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C.M.A.No.4152 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**Civil Miscellaneous Appeal No.4152 of 2019
and
C.M.P.No.23475 of 2019**

M/s.Cholamandalam MS General Insurance
Company Limited,
The Branch Manager,
2nd Floor, Old No.666-667,
New No.963/1, Avinasi Road,
Pappinaickampalayam,
Coimbatore – 641 037.

... Appellant

-Vs-

1. Poovizhi

2. M.Lakshmi

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No.325 of 2017 dated 27.02.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Ms.C.Harini
for M/s.M.B.Gopalan Associates

For Respondents : Mr.P.Vetrivel for R1
No appearance for R2



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J U D G M E N T

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Aggrieved by the compensation awarded by the Tribunal in M.C.O.P. No. 325 of 2017 filed by the claimant, the Insurance Company has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The first respondent, Poovizhi, aged 29 years, alleged to be earning a sum of Rs.53,682/- per month, met with an accident on 03.10.2016 when the vehicle belonging to the second respondent, driven by its driver in a rash and negligent manner, dashed against the first respondent in which the first respondent is alleged to have suffered injuries for which she was admitted in the hospital and due to the loss suffered on account of the accident, the claimant, claiming compensation for the injuries suffered and also for loss of income, had filed the claim petition. The said claim was resisted by the Insurance Company / appellant.

3. The claimant had filed the claim petition claiming compensation of a sum of Rs.15,00,000/-, and the Tribunal, considering the oral and documentary evidence, adduced by the claimant and the Insurance Company, awarded a sum of Rs.3,24,000/-.



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4. Learned counsel appearing for the appellant / Insurance Company

submitted that the Tribunal had erred in fastening the liability on the appellant merely on the basis of a proposal. It is submitted that the proposal cannot be construed as a policy since it was merely a declaration and submission by the owner of the vehicle. Hence, there is no insurance policy in favour of the second respondent and thus, the second respondent is liable to pay the compensation and prayed for allowing the appeal.

5. Learned counsel for the first respondent / petitioner submits that the Tribunal, after taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference.

6. There is no representation on behalf of the second respondent.

7. A cursory look at the records reveal that no document has been filed to prove that the appellant had accepted the proposal, received premium and issued the policy and there was no acknowledgment of receipt of premium. Hence, the Tribunal has erred in holding that the proposal itself would lead a owner a believe that it is a policy. Thus, this Court is of the view that there was no insurance policy in favour of the second respondent as on the date of accident and a mere proposal without any proof could not be assumed as a policy.



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8. Accordingly, the civil miscellaneous appeal is allowed and the direction of the Tribunal directing the appellant to pay the compensation to the first respondent is set aside and the first respondent is at liberty to proceed against the second respondent in the manner known to law. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

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vji

Index: Yes / No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
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1. The Motor Accident Claims Tribunal,
Special District Court,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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vji

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