



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2016

CORAM:

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THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.M.A. (MD) No. 619 of 2015

and

M.P. (MD) Nos. 1 and 2 of 2015

The Divisional Manager,
National Insurance Co. Ltd.,
No. 3, North Veli Street,
Madurai - 625 001.

: Appellants

Vs.

1. T. Dharumar
2. N. Nagarjan

: Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, against the award dated 18.10.2011 made in W.C.No.200 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Petitioner : Mr. S. Srinivasa Raghavan
For Respondent No. 1 : Mr. K. Mahendran

JUDGMENT

The civil Miscellaneous Appeal has been filed against the award dated 18.10.2011 made in W.C.No.200 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai,

2. The first respondent filed W.C.No.200 of 2008 before the learned Deputy Commissioner of Labour, Madurai, claiming a sum of Rs. 4,81,460/- as compensation for the grievous injuries sustained by him in a motor accident occurred during the course of his employment under the second respondent.

3. Counter statement has been filed by the appellant insurance company before the Commissioner, disputing the manner of the accident and quantum of compensation.

4. After considering the oral and documentary evidence, the Commissioner, by an order dated 18.10.2011, has awarded a sum of Rs. 1,64,914/- as compensation, by fixing the permanent disability as 43%. Aggrieved by the aforesaid award, the appellant insurance



company has preferred this appeal.

5. At the time of admission, the following substantial questions of law have framed for consideration of the present civil miscellaneous appeal.

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1. Whether the Commissioner of Workmen Compensation/Deputy Commissioner of Labour, Madurai is right in holding that the Driver could have obtained Heavy Vehicle License from any other Regional Transport Office?

2. Whether the finding of Commissioner of Workmen Compensation/Deputy Commissioner of Labour, Madurai that driver could have obtained Heavy Vehicle License in any other RTO's Office, contrary to Rule 34 of Motor Vehicles Act?

3. Whether the provision of Motor Vehicles Act and Rules to be considered in a claim made under Employees Compensation Act?

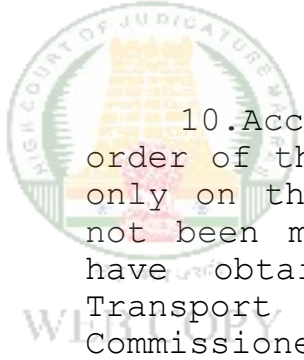
4. Whether the Commissioner has committed error in holding that the appellant is liable to pay compensation under the Act?

6. The contention of the learned counsel for the appellant is that the investigation would reveal that the driver did not possess Heavy Motor Vehicle license, to drive the transport vehicle at the time of accident and therefore, the appellant insurance company is not liable to pay compensation to the claimant.

7. The Deputy Commissioner of Labour has clearly observed that the said contention of the appellant insurance company has not been established that the driver does not possess valid license to drive Heavy Motor Vehicle. There is no dispute that the policy covered third party coverage.

8. Furthermore, the learned counsel for the appellant would submit that an official from the Regional Transport Office (South) at Madurai was examined as P.W.2 and through him, it has been proved beyond reasonable doubt that Mr. Virumandi, the driver of the insured vehicle at the time of accident was possessed of driving licence to drive light motor vehicle (non-transport) on the date of accident and the driver had not obtained any badge or additional licence to drive the transport vehicle.

9. It is further submitted that a person can obtain driving licence, renew the same or obtain additional licence only from the place where he has got proof of permanent residence and not otherwise and hence, the finding of the Commissioner is incorrect and the same is liable to be set aside.



10. According to the learned counsel for the appellant, the order of the Deputy Commissioner of Labour is liable to be set aside only on the ground that defence of absence of driving licence has not been made out for the reason that the driver concerned would have obtained an additional licence from any other Regional Transport Office except the office of origin. Therefore, the Commissioner is wrong in fastening the liability on the appellant/insurance company by holding that the absence of driving licence is not sustainable in a proceeding under the workmen compensation Act.

11. It is appropriate to extract the portions of the decision of United India Insurance Company Limited Vs. V. Vijayakumar reported in 2010(2) TN MAC 388 (DB), which read as follows:

"15. Section 2 of the Motor Vehicles Act provides definitions of the terms. As per section 2 (21), 'light motor vehicle' means:

"a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which does not exceed 7500 kilograms;"

As per section 2 (47), 'transport vehicle' means:

"a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

16. Although the definition of the 'light motor vehicle' brings within its umbrage both 'transport vehicle' and 'omnibus', there is a clear distinction between 'light motor vehicle' and 'transport vehicle'. In Oriental **Insurance** Co. Ltd. v. Angad Kol and others, 2009(1)TNMAC (SC) : 2009 ACJ 1411, the Supreme Court held as under:

"(10) The distinction between a 'light motor vehicle' and a 'transport vehicle' is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a 'transport vehicle' and a 'passenger vehicle' can also be noticed from section 14 of the Act. Subsection (2) of section 14 provides for duration of a period of three years in case of an effective licence to drive a 'transport vehicle' whereas in case of any other licence, it may remain effective for a period of 20 years."

The effect of the different terms of licences granted in terms of the provisions of section 2(14) and 2



(47) has also been considered by the Supreme Court in New **India** Assurance Co. Ltd. v. Prabhu Lal, 2008(1) TN MAC 97 (SC) : 2008(1)SCC 696.

18. Section 14 deals with 'Currency of licences to drive motor vehicles', which reads as under:

14. Currency of licences to drive motor vehicles.--(1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,--

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

XXX XXX XXX

(b) in the case of any other licence,--

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,--

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) xxx xxx xxx

Provided that every driving licence shall, notwithstanding its expiry under this subsection, continue to be effective for a period of thirty days from such expiry.

19. As per section 15 (1) of the Motor Vehicles Act, on application made to it, any licensing authority may renew a driving licence issued under the provisions of the Act with effect from the date of its expiry. Section 15 (2) stipulates that application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government. As per section 3, no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle. The Central Government has framed the Rules known as 'Central Motor



Vehicles Rules, 1989'. The word 'Form' has been defined in rule 2 (e) of the said Rules as "Form appended to the Central Motor Vehicles Rules".

21. As per rule 3 (i) of Tamil Nadu Motor Vehicles Rules, 'Form' means a Form appended to the Tamil Nadu Motor Vehicles Rules, Rule 7 provides for application for authorisation to drive a transport vehicle. As per rule 7, the holder of a driving licence may, at any time, appeal to the licensing authority in Form LTV A for the grant of an authorisation to drive a transport vehicle. Such application shall be accompanied by the driving licence and appropriate fee as specified in the Table under rule 49. Rule 10 deals with 'Issue of authorisation', which reads as under:

10. Issue of authorisation.--The licensing authority granting an authorisation to drive a transport vehicle shall allot a badge number, sign the driving licence accordingly and return the same to the holder thereof and shall, if it is not the authority which issued the licence at the same time, send intimation in Form LTV to the authority by which the driving licence was issued.

22. As per rule 12, every driver of a transport vehicle shall, in addition to the driving licence, carry an authorisation issued by the owner of the vehicle in the prescribed Form AVT. As per rule 21, the driver of a transport vehicle, while on duty, display on his left chest pocket a white plastic plate of size 8 cm x 2 cm inscribed with his name in bold black letters of size 0.5 cm, both in English and in Tamil, with badge number and the name of the District as set forth in the rule. The cost of the nameplate shall be borne by the driver himself.

23. Rule 37 deals with the conduct of driver of a transport vehicle while on duty. Rule 40 deals with duty of driver in the motor cab stand. Form LTV A is the form of application for authorisation to drive a transport vehicle. Form LTV is the form of intimation of grant of an authorisation to drive a transport vehicle. Form AVT is the form of authorisation to be carried by a driver of a transport vehicle.

24. The 3rd respondent was having only LMV licence to ply light motor vehicle. A person holding mere LMV licence is not a duly licensed driver to drive transport vehicle. To establish that respondent No. 3 did not possess a valid licence to drive transport vehicle, Junior Assistant from the Motor Vehicles



Inspector's Office was examined as RW 1. In inspection report of the Motor Vehicles Inspector, Exh. A3, as against the column "particulars of driver's licence", it is stated as '1407/96-5.6.2016'. In his evidence, RW 1 has clearly stated that the respondent No. 3 was not granted any authorisation to drive the transport vehicle nor allotted a badge number and, therefore, respondent No. 3 was not duly licensed to drive a transport vehicle. By examining RW 1 and by adducing evidence on the driving licence particulars of respondent No. 3, the **insurance** company has discharged the burden cast upon it in establishing that the driver did not have a valid driving licence to drive a transport vehicle and that there was violation of the policy conditions.

27. Referring to the above answer of RW 1, and referring to National **Insurance** Co. Ltd. v. Swaran Singh, : 2004 ACJ 1 (SC), the Tribunal held that respondent No. 3 might have obtained the badge elsewhere and that the same might not have been brought to the notice of the licensing authority and that there was no fundamental breach of the policy conditions. The Tribunal further held that even though the respondent No. 3-driver was not in possession of valid driving licence to drive a maxi cab there was no fundamental breach of the policy conditions and, therefore, the **insurance** company cannot avoid their liability on the ground that there was breach of condition.

28. There is no force in the contention that the driver might have obtained badge elsewhere and that the same might not have been brought to the notice of the office of the Motor Vehicles Inspector in Mettur. As per rule 35 of Tamil Nadu Motor Vehicles Rules, a licensing authority renewing a driving licence under the provisions of sub-section (6) of section 15 shall intimate the fact to the licensing authority by which the driving licence was issued in Form LR. Rule 36 deals with 'Intimation of addition to driving licence' which reads as under:

"A licensing authority adding under section 11 to the classes of motor vehicle which a driving licence authorises the holder to drive shall, if it is not the authority by which the driving licence was issued, intimate the addition to that authority in Form LAD."

It is, thus, clear that any additions made under section 11 to the classes of motor vehicle which a driving licence authorises the holder to drive shall intimate the addition to the licensing authority. The absence of any endorsement in the driving licence as to



the issuance of authorisation to drive the transport vehicle and non-mention of allotment of badge number clearly shows that the respondent No. 3 was not in possession of a valid driving licence and that he was not duly licensed to drive the transport vehicle and there was violation of policy conditions. The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of policy conditions."

12.Considering the above said decision along with the facts of the preset case, I am of the view that the Tribunal was not right in fastening the liability upon the appellate insurance company and the Tribunal ought not to have fastened the liability against the insurance company. Therefore, in the light of the above decision, the award passed by the Tribunal is liable to modified.

13.Accordingly, this civil miscellaneous appeal is partly allowed and order is passed as follows:

I.The insurance company is directed to pay the compensation and liberty is given to recover the same from the owner of the vehicle, as decided by the decision of the Hon'ble Supreme Court cited supra.

2.The first respondent/claimant is directed to withdraw the entire amount, which already in deposit before the Deputy Commissioner of Labour, Madurai.

No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 53008

+ 1 CC TO Mr.K.MAHENDRAN, ADVOCATE IN SR No. 53287

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TE/KM : 16/12/2016 : 7P/4C

Order made in
C.M.A. (MD) No.619 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015
15.09.2016