



C.M.A.(MD).Nos.741 and 1188 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).Nos.741 and 1188 of 2021

and

C.M.P.(MD).No.6744 of 2021

C.M.A.(MD).No.741 of 2021

Cholamandalam Ms.General Insurance Company Limited,
Dare House, 2nd Floor,
No.2, NSC Bose Road,
Chennai.

... Appellant

-Vs-

1.S.Pandian

2.S.Palani

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 6 of 2017 on the file of the Motor Accident Claims Tribunal (Sub Court), Thoothukudi, dated 18.10.2019.

For Appellant : M/s. K.R.Shivashankari

For R1 : Mr.T.Selvakumaran

For R2 : No appearance



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C.M.A.(MD).No.1188 of 2021

S.Pandian

... Appellant

-Vs-

1.Cholamandalam Ms.General Insurance Company Limited,
Dare House, 2nd Floor,
No.2, NSC Bose Road,
Chennai.

2.S.Palani

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 6 of 2017 on the file of the Motor Accident Claims Tribunal (Sub Court), Thoothukudi, dated 18.10.2019.

For Appellant : Mr.T.Selvakumaran

For R1 : M/s. K.R.Shivashankari

For R2 : No appearance

COMMON JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal (Sub Court), Thoothukudi in M.C.O.P.No.6 of 2017, dated 18.10.2019, the present appeals have been filed.



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2. The brief facts leading to the filing of this appeal are as follows:

On 15.06.2017, at about 11.00 a.m., while the petitioner was riding his bicycle from East to West in Chinnakannupuram main road, a Van bearing Registration No.TN 69 AJ 2840 came in a rash and negligent manner and dashed against the petitioner. As a result, the petitioner sustained fracture on the forearm and the injuries on the right thumb and he was taken to Government Hospital, Tuticorin. Thereafter, he was taken treatment in A.V.M.Hospital, Tuticorin and a crime also registered against the petitioner and the driver of the offending vehicle. Hence, the petitioner has claimed a compensation before the Motor Accident Claims Tribunal. The first respondent remained ex-parte. The second respondent took a stand that there is a violation in the policy condition and they are not liable to pay the compensation.

3. Before the Tribunal, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P10 were marked and on the side of the respondents, R.W.1 was examined and Exs.R1 and R2 were marked.



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4. Based on the evidence and materials, the Tribunal has held that the driver of the van was negligent in driving the vehicle and dashed against the cyclist and awarded a sum of Rs.2,33,300/- as compensation, taking note of the medical evidence, in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	For permanent disability	Rs.1,57,500/-
2.	For loss of income	Rs.15,000/-
3.	For extra nourishment	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	For medical expenses	Rs.800/-
6.	For pain and suffering	Rs.50,000/-
	Total	Rs.2,33,300/-

Challenging the same, the present appeals have been filed.

5. The learned counsel appearing for the appellant/Insurance Company would submit that on the date of accident, the first respondent vehicle was not covered with the insurance. According to her, the accident took place on 15.06.2017, whereas Exs.R1 and R2 / the policies filed clearly indicate that on the



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date of accident, there was no policy. The Tribunal has relied upon only the proposal form and awarded the compensation, which is not correct.

6. The learned counsel appearing for the first respondent would submit that the proposal form was submitted prior to the accident and according to him, on the date of accident, the policy was very much in existence.

7. In the light of the above submissions, now the points for consideration in this appeal are

(i) Whether the Tribunal is right in fixing the liability?

(ii) Whether the offending vehicle is covered with the insurance on the date of accident?

The other aspects have not been challenged in the appeal. Ex.B4 filed by the petitioner is only a proposal form. A perusal of Ex.B4 show that the date is not clearly mentioned. Whereas Exs.R1 and R2 / original copies of the policy have been filed by the Insurance Company. Ex.R1 makes it very clear that the policy was valid from 07.05.2016 at 10.30 hours to midnight on 06.05.2017. Thereafter, the policy was issued from 16.06.2017 to midnight 15.06.2018, after



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expiry of the previous policy on 06.05.2017. The fresh policy was taken only on 16.06.2017 till 15.06.2018. The accident took place on 15.06.2017 at 11.00 p.m. On the date of the accident, there was no valid policy. In fact, the policy has been taken only subsequently i.e, from 16.06.2017, which commences from 00.1 hours. Admittedly, the accident took place at 11.00 p.m. on the previous day and the earlier policy was expired as early as on 06.05.2017.

8. Such being the position, on the date of the accident, there was no valid policy to the offending vehicle. In the absence of valid existing policy on the date of accident, the liability cannot be fastened on the Insurance Company. When there is a violation and the vehicle was run without any insurance, the liability can be fastened only on the owner of the vehicle. Despite notice sent to the second respondent, the same has been refused. Despite the name of the second respondent has been printed in the cause list, none appeared for him.

9. In such a view of the matter, the award of the Tribunal directing the Insurance Company to pay the award amount is set aside and instead, the award passed by the Tribunal shall be satisfied only by the owner of the vehicle.



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Accordingly, the Civil Miscellaneous Appeal is allowed.

10. The learned counsel appearing for the appellant in C.M.A.(MD).No. 1188 of 2021 would fairly submit that this appeal may be dismissed.

11. In such a view of the matter, the appeal filed by the petitioner/claimant for enhancement of compensation is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

06.06.2023

akv

To

The Motor Accident Claims Tribunal (Sub Court),
Thoothukudi,



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N.SATHISH KUMAR, J.

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