



C.M.A.(MD) Nos.298 & 299 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.298 & 299 of 2009

and

M.P.Nos.1 & 1 of 2009

In C.M.A(MD)No.298 of 2009:

Cholamandalam MS General Insurance Co. Ltd,
Coimbatore 641 002.

Through its Branch Manager,
2nd Floor, Alangar Buildings,
551, DB Road, RS Puram.

... Appellant

Vs.

1.S.Palavesam,
2.N.Vellathai

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of the Motor Vehicle Act, 1988, to set aside the fair and decretal order dated 04.12.2008 passed in M.C.O.P.No.657 of 2006 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.1), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents
for R2 : No appearance



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In C.M.A(MD)No.299 of 2009:

Cholamandalam MS General Insurance Co. Ltd,
Coimbatore 641 002.
Through its Branch Manager,
2nd Floor, Alangar Buildings,
551, DB Road, RS Puram.

... Appellant

Vs.

1.K.Muthupandi
2.N.Vellathai

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of the Motor Vehicle Act, 1988, to set aside the fair and decretal order dated 04.12.2008 passed in M.C.O.P.No.658 of 2006 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.1), Tirunelveli.

COMMON JUDGMENT

The instant appeals have been filed challenging the finding on liability in two claim petitions.

2. Since the claim petitions have been filed by the claimants, who were injured in the same accident and the same were decided by a common award, these appeals were taken up together.

3. The claimants had stated before the Tribunal that on 12.12.2005,



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while they were riding their motorcycle, an auto bearing registration No.TN-69-V-0794 came in a rash and negligent manner and caused a collision, as a result of which, the claimants sustained grievous injuries.

4. The owner of the auto remained *ex parte* before the Tribunal.

5. The appellant filed a counter stating that the rider of the auto was not liable for rash and negligent riding and that in any case, the compensation claimed was excessive.

6. The claimants examined themselves as P.W.1 and P.W.2, respectively, and another witness, namely, Dr.Ramaguru, as P.W.3 and marked Exs.P2 to P14. The appellant examined R.W.1 and R.W.2 and marked Exs.R1 to R5.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the appellant is liable to pay the compensation and awarded the compensation of Rs.1,33,692/- for the claimant in C.M.A.(MD)No.298 of 2009 (M.C.O.P.No.657 of 2008) and Rs.18,763/- for the claimant in C.M.A.(MD)No.299 of 2009



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(M.C.O.P.No.658 of 2008).

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8. The learned counsel for the appellant/Insurance Company submitted that since the Tribunal had found that the rider of the insured vehicle did not have a valid licence, the appellant ought to have been exonerated from paying the compensation.

9. Notice is yet to be served on the respondents in both appeals. This Court is of the view that the notice is not required in view of the order that this Court proposes to pass.

10. The only point for consideration in the instant appeal is *‘whether the Tribunal was right in directing the appellant to satisfy the award at the first instance and thereafter, recover it from the owner of the insured vehicle?’*

11. The learned counsel for the appellant is unable to point out any infirmity in the quantum of compensation awarded by the Tribunal. The quantum of compensation awarded by the Tribunal has not been challenged by the appellant. The appellant had established before the



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Tribunal that the rider did not have a valid licence as per Ex.R5-the Claim Form, in which, it is stated that the rider of the insured vehicle did not have a valid licence.

12. In such circumstances, this Court is of the view that since there is a violation of the terms of the contract of the insurance, the appellant can be directed to satisfy the award at the first instance and thereafter, recover it from the owner. Therefore, the award of the Tribunal is confirmed and both the appeals are dismissed.

13. The appellant/Insurance Company shall, therefore, deposit the compensation amount of Rs.1,33,692/- for the claimant in C.M.A.(MD)No.298 of 2009 (M.C.O.P.No.657 of 2008) and Rs.18,763/- for the claimant in C.M.A.(MD)No.299 of 2009 (M.C.O.P.No.658 of 2008) with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

14. On such deposit, the first respondents/claimants in both appeals



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are entitled to withdraw their award amount together with proportionate interest and costs, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal.

15. In the result, both these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. Motor Accidents Claims Tribunal/Additional District Judge
(Fast Track Court No.1), Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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