BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1276 of 2013
and
M.P.(MD)No.1 of 2013

1.Ameenal Beevi
2.Abdul Rasak
3.Rahmathulla
4.Mathinal Begam .. Appellants

Vs.

1.Abdul Khadar

2.Iffko Tokio General Insurance Co. Ltd.,
By its Branch Manager,
Coimbatore - 2. .. Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 27.04.2012 passed in M.C.O.P.No.7 of 2010, on the file of the Principal Motor Accident Claims Tribunal, Principal Sub Judge, Tenkasi, in so far as the liability is concerned.

For Appellants : Mr.R.Subramanian
For Respondents : Mr.S.Srinivasaraghavan (for R2)
Mr.P.Vinoth (for R1)
for M/s.N.Vijayarajan

JUDGMENT

The appellants/claimants have filed the present C.M.A(MD) No.1276 of 2013, challenging the award passed in MCOP.No.7 of 2010, dated 27.04.2012, on the file of the Principal Motor Accident Claims Tribunal, Principal Sub Judge, Tenkasi.

2.It is a case of a fatal accident caused on account of an accident took place on 21.06.2006 around 10.30 p.m. near Idaikal-Sernthamaram Road. The legal heirs of the deceased filed an application seeking compensation before the Principal Motor Accident Claims Tribunal, Principal Sub Judge, Tenkasi in MCOP.No.7 of 2010. Considering the facts and circumstances of the case, the Tribunal awarded Rs.6,00,000/-. Challenging the same, the appellants/

claimants have filed this appeal on the ground of liability and the main ground raised in the appeal is that the liability fixed on the owner of the vehicle by the Tribunal was erroneous and the same is to be shifted on the second respondent / Insurance Company. To substantiate the contention of the learned counsel appearing for the appellant argued that the appellant had filed an additional document producing the copy of the driving licence, which shows that the licence was issued for a period from 16.01.2006 to 15.01.2026 and therefore, the driving licence was a valid driving licence and further as per the licence all the Light Motor Vehicle can be driven by the person, who was driving the vehicle, which met with an accident. This apart, the learned counsel appearing for the appellant contended that Section 2 (21) enumerates the definition for Light Motor Vehicle which reads as follows:

"light motor vehicle" means a transport bus or omnibus the gross vehicle weight of either of which or a motor car or tracter or road-roller the unladen weight of any of which, does not exceed 7500 kilograms"

3.Further, the reference is made with regard to Rule 172(7) of the Tamil Nadu Motor Vehicles Rules, which reads as follows:-

"It shall be a condition of every permit of a transport vehicle that the vehicle shall be allowed or caused to be driven only by a duly qualified persons holding a valid driving licence."

4.Citing the above provisions, the learned counsel appearing for the appellant argued that the appellant, driver was in possession of a valid driving licence and entitled to drive the Light Motor Vehicle and therefore, the liability ought to have been fixed on the second respondent/Insurance Company. But, the Tribunal erroneously fixed the liability on the owner of the vehicle, which is to be set aside.

5.The learned counsel appearing for the second respondent/ Insurance Company opposed the contentions of the appellant by stating that the driver, who was driving the vehicle, which met with an accident did not possess a valid badge endorsement, which is mandatory as per the regulations for driving the vehicle more specifically transport vehicle. In the absence of a valid badge endorsement, the Insurance Company is not liable to pay the compensation, since it is a statutory violation.

6.The learned counsel appearing for the appellants contended that the possession of a valid badge endorsement is not stipulated in the policy agreement and in the absence of a specific condition in the policy agreement. Such a plea cannot be taken by the Insurance Company before the Tribunal or before this Court. In other words, possession of a valid badge endorsement cannot be required, since the other conditions of the Motor Vehicle Act are fulfilled by the driver, who was driving the vehicle, which met with an accident.

7.This Court is unable to accept the arguments advanced by the learned counsel for the appellant, in view of the fact that the policy agreement is nothing but a contract and the contractual obligations are set out between the respective parties, who are the signatories in the policy agreement and this Court has no quarrel on this principle. But, the statutory provisions, Rules and other provisions need not be stated in any of the agreement between the parties. The principle of law is that the agreements are governed under the Indian Contract Act and the Indian Contract Act do not stipulate, the statutory provisions are to be incorporated in any agreement. It is needless to state that the provisions of law need not be incorporated either in policy agreement or in any agreement between the respective parties. Hence, this Court is unable to appreciate the arguments advanced by the learned counsel appearing for the appellant that there is no incorporation of a specific clause with regard to the valid badge endorsement by the driver. Such a clause is not required in view of the fact that it is a statutory provision enacted and agreement need not have any such clause more specifically in the policy agreement issued by the second respondent/Insurance Company. Accordingly, the order of the Tribunal fixing the entire liability on the owner of the vehicle is also erroneous to the extent that the Tribunal failed to order pay and recovery in respect of the compensation. Since it is a violation of the statutory condition of the holding a valid badge endorsement, this Court is inclined to adopt the principles laid down by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in **(2004) 13 SCC 224** is applied which is extracted below:

"8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

8.Accordingly, pay and recovery is ordered, in all other respects, the award of the Principal Motor Accident Claims Tribunal, Principal Sub Judge, Tenkasi, dated 27.04.2012, is confirmed and the Civil Miscellaneous Appeal is disposed of.

9.The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interest within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the appellants/claimants are permitted to withdraw the entire award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Principal Subordinate Judge,
Principal Motor Accident Claims Tribunal,
Tenkasi,Tirunelveli District.

Copy To:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/S.S.SRINIVASA RAGHAVAN,ADVOCATE,SR NO.73737

+1 CC TO M/S.R.SUBRAMANIAN,ADVOCATE,SR NO.73765

vsa
MAS/MR:20.03.2017:4P-5C

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