

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No.2368 of 2016

Sriram General Insurance Co. Ltd.,
represented by its Manager,
10003 E8, RIICO Industrial Area,
Sitapura Jaipur,
Rajasthan State-302 022. Appellant/2nd Respondent

..Vs..

1.Thamarai

2.Minor Karthik

3.Minor Mythili

(Minors represented by their Next Friend Thamarai)

4.Vasantha

5.Govindasamy Respondents 1 to 5/Petitioners

6.P.Madhesh 6th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 26.02.2015 passed in M.C.O.P.No.46 of 2014, by the Motor Accident Claims Tribunal, (Special District Court) Krishnagiri.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.S.Murugan for R1 to R5.

JUDGMENT

(Judgment of the Court was delivered
by A.D.JAGADISH CHANDIRA ,J.,)

This Civil Miscellaneous Appeal has been filed by the second Respondent/Insurance Company against the decree and judgment dated 26.02.2015 passed in M.C.O.P.No.46 of 2014, by the Motor

Accident Claims Tribunal, (Special District Court) Krishnagiri, awarding compensation of Rs.17,62,000/- to the Respondents 1 to 5/Claimants.

2. The respondents 1 to 5 are the claimants before the Tribunal and they are wife, son, daughter, mother and father of the deceased Murugesan, 6th respondent is the owner of the TATA ACE vehicle involved in the accident.

3. The case of the claimants before the Tribunal is that on 19.12.2013, at about 2.00 p.m, the deceased Murugesan was riding the motor cycle at Kalguddapatti Medu in Kaveripattinam Palacode road, very slowly and cautiously. At that time, a TATA ACE bearing Registration No.TN-24-3-4051, belonging to the 6th respondent herein and insured with the appellant was coming in the opposite side to the deceased in a rash, careless and negligent manner. The driver of the vehicle without raising the horn and also with great speed and without following the traffic rules of the road, had lost his control and dashed against the motor cycle of the deceased. Due to impact the deceased was thrown out from the motor cycle, and had sustained fatal injuries, and died on the spot itself. The motor cycle of the deceased was also damaged heavily in the accident. The accident occurred only due to the rash and negligent driving of the driver of the TATA ACE. At the time of accident the deceased was only 32 years and he was doing agricultural work and also doing milk business. The deceased was the only breadwinner of the family. The claimants/respondents 1 to 5 made a claim of Rs.20,00,000/- towards compensation on various heads.

4. The appellant Insurance Company filed a counter, wherein the appellant specifically denied the averments made in the claim petition and contended that the claimants have not produced the driving licence of the deceased and hence it could be presumed that the deceased had no driving licence and he had no proper driving knowledge. The driver of the 6th respondent herein had no valid and effective driving licence. There is no proof to show that Motor Cycle belongs to the deceased. The owner and insurer of the said Motor Cycle are necessary parties to the claim and hence, the claim petition is liable to be dismissed for non-joinder of necessary parties and therefore, the appellant Insurance Company is not liable to pay any compensation.

5. In order to prove the claim, on the side of the claimants, the first respondent/wife examined herself as P.W.1 besides examining P.W.2 and marked Exs.P.1 and P.5. On the side of the appellant Insurance Company, Mr.Ananda Raja, the Legal Manager of the appellant Insurance Company at Salem, was examined as R.W.1 and Mr.M.M.Prabhu, the Assistant in the office

of the Regional Transport Officer, Krishnagiru, was examined as R.W.2 and marked 5 documents as Ex.R1 to R5.

6. The learned Tribunal, after considering the evidence available before it, came to the conclusion that the accident was caused by the rash and negligent driving by the driver of the TATA ACE and the said vehicle was insured with the appellant Insurance Company. The Tribunal has fixed the entire liability on the appellant Insurance Company and awarded a sum of Rs.17,62,000/-, as total compensation payable with 7.5% interest. The break up details of the compensation amount, awarded by the Tribunal are as follows:

1. Loss of Income	: Rs.12,96,000/-
2. Loss of Consortium to 1 st respondent	: Rs. 1,00,000/-
3. Loss of love and affection to the minor respondents 2 and 3.	: Rs. 2,00,000/-
4. Loss of love and affection to the respondents 4 and 5.	: Rs. 1,00,000/-
5. Transport to hospital	: Rs. 10,000/-
6. Funeral expenses	: Rs. 20,000/-
Total	Rs.17,62,000/-

Aggrieved by the decree and judgment of the learned Tribunal fixing liability to pay compensation to the claimants, the Insurance Company has filed the present appeal .

7. Though several grounds have been raised by the appellant in the grounds of appeal, the only ground attacking the decree and judgment passed by the learned Tribunal is that the insured vehicle involved in the accident was a Goods Carrying Vehicle TATA ACE and that the vehicle was a transport vehicle and therefore the driver of the vehicle ought to have an endorsement authorizing him to drive such transport vehicle and therefore, driving the vehicle with only Light Motor Vehicle licence is violation of Motor Vehicles Act and the Insurance Company should be absolved from paying the amount awarded by the Tribunal.

8. Heard Mr.S.Dhakshnamoorthy, learned counsel appearing for the appellant and Mr.S.Murugan, the learned counsel appearing for the respondents 1 to 5.

9. The main ground contended in the grounds of appeal is that in view of the oral and documentary evidence on record it has been proved that the vehicle involved in the accident was a

Goods Carrying Vehicle and that the driver had no endorsement and badge authorizing him to drive such vehicle and the learned Tribunal ought to have found that there was clear and gross violation of terms and conditions of policy and provisions of Motor Vehicles Act and ought to have exonerated the Insurance Company from liability.

10. When the matter was taken up today, it was fairly contended by the learned counsel for the Insurance Company that in view of the latest decision rendered by the 3 Judges Bench of the Honourable Apex Court reported in *Mukund Dewangan v. Oriental Insurance Company Limited* [2017 (7) SCALE 731], in respect of a reference with regard to the conflict of opinion in the decisions of the Hon'ble Apex Court on the question as to whether a driver who is having licence to drive "Light Motor Vehicle" and is driving "transport vehicle" of that class is required additional a reference in respect of a question involving whether the driver who is having a licence to drive "Light Motor Vehicle" and is driving 'Transport Vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle, the questions have been referred for decision to a Larger Bench and the Larger Bench in the decision cited supra, has answered in the following lines:-

"45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle construed or adapted for use solely for the carriage of goods, or any motor vehicle not so construed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it

is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the amendment Act 54/1994.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg., would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg., and holder of a driving

licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg., or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

- (iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. Light motor vehicle.
- (iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect." (para 45, 46).

11. In view of the above, the grounds raised by the appellant/ Insurance Company cannot be sustained and the appeal stands dismissed. The order dated 26.02.2015 passed in M.C.O.P.No.46 of 2014, by the Motor Accident Claims Tribunal, (Special District Court) Krishnagiri is confirmed.

12. In so far as the quantum of award is concerned, while going through the judgment and decree we found out that there is a discrepancy with regard to the calculation of amount awarded

under various heads. The total amount actually comes to Rs.17,26,000/- whereas it has been wrongly calculated as Rs.17,62,000/-. This seems to be a mathematical error and it has to be corrected in the judgment. However we do not want to reduce the amount awarded and hence orders are passed with regard to the award by adjusting the amount in various heads and by confirming the amount awarded at Rs.17,62,000/-, in the following manner.

1. Loss of Income	: Rs.12,96,000/-
2. Loss of Consortium to 1 st respondent	: Rs. 1,00,000/-
3. Loss of love and affection to the minor respondents 2 and 3.	: Rs. 2,10,000/-
4. Loss of love and affection to the respondents 4 and 5.	: Rs. 1,10,000/-
5. Transport to hospital	: Rs. 16,000/-
6. Funeral expenses	: Rs. 20,000/-
Total	Rs.17,62,000/-

13. The appellant/Insurance Company is directed to deposit the balance award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of the above said MCOP, within a period of 8 weeks from today. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(Special District Court)
Krishnagiri.

+lcc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.54215

C.M.A.No.2368 of 2016

KJ(CO)
CA(09/10/2017)