

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.796 of 2012

and

M.P.No.1 of 2012

The Divisional Manager,
New India Assurance Company Ltd.,
Officers Line, Vellore ..Appellant /2nd Respondent

Vs.

1.Selvamani ..1st Respondent/ Petitioner
2.Nandakumar
3.V.P.Murali
4.The Divisional Manager,
Oriental Insurance Co.Ltd.,
Arcot Road,
Jambubala Complex,
Vellore ..Respondents 2 to 4/
/Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.03.2011 made in M.C.O.P.No.264 of 2008 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Vellore.

For Appellant : Mr.K.Vinod
For R1 &R3 :No appearance
For R2 :Mr.G.Saravanan
For R4 :Mr.M.Krishnamoorthy

JUDGMENT

The first respondent herein is a insurer has preferred M.C.O.P.No.264 of 2008 and before the Tribunal, owner and the Insurance Company of the Tata ACE was arrayed as R1 and R2. While, the owner and the Insurance Company of the Auto Rickshaw in which, the injured was travelling ar arrayed as R3 and R4.

2. Based upon the oral and documentary evidence adduced before the Tribunal, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligence on the part of both the drivers and accordingly, fixed at 50:50 each. The Insurance Company of the Tata ACE vehicle namely the second respondent before the Tribunal, the appellant herein has specifically pleaded that at the time of the accident, the driver of the TATA ACE vehicle does not possess necessary badge to drive the vehicle and hence, on the ground of the absence of badge and the driving licence, they preferred this Civil Miscellaneous Appeal .

3. Heard both sides and perused the materials available on record.

4. It is represented that two other insurer in the very same accident has also filed C.R.Ps and the same were disposed of in the year 2007 wherein pay and recovery was ordered in favour of the insurer of the TATA ACE. However, in view of the decision rendered in (2017) 14 Supreme Court Cases 663 in Mukund Dewangan V.Oriental Insurance Company Limited, the requirement of badge for driving Light Motor Vehicle has been considered and held that it is not necessary to obtain a badge if he possess the LMV driving licence.

5. Admittedly, the driver of the vehicle of the first respondent TATA ACE has possessed LMV vehicle. However, on factual background based upon the law prevailing at that point of time, it was held that the Insurance Company has been given liberty to pay and recovery. Now, taking note of the change of proposition of law has laid down of the latest judgment of the Apex Court, this Court finds a badge endorsement on the LMV driving licence of the driver of the TATA ACE vehicle being not necessary, I do not find any ground to interfere with and after hearing the respective counsel and also perusing the records the quantum of compensation was awarded by the insurance is found to be reasonable.

6. In view of this matter, this Civil Miscellaneous Appeal is dismissed. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimants to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

nvi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Court of Chief Judicial Magistrate),
Vellore.

+1cc to Mr.K.Vinod, Advocate, SR.No.24563

+1cc to Mr.M.Krishnamoorthy, Advocate, SR.No.24805

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Kak(11/07/2019)



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