



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.167 of 2011

Sadasivam

...Appellant

vs.

1. Jayaraman

2. National Insurance Co. Ltd.,
Branch Office, 37/2, Salem main road,
Mettur Dam, Salem District.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in MCOP.No.96 of 2006, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Fast Track Court No.I, Salem dated 09.03.2010 for fixation of liability and for enhancement of compensation.

For Appellant : Mr.C.Kulandhaivel

For Respondents : Mr.J.Chandran for R2
R1 - Tapal returned

JUDGMENT

The appellant is the claimant in MCOP.No.96 of 2006, on the file of the learned Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court No.I, Salem. He has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,50,000/- for the injuries sustained by him in a road accident that took place on 05.04.2005.

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

(i) The appellant/claimant was aged about 45 years on the date of the accident. He was doing coir twisting work and was earning a sum of Rs.5,000/- per month.

(ii) On 05.04.2005, at about 07.00 am, the



appellant/claimant was walking with his minor son Ramachandran on the left side of the Annadanapatty side, near Bharathi Hospital. At that time, an auto bearing Registration No. TN 31 C 6358 came from back side of the appellant/claimant, which was driven by its driver in a rash and negligent manner without following any traffic rules and regulations, with great speed, without blowing horn. All of a sudden, the said auto hit behind the appellant/claimant and his minor son. Due to the accident, the appellant/claimant and his minor son were thrown out and sustained serious injuries. The appellant/claimant sustained injuries on forehead, right frontal area, right shoulder, right elbow and right hand.

(iii) Immediately after the accident, the appellant/claimant was admitted in GMKMMC Hospital, Salem. The appellant/claimant was treated as an inpatient in that Hospital for more than a week. The appellant/claimant has undergone skin crafting, blood infusion and other related treatments. Many x-rays were taken. Lot of medicine was given. Because of the injuries, the appellant/claimant was permanently disabled and he is in need of help of others for his day-to-day affairs.

(iv) According to the appellant/claimant, the rash and negligent driving of the driver of the auto bearing Registration No. TN 31 C 6358 was the cause of the accident and that since, the said auto was insured with the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. The owner of the said auto was absent before the Tribunal and therefore, he was set ex-parte. The National Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and exhibits A1 to A8 were marked. On the side of the Insurance Company RW1 and RW2 were examined and exhibits B1 to B3 were marked.

4. The learned Additional District Judge after analysing the oral and documentary evidences available on record, exonerated the Insurance Company from its liability to pay compensation to the appellant/claimant on the ground that the owner of the said auto does not possess necessary badge or endorsement in his driving licence to drive the goods vehicle. The learned Judge awarded a compensation of Rs.25,460/- together with interest at the rate of 7.5% per annum and directed the owner of the said auto to pay the same to the appellant/claimant. Aggrieved against such a finding given by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



5. The factum of the accident, manner of the accident, rash and negligence fixed on the part of the driver of the first respondent's vehicle are not disputed by both the parties. The quantum of compensation assessed by the Tribunal for the injuries sustained by the appellant/ claimant was based upon the accident register copy (Ex.A2) and medical bill (Ex.A7) and the same is just and reasonable and hence, the quantum of compensation awarded by the Tribunal is hereby confirmed.

6. Before the Tribunal, on the point of liability, the Insurance Company has examined Mariappan (RW1), an assistant from the Regional Transport Office and through him driving licence of Premkumar (Ex.B1), the driver of the said auto was marked to show that he possessed only licence to drive 'light motor vehicle' and did not possess necessary badge or endorsement to driver the said auto.

7. Based upon the terms and conditions of the Insurance Policy (Ex.B2) and original RTO extract (Ex.B3) coupled with the evidence of RW2, the Tribunal appears to have held that, on the date of the accident, the driver of the auto bearing Registration No. TN 31 C 6358 does not posses necessary badge or endorsement on his driving licence to drive the auto bearing Registration No. TN 31 C 6358.

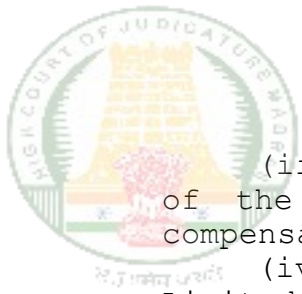
8. The possession of endorsement or badge in driving licence is no longer res integra, in view of the Judgment pronounced by the Apex Court, in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been held that once a licence is issued 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.

9. Admittedly, the auto in the present case is below the prescribed weight and accordingly, in view of the above decision, this Court holds that there is no want of badge for the 'light motor vehicle' licence. Therefore, it does not amount to breach of policy condition. Accordingly, the finding rendered by the court below is hereby set aside and the owner and the insurer of the auto are jointly and severally held liable to pay compensation to the appellant/claimant.

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is upheld.



(iii) The order passed by the Tribunal directing the owner of the auto bearing Registration No. TN 31 C 6358 to pay compensation to the appellant/claimant is set aside.

(iv) The second respondent/National Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.25,460/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 96 of 2006, dated 09.03.2010, on the file of the learned Additional District Judge, Fast Track Court No.I, Motor Accidents Claims Tribunal, Salem within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount, after following due process of law.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Additional District Judge,
The Fast Track Court No. I,
Salem.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.35619

+1cc to Mr.C.Kulandhaivel, Advocate, S.R.No.35157

CMA.No.167 of 2011

VSNI (CO)
CS/01/10/2019