

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1483 of 2018

and

C.M.P.No.11773 of 2018

Shriram General Insurance Co.Ltd.,
No.56, City Centre Complex,
2nd Floor Thirumalai Pillai Road,
T.Nagar, Chennai ..Appellant/2nd Respondent

Versus

1.Vilvamani
2.Lakshmi
3.Mani ..Respondents/Petitioner

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2016 made in M.C.O.P.No.213 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram.

For Appellant : Mr. S.Dhakshinamoorthy
For Respondents :

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 27.01.2016 made in M.C.O.P.No.213 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram.

2. By consent of Mr.S.Dhakshinamoorthy, learned counsel for the Appellant/Insurance Company, the main Civil Miscellaneous Appeal is taken up for final disposal at the time of admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 13.04.2012 while the deceased Kuttiyapillai was proceeding in his bicycle from Otteripalayam to V.Agaram, while going near

Sakthiram builders 'U' cement works, in Chennai to Kumbakonam Main road at about 5.30 p.m., the 1st respondent vehicle bearing Registration No.TN-31-AB-7968 came at high speed driven in a rash and negligent manner, dashed on the bicycle of the deceased from behind, causing him fatal injuries and he died in the hospital on the same day. The accident occurred only due to the negligence of the 1st respondent vehicle driver. The deceased was aged 54 years and by working as a drummer was earning Rs.20,000/- per month. The petitioners/claimants, who are the wife and daughter of the deceased were depending on the earnings of the deceased. Due to his sudden demise, the petitioners/claimants is suffering from loss of income as well as loss of Love and Affection. Thus, the petitioners/claimants seek a sum of Rs.15,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the deceased and as such, the petitioners/claimants are not entitled to seek compensation. The claim of the petitioners/claimants about the age, occupation and income of the deceased is denied. The driver of the 1st respondent vehicle did not possess valid driving license. The said vehicle has no Insurance coverage and no valid permit to operate in the roads. The accident occurred only because of the deceased suddenly attempted to cross the road without noticing the on coming vehicle. The claim of the petitioners/claimants is exorbitant. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2, produced document Exs.P.1 to P.6 to prove their claim. On the side of the respondents R.W.1 was examined, Exs.R.1 and R.2 was marked. After analysing the evidence available on record, the Tribunal, found that the negligence of the 1st respondent vehicle driver alone caused the accident passed an award for a sum of Rs.7,15,000/- payable by the respondents who are the owner and insurer of the offending vehicle. Aggrieved over the said finding, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. Heard both sides and perused the available materials on record.

7. The learned counsel for the 2nd respondent/Insurance Company who have come forward with the appeal challenging the conclusion of the Tribunal contends that the driver of the 1st respondent vehicle which was insured with them has no badge

endorsement in the light motor vehicle license possessed by him and as such, there is no valid license for him to drive transport vehicle. Thus, it is contended by the 2nd respondent/Insurance Company that the owner/1st respondent has committed violation of terms and conditions of the policy taken by him permitting a person with Light Motor Vehicle license only to drive the goods vehicle. This, according to the 2nd respondent/Insurance Company will clearly amount to violation of the Insurance Policy conditions and therefore, the Tribunal ought to have given liberty to the 2nd respondent/Insurance Company to recover the Award amount from the 1st respondent/owner of the vehicle for the violation committed by him.

8. The 2nd respondent/Insurance Company has not seriously disputed the conclusion of the Tribunal on the aspect of negligence and liability as well as quantum. The only contention raised by the 2nd respondent/Insurance Company/Appellant is that they are entitled to recover the Award amount from the owner in view of violation of policy condition.

9. On the other hand, refuting the same, the learned counsel for the petitioners/claimants contends that the driver of the vehicle was possessing valid Light Motor Vehicle license and in such circumstances, even if there is no badge endorsement, the same will not amount to violation of any policy condition. It is further pointed out that the person with such Light Motor Vehicle license is entitled to drive the goods vehicle and the same will not amount to violation of any policy condition. In support of the same, the learned counsel for the petitioners/claimants relied upon the Ruling reported in 2017 (2) TN MAC 145 (SC), [Mukund Dewangan Vs. Oriental Insurance Co.Ltd.], wherein it is held as follows:-

" 43. Section 10(2)(a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our

considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2 (21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2 (21) read with sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) 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 7500 kg. 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 7500 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 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10 (2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) [sic 2(41)] of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10. Likewise, he relied upon the Ruling reported in 2018 (1) TN MAC 738 (SC), [Jagdish Kumar Sood V. United India Insurance Co.Ltd.,], wherein it is held as follows:-

"4. The issue which arises before the Court is not res integra and is covered by a judgment of a three Judges of this Court in Mukund Dewangan v. Oriental Insurance Co. Ltd., 2017 (2) TN MAC 145 (SC) : 2017

(14) SCC 663 in which it has been inter alia held as follows:

"60.1. "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2 (21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994." (Id at page 709)

60.2. 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 7500 kg 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 7500 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 of 1994 and 28.3.2001 in the form." (Id at page 710)"

11. Further, the learned counsel for the petitioner/claimant contends that following the above said Apex Court Rulings, the Central Ministry of Road Transport and Highways, Government of India has issued circular dated 16.04.2018 giving effect to the conclusion of the above said Rulings. Thus, it is clear from the above said Apex Court Rulings and the circular issued by the Central Ministry of Road Transport and Highways, Government of India, that there is no need or necessity for badge endorsement in Light Motor Vehicle license and absence of such endorsement will not amount to violation of Insurance Policy condition. Therefore, the contention of the 2nd respondent/Insurance Company that for violation of policy condition committed by the 1st respondent/Owner, the Tribunal ought to have ordered pay and recovery of the Award amount is unsustainable and the same has to fail.

12. As stated earlier, the 2nd respondent/Insurance Company has not raised any other issue. Thus, the conclusion of the Tribunal in passing an award for a sum of Rs.7,15,000/- directing the respondents to pay the same jointly and severally is perfectly in order and the same does not warrant any

interference. For the reasons stated above, the Appeal has to fail. Point is answered accordingly.

13. In the result, the Order passed by the Tribunal 27.01.2016 made in M.C.O.P.No.213 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram, is confirmed and the Appeal filed by the 2nd respondent/Insurance Company is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Special District Court,
Motor Accident Claims Tribunal,
Villupuram.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Dakshnamoorthy, Advocate SR.No.45970

C.M.A.No.1483 of 2018

GMV (08/10/2018)

सत्यमेव जयते

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