IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3293 of 2012

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
Divisional Office,
T.K.M.Complex, Katpadi Road,
Vellore. ...Appellant/2nd respondent

.Vs.

1.Tmt.Muniammal ... 1st Respondent/Claimant
2.Thiru. T.M.Abdul Basheer ... 2nd Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 12.11.2011 passed in MCOP.No.242 of 2010 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court of Tirupattur at Vellore.

For Appellant : Mr.J.Chandran

For Respondents : Mr.PA.Sudesh Kumar for R1
No appearance for R2

JUDGMENT

The appellant the United India Insurance Company Limited is the second respondent in MCOP.No.242 of 2010 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court Tirupattur at Vellore. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking a compensation of Rs.50,000/- for the injuries sustained by her in a road accident on 08.01.2007.

2. The case of the claimant is that on 08.01.2007, she was travelling in a Minidor Auto bearing Registration No. TN 23 AW 5726 belonging to the first respondent and insured with the second respondent, along with her goods on Singarapettai – Tirupattur Road. When the Minidor Auto was nearing Perampattu, the driver of the Minidor Auto drove the vehicle rashly and negligently and applied brakes, as a result of which, the

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Minidor Auto toppled and the claimant sustained injuries all over her body.

3. According to the claimant, the rash and negligent driving of the driver of the Minidor Auto bearing Registration No. TN 23 AW 5726, belonging to the first respondent, was the cause of the accident and that since the said Minidor Auto was insured with the present appellant / United India Insurance Company Limited, both of them are jointly and severally liable to pay a compensation.

4. The Tribunal while awarding a compensation of Rs.12,000/- together with interest at the rate of 7.5% per annum to the claimant also held that the Insurance Company should pay the Award amount in the first instance and then recover the same from the owner of the vehicle. This conclusion of the Tribunal is mainly based on the fact that the driver of the minidor auto, though had a driving license to drive a Light Motor Vehicle did not have a specific endorsement on his driving license to drive a commercial vehicle. Questioning the liability to pay compensation to the claimant, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. In the instant case, the driver of the Minidor Auto had a driving license to drive a Light Motor Vehicle. 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

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> 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 Vehicle he can also drive transport vehicle of such class without any endorsement to that effect in the driving license. Therefore, the order passed by the Tribunal directing the Insurance Company to pay the Award amount in the first instance and then recover the same from the owner of the vehicle is liable to be set aside.

6. It is pertinent to point out that the owner of the vehicle did not file any appeal and the Insurance Company alone has filed an appeal, questioning their liability to pay compensation. The Insurance Company cannot avoid its liability merely because the driver of the Minidor Auto did not have an endorsement in his driving license to drive a commercial vehicle as per decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (4) SCC 663 (cited supra). Hence the appeal is liable to be dismissed. However,

the order passed by the Tribunal directing the Insurance Company to pay the claim amount in the first instance and then recover the same from the owner of the vehicle is liable to be set aside.

7. In the result,

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

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

(iii) The present appellant, United India Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.12,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum, to the credit of MCOP.No.242 of 2010 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court of Tirupattur at Vellore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

(v) The order of "Pay and Recovery" passed by the Tribunal is set aside.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court of Tirupattur
Vellore.

+1cc to Mr.J.Chandran, Advocate SR.89028
+1cc to MR.Pa.Sudesh kumar, Advocate SR.88535

CMA.No.3293 of 2012

VD(CO)
CB(06/03/2020)

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