

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Civil Miscellaneous Appeal Nos.2300 & 2301 of 2016
and
C.M.P.Nos.16229 and 16230 of 2016

C.M.A.No.2300 of 2016

The Manager
Cholamandalam MS General Insurance Company Limited
2nd Floor, Dare House
No.2, NSC Bose Road
Chennai - 600 001 ... Appellant/3rd Respondent

Vs

1.C.Amsa
2.Ramalingammal
3.K.Murugesan
4.P.Sounder
5.The Divisional Manager
New India Assurance Company Limited
Divisional Office, Sri Vari Shopping Mall
Old No.2/91, New No.258/2, II Floor
New Bus Stand, Meyyanoor, Salem - 4
... Respondents/Petitioners/
Respondents 1, 2 and 4

C.M.A.No.2301 of 2016

The Manager
Cholamandalam MS General Insurance Company Limited
2nd Floor, Dare House
No.2, NSC Bose Road
Chennai - 600 001 ... Appellant/3rd Respondent

Vs

1.Ramalingammal
2.Panchali
3.Chakravarthi
4.Ravichandran
5.Gowrammal
6.Periyakka
7.K.Murugesan
8.P.Sounder

9.The Divisional Manager

New India Assurance Company Limited
Divisional Office, Sri Vari Shopping Mall
Old No.2/91, New No.258/2, II Floor
New Bus Stand, Meyyanoor, Salem - 4

... Respondents/Petitioners/
Respondents 1, 2 and 4

Prayer in C.M.A.Nos.2300 and 2301 of 2016: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 31.03.2015, passed in M.C.O.P.No.169 and 170 of 2013, by the Motor Accident Claims Tribunal, (Special District Court), Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan
in both CMAs

For Respondents : Mr.Mukund R.Pandian for R1
in C.M.A.2300 of 2016
Mr.S.Manohar for R5
in C.M.A.2300 of 2016 and
R9 in C.M.A.2301 of 2016

COMMON JUDGMENT

(Made by S.Manikumar,J)

On 14.04.2012 Mahindra pick-up van bearing Registration No.TN-29 AY-4811, belonging to K.Murugesan, dashed against a motorcycle and caused the accident, Murugan/rider and Palraj/pillion rider of TVS Star City motorcycle bearing Registration No.TN-24 H-8956, sustained grievous injuries. Rider and the pillion rider, son and father respectively, died. A case in Crime No.661/2012 was registered against the driver of the Mahindra van.

2. Legal representatives of Murugan filed M.C.O.P. No.169/2013, claiming compensation of Rs.15,00,000/- and legal representatives of Palraj filed M.C.O.P.No.170/2013, claiming compensation of Rs.10,00,000/- by impleading the owner of the vehicle as on the date of accident, the the previous owner, the Manager, Cholamandalam MS General Insurance Company Limited, Chennai and the Divisional Manager, New India Assurance Company Limited, Salem-4, as respondents, in the claim petitions. As both the claim petitions arose out of the same accident, evidence being same, they were taken up together and jointly tried.

3. Though the accident and liability of the insurance company to pay compensation were disputed, on evaluation of pleadings and evidence, the Tribunal held that the accident

was caused by the driver of the Mahindra pick-up van bearing Registration No.TN-29 AY-4811. In M.C.O.P.No.169 of 2013, the Tribunal, quantified the compensation as Rs.14,04,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, as here under:

Future loss of income	: Rs.12,24,000/-
Loss of consortium for the first petitioner who lost her husband at the young age of 22 years	: Rs. 1,00,000/-
Loss of love and affection to the second petitioner, mother of the deceased	: Rs. 50,000/-
Transport to hospital	: Rs. 10,000/-
Funeral expenses	: Rs. 20,000/-
Total	: Rs.14,04,000/-

In M.C.O.P.No.170/2013, the Tribunal quantified the compensation as Rs.9,07,000 with interest at the rate of 7.5% per annum from the date of claim till deposit, and costs as here under:

Future loss of income	: Rs. 7,77,600/-
Loss of consortium for the first petitioner who lost her husband	: Rs. 1,00,000/-
Loss of love and affection to the petitioners 2 to 6 (10,000 x 5)	: Rs. 50,000/-
Transport to hospital	: Rs. 10,000/-
Funeral expenses	: Rs. 20,000/-
Total	: Rs. 9,07,600/-
Rounded off to Rs.9,07,000/-	

4. As regards liability between the above said two insurers, upon perusal of Exs.P3 and P4 - insurance policies, the Tribunal has noticed that the insurance policy with the Manager, Cholamandalam MS General Insurance Company Ltd., Chennai commenced from 15.04.2011 till midnight of 24.00 hours of 14.04.2012. Accident has occurred at 22.00 hours on 14.04.2012. Insurance policy subscribed by the previous owner of the vehicle Mr.P.Soundar with the Divisional Manager, New India Assurance Co. Ltd., Salem was from 12.04.2012 onwards.

By observing that there cannot be two insurance policies for the same vehicle at the same time, Tribunal held that the claim petition against New India Assurance Company Limited, Salem is not maintainable. Accordingly, while dismissing the claim against the abovesaid company, the Tribunal, directed the owner of the Mahindra pick up van bearing Registration No.TN-29 AY-4811 on the date of accident, previous owner and the Manager, Cholamandalam MS General Insurance Co. Ltd., Chennai/respondents 1 to 3, before the Tribunal to pay compensation of Rs.14,04,000/- to the legal representatives of Murugan and Rs.9,07,000/- to the legal representatives of Palraj, with interest at the rate of 7.5% per annum from the date of claim till deposit, and costs.

5. Being aggrieved by the finding fastening liability exclusively on Cholamandalam MS General Insurance Company Ltd., Chennai, instant appeal has been filed. Record of proceedings shows that instant appeal has been admitted on 19.10.2016 and notice ordered. When the matter came up for further hearing, on instructions, and e-mail dated 20.03.2017, Mr.N.Vijayaraghavan, learned counsel for M/s.Cholamandalam MS General Insurance Company Ltd./appellant herein, submitted that Mr.S.Sudagar, Assistant Manager (TP Cell), the New India Assurance Co, Coimbatore Regional Office, has confirmed that for the period between 12.04.2012 to 11.04.2013, a cover Note No.170229 dated 11.04.2012 was issued for the offending vehicle TN-29 AY-4811 and premium of Rs.15,134/- was received by cash on 12.04.2012. He further submitted that New India Assurance Co., Coimbatore Regional Office has also confirmed the policy for the above said period. Thus when the vehicle was insured in the above two insurance companies, he prayed that liability to pay compensation of Rs.14,04,000/- to the legal representatives of Murugan and Rs.9,07,000/- to the legal representatives of Palraj, with interest at the rate of 7.5% per annum from the date of claim till deposit, and costs, should be fastened equally, between the insurers.

6. Upon perusal of the e-mail, Mr.S.Manohar, learned counsel for New India Assurance Company, Coimbatore fairly submitted that the said company is also liable to pay compensation. Mr.N.Vijayaraghavan, learned counsel for the appellant/Cholamandalam MS General Insurance Co. Ltd. submitted that 50% of the award amount with proportionate interest has already been deposited by the insurer to the credit of M.C.O.P.Nos.169 and 170 of 2013.

7. Placing on record the above submissions that New India Assurance Co. Ltd. is liable to pay 50% of the award amount with proportionate interest, at the rate of 7.5% per annum from the date of claim, to the credit of M.C.O.P.Nos.169 and 170 of 2013. Accordingly, a condition is issued to deposit, within a period of six weeks from the date of receipt of a copy of this judgment.

Civil miscellaneous appeals are allowed in part with the above modification. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ASR

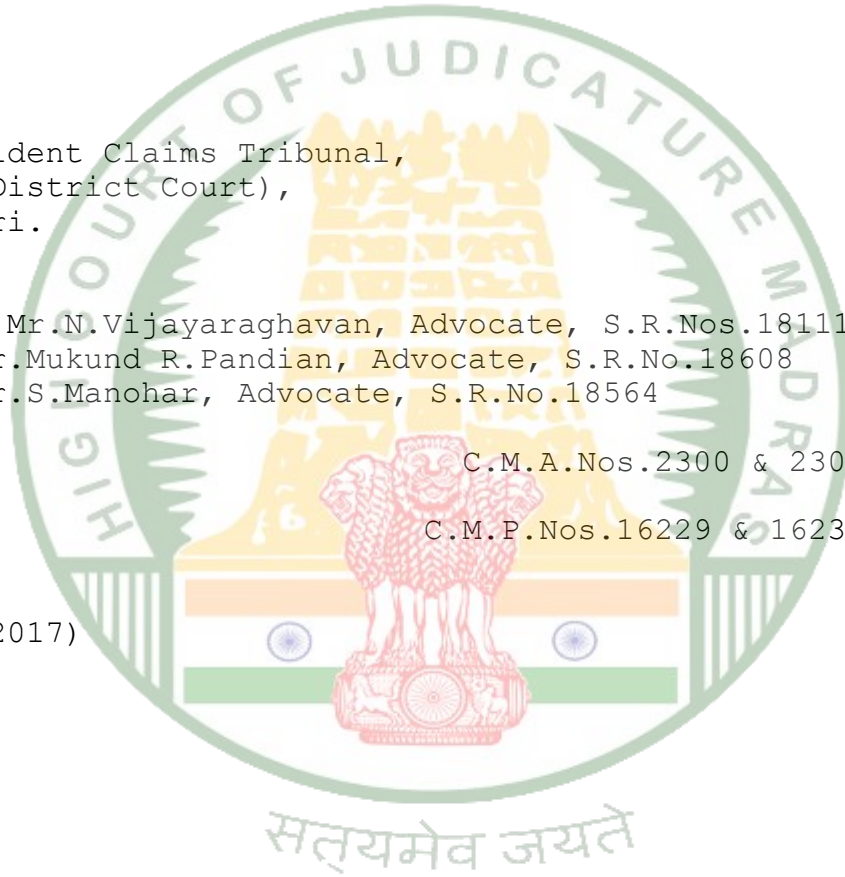
To

Motor Accident Claims Tribunal,
(Special District Court),
Krishnagiri.

+2cc's to Mr.N.Vijayaraghavan, Advocate, S.R.Nos.18111 & 18112
+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No.18608
+1cc to Mr.S.Manohar, Advocate, S.R.No.18564

C.M.A.Nos.2300 & 2301 of 2016
and
C.M.P.Nos.16229 & 16230 of 2016

AK(CO)
EU(04/05/2017)



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