IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.3326 of 2017

The Manager,
M/s. Reliance General Insurance Co. Ltd.,
First Floor, Sri Lakshmi Complex,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem ... Appellant

..vs..

1. Selvarasu
2. Palanisamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 08.05.2017 made in MCOP No.210 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant . : Mr. S.Arunkumar

JUDGMENT

The claimant, Selvarasu, while travelling in his vehicle (two-wheeler), bearing Registration No.TN39-AU-9723, XL Super, at Erumapatti-Thuraiyur Main Road, near to Sub-Registrar's Office, on

13.01.2015, the Tata Ace Vehicle, belonging to the first respondent (TN28-AJ-4702) came in the opposite direction, in a rash and negligent manner and hit against the first respondent herein.

2. In respect of the accident, a case was registered against the driver of the Tata Ace, in Crime No.8 of 2015.

3. The claimant filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

3.1. The claim was disputed on the grounds that (a) the criminal case has been referred to as 'Mistake of Fact'; (b) the injured petitioner (first respondent herein) has no driving licence to drive the two-wheeler; (c) the owner and the insurer of the vehicle were not impleaded.

4. The Tribunal gave a finding that the injured petitioner had a valid driving licence at the time of accident, as supported by Ex.P-7. There is a further finding that the driver of the Tata Ace namely Palanisamy also had the driving licence, as supported by Exs.P-5 and P-8.

5. As contended by the learned counsel appearing for the Insurance Company, the criminal case is not referred as mistake of fact and after investigation, charge sheet has been filed against the driver of the Tata Ace, as evident from Ex.P-6. As there was no allegation against the petitioner, it is not necessary to implead the owner and the insurer of the two-wheeler.

6. On these findings, the Tribunal has passed an award for a sum of Rs.2,47,400/-, under the following breakup details:-

Loss of income during treatment period (Rs.4,000/- x 2)	:	Rs. 8,000.00
Transport Expenses	:	Rs. 7,000.00
Extra Nourishment	:	Rs. 10,000.00
Medical expenses	:	Rs. 62,400.00
Permanent disablement	:	Rs.1,20,000.00
Pain and sufferings	:	Rs. 40,000.00
		Rs.2,47,400.00

7. The Insurance Company has filed the appeal contending that the owner of Tata Ace, namely, the second respondent in the Appeal, committed breach of terms and conditions of the policy as the driver was permitted to drive without valid driving licence. It is contended that, in any event, the Tribunal should have ordered pay and recovery, i.e., the Tribunal should have granted liberty to the

Insurance Company to recover the amount from the owner.

8. Under the circumstances, the issue to be considered is, whether the Tribunal is justified in giving a finding that the driver of the Tata Ace had a valid driving licence.

9. The learned counsel appearing for the appellant / Insurance Company submitted that the Tribunal ought to have relied upon Exs.R-1 to R-4 and should have dismissed the claim petition.

10. A perusal of Exs.R-1 to R-4 would only go to show that the copy of the Insurance Policy, notice sent through a lawyer, acknowledgement card and notice issued to the driver, which had been returned, are the documents filed. These documents do not prove that the driver did not have the valid driving licence.

11. It is contended that the driver did not have the badge at the time of accident and therefore, the driving licence is not valid.

11.1. The issue regarding the validity of the driving licence without a badge is answered by a decision of the Supreme Court reported in **2016 (4) SCC 298 (Mukund Dewangan v. Oriental Insurance Company Limited and others)** wherein it has been held that Transport Vehicles were included under the category of Light Motor Vehicle, Heavy Motor Vehicle, etc., as per gross vehicle weight or unladen weight and that in certain categories, when a driver is holding licence to drive light motor vehicles, he/she is competent to drive transport vehicle of that category.

12. It is not proved by the Insurance Company as to how the driving licence produced by the claimant is invalid driving licence. The Insurance Company did not produce any evidence to show the unladen weight of the vehicle, which was driven by the first respondent herein. Therefore, the contention that the driving licence is invalid cannot be accepted.

13. Under the circumstances, the contention raised by the Insurance Company cannot be accepted and the Civil Miscellaneous Appeal has to be dismissed and it is dismissed accordingly. No costs. Consequently, the connected CMP is closed.

14. The appellant / Insurance Company is directed to deposit the amount of compensation, as determined by the Claims Tribunal, along with interest at 7.5% per annum, from the date of petition till

the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer a sum of Rs.1,47,400/- along with the entire interest to the Savings Bank Account of the claimant, through RTGS, and the balance sum of Rs.1,00,000/- shall be deposited in any one of the Nationalized Banks, for a period of three years, and the interest accrued thereon shall be transferred to the said savings bank account of the claimant, once in three months, directly from the bank.

12.12.2017

Index : Yes / No

Web : Yes / No

srk

To

1. MACT, Special Sub Judge No.1,, Salem
2. The Section Officer, V.R.Section, Madras High Court,
   Chennai 104

Dr. S.VIMALA, J.,

srk

C.M.A.No.3326 of 2017

12.12.2017