

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2018
CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.768 of 2010 and
M.P.No.1 of 2010

M/s.Cholamandalam MS General Insurance Co. Ltd.,
Coimbatore - 614 018. ... Appellant

..VS..

1.Tmt.V.Sakunthala
2.V.Krishnaraj
3.Tmt.Nachammal
4.D.Suresh
5.V.Muthuraj ... Respondents
(Respondents 4 & 5 ex-parte before Lower
Court and hence notice may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.1177 of 2006 dated 05.09.2009 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruppur.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.MA.P.Thangavel

JUDGMENT

The appellant is the Cholamandalam MS General Insurance Company Limited. They are the third respondent in M.C.O.P.No.1177 of 2006, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruppur. The appeal has been filed by the appellant on the ground that since the driver of the offending vehicle namely the Minidor Auto bearing Registration No. TN 37 AH 9525 did not have a valid driving license on the date of the accident, the trial court should have directed the Insurance Company to pay the compensation amount and then to recover the same from the owner of the vehicle.

2.The case of the respondents 1 to 3 is that the deceased Velusamy who was the husband of the first respondent and father of second respondent was riding his two wheeler bearing Registration No. TN 39 E 8566 on Bodipalayam road. On 08.09.2005, at about 11.30 am, a speeding Minidor Auto bearing Registration No. TN 37 AH 9525 hit the two wheeler driven by the deceased, as a

result of which, the deceased Velusamy sustained injuries all over his body. He was immediately rushed to Ramakrishna Hospital, Coimbatore, where he was treated as an in-patient from 08.09.2005 to 19.9.2005. However, he succumbed to injuries on 19.09.2005.

3.The Contention of the respondents 1 to 3/claimants is that the rash and negligent driving of the driver of the Minidor auto bearing Registration No. TN 37 AH 9525 was the cause of the accident and that since the said auto was insured with the Cholamandalam MS General Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4.The arguments of Mr.N.Vijayaraghavan, learned counsel appearing for the appellant are two fold. Firstly he would contend that the appellant/Insurance Company had sent a notice to the owner as well as the driver of the said Minidor auto directing them to furnish a copy of the driving licence and the same was served on the owner of the vehicle, as evidenced by the postal acknowledgment card (Ex.R7). The driving license was not produced by him. Secondly, he would contend that when the Inspector of Police, Madhukarai Police Station laid a final report against the driver of the vehicle for the offences punishable under Sections 279, 304 A of IPC and Section 3 of the Motor Vehicles Act, 1988 in C.C. No.243 of 2005 before the learned Judicial Magistrate No. VII, Coimbatore and in the Judgment (Ex.R5), dated 28.07.2006, it is clearly held that the driver of the vehicle did not have valid driving license on the date of the accident, the Tribunal should have directed the Insurance Company to pay the award amount and recover the same from the owner of the vehicle.

5.In the trial court a specific plea was taken by the appellant Cholamandalam MS General Insurance Company Limited that the driver of the Minidor auto bearing Registration No. TN 37 AH 9525 did not possess a valid driving license on the date of the accident and therefore, they are not liable to pay any compensation to the respondents 1 to 3/claimants. They have also filed the notices issued to the owner and the driver of the said Minidor auto in this regard. Apart from filing the above, they have also attached the final report filed by the Inspector of Police, Madhukarai Police Station and a copy of the Judgment in C.C.No.243 of 2005 on the file of the learned Judicial Magistrate No. VII, Coimbatore.

6.However, the trial court, without considering these documentary evidence, had held that merely because the driver of the vehicle was charged for the offence punishable under Section 3 of the Motor Vehicles Act, 1988, it cannot be held that he did not possess any valid

licence on the date of the accident. This finding of the trial court cannot be sustained, since, even though he was provided enough opportunity to produce the driving license, he did not do so. Infact both the driver as well as the owner of the said Minidor Auto remained absent before the trial court and they were set ex-parte. In the instant appeal also there is no representation on their side though their names were printed in the cause list. Since, the driver of the vehicle did not possess a valid driving license on the date of the accident, the Insurance Company after paying the compensation amount to the appellants can recover the same from the owner of the said Minidor Auto on the same cause of action.

7.At this juncture, Mr.MA.P.Thangavel, learned counsel appearing for the claimants would contend that the trial court did not consider the medial bills (Exs. P6, P7 and P8) filed by the respondents 1 to 3/claimants to the tune of Rs.1,59,391/- and that this amount should be added to the award amount passed by the Tribunal.

8.It is pertinent to point out that the claimants did not file any Cross Objections/Appeal against the compensation amount awarded by the Tribunal. However, a perusal of medical bills Ex.P6, Ex.P7 and Ex.P8 shows that a sum of Rs.1,59,391/- has been incurred towards medical expenses and this amount is totally omitted by the trial court while awarding the compensation to the claimants. Therefore, in the interests of justice, the award amount is enhanced from Rs.6,36,000/- to Rs.7,95,391/-.

9.Thus, the enhanced award amount of Rs.7,95,391/- shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The appellant Insurance Company is directed to deposit the enhanced compensation amount (less the amount already deposited by them) within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the respondents 1 to 3 are at liberty to withdraw the same after following the due process of law. The appellant/ Insurance Company can recover the above said amount from the owner of the said Minidor Auto on the same cause of action.

10.With the above observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mbi/prm

To
The Principal Subordinate Court,
Tiruppur.

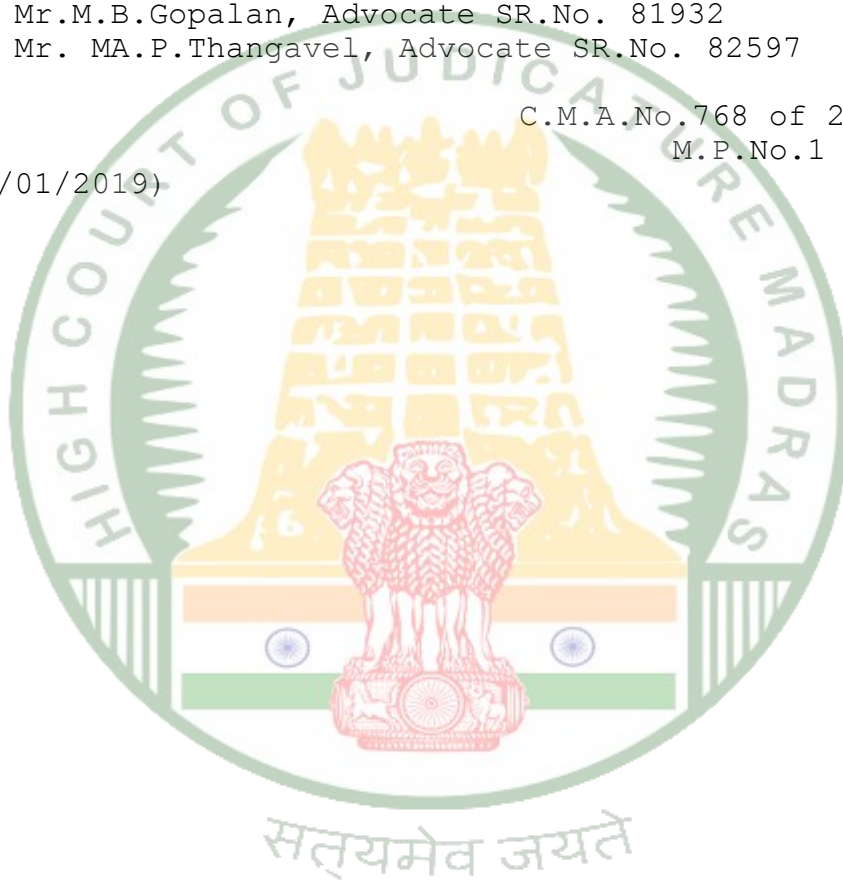
2. The section officer,
VR Section,
High court
Madras

+lcc to Mr.M.B.Gopalan, Advocate SR.No. 81932

+lcc to Mr. MA.P.Thangavel, Advocate SR.No. 82597

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A.SK(10/01/2019)



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