

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3544 of 2004
and
C.M.P.No.19200 of 2004

M/s. Oriental Insurance Co. Ltd.
Easwaran Koil Street,
Pondicherry.

...Appellant/2nd Respondent

..Vs..

1. Kumaran

..1st Respondent/Petitioner

2. A.Marimuthu,

..2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 28.01.2004 in M.C.O.P.No. 262 of 2001 on the file of the Motor Accident Claims Tribunal, II Additional Sub-Court, Cuddalore.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents: Mr.D.S.Thirumavalavan for R1
No appearance for R2

JUDGMENT

The appellant, the Oriental Insurance Company Limited is the second respondent in M.C.O.P.No. 262 of 2001 on the file of the Motor Accident Claims Tribunal, Additional Sub-Court, Cuddalore. They filed the present appeal questioning their liability to pay compensation awarded by the tribunal. The first respondent/claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 23.09.2000, at about 09.15 am, when he was riding his bicycle along Palayam main road.

2. According to the first respondent/claimant, a speeding Ambassador car bearing Registration No. TN 04 5617 hit him, as a result of which, he sustained grievous injuries all over his body. His further contention is that the rash and negligent driving of the driver of the Ambassador car bearing Registration No. TN 04 5617 was the cause of the accident and that since the said car was insured with the present appellant, the Oriental Insurance Company Limited, both of them are jointly and severally liable to pay compensate to him.

3. The owner of the Ambassador car bearing Registration No. TN 04 5617 as well as the present appellant contested the claim petition. The learned Additional Subordinate Judge, Cuddalore after analysing the evidence on record, awarded compensation of Rs.67,412/- together with interest 9% per annum to the claimant.

4. Aggrieved over the orders passed by the tribunal, the appellant, the Oriental Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.M.J.Vijayaraghavan, learned counsel appearing for the appellant would contend that since the driver of the car bearing Registration No. TN 04 5617 did not have any valid endorsement in his licence to drive a tourist taxi, the Insurance Company is not liable to pay compensation to the first respondent/claimant.

6. Per contra, Mr.D.S.Thirumavalavan, learned counsel appearing for the first respondent/claimant would contend that the tribunal has considered these aspects in its Judgment dated 28.01.2004, and has clearly held that since the offending vehicle in the instant case is a 'light motor vehicle', no endorsement is necessary in the driving licence of the driver of the Ambassador car. To substantiate his contention, he relied on the decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017(2) TN MAC 145 (SC).

7. A perusal of the records shows that the offending vehicle is an Ambassador car, which is a 'light motor vehicle' and as rightly pointed out by the learned counsel appearing for the first respondent/claimant that no endorsement is necessary for driving the said vehicle even though, it was a tourist taxi. In the decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017(2) TN MAC 145 (SC), it has been held thus:

"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 Vehicles

includes Transport Vehicles also, a holder of Light Motor Vehicle Licence can drive all the vehicles of th class including Transport Vehicles. It was pre-amended position as well the post-amended position of form 4 as amended on 28.03.2001. 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 Vehicle' 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) & 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 & 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) & Section 2(41) [sic 2(41)] of th 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."

8. In view of the same, the appeal fails and is dismissed.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is closed.

(ii) The order passed by the tribunal is upheld.

(iii) The present appellant/Oriental Insurance Company Limited is directed to pay the entire compensation awarded by the tribunal (less the amount already deposited by them) to the credit of M.C.O.P.No. 262 of 2001 on the file of the Motor Accident Claims Tribunal, (Additional Sub-Court), Cuddalore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant, the first respondent/claimant is at liberty to withdraw the same, after following due process of law.

mbi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
II Additional Sub-Court,
Cuddalore.

C.M.A.No.3544 of 2004 and
C.M.P.No.19200 of 2004

Kak(22/05/2019)