

THE HONOURABLE SMT. JUSTICE T. RAJANI

M.A.C.M.A. No.314 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the appellants, who are respondents 3 and 4 in the claim petition, assailing the Award and Decree dated 01.10.2007 in O.P.No.468 of 2006 passed by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar, (for brevity “the Tribunal”), on the ground that the driver of the offending vehicle was not having valid driving licence, and that he was holding only driving licence to drive non-transport vehicle, whereas the vehicle involved in the accident is a transport vehicle.

The learned counsel for the appellants has drawn the attention of this Court to the driving licence extract, which was marked as Ex.B.2 before the Tribunal, to show that the driver was issued non-transport driving licence, which was valid up to 06.11.2022. There is no endorsement on the said driving licence authorizing him to drive transport vehicle.

In **S.Iyyappan v. United India Insurance Company Limited and Another**¹ the Apex Court has observed that the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. It was further observed that in any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy, but however ultimately the Apex Court awarded compensation against the insurer without order for any recovery from the owner. In that case the driver

¹ (2013) 7 SCC 62

was holding driving licence to drive light motor vehicle and the light motor vehicle shall be a particular weight specified under the Motor Vehicle Act and if a commercial vehicle falls within the particular weight, it need not be considered as violation of the policy. But in this case, the weight of the vehicle is not specified, the category of the vehicle involved in the accident is totally different from the category of the vehicle for which the driver was issued driving licence.

Hence, going by the observations and ratio laid down by the Apex Court, an order for payment and recovery can be made in favour of the appellants herein. To the extent indicated above, the appeal stands partly allowed.

As a sequel, miscellaneous petitions, if any, stand closed.
There shall be no order as to costs.

Date:06-03-2017
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JUSTICE SMT.T.RAJANI