



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) Nos.144 to 146 of 2011

and

M.P(MD)Nos.1,1 & 1 of 2011

C.M.A(MD)No.144 of 2011

Cholamandalam MS General Insurance
Company Ltd.,
1st Floor, "Annai Plaza"
No.5, Coimbatore Road,
Opp. To A.K.C.Petrol Pump,
Karur.

.. Appellant/Respondent No.2

vs.

1.C.Padmavathy

.. Respondent/Petitioner

2.M.Raja

.. Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 08.09.2010 made in MCOP No.31 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

C.M.A(MD)No.145 of 2011

Cholamandalam MS General Insurance
Company Ltd.,
1st Floor, "Annai Plaza"
No.5, Coimbatore Road,
Opp. To A.K.C.Petrol Pump,
Karur.

.. Appellant/Respondent No.2

vs.

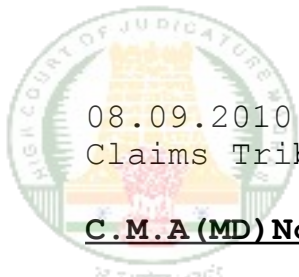
1.Mariammal

.. Respondent/Petitioner

2.M.Raja

.. Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated



08.09.2010 made in MCOP No.32 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

C.M.A (MD)No.146 of 2011

Cholamandalam MS General Insurance
Company Ltd.,
1st Floor, "Annai Plaza"
No.5, Coimbatore Road,
Opp. To A.K.C.Petrol Pump,
Karur.

.. Appellant/Respondent No.2

vs.

1.Pappathi

.. Respondent/Petitioner

2.M.Raja

.. Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 08.09.2010 made in MCOP No.33 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

For Appellant : Mr.S.Srinivasa Raghavan
(in all the appeals)
For R1 : Mr.I.Velpradeep
(in all the appeals)
For R2 : No appearance

C O M M O N J U D G M E N T

These appeals have been preferred against the common award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur in M.C.O.P.Nos.31,32 & 33 of 2008.

2. The first respondents in the appeals are the claimants in the claim petitions. According to them, on 07.10.2007 they travelled in a Mini door vehicle bearing Registration No.TN-45-V-9527 along with goods. At the time, the driver drove the vehicle in a rash and negligent manner and lost his control of the vehicle, hence it got capsized and thereby, they sustained injuries. Immediately, they were taken to Karur Amaravathi Hospital and subsequently, they were taken treatment to Ganga Hospital, Kovai.

3. The case of the appellant before the Tribunal was that the claimants were un-authorized passengers in a goods vehicle and the policy issued in favour of the owner was cancelled on account of dishonour of cheque and therefore no liability can be fastened with the Insurance Company. In order to prove the defence, the appellant marked the Policy as Ex.R1 and Ex.R2-cheque. Ex.R3 & R4 shows that intimations have been given from the bank for dishonour of cheque Ex-R2. Ex-R5 is the intimation to the owner for cancellation of policy. Ex-R6 is the registered letter. Finding the appellant



failed to prove that the intimation was served on the owner of the offending vehicle, the Tribunal passed an award directing the owner as well as the insurer of the vehicle to pay the compensation.

4. A perusal of the records would show that based on the evidence given by the claimant, the Tribunal has passed an award of Rs.70,000/-, Rs,27,300/- and Rs.25,100/- respectively. The quantum appears to be just and reasonable.

5. Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant and Mr.I.Velpradeep, learned counsel appearing for the first respondents.

6. It is not in dispute that the cheque issued for payment of premium has been dishonoured, however, there was no proper intimation to the insured regarding the dishonour of the cheque. The owner, who had received notices from the Tribunal as well as in this appeal remained absent.

7. In this regard, it is useful to refer the decision in **2012 (1) TN MAC 580 (D.Amirthalinga Nadar vs. K.Sivakumar and another)**, wherein, a learned single Judge of this Court referring to various judgments held that "on the failure of the Insurer to produce any acknowledgment/receipt for giving intimation to owner about cancellation, the Tribunal has grossly erred in absolving the Insurance Company from answering the award and the Tribunal ought to have directed the Insurance Company to satisfy the award with liberty given to it to recover the same from the insured and the liability aspect is hence accordingly decided".

8. The decision referred above would squarely apply to the case on hand. In that view, these civil miscellaneous appeals are allowed and the appellant Insurance Company is directed to deposit the award amounts at the first instance and then recover the same from the owner of the vehicle by following due process of law. The appellant-Insurance Company is directed to deposit the award amounts, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the entire award amount with accrued interests and costs, less the award amount, if any, withdrawn, by filing formal application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

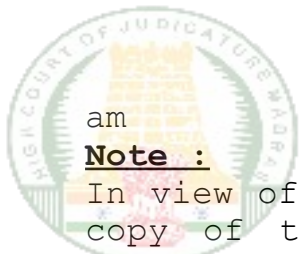
Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)



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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+3 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-4057,4058[F],4059)

+3 CC to M/s.I.VELPRADEEP, Advocate (SR-3880,3882,3883)

C.M.A(MD) Nos.144 to 146 of 2011
08.02.2021

NA (CO)
KK(10.03.2021) 4P 10C