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Rev.Aplc.No.176 of 2021
in C.M.A.No.270 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application No.176 of 2021

in

C.M.A.No.270 of 2021

Cholamandalam MS General
Insurance Company Limited,
138/2, LMR Shopping Arcade,
II Floor, Opp. to MGM Theatre,
Salem Road,
Namakkal.

.. Review Petitioner

Vs.

1.Manoharan

2.M.Kannan

3.SBI General Insurance Company Limited,
“Natraj”, 101, 201 & 301,
Junction of Western Express Highway,
Andheri Kurla Roads, Andheri (East),
Mumbai City – 400 069.

.. Respondents

Prayer: This Review Petition is filed under Order XLVII, Rule 1 & Section 114 of Civil Procedure Code, against the judgment and decree dated 15.02.2021 made in C.M.A.No.270 of 2021.



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For Review Petitioner : Ms.R.Sree Vidhya

For R1 : Mr.K.T.S.Sivakumar

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

This Review Petition is filed to review the judgment and decree dated 15.02.2021 made in C.M.A.No.270 of 2021.

2.Heard the learned counsel appearing for the review petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

3.The present Review Petition is filed to reconsider the judgment dated 15.02.2021 dismissing C.M.A.No.270 of 2021 filed by the petitioner and for joint disposal of C.M.A.No.4433 of 2019 filed by the 3rd respondent herein challenging the very same award passed in M.C.O.P.No.107 of 2014 along with C.M.A.No.270 of 2021.



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4.The petitioner filed C.M.A.No.270 of 2021 challenging the award dated 25.04.2019 questioning 25% liability fixed on them. The 3rd respondent – SBI General Insurance Company Limited has challenged the very same award fixing 75% of the liability fixed on them by filing C.M.A.No.4433 of 2019. The said C.M.A.No.4433 of 2019 was admitted on 28.11.2020 and interim stay was granted in C.M.P.No.25138 of 2019 and the said C.M.A.No.4433 of 2019 is still pending before this Court. This was not brought to the notice of this Court by the learned counsel for the petitioner when C.M.A.No.270 of 2021 was taken up for hearing, as the petitioner did not receive any notice in the said C.M.A.No.4433 of 2019 filed by the 3rd respondent. The learned counsel appearing for the petitioner further submitted that both the appeals arise out of the same award and decision in one appeal will have implication on the other and conflicting decision will be rendered. Due to the same, there is an error in dismissing the judgment in C.M.A.No.270 of 2021 and prayed to review the judgment dated 15.02.2021 passed in C.M.A.No.270 of 2021.

5.It is not in dispute that in the impugned award in M.C.O.P.No.107 of 2014, the Tribunal fixed 25% liability on the review petitioner and 75% negligence on the part of the driver of the Taurus Lorry belonging to 2nd respondent, insured with 3rd



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respondent and 75% liability on the 3rd respondent. Challenging 75% liability fixed on the 3rd respondent, an appeal in C.M.A.No.4433 of 2019 filed by the 3rd respondent was admitted by this Court and interim stay was granted on 28.11.2020. The said fact was not brought to the notice of this Court when C.M.A.No.270 of 2021 was heard and discussed.

6.In view of the same, to avoid conflicting decision, the judgment dated 15.02.2021 in C.M.A.No.270 of 2021 is recalled. Registry is directed to post C.M.A.No.270 of 2021 along with C.M.A.No.4433 of 2019 for fresh disposal.

7.With the above direction, the review petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.12.2021

krk

Index : Yes / No

Internet : Yes / No

V.M.VELUMANI, J.,



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