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**(2013) 09 MAD CK 0039**

**In the Madras High Court**

**Case No :** C.M.A. No. 661 of 2011 and M.P. No. 1 of 2011

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

APPELLANT

Vs

Ravi @ Ravichandran and N.K.M. Meera Hussain

RESPONDENT

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**Date of Decision :** 04-09-2013

**Acts Referred:**

**Citation :** (2013) 8 MLJ 195

**Hon'ble Judges :** P.R. Shivakumar, J

**Bench :** Single Bench

**Advocate :** N. Vijayaraghavan, for the Appellant; F. Terry Chellaraja, for the Respondent

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## **Judgement**

P.R. Shivakumar, J.—M/s. Cholamandalam MS General Insurance Co. Ltd., which figured as the 2nd respondent in M.C.O.P. No. 300 of

2008 before the Motor Accidents Claims Tribunal (Fast Track Court No. 4), Ponneri is the appellant in the civil miscellaneous appeal. The first

respondent herein made a claim against the 2nd respondent herein and the appellant herein for compensation for the injuries sustained by him in a

motor accident that allegedly took place on 06.04.2008, in which the vehicle bearing Registration No. TN-72 X-5545 belonging to the 2nd

respondent herein was involved. He made a claim as against the 2nd respondent as well as the appellant on the premise that as on the date of

accident, there was a valid insurance coverage, as the appellant had issued an insurance certificate. The appellant insurance company, who figured

as the 2nd respondent, contested the MCOP on the limited ground that the appellant was not liable to reimburse the owner of the vehicle, as there

was no insurance policy issued by the appellant in force as on the date of accident. The Tribunal, however disbelieved the said contention and

chose to pass an award holding the appellant insurance company jointly and severally liable with the 2nd respondent to pay the compensation

amount awarded by the Tribunal to the first respondent herein/claimant. As against the said award, the present civil miscellaneous appeal has been

filed not in respect of the quantum of compensation, but only in respect of the liability of the insurance company, namely the appellant.

2. The arguments advanced by Mr. N. Vijayaraghavan, learned counsel for the appellant and by Mr. F. Terry Chellaraja, learned counsel for the

respondent are heard. The materials available on record are also perused.

3. The short question that arises for consideration in this appeal is "whether the Tribunal was right in holding that there was a valid insurance policy

in force as on the date of accident and that the appellant was the insurer who issued the insurance certificate?

4. In this regard, it is pertinent to note that the insured, namely the 2nd respondent herein who was the owner of the vehicle as on the date of

accident, did not contest the MCOP and remained ex-parte. The appellant herein/ Insurance company, resisted the claim petition on the ground

that, it had not issued any insurance certificate to the vehicle in question as on the date of accident and that only a few days after the accident, the

proposal for insurance was made and premium for the same was paid based on which the cover note came to be issued followed by the issuance

of the insurance certificate. The first respondent herein chose to produce a xerox copy purporting to be a copy of the cover note issued by the

agent of the appellant for the vehicle involved in the accident. The same has been marked as Ex. P5. Though a rubber stamp has been affixed for

certifying it to be a true copy designating the person to certify it as true copy to be the counsel for the petitioner, it has not been so certified. There

is no proof to show where from the first respondent/claimant had got that document. The said document does not even contain an authentication

made by the Investigating Officer, to be a true copy.

5. In the said circumstances, as rightly pointed out by the learned counsel for the appellant, the same should have been either created by

manipulation by the first respondent/claimant himself or should have been created by manipulation by the 2nd respondent and handed over to the

first respondent/claimant. In support of his contention, the learned counsel for

the appellant drew the attention of the court to Ex. R2-Proposal from, Ex. R3-Pre-Acceptance Vehicle Inspection Report, Ex. R4-declaration on the third party cheque signed by the 2nd respondent, Ex. R5-the premium receipt showing that the payment was made by way of a cheque dated 14.04.2008 and Ex. R6-Carbon copy of the cover note bearing cover Note No. 7186113 issued on 14.04.2008 at 4.00 p.m. and the policy issued on 26.04.2008 to be effective from 14.04.2008 produced as Ex. R7. A comparison of Ex. R6-carbon copy of the cover note and Ex. P5 will show that the date columns alone have been corrected and a xerox copy has been obtained. The particulars found in Ex. R6-carbon copy of the cover note are corroborated and strengthened by reliable documentary evidence, That have been produced as Exs. R2 to R5 and R7. A perusal of all those documents will show that proposal for insurance was made only on 14.04.2008, premium for the same was paid by way of cheque dated 14.04.2008 and the cover note was also prepared on 14.04.2008 to be effective from 14.04.2008. The accident took place 8 days earlier, namely on 06.04.2008.

6. It is not the case of the first respondent that the vehicle had been insured with the appellant for the previous period also and what was sought to be done by the proposal was to renew the earlier policy. It is also an admitted fact that for the first time, the appellant was approached for the issuance of the policy. Therefore, this court does have no hesitation in coming to the conclusion that the appellant has clearly proved that the vehicle was not covered by a policy issued by the appellant as on the date of accident and that the Tribunal has committed a grave error in holding that the vehicle stood insured with the appellant and hence the appellant was jointly and severally liable to pay compensation to the first respondent. In view of the above said conclusion, this court comes to the conclusion that the appeal is bound to be allowed and the award of the Tribunal has got to be modified by exonerating the appellant from the liability to pay compensation. Accordingly, the civil miscellaneous appeal is allowed. The award of the Motor Accidents Claims Tribunal (FTC No. 4), Ponneri dated 29.12.2010 made in M.C.O.P. No. 300 of 2008, is modified by holding that the amount awarded as compensation shall be payable only by the 2nd respondent herein (first respondent in the MCOP)

and the MCOP as against the appellant herein (2nd respondent in the MCOP), shall stand dismissed. However, there shall be no order as to cost.

Consequently, the connected miscellaneous petition is closed.