BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 1136 of 2014
and M.P.(MD)No.1 of 2014

The Oriental Insurance Company Limited,
Branch Manager,
D.S.M. Complex,
(Railway Station Opposite),
Palacad, Kerala. ... Appellant / Respondent No.2

Vs.

1.Sivakani ... 1st Respondent / Petitioner
2.Rajalingam ... 2nd Respondent / Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.62 of 2011dated 20.07.2012 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Theni.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.M.Senthilkumar
For R2 : Mr.M.Pounraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company against the Judgment and Decree passed in M.C.O.P.No.62 of 2011 dated 20.07.2012 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Theni.

2. The brief facts of the case are as follows:
It is a case of injury caused in the accident that took place on 16.04.2010 at about 01.30 p.m. When the injured was crossing the road in Muthanampatti Villakku, the vehicle bearing Registration No.TN-57-P-6859 came and therefore, the accident occurred due to which she sustained grievous injuries. Hence, the injured claimant filed a claim petition in M.C.O.P.No.62 of 2011, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Theni, claiming a sum of Rs.2,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, one witness viz., P.W.1 was examined and seven documents viz., Exs.P.1 to P.7 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and one document viz., Ex.R1. was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the first respondent's vehicle, which is insured with the appellant Insurance Company and directed the appellant/Insurance Company to pay a sum of Rs.65,000/-, as compensation.

5. Against which, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal quesioning liability.

6. The learned Counsel for the appellant would contend that R.W.1 has stated that the driver was not holding badge endorsement to drive a transport vehicle and therefore, the Insurance Company is not at all liable to pay compensation.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent/claimant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel for the claimant would submit that separate endorsement is not required to drive a transport vehicle and since the pettioner has a valid license the Insurance Company is liable to pay compensation. In support of his contention, the learned counsel for the claimant would rely the judgment reported in **Sriram General Insurance Co.Ltd. Vs. Thamarai and five others,** wherein it has been held as follows:

> *"2. 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 7500kg., 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 75000 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 28.03.2001 in the form."*

9. In view of the above judgment, there is no infirmity in the order passed by the Tribunal fixing liability on the Insurance company. This Court is of the view that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the award made in M.C.O.P.No.62 of 2011 on the file of Motor Accident Claims Tribunal cum cum Chief Judicial Magistrate, Theni, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar

To,

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Theni.

+1 cc to Mr.C.Jawahar Ravindran , Advocate in SR.No. 75256
+1 cc to Mr.M.Senthilkumar , Advocate in SR.No. 75564
+1 cc to Mr.M.Pounraj , Advocate in SR.No. 75682

CM
AE/GT/SAR3/27.09.2017/2P/5C

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