

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.11.2016

Judgment Pronounced on : 03.03.2017

CORAM :

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3044 of 2009
and MP.No.1 of 2009

The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office,
105, Railway Station Road,
Tirupathur, Vellore District...Appellant/II Respondent

Vs.

1.Lingammal
2.Minor Aravinth
3.Chinnammal ..Respondents 1 to 3/Petitioners 1 to 3
4.P.Stalin
[R4 set exparte in lower Court]..4th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 17.6.2009 made in MCOP.No.719 of 2008 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri.

For Appellant : Ms.Sreevidhya
For Respondents : Mr.R.Selvakumar[R1 to R3]

JUDGMENT

The insurance company which was arrayed as the second repondent in MCOP.No.719 of 2008 on the file of MACT (Principal District Judge) Dharmapuri has preferred this appeal challenging in the essence the liability fastened on it by the award dated 17.6.2009.

2. The facts that are relevant for the present purpose may be briefly stated :

On 12.3.2007 at about 5.30 p.m. a cyclist was fatally knocked down by a mini door motor vehicle bearing registration No.TN23-K-4245, belonging to the 4th respondent herein and insured with the appellant. The victim of the accident was one Selvam and was 30 years old and was engaged in agriculture besides milk vending business. His young widow, a minor child and mother approached

the Tribunal with a claim of compensation for Rs.10,00,000/- whereas the Tribunal has passed an award for Rs.4,82,000/- payable with interest at 7.5% per annum.

3. One of the contention in defence taken by the appellant before the Tribunal is that the driver of the offending vehicle did not possess a valid driving licence. During enquiry it produced Ext.R2 (= Ext.P6), a copy of the driving licence of the driver whose negligence was responsible in the accident.

4. The learned counsel for the appellant contended that the driver possessed only a licence to drive light motor vehicle and did not possess necessary badge for driving goods vehicle which amounted to violation of policy condition and consequently insurance company cannot be made liable to pay compensation. At any rate, contended the counsel that it is a case where the doctrine of pay and recover should have been applied rather than fastening the liability on the appellant jointly and severally with the owner of the vehicle.

5. Per contra, the learned counsel for the claimants /respondent 1 to 3 would contend that possessing a valid licence to drive light motor vehicle will be adequate to drive any medium size vehicle and this includes goods vehicle as well. This aspect of the matter is adequately considered by the Tribunal by relying on the ratio of judicial pronouncements on the aspect and that does not require any interference.

6. The driver of the vehicle admittedly has a valid licence to drive a light motor vehicle. The vehicle which he drove that resulted in the accident was a goods carrier weighing 1,350 kg (Refer to Ext.R-1 insurance policy) which as per definition in Sec.2(47) of the MV Act falls under the category of a transport vehicle. Sec.2(21) defines a light motor vehicle to mean a transport vehicle or omnibus the gross vehicle weight does not exceed 7,500 kg. But Sec.10(2) providing for the Form and contents of a driving licence to drive a motor vehicle has inter alia classified it into light motor vehicle under Sec.10(2)(d) and also as transport vehicle under Sec.10(2)(e). In Mukund Dewangan Vs Oriental Insurance Co., Ltd., [CDJ 2016 SC 137] the Hon'ble Supreme Court while referring the matter to a larger bench has posed four questions of which the first three are contextually relevant:

1. "What is the meaning to be given to the definition of 'light motor vehicle' as defined in Sec.2(21) of the MV Act? Whether transport vehicles are excluded from it:

2. Whether 'transport vehicle' and 'omnibus' the "gross vehicle weight" of either of which does not exceed 7500 kgs. Would be a "light motor vehicle" and also motor-car or tractor or a road roller, "unladen weight" of which does not exceed 7500 kgs. and holder of licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) would

be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 750 kgs. or a motor-car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kgs.?

3. What is the effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression 'transport vehicle' under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of amendment of the Form 4 as to operation of the provisions contained in Section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of "Light Motor Vehicle" has been changed?'

7. Be that as it may, relying on few authorities on the point, the Tribunal has taken a view that licence to drive a light motor vehicle is adequate to drive a light weight goods vehicle. Since the controversy is yet to be settled by the Supreme Court, for the present, this court subscribe to the view that the Tribunal has taken.

8. In the result I find no merit in the appeal and the same is dismissed without costs. The appellant/insurance company is directed to deposit the award amount less if any already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the claimants are entitled to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To:

1.The Motor Accident Claims Tribunal
Principal District Court,
Dharmapuri

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mrs.R.Sreevidhya,Advocate for the Appellant sr.14672

+1cc to Mr.P.Selvakumar,Advocate for the respondent sr.14023

C.M.A.No.3044 of 2009

kj(co)
ss(5/4/2017)



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