IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 22.11.2016

Judgment Pronounced on: 15.09.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.1743 & 1744 of 2009
and MP.Nos.1 & 1 of 2009
and Cros.Obj.Nos.10 & 11 of 2011

CMA.No.1743 of 2009 :
The Oriental Insurance Co. Ltd.,
Post Box No.20, TSM Complex,
V.H. Road, Palakkad, D.O. At Chamundi Complex
Four Road,
Salem – 7 .. Appellant/2nd Respondent

Vs.

1.Palani
2.Irusayee
3.Ramesh .. Respondents/Petitioners/1st Respondents

CMA.No.1744 of 2009 :
The Oriental Insurance Co. Ltd.,
Post Box No.20, TSM Complex,
V.H. Road, Palakkad, D.O. At Chamundi Complex
Four Road,
Salem – 7 .. Appellant

Vs.

Sundaram (died)
1.Sundarambal
2.S.Yuvaraj
3.B.Ramesh .. Respondents

Cros.Obj.No.10 of 2011:
B.Ramesh .. Cross Objector/3rd Respondent

Vs.

1.The Oriental Insurance Co. Ltd.,
Salem – 7.
2.Palani
3.Irusayee .. Respondents/Appellant/Respondents 1 & 2

Cros.Obj.No.11 of 2011:
B.Ramesh .. Cross Objector

Vs.

1.The Oriental Insurance Co. Ltd.,
Salem - 7.

Sundaram (Died)

2.Sundarambal
3.S.Yuvaraj .. Respondents

Common Prayer in CMAs : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in MCOP.Nos.574 of 2006 and 517 of 2006 respectively dated 29.07.2008 before the Motor Accident Claims Tribunal, (I Additional District Judge) at Salem District and to dismiss the above claim.

Common Prayer in Cros.Obj Nos.10 & 11 of 2011 : Cross Objections filed under Order 41 Rule 22 of CPC to set aside the award dated 29.07.2008 passed in MCOP.No.574 of 2006 and MCOP.No.517 of 2006 respectively on the file of the Motor Accident Claims Tribunal (I Additional District Judge) at Salem District in so far as directing the first respondent to recover the amount from the cross appellant is concerned.

In both CMAs :

For Appellant : Mr.J.Chandran
For RR1 & 2 : Mr.R.Thangavel
For R3 : Mr.S.Saravanan

In both Cros.Obj.:

For Cross Objector : Mr.S.Saravanan
For R1 : Mr.J.Chandran
For RR2 & 3 : Mr.R.Thangavel

COMMON JUDGMENT

On 10.03.2006 at about 8.00 p.m., Saravanan was going along with his friend Gopal alias Gopalakrishnan in former's bicycle along Sankari-Salem Highway, when a van bearing No. TN33-AF-1757 belonging to one Ramesh (the first respondent before the Tribunal) and insured with the appellant came rashly and negligently, and fatally ran over both Saravanan and Gopal They died on the spot. They both were stated to be bachelors and the parents of both Saravanan and Gopal have preferred separate claims, seeking a compensation of Rs.10,00,000/- each.

2. Denying negligence on the part of the driver of the van that it has insured, the appellant in its counter had attributed negligence to Saravanan. The second contention it took was that the van in question is a goods carrier, that the driver of the vehicle possessed only a driving licence for driving Light Motor Vehicles and that he did not possess a valid and effective licence to drive a goods vehicle.

3.1 For the loss of Saravanan, the Tribunal has passed an award Rs.3,77,500/- payable with interest at 7.5% per annum, whereas for loss of Gopal, the Tribunal has passed an award for Rs.4,20,500/- payable with interest at 7.5% per annum.

3.2 As to the insurance company's objection on the point of driver's disqualification in driving a goods carrier for want of an effective licence is concerned, the Tribunal has applied the doctrine of pay and recover.

4. Challenging, inter alia the primary liability fastened on it by the Tribunal in applying the doctrine of pay and recover, the insurance company has preferred the twin appeals, whereas the owner of the vehicle, whose participation in the proceedings before the Tribunal was limited to mere filing of the counter and nothing beyond it, has come forward with cross objections in each of the appeals challenging the application of doctrine of pay and recover.

5. The appeals and cross objections rest on the same axis: In the absence of driving licence for driving a goods carrier, will the insurance company be liable. If it is fine tuned a bit, the point raised is that whether existence of a driving licence to drive a Light Motor Vehicle but not a goods carrier would amount to violation of policy condition to drive a vehicle of particular category or should it be treated as absence of a valid driving licence.

6. It may be stated at the outset, that the insurance company that feels aggrieved for not absolving it of the entire liability has not even cared to produce the policy of insurance either then before the Tribunal, or now before this Court. However, the parties appeared to know the point involved and has taken up positions in strategising their point and counter-point of arguments. When a point arose whether a driving licence for Light Motor Vehicle includes a licence to drive a transport vehicle under that category, a two Judges Bench of the Supreme Court referred the matter to a larger Bench. See: Mukund Dewangan Vs Oriental Insurance Compnay., Ltd., [CDJ 2016 SC 137]. This reference to the larger bench was decided by a Bench comprising three Judges of the Supreme Court in Mukund Dewangan Vs Oriental Insurance Compnay., Ltd., [AIR 2017 SC

3668 : 2017 ACJ 2011]. After discussing the case law on the subject and also the relevant provisions of the Motor Vehicles Act, the Supreme Court has held that a driver having a licence to drive a Light Motor Vehicle is entitled to drive a transport carrier falling under the said category and is not required to obtain any special endorsement in the licence to that effect.

7. In the present case, there is no dispute that the driver of the offending vehicle possessed a licence to drive a Light Motor Vehicle. It is also not in dispute that the offending transport carrier's weight falls within the weight stipulated for categorising a vehicle as Light Motor Vehicle. Since the Supreme Court has now resolved the issue, it is no more required for a driver holding a licence to drive a Light Motor Vehicle to obtain any special endorsement for driving a transport vehicle falling under that category. Necessarily, the point in objection raised by the owner of the transport carrier has to be upheld in his favour. So far as the insurance company is concerned, its position is worse than what it was before.

8. In the result, both the appeals are dismissed and the cross objections are allowed. While the quantum of compensation as determined by the Tribunal is not interfered with (as it was not required), its application of doctrine of pay and recover enabling the insurance company to recover the compensation amount from the owner of the vehicle after paying it to the claimant is liable to be set aside and it is accordingly done. Accordingly, the appellant is directed to pay the entire compensation amount along with the accrued interest as determined by the Tribunal, less any amount already deposited within a period of six weeks from the date of receipt of a copy of this order and the claimants are entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

ds

To:

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

2. The Section Officer,
V.R.Section, High Court,
Madras - 104.(2 Copies)

+1cc to Mr.M.R.Thangavel, Advocate SR.No.68391
+2cc's to Mr.J.Chandran, Advocate SR.No.68468, 68467
+1cc to Mr.S.Saravanan, Advocate SR.No.67473

CMA.Nos.1743 & 1744 of 2009
and Cros.obj.Nos.10 & 11 of 2011

GJ(CO)
GN(22/01/2018)