel under pressure being part of plant attached to or forming part of the vehicle insured.

IMT. 56. (Road Transit Only)

In consideration of the payment of an additional premium it is hereby understood and agreed that insurance by sections I and II of this policy shall

extend to the motor vehicle (mechanically propelled or otherwise) attached to the motor vehicle for the purpose of being towed:

Provided always that--

(a) the insurer shall not be liable under this policy in respect of damage to property conveyed by the towed vehicle.

(b) the insurer shall not be liable under this policy in respect of accident, loss, damage and/or liability caused sustained or incurred whilst the vehicle

insured is towing a greater number of vehicles than is permitted by law.

IMT. 57. Motorised Two-Wheelers (Motor Trade Only)

It is hereby declared and agreed that item 5 in the Schedule to this policy is deemed to have been deleted and the following substituted therefor--

The motor vehicle: Any motorised two-wheeler (including sidecar attached thereto) the property of the insured or insured''s custody or control

whilst bearing trade certificate No.........

It is further declared and agreed that the words ''motor vehicle'' wherever they appear are deemed to have been deleted and substituted by the

words ''motorised two-wheeler''.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 58. Loan or Hire of Motor Cars, Motorised Two-Wheelers, Motor Vehicles to Customers by Motor Dealers

(Motor trade only)

Notwithstanding anything to the contrary contained herein, it is hereby understood and agreed that the motor car(s), motorised two-wheelers,

motor vehicle(s) described in the Schedule hereto may be let out on loan or hire to insured''s customers when their vehicle(s) is/are under repair

with the insured:

Provided that the insured agrees to record in a register for the purposes of this policy the date of loan or hire of such vehicle(s), its make and

registered number (or chassis number if the loaned/hired vehicle itself is not registered) and the duration of the loan or hire and to submit to the

insurer within one month of the expiry of each period of insurance a statement of the total number of days each loaned/hired vehicle was in use:

Provided also that the premium for this policy shall be subject to adjustment on expiry of each period of insurance.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 59. Private Use of Vehicle by Member/Director/Employee of the Insured

(Motor trade only)

In consideration of the payment of an additional premium of Rs. ......and notwithstanding anything contained herein to the contrary, it is hereby

understood and agreed that this policy shall be operative whilst the vehicle insured is being used by the insured or with the permission of the insured

by a member, director or employee of the insured for social, domestic or pleasure purposes.

Whilst the vehicle insured is being so used the insurer will in terms of and subject to the limitations of and for the purpose of section II of this policy

treat as though he were the insured person using the vehicle insured provided that such person:

(1) is not entitled to indemnity under any other policy;

(2) shall as though he/she were the insured observe, fulfil and be subject to the terms, provisions, conditions and endorsements of this policy in so

far as they apply;

(3) has not been refused any motor vehicle insurance or continuance thereof by any insurer.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 60. Demonstration - Driving Extension

(Applicable to motor trade policies only)

In consideration of the payment of an additional premium of Rs. .... and notwithstanding anything to the contrary contained herein, it is hereby

understood and agreed that the policy shall be operative whilst the vehicles are being driven for the purpose of demonstration by person(s) not in

the employment of the insured provided he/she/they is/are driving with the insured''s permission and is/are accompanied by the insured or by any

person(s) in the insured''s employment.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 61. Tuition - Driving Extension

(Applicable only to motor trade policies issued on named driver basis)

In consideration of the payment of an additional premium of Rs...... and notwithstanding anything to the contrary, it is hereby understood and

agreed that the policy shall be operative whilst the vehicles insured are being used for purpose of demonstration or tuition by any other person,

provided he/she is driving with the insured''s permission and is accompanied by a named driver mentioned in the policy Schedule.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

IMT. 62. Deletion of 50 per cent Limitation Clause in respect of Damage to Tyres

(Applicable to motor trade road transit risks policies only)

In consideration of the payment of an additional premium of Rs. ..... it is hereby understood and agreed that the words "".....when the liability of the

insurer is limited to 50 per cent of the cost of the replacement...."" are hereby deleted from proviso (b) of section I(1) of the policy.

Subject otherwise to the terms, conditions, limitations and exceptions of the policy.

IMT. 63. Restriction of Cover to Liability Risks Only

(Motor trade internal risks policy)

It is hereby understood and agreed that--

(a) Sections I and II(2)(i) and the word ''other'' in section II(2)(ii) of this policy in the Schedule to this policy are deemed to be cancelled and

(b) the insurer shall not be liable in respect of damage to the motor vehicle or its accessories.

IMT. 64. Open-Air Car Parks

(Motor trade internal risks only)

In consideration of the payment of an additional premium, it is hereby understood and agreed that for the purpose of this policy the premises shall be deemed to include the car park at......* superficial area not exceeding........**

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

*To insert location

**To insert appropriate area

IMT. 65. Work Away From Premises

(Motor trade internal risks only)

In consideration of the payment of an additional premium it is hereby understood and agreed that the premises are deemed to include any place at

which the insured is performing work not being premises under the control of the insured provided that the insurer shall not be liable in respect of

injury or damage resulting from the driving of the vehicle insured in a public place in India within the meaning of the Motor Vehicles Act, 1988.

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

93. In the case of personal accident cover policy, unlike third party claims, the quantum of compensation awarded to the injured or the legal

representatives of the deceased, it is not unlimited, whereas, in the case of third party claims, a combined reading of the provisions, sections 140

and 141 of the Motor Vehicles Act makes it clear that apart from the statutory compensation of Rs. 25,000 in the case of permanent disablement

or Rs. 50,000 in the case of death, arising out of an accident, where there is use of a motor vehicle, the injured or the legal representatives of the

deceased, as the case may be, are entitled to make a claim for compensation, u/s 163-A or section 166 of the Motor Vehicles Act, as the case

may be.

94. As per personal accident cover policy, the cover of insurance is not intended to satisfy any award to be passed in favour of a third party, and it

is intended only to pay compensation to the injured or the legal representatives of the deceased, i.e., owner-cum-driver. Even though in National

Insurance Co. Ltd. v. Sinitha, 2012 ACJ 1 (SC), the Supreme Court has held that a claim u/s 163-A can be defeated by the insurer by adducing

evidence that the injured was at fault, negligent or committed an act of neglect, and invoke the theory of ''fault liability'', in my humble opinion, the same would not be attracted in the case of a personal accident cover policy. The said defence cannot be extended to a case of personal accident

cover policy.

95. At this juncture, this court deems it fit to consider a larger Bench decision of the Apex Court in Deepal Girishbhai Soni v. United India

Insurance Co. Ltd., 2004 ACJ 934 (SC), wherein the Apex Court, while considering the issue, as to whether claims under sections 163-A and

166 of the Motor Vehicles Act can be pursued simultaneously and while interpreting the words, ""Notwithstanding anything contained in this Act

(the Motor Vehicles Act, 1988) or in any other law for the time being in force"" and its import thereof, at para. 66, held as follows:

(66) We may notice that section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation

under the Act and also under the Workmen''s Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles

Act contains different expressions as, for example, ''under the provision of the Act'', ''provisions of this Act'', ''under any other provisions of this

Act'' or ''any other law or otherwise''. In section 163-A, the expression ""notwithstanding anything contained in this Act or in any other law for the

time being in force"" has been used, which goes to show that Parliament intended to insert a non obstinate clause of wide nature which would mean

that the provisions of section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in

force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to section 166 and

the concept of social justice has been duly taken care of.

96. Deepal Girishbhai Soni v. United India Insurance Co. Ltd., 2004 ACJ 934 (SC), has been decided by a larger Bench, comprising three

Judges, whereas National Insurance Co. Ltd. v. Sinitha, 2012 ACJ 1 (SC), has been decided by a two-Judge Bench and that there is no reference

to the larger Bench decision. At paras 39 to 42 and 46, the Supreme Court further held that--

(39) Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons

of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988

Act several representations and suggestions were made by the

State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations made by

the various courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India

appointed a Review Committee. The Review Committee in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of

compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is

found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11,214 claims pending

before the Motor Accidents Claims Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation

claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the insurance company if a system of structured

compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases depending upon the

age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of

limb, etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme

of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for

settlement of claims on ''fault liability'' in respect of third party liability under Chapter XI of the Motor Vehicles Act, 1988. They have suggested

that the claimants should first file their claims with Motor Accidents Claims Tribunals and then the insurers may be allowed six months time to

confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability

by the insurer the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated

time.

(40) The recommendations of the Review Committee and representations from the public were placed before the Transport Development Council

for seeking their views pursuant whereto several sections were amended. Section 163-A was inserted in the Act to provide for payment of

compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the

Central Government from time to time.

(41) Section 140 of the Act dealt with interim compensation but by inserting section 163-A, Parliament intended to provide for making of an

award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The

amendment was, thus, a deviation from the common law liability under the law of Torts and was also in derogation of the provisions of the Fatal

Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant

a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said

provisions were assured of a speedy and effective remedy which was not available to the claimants u/s 166 of the Act.

(42) Section 163-A was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000

having regard to the fact that in terms of section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid

on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made

thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule

appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position

furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the

victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in

columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay down a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving

that accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

(46) Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis.

Sub-section (1) of section 163-A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to

pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the

Second Schedule, to the legal heirs or the victim, as the case may be. Sub-section (2) of section 163-A is in pari materia with sub-section (3) of

section 140 of the Act.

97. It is a settled law that larger Bench decision will prevail over a smaller Bench decision. Though in Deepal Girishbhai Soni v. United India

Insurance Co. Ltd., 2004 ACJ 934 (SC), it is not the issue, as to whether a tortfeasor can maintain a claim for compensation u/s 163-A of the

Motor Vehicles Act, the ratio decidendi of the Supreme Court, with reference to a claim u/s 163-A of the Motor Vehicles Act, 1988, that

Parliament has intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims, who would

require the amount of compensation, without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part

of the driver of the motor vehicle or any other fault, arising out of use of the vehicle and the specific observation of the Apex Court, at para. 66 of

the judgment, that section 163-A of the Act would cover cases, where even negligence is on the part of the victim, cannot be lost sight of. In

Deepal Girishbhai Soni''s case, the Supreme Court held that section 163-A of the Act is by way of an exception to section 166 and the concept of

social justice has been taken note of.

98. When an owner-cum-driver takes a personal accident cover, an optional contract of insurance, and pays 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 licence, in accordance with the provisions of rule 3 of the Central Motor Vehicles Rules, 1989, at

the time of the accident.

99. As regards the contention that the personal accident cover policy issued by Bajaj Allianz General Ins. Co. 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.

100. Personal accident cover policy has following general exceptions--

(1) Any accidental loss, damage and/or liability caused, sustained or incurred outside the geographical area.

(2) Any claim arising out of any contractual liability.

(3) Any accidental loss/damage and/or liability caused, sustained or incurred whilst the vehicle insured herein is:

(a) being used otherwise than in accordance with the limitations, as to use or

(b) being driven by or is for the purpose of being driven by him/her in the charge of any person other than a driver as stated in the driver''s clause.

1. (a) Any accidental loss or damage to any property whatsoever or any loss of expense whatsoever resulting or arising therefrom or any

consequential loss.

(b) Any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing 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.

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

(2) Any accidental loss damage and/or liability directly or indirectly or proximately or remotely occasioned by or contributed by or traceable to or

arising out of or in connection with war, invasion, the act of foreign enemies, hostilities or warlike operations (whether before or after declaration of

war), civil war, mutiny, rebellion, military or usurped power or by any direct or indirect consequences of any of the said occurrences and in the

event of any claim hereunder the insured shall prove that the accidental loss/ damage and/or liability arose independently of and was in no way

connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequences thereof and in default of

such proof the company shall not be liable to make any payment in respect of such a claim.

101. 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 travelling 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

102. There are four types of injuries, for which separate scales of compensation are 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 (i) to (iv), stated supra, in

respect of owner-cum-driver, arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs.

1,00,000 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 licence, in accordance with the provisions

of rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident.

103. 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 per cent

compensation to items (i), (ii) and (iv), i.e., the maximum amount specified in the policy or 50 per cent compensation for item (iii), mentioned in

section III 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

per cent or 100 per cent, 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 sight of two eyes or one limb or sight of one eye.

104. The scales of compensation are 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. 1,00,000, during any one 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.

105. The contention that insurance company need not pay any compensation to any grievous injury or permanent disablement, arising out of the

injuries, except for items (i) to (iv), specified in the personal accident cover policy, cannot be accepted, as the contract of insurance, viz., personal

accident cover policy for the owner-cum-driver, is also a motor transport policy, under IMT 15, recognised by the Motor Tariff Committee. As

stated supra, when the policies issued under the Insurance Act are recognised by the Committee, subject to the regulations and instructions issued

by the Committee, it is not open to the insurance companies to disown their liability to pay compensation in respect of other bodily injuries, wherein

scales of compensation are not specifically provided. There is no negative covenant in the policy, that no compensation would be paid in respect of

other bodily injuries. It is well settled that the Motor Vehicles Act is a beneficial legislation. Reference can be made to a decision of the Apex

Court in Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC), wherein, in construing the provisions of the Act, the Apex Court held

that it is to advance the beneficial purpose underlying the enactment in preference to a construction, which tends to deviate the purpose.

106. In Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC), 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.

107. At para. 56 of the judgment in Deepal Girishbhai Soni v. United India Insurance Co. Ltd., 2004 ACJ 934 (SC), 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 v. Gujarat Kisan Mazdoor Panchayat, JT 2003 (3) SC 50; Indian Handicrafts Emporium and

Others Vs. Union of India (UOI) and Others, ; Ameer Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd., ; and Ashok Leyland Ltd.

Vs. State of Tamil Nadu and Another, . The object underlying the statute is required to be given effect to by applying the principles of purposive

construction.

108. Such a narrow construction of the terms of the policy, proposed by the insurance company, would run contrary to the purpose of the

beneficial legislation. For the above said reasons, this court is not inclined to deny the benefit of personal accident cover to the respondent-

claimant, who is the owner-cum-driver of the vehicle involved in the accident. In the case on hand, according to the respondent, on 31.10.2005, when he was riding his motor cycle, 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 motor cycle at a moderate speed, while

applying the brakes, the vehicle skidded, he fell down, along with the pillion rider and sustained injuries. When the 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

tortfeasor. The judgments relied on by the learned counsel for the insurance company would not lend any support to the contentions of the

insurance company.

109. In the case on hand, relying on the decisions in Thilagavathy v. Sundaram, 1974 ACJ 491 (Madras); Minu B. Mehta v. Balkrishna

Ramchandra Nayan, 1977 ACJ 118 (SC); New India Assurance Co. Ltd. v. Susamma Varghese, 1990 ACJ 521 (Kerala); Kaliathal v. New

India Assurance Co. Ltd., 2004 ACJ 51 (Madras); and Dhanraj v. New India Assurance Co. Ltd., 2005 ACJ 1 (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 insurance 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.

110. The 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, wound certificate dated 17.2.2007, Exh. P2; duplicate

copy of the discharge summary, dated 1.11.2005, Exh. P7; X-ray dated 29.6.2006, Exh. P15; and disability certificate issued by doctor, PW 3,

Exh. P14; the respondent-claimant has sustained dislocation of scapula and other injuries. On clinical examination, doctor, PW 3, has assessed the

disability at 18 per cent and issued disability certificate, Exh. P14. 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 cent per annum.

111. 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 per

cent or 50 per cent, as the case may be, depending upon the nature of injuries mentioned under items (i) to (iv). The contention that the Consumer

Forum alone has the jurisdiction to entertain a claim under the personal accident cover policy, is contrary to the statute and the decision made in

Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Councel, . In the result, all the issues raised in this appeal are answered

against the appellant insurance company. The computation of quantum of compensation to the injured owner-cum-driver is not excessive,

warranting interference. The civil miscellaneous appeal is dismissed. No costs.

