

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.347 of 2006

National Insurance Company Limited,
Dharmapuri.

... Appellant/2nd Respondent
..Vs..

1.Madhavan ..1st Respondent/Claimant
2.R.Kandasamy

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28.04.2005 in M.C.O.P.No.1854 of 2003 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance for R1 and R2

JUDGMENT

The appellant is the National Insurance Company Limited, Dharmapuri. The first respondent/claimant filed a claim petition in M.C.O.P.No.1854 of 2003 on the file of the I Additional District Judge, Dharmapuri at Krishnagiri, seeking a compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident that took place on 11.06.2003.

2.The brief case of the first respondent/claimant is as follows:

On 11.06.2003, when the first respondent/claimant was riding a Motorcycle bearing Registration No. TN 60 0405 on Ottappatti - Sonarahalli road, a speeding Minidor auto rickshaw bearing Registration No. TN 29 K 1141 belonging to the second respondent, hit the Motorcycle, as a result of which, the first respondent/claimant sustained injuries all over his body.

3.According to the first respondent/claimant, the rash and negligent driving of the driver of the Minidor auto rickshaw bearing Registration No. TN 29 K 1141 belonging to the second respondent was the cause of the accident and that since the

owner of the vehicle insured the said vehicle with the present appellant, both of them are jointly and severally liable to pay compensation to them. It is also contended by him that he was an agriculturist and was also doing business in buying and selling coconuts earning a sum of Rs.5,000/- per month.

4.The owner of the Minidor auto rickshaw remained absent before the Tribunal and was set ex-parte. The National Insurance Company Limited, Dharmapuri, the present appellant contested the above said claim petition by filing a counter. In the counter, a specific plea was taken by the present appellant that the driver of the Minidor auto rickshaw did not possess a valid driving licence on the date of the accident.

5.The Tribunal after analysing the evidence on record, awarded a compensation of Rs.1,83,000/- together with interest at the rate of 9% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited, Dharmapuri has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Mr.S.Arun Kumar, learned counsel appearing for the appellant would contend that when a specific plea was taken by the present appellant that the driver of the Minidor auto rickshaw did not possess a valid driving licence, the same was not considered and the Tribunal directed the present appellant to pay the compensation amount of Rs.1,83,000/- together with interest at the rate of 9% per annum to the first respondent/claimant.

7.A perusal of the driving licence (Ex.R1) shows that the driver of the Minidor auto rickshaw was in possession of the driving licence for the period from 27.12.2002 to 27.12.2022 to drive light motor vehicle. It is also seen from the Registration Certificate (Ex.R2) of the Minidor auto rickshaw that the cubic capacity of the said vehicle is mentioned as 499 and the gross vehicle weight is mentioned as 1350 Kgs. In the decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), it has been held thus:

"14.The definition of Light Motor Vehicle' makes it clear that for a Transport Vehicle or Omnibus, the gross vehicle weight of either of which or a Motor Car or Tractor or Road Roller the unladen weight of any of which, does not exceed 7500 kgs. 'Gross vehicle weight' has been defined in Section 2 (15). The Motor Car or Tractor or Road Roller, the unladen weight of any of which does not exceed 7500 kgs. As defined in

Section 2(48) of the Act, are also the Light Motor Vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in Sections 2(21) & 10(2)(d) relating to the Light Motor Vehicle. The definition of 'Light Motor Vehicle' has to be given full effect to and it has to be read with Section 10(2)(d) which makes it abundantly clear that 'Light Motor Vehicle' is also a 'Transport Vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs as specified in the provision. Thus, a Driver is issued a Licence as per the class of vehicle i.e. Light Motor Vehicle, Transport Vehicle or Omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in Section 2(21) of the Act. The provision of Section 3 of the Act requires that a person in order to drive a 'Transport Vehicle' must have authorization. Once a Licence is issued to drive Light Motor Vehicle, it would also mean specific authorization to drive a Transport Vehicle or Omnibus, the gross vehicle weight or Motor Car, Road Roller or Tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'Transport Vehicle' category in Section 10(2)(e) has no effect of obliterating the already defined category of Transport Vehicles of the class of Light Motor Vehicle. A distinction is made in the Act of heavy Goods Vehicle, Heavy Passenger Motor Vehicle, Medium Goods Vehicle and Median Passenger Motor Vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger Motor Vehicle, heavy Goods Vehicle, the weight, as the case may be, exceed 12000 kg. Medium Goods Vehicle shall mean any Goods Carriage other than a Light Motor Vehicle or a heavy Goods Vehicle; whereas 'medium passenger Motor Vehicle' means any public service vehicle or private service vehicle or Educational institution Bus other than a Motorcycle, invalid carriage, Light Motor Vehicle or heavy passenger Motor Vehicle."

8. In the light of the above said decision, I hold that there is no violation of policy condition and the orders passed by the Tribunal directing the present appellant and second respondent

to pay the compensation jointly and severally is perfectly in order.

9.As regards the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant. Infact, no cross objections or appeal is filed by the first respondent/claimant and he did not also appear in the instant case. Therefore, the the award dated 28.04.2005 passed by the Motor Accidents Claims Tribunal, I Additional District Court, Dharmapuri at Krishnagiri in M.C.O.P.No.1854 of 2003 is upheld.

10.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mbi
To

The I Additional District Judge
Motor Accidents Claims Tribunal,
Dharmapuri at Krishnagiri.

+1 CC to Mr.S.Arunkumar, Advocate sr 87025.

C.M.A.No.347 of 2006

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SP(01/02/2019)

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