IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.2578, 2579 and 2580 of 2009

Branch Manager,
Iffco-Tokio General Insurance Co. Ltd.,
Customer Service Centre,
KSCMF Building, 3rd Block, 3rd Floor,
No.8, Tunninatham Road,
Bangalore - 52. ...Appellant in all C.M.As

.Vs.

Raja @ Selambu Udayar ... Respondent in C.M.A.No.2578 of 2009

Nandakumar ... Respondent in C.M.A.No.2579 of 2009

R.Sellamuthu ... Respondent in C.M.A.No.2580 of 2009

Alagesan ... 2nd Respondent in all C.M.As

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 01.04.2009 passed in MCOP.Nos.192, 193 & 194 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Rasipuram.

In all C.M.As :

Appellant : Mr.S.Dineshkumar

R1 : Mr.Ma.Pa.Thangavel

R2 : No appearance

C O M M O N J U D G M E N T

The appellant, Branch Manager, Iffco-Tokio General Insurance Company Limited is the second respondent in MCOP.Nos.192, 193 & 194 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Rasipuram. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident on 18.06.2006.

2. The parties are referred to as per their ranking in the claim petitions and at appropriate places, their ranks in the present appeals would also be indicated.

3. The case of the claimants in nutshell is as follows:

On 18.06.2006, the claimants were travelling in a motorcycle bearing Registration No. TN 28 S 7812 along Mettala – Ulliyapuram Main Road and at about 02.00 p.m, a speeding mini auto bearing Registration No. TN 28 H 7656, hit them, as a result whereof, the claimants sustained injuries.

4. According to the claimants, the rash and negligent driving of the driver of the mini auto belonging to the first respondent, was the cause of the accident and that since the said mini auto was insured with the appellant/Iffco-Tokio General Insurance Company Limited, owner and insurer of the mini auto are jointly and severally liable to pay a compensation.

5. The owner of the mini auto remained absent before the Tribunal and therefore he was set exparte. The appellant / Iffco-Tokio General Insurance Company Limited contested the claim petitions on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Rasipuram while awarding compensation of Rs.1,33,700/-, Rs.44,000/- and Rs.1,40,500/- to the claimants in MCOP.Nos.192, 193 & 194 of 2008 respectively together with interest at the rate of 7.5% per annum, directed the owner and insurer namely the Iffco-Tokio General Insurance Company to pay the amount jointly and severally. Questioning their liability to pay compensation to the claimants, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.S.Dineshkumar, learned counsel appearing for the appellant and Mr.Ma.Pa.Thangavel, learned counsel appearing for the first respondent in all the appeals. No appearance on behalf of the second respondent.

7. The main contention of the learned counsel appearing for the appellant is that since the driver of the mini auto was not having a specific endorsement to drive a commercial vehicle in his driving licence there is a violation of condition of policy and hence the Tribunal was wrong in mulcting liability on the Insurance Company.

8. In the instant case, the driver of the mini auto had a driving license to drive Light Motor Vehicles. In the decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (4) SCC 663 it is held 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 54 of 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 roadroller, "unlanden weight" of which does not exceed 7500 kg and holder of a driving license 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 roadroller, 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.

(iii) The effect of the amendment made by virtue of Act 54 of 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) 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".

Therefore it is clear from the above decision, that if a driver has a driving license to drive Light Motor Vehicles, he can also drive transport vehicle of such class without any endorsement to that effect in the driving license. In the facts and circumstances, the Insurance Company cannot avoid its liability merely because the driver of the mini auto did not have an endorsement in his driving license to drive a commercial vehicle as laid down in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (4) SCC 663 (cited supra).

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Rasipuram.

Copy To

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

+1cc to Mr.K.Mohan, Advocate, S.R.No. 95492
+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No. 95072

C.M.A.Nos.2578, 2579 and 2580 of 2009

SPD(CO)
GN(24/11/2020)