



A.Nos.2233 & 2234 of 2024

Reserved on: 10.06.2024

Pronounced on: 14.06.2024

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A. Nos.2233 & 2234 of 2024

in

CS. No.845 of 2010

P.B.BALAJI, J.

These Applications are filed to recall DW1 to give evidence and mark photocopies of Insurance Policies.

2. I have heard Mr. U.M.Ravicandran, learned counsel for the Applicants and Mrs. V.Aishwarya, for M/s.R&P Partners, learned counsel for the 1st respondent.

3. The learned counsel for the Applicants would submit that the Insurance Policies that are sought to be marked have been referred to by the plaintiffs themselves at paragraph 10 of the plaint and there is also a reference to the same in the written statement. According to the defendants, the Insurance Policies which are sought to be produced are of utmost relevance and importance to defend the suit claim.



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4. The learned counsel for the Applicants would submit that the documents sought to be produced would go to the root of the matter and establish that there has been no negligence on the part of the defendants in order to fasten liability for damages. The learned counsel would further submit that the Insurance Policies cannot be disputed and they can be marked as secondary evidence in order to substantiate the contentions of the defendants. The learned counsel would also submit that the documents have already been referred to in the pleadings and they are not new documents which are sought to be marked.

5. Refuting the said contentions of the counsel for the Applicants, the learned counsel for the 1st respondent/plaintiff would submit that there is absolutely no reason assigned in the affidavit as to why these documents could not be produced earlier in point of time, much less when the defendant was in the box. The learned counsel would also state that there is no pleading with regard to these documents, namely, the Insurance Policies and the attempt is only an afterthought in order to improvise the defense, already



set up by the defendants by way of a written statement.

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6. I have carefully considered the rival submissions advanced by the learned counsel on either side.

7. I find from a reading of the plaint that the plaintiffs themselves refer to the insurance policies which are now sought to be marked. There is also reference, as rightly pointed out by the learned counsel for the Applicants, about these policies though not specifically in the written statement as well. The trial has just concluded and as long as the parties are before the Trial Court, the interest of justice requires that the parties be afforded a full and fair opportunity to put forth their respective evidence. However, at the same time, I do not find any satisfactory reason for non-production of these Insurance Policies when the witness was in the box. However, for this reason, the defendants should not be deprived of an opportunity to put forth these documents and advance their contentions by way of defense. However, the defendants can be put on terms to compensate



the plaintiff for the delay in not producing these documents earlier.

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8. The Applications are therefore **allowed** and subject to admissibility, proof and relevancy, the defendants are permitted to mark the photocopies of the documents, viz.,:

(a) Copy of the offer for insurance policy through e-mail dated 27.02.2008,

(b) Copy of Insurance Policy No.PSP-00046227-000-00 dated 11.03.2008 issued by the Cholamandalam MS General Insurance Company Ltd. along with enhanced various endorsements covering date 30.04.2008, 08.05.2008, 09.05.2008, 09.05.2008, 27.05.2008, 17.06.2008, 04.07.2008, 30.07.2008, 06.10.2008 09.07.2008, 24.07.2008,

(c) Policy No.PBG-00009758-000-00 dated 11.03.2008 issued by the Cholamandalam MS General Insurance Company Limited.

9. These Applications are **allowed** subject to payment of costs of Rs.2,500/- in each Applications to the learned counsel for the 1st



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respondent/plaintiff. The Applicants shall pay a cost of Rs.5,000/-
(Rs. 2500/- in each Application) within a period of 2 weeks from the date of
this order and on payment of such costs, the Applications shall stand
allowed.

10. Post the matter on 01.07.2024, for reporting compliance.

14.06.2024

rkp



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Pre-delivery ORDER in
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in
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