

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2842 of 2009
and M.P.No.1 of 2009

Marimuthu ... Appellant/1st Respondent

Vs.

1. Akbar Ali
2. Chanbegam
3. The New India Assurance Co.Ltd.,
Branch Office, 66-C, Nort Car Street,
Tiruchengode - 637 211,
Namakkal District. ... Respondents/Petitioners/2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1925, against the order dated 30.09.2008 made in W.C.No.164 of 2006 on the file of the Commissioner for Workmen's Compensation, Salem.

For Appellant : M/s.N.Manokaran

For R1 and R2 : Mr.P.Jagadeesan

For R3 : Mr.N.Vijayaraghavan

J U D G M E N T

Aggrieved over the order dated 30.09.2008 made in W.C.No.164 of 2006 on the file of the Commissioner for Workmen's Compensation, Salem, the owner of the vehicle/appellant has come before this Court with this Civil Miscellaneous Appeal.

2. The 1st and 2nd respondents are the claimants. On 07.09.2005, while the deceased Batcha @ Mohideen was employed as a Cleaner-cum-Helper in a lorry bearing registration No.KA-06-B-5931, owned by the appellant, the vehicle met with an accident and the employee died on the spot. On the death of the said the 1st and 2nd respondents made a claim petition before the Tribunal under Workmen's Compensation Act.

3. Before the Tribunal, to prove their claim, the 2nd respondent examined herself as A.W.1 and marked documents from

Ex.A1 to Ex.A6. The appellant herein as well as the representative of the 3rd respondent, the Insurance Company were examined, but no documents were marked.

4. On considering the oral and documentary evidence, the authority had come to a conclusion that the accident has taken place due to the rash and negligent driving of the driver of the lorry and the employee died during the course of the employment. There is no dispute about the age and employment. The authority under Workmen's Compensation Act, considering the evidence has fastened the liability on the owner of the vehicle for breach of policy condition.

5. It is held that the driver of the vehicle was possessing the licence for driving light motor vehicle, whereas, he drove the heavy goods vehicle. Since he was not possessing valid driving licence, the policy condition was held to be violated and hence, the liability was fastened on the owner of the vehicle by exempting the insurance company. Against which, the present Civil Miscellaneous Appeal has been filed.

6. The learned counsel for the appellant would contend that once a valid driving licence is issued to drive the light motor vehicle, the driver can drive not only the light motor vehicle, but also the light goods vehicle and other transport vehicles, which includes heavy goods vehicle also. In support of this claim, he relied on the judgment of the Hon'ble Supreme Court reported in 2014 (12) SCALE 356 (Kulwant Singh and Others Vs. Oriental Insurance Company Limited) and the judgment reported in AIR 2017 Supreme Court 3668 (Mukund Dewangan Vs. Oriental Insurance Company Limited). In the judgment of Kulwant Singh's case, the Hon'ble Supreme Court has held that if a person is given valid licence to drive light motor vehicle, he is entitled to drive light goods vehicle also and a separate endorsement is not required for driving light goods vehicle. In the recent judgment in Mukund Dewangan's case, classes of vehicles were explained by the Hon'ble Supreme Court and it was held that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle, which is registered or insured, for purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by provisions of Act. When a driver is authorised to drive a vehicle, he can drive it irrespective of fact whether it is used for a private purpose of hire or reward or for carrying goods in said vehicle.

7. On the basis of the above-said judgment, the learned counsel appearing for the appellant would contend that when a driver of the lorry is having valid licence for driving the vehicle, it shall be contemplated that he can drive even transport vehicle or passengers vehicle carrying passengers or

goods for hire or reward and therefore, would contend that the finding of the authority under Workmen's Compensation Act is erroneous and the insurance company should be made liable for payment of compensation.

8. Per contra, the learned counsel appearing for the insurance company would contend that if a person is given licence to drive light motor vehicle, he is entitled to drive any vehicle in that category, but, he is not entitled to drive another class of vehicles to which he has no licence. Therefore, in one class of the vehicles there may be different kinds of vehicles and if they fall in the same class of the vehicles, no separate endorsement is required for such vehicle. But, in the instant case, the driver had licence to drive only light motor vehicle, whereas, he has driving Rig vehicle, which is heavy goods vehicle, and, therefore, the judgment will not be applicable to the present case.

9. Heard the rival contentions made by the counsel appearing for both parties.

10. Under Section 2, sub-section 21 of the Motor Vehicles Act, the light motor vehicle is defined as under:-

(21) "light motor vehicle" means 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] kilograms ;

Under Section 2(16) of the Motor Vehicles Act, the heavy goods vehicle is defined as under:-

(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

Under Section 2(10) of the Motor Vehicles Act, the driving licence is defined as under:-

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

11. Considering the statutory provisions, it can be seen that under Section 2(10) the competent authority under Chapter II authorises a person to drive a motor vehicle of any specified class or description.

12. In the instant case, the driver of the vehicle is having licence to drive light motor vehicle, as per Section 2(21) of the Act, light motor vehicle is not to exceed 7500 kilograms of weight and under Section 2(16) of the Act, heavy goods vehicle weight exceeds 12000 kilograms. Admittedly, the lorry driven by the driver is heavy goods vehicle and it would exceed 12000 kilograms in weight. More so, it is carrying rig bearing machine.

13. In such circumstances, the contention that the licence holder of light motor vehicle can drive any vehicle, including heavy goods vehicle, cannot be accepted. The Hon'ble Supreme Court in the Mukund Dewangan's case also held that if a driver is authorised to drive vehicles of specific class, he can drive different kinds of vehicle in that class, he does not require any endorsement. That means that he cannot drive the vehicles belonging to another class.

14. In the instant case, the lorry involved in the accident is heavy goods vehicle exceeding of 12000 kilograms and the driver was authorised to drive only vehicle of weight not exceeding 7500 kilograms.

15. In such circumstances, the driver of the lorry was not possessing a valid licence to drive heavy goods vehicle. Therefore, the judgment presented before this Court is not applicable to the case on hand. There is no dispute that in case of breach of policy condition, the insurance company is not liable to pay the compensation and on that ground, the authority under Workmen's Compensation Act, can straightly fasten the liability on the owner of the vehicle, namely, the appellant herein.

16. Therefore, I am not persuaded to interfere with the order 30.09.2008 made in W.C.No.164 of 2006 by the Commissioner for Workmen's Compensation, Salem and, accordingly, the order passed by the authority is confirmed.

17. With the above observations and directions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation
Salem.

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 8094.

+1 CC to Mr.N. Manokaran, advocate sr 7724.

+1 CC to Mr.P. Jagadeesan, Advocate sr 7622

C.M.A.No.2842 of 2009
and M.P.No.1 of 2009

KK (CO)
SP(05/04/2018)



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