

Rev.Aplc(MD)No.59 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 17.02.2025

Delivered on : 17.04.2025

CORAM:

THE HONOURABLE MR JUSTICE RMT.TEEKAA RAMAN

and

THE HONOURABLE MR JUSTICE P.B. BALAJI

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and

C.M.P.(MD)No.6918 of 2024

The Divisional Manager,

M/s.The New India Assurance Co. Ltd.,

Jerome Building, 1st Floor,

Fort Station Road, Trichy.

... Petitioner /Review Petitioner

Vs.

1.The Divisional Manager,

Cholamandalam M/s. General Insurance Co.Ltd.,

No.9, 1st Floor, Rajai Road,

The Bank of Travancore Upstairs,

Peramanur, Salem – 636 007.

2.Kamala

3.V.K.Sekaran

1/6



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4.Gowtham

5.Baskaran

6.V.W.Sampathkumar

... Respondents / Respondents

Prayer:- Review Petition filed under Order 47 Rules 1 & 2 r/w. Section 114 of the Code of Civil Procedure, to review the judgment and decree of the respondents 2 to 4 dated 18.12.2023 passed in C.M.A.(MD)No.67 of 2018 on the file of this Court.

For Petitioner : Ms.Malini

For Respondents : Mrs.K.R.Shivashankari for R1
: Mr.Ramanathan for R2 & 3
: No appearance for R4 to 6

ORDER

P.B. BALAJI,J.

The instant Review Petition has been filed seeking to review the judgment and decree passed in C.M.A.(MD)No.67 of 2018, dated 18.12.2023.

2. The review applicant is the sixth respondent in the Civil Miscellaneous Appeal and in and by the judgment in the Civil Miscellaneous Appeal, we had examined the oral and documentary



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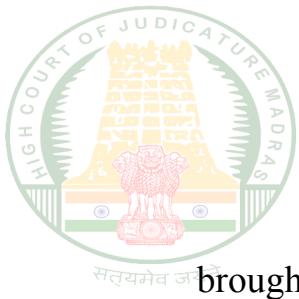
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evidence on record and found that the Tribunal had not fixed the liability on the lorry driver and therefore, we fixed 20% towards contributory negligence and remaining 80% on the lorry insured with the appellant.

3. Now, the review petitioner contends that Ex.R1 policy copy of the Tata Safari Car was an 'Act policy' and no premium had been paid for the occupants and hence, fixing of liability of 20% on the sixth respondent was erroneous.

4. We have heard Ms.Malini, learned counsel for the review applicant, Mrs.K.R.Shivashankarai, learned counsel for the first respondent, who is the appellant in the Civil Miscellaneous Appeal and Mr.Ramanathan, learned counsel for the respondents 2 and 3, who are the claimants before the Tribunal.

5. Though it is now contended in the review petition that Ex.R1 policy was only an Act policy and hence, no liability can be saddled on the review applicant, when the Civil Miscellaneous Appeal was heard by us and though the review applicant was represented by a counsel, it was not



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brought to our notice that the policy was an Act policy and therefore, liability cannot be fixed on the review applicant. Even at the time of hearing the appeal, the question of contributory negligence was brought up and atleast at that point of time, if it had been brought to our notice that Ex.R1 was only an Act policy, then we may have considered modifying the award of the Tribunal suitably.

6. In such view of the matter, we do not find justifiable grounds to accept the contention of the sixth respondent, the review applicant herein and exonerate them from liability even to the extent of 20%. However, at the same time, since it has now been brought to our notice that Ex.R1 was only an Act policy, in the interests of justice, we deem it fit and proper to direct the sixth respondent to pay 20% of the award to the tune of Rs.11,54,575/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and recover the same from the owner of the vehicle, viz., the fifth respondent herein.

7. In fine, this Review Application is partly allowed, directing the review applicant / sixth respondent to pay a sum of Rs.11,54,575/-,



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together with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of copy of this order and recover the same from the owner of the vehicle, viz., the fifth respondent. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

(T.K.R.J) & (P.B.B.J.)

17.04.2025

To

1. The Rent Control Appellate Authority (Sub Court),
Madurai.

2. The Additional Rent Controller,
(Additional District Munsif Court),
Madurai Town.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

Ls

Pre-delivery order in
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