



C.M.A.No.3450 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3450 of 2021

and

C.M.P.No.19881 of 2021

Cholamandalam MS General Insurance Company Limited,
Branch Office,
304-A, 3rd Floor, Shanthi Gears Road,
Singanallur, Coimbatore - 641 005.

... Appellant

Vs.

1.Chitradevi
2.Manoj Prabakaran
3.Vellingiri
4.Ponraj
5.Pondurai

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 22.12.2020 made in M.C.O.P. No.231 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Officer, Tiruppur.

For Appellant : Mr.C.Harini

For Respondents : Mr.Ma.Pa.Thngavel
for R1 and R2
R3 to R5 - No Appearance



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C.M.A.No.3450 of 2015

JUDGMENT

This appeal has been filed by the Insurance Company, questioning its liability to pay compensation on the ground that even prior to the date of the accident, the insurance policy issued earlier in favour of the insured viz., the respondent No.5 herein was cancelled.

2. This Court has perused and examined the impugned award as well as the evidence available on record. Admittedly, in the case on hand, though the appellant Insurance Company claims that they have intimated the insured (respondent No.5 herein) about the cancellation of the insurance policy prior to the date of the accident, they have not produced the acknowledgment card before the Tribunal to prove that the insured was informed about the cancellation of the insurance policy prior to the date of the accident. The accident happened on 09.01.2015. The notice sent by the Insurance Company is dated 20.05.2014. Though it is prior to the date of the accident, admittedly, no acknowledgment card has been produced by the appellant before the Tribunal.

3. The appellant has examined the Inspector of Postal Department (RW2). RW2 has also confirmed in his deposition that from their available



records, it cannot be ascertained whether the notice sent by the appellant was served on the insured or not as the records have been destroyed.

4. It is settled as laid down by the decision of the ***Honourable Supreme Court in the case of United India Insurance Company Ltd., Vs. Laxmamma and Others reported in 2012 (5) SCC 234*** that it is the responsibility of the Insurance Company to prove about the intimation of the fact that the insurance policy was cancelled prior to the date of the accident. In the case on hand, the appellant Insurance Company has not proved the same by producing the acknowledgment card for having served the notice on the insured about the cancellation of insurance policy. The Tribunal has rightly granted pay and recovery rights in the impugned award by following the decision of the Honourable Supreme Court referred to supra.

5. This Court does not find any merit in this appeal. Accordingly, this appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

25.04.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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To

1. The Motor Accident Claims Tribunal, Chief Officer, Tiruppur.
2. The Section officer, Record Section, High Court of Madras.

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25.04.2024