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Writ Petition No.29510 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/9/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Writ Petition No.29510 of 2023

a n d

W.M.P.No.29131 of 2023

M/s. Cholamandalam MS General
Insurance Company Limited
Corporate & Registered Office
DARE House, II Floor
No.2.N.S.C.Bose Road
Parrys
Chennai 600 001.

...

Petitioner

Vs

1. The Insurance Ombudsman
(for the State of Tamil Nadu &
Union Territories – Puducheri Town
and Karaikal)
Fathima Akhtar Court, IV Floor
453 Anna Salai
Chennai 600 018.

2. Jothika

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of certiorari to call for the records in
Award bearing No.IO/CHN/A/GI/0012/2023-2024 dated 30/5/2023 of the



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first respondent – Insurance Ombudsman, Chennai, allowing the complaint of the second respondent and quash the same.

For petitioner ... Mr.J.Michael Visuvasam

For respondents ... No appearance – for R.1

Mr.K.Santhosh Kumar
for R.2

ORDER

This writ petition has been filed to quash the Award bearing No.IO/CHN/A/GI/0012/2023-2024 dated 30/5/2023 of the Insurance Ombudsman, Chennai/first respondent.

2. The facts of the case in brief are as under:-

On 22/9/2021, at about 21.30 hours, when Late.V.Anandan was driving a motorcycle bearing Registration No.TN05BX-5470, in front of Kallikuppam tollgate, met with an accident and when rushed to Government Stanley Medical College Hospital, he succumbed to injuries on 23/9/2021 at about 11.30 a.m.



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3. A First Information Report was registered by the Traffic Investigation Wing, Poonamallee, on 23/9/2021 at about 08.00 hours in Crime No.737 of 2021, under Sections 279 and 338 of the Indian Penal Code, r/w. Section 185 of the Motor Vehicles Act, 1988.

4. Late V.Anandan, had availed two loans from M/s.Indus Ind Bank Ltd., and the said loans were covered by way of two Chola Credit linked group Personal Accident Insurance Policies, issued in favour of Late.V.Anandan.

5. Late Anandan was alive upto 14 hours after the accident. He succumbed to injuries in Government Stanley Hospital, on 23/9/2021 at about 11.30 a.m. Post-mortem was conducted on the body of the deceased on the next day, i.e., on 24/9/2021 at about 10.15 a.m. Forensic Report, dated 26/10/2021, was issued by the Forensic Sciences Department, wherein it is stated that no alcohol or other poison was detected in the stomach, intestine, liver, blood and preservative.



6. Claim form was filed by the second respondent with the petitioner and the same came to be repudiated by the petitioner on 23/8/2022.

Aggrieved by the same, the second respondent had preferred a complaint with the Insurance Ombudsman, Chennai, on 3/4/2023, and a reply was filed by the petitioner with reference to the said complaint preferred by the second respondent. The Insurance Ombudsman, Chennai, vide Award dated 30th May, 2023, advised the petitioner to settle the claims admissible under the said two Insurance Policies. Being aggrieved, the petitioner has come forward with the instant writ petition.

7. Heard Mr.J.Michael Visuvasam, learned counsel for the petitioner, Mr.K.Santhosh Kumar, learned counsel for the second respondent. There is no representation on behalf of the first respondent.

8. The learned counsel appearing for the petitioner Insurance Company submitted that the deceased hitting a road divider, suffered a fall, resulting in the head injuries, without involvement of any other vehicle, would clearly establish the fact that the deceased was under the influence of alcohol.



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9. The learned counsel appearing for the second respondent submitted that initially the observation suggested the possibility of alcohol consumption. The burden of proof falls on the party alleging intoxication, which in this instance would be the petitioner Insurance Company. The Police report and forensic analysis unambiguously confirm the absence of alcohol.

10. Perused the materials available on record.

11. This was the case of alleged riding under the influence of alcohol. From the materials available on record what could be deduced is that Forensic report did not make any findings on alcohol. There is no evidence regarding the quantity of alcohol in the blood of the deceased. The onus was upon the petitioner to prove the content of alcohol. The final Police report also dropped offence under Section 185 of the Motor Vehicles Act.

12. In view of the above, this Court is of the considered view that in the absence of any specific reliable evidence, mere reference to smell of alcohol could not be the ground to establish that the deceased was under the



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influence of alcohol at the time of accident. The upshot of the discussion is that the impugned Award dated 30/5/2023 passed by the first respondent is confirmed.

13. In the result, this writ petition is dismissed and the petitioner is directed to settle the Insurance claim to the second respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No

Neutral Citation: Yes/No



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