

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2213 of 2013

and

M.P.No.1 of 2013

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai. ...Appellant/4th Respondent

..Vs..

1.S.Deivanai

2.S.Sivakami

3.S.Tamilselvi

4.S.Sumithra

5.S.Uma Maheswari

6.Minor S.Shobana Priya

7.Minor S.Vijayashanthi

(Minors represented by their
next friend / guardian /
mother S.Deivanai)

8.M.Yesudass

9.K.Subramaniam

10.M.Kowsalya

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 21.12.2012 made in M.C.O.P.No. 850 of 2010 on the file of the Motor Accident Claims Tribunal / First Additional District cum Sessions Judge, Tirupur.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.V.P.Sengottuvel for R1 to R7
No appearance for R8 to R10

JUDGMENT

The appellant, the Royal Sundaram Alliance Insurance Co. Ltd., is the fourth respondent in M.C.O.P.No. 850 of 2010 on the file of the Motor Accident Claims Tribunal / First Additional District cum Sessions Judge, Tirupur. 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.20,00,000/- for the death of one Somasundaram, husband of the claimants 1 and 2, father of the claimants 3 to 7 in a road accident on 03.02.2009.

2. According to the claimants, the deceased Somasundaram was riding his motorcycle bearing Registration No.TN-38-Z-0952 along Avinasi Mangalam Road, near Kasikoundenpudur Ration shop and at about 22.30 hours, a speeding Van, bearing Registration No.TN-39-AF-5427 hit the deceased, as a result of which, the deceased Somasundaram sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the Van bearing Registration No.TN-39-AF-5427 was the cause of the accident and that since the said Van was insured with the present appellant, the Royal Sundaram Alliance Insurance Co. Ltd., both of them are jointly and severally liable to pay compensation.

3. The owner of the Van bearing Registration No.TN-39-AF-5427 as well as the present appellant contested the claim petition. The learned First Additional District cum Sessions Judge, Tirupur after analysing the evidence on record, awarded compensation of Rs.7,89,00/- together with interest 7.5% per annum to the claimant.

4. Aggrieved over the orders passed by the Tribunal, the appellant, Royal Sundaram Alliance Insurance Co. Ltd., has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that since the driver of the Van bearing Registration No.TN-39-AF-5427 though had a licence to drive a light motor vehicle did not have any endorsement in his licence to drive a commercial vehicle, and therefore, the Insurance Company is not liable to pay compensation to the claimants.

6. Per contra, Mr.V.P.Sengottuvel, learned counsel appearing for the respondents 1 to 7 / Claimants, would contend that since the Van is a 'light motor vehicle', no separate endorsement is necessary in the driving licence.

7. A perusal of the records shows that the offending vehicle is a Van, which is a 'light motor vehicle' and as rightly pointed out by the learned counsel appearing for the claimants no endorsement is necessary for driving the said vehicle even though, it was a tourist Van. 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 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."

In view of the same, the appeal fails and it is liable to be dismissed.

8. 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/Royal Sundaram Alliance Insurance Co. Ltd., 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. 850 of 2010 on the file of the Motor Accident Claims Tribunal / First Additional District cum Sessions Judge, Tirupur, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 7 / claimants are at liberty to withdraw the same, as per the orders passed by the Tribunal after following due process of

law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

ssn

To

The Motor Accident Claims Tribunal,
First Additional District cum Sessions Judge,
Tirupur.

Copy To
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.94533

+1cc to Mr.V.P.Sengottuvel, Advocate SR.No.94979

C.M.A.No.2213 of 2013
and
M.P.No.1 of 2013

VG II (CO)
GMY (19/08/2020)