

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.873 & 874 of 2018
and
C.M.P.Nos.7238 & 7239 of 2018

Bharti AXA General Insurance Co.Ltd.,
No.162, Metro Plaza, 2nd Floor,
Anna Salai, Mount Road,
Chennai 600 002.

... Appellant in both
CMAs/

2nd Respondent in the Tribunal
Vs.

1.Jaya
2.Shankar
3.Prakasam @ Govindasamy
4.Kumudha
5.S.Veeramani

...Respondents in CMA.No.873 of 2018/
petitioners 1 to 4 and 1st respondent in
Tribunal below

1.M. Neelaveni ...Respondents in CMA.No.874 of 2018/
2.S.Veeramani petitioner
and 1st respondent in Tribunal below

Common Prayer: This Civil Miscellaneous Appeal is filed
under Section 173 of Motor Vehicles Act, 1988, against the
award and decree dated 20.09.2017 in MCOP.Nos.670 & 248 of
2013 on the file of the Motor Accident Claims Tribunal,
Special Subordinate Judge, Tirupattur.

For Appellant : Mr.S.Arunkumar in both the CMAs

For Respondents : Mr.PA.Sudesh Kumar
for R1 to R4 in CMA.No.873/2018
R1 and R2- Not ready notice in
CMA.No.874/2018

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

These Civil Miscellaneous Appeals have been preferred
against the judgment and decree dated 20.09.2017 in
MCOP.Nos.670 & 248 of 2013 on the file of the Motor Accident

Claims Tribunal, Special Subordinate Judge, Tirupattur.

2. The brief facts of the case in CMA.No.873 of 2018 is as follows:

1-a) On 15.05.2012 at 03.00 p.m., when the deceased was driving his TVS XL motorcycle bearing Reg.No.TN-23-U-6723, in Patchur to Kotthur NH main road, near Samagoundanur bus stop, the driver of the TATA ACE four wheeler bearing Regn.No. TN 23 BW 6555 drove the vehicle in a rash and negligent manner, dashed against the vehicle of the deceased, due to which, the motor cycle was damaged and the deceased sustained grievous injuries in head and fracture over both the legs and injuries all over the body. Immediately, he was admitted in the Government Hospital, Vaniyambadi, where he was declared dead. Subsequently, a case was registered in Cr.No.199 of 2011 under Sections 279 & 304(A) of IPC in Natrampalli Police Station. The claimants of the deceased claimed that the TATA ACE was driven by its owner-cum-driver viz., S. Veeramani and the vehicle is insured with the appellant/Insurance Company and hence the Insurance Company is liable to pay Rs.15,00,000/- as compensation to them.

2-b) The Insurance Company in the counter statement has denied the age, income and occupation of the deceased and the petitioners are put to strict proof of the same. The Insurance Company denies the fact that the death occurred due to the injuries sustained in the accident. They denied the relationship of the petitioners to the deceased and their entitlement to any compensation. They contend that the petitioners are put to strict proof of the occurrence of the accident and further submits that the accident occurred only due to the negligence of the deceased. Without proper driving license, the deceased drove the motorcycle and suddenly came across the vehicle and caused this accident. Hence, they plead contributory negligence. The Insurance Company contends that to drive the TATA ACE vehicle, the first respondent must have obtained Badge, however, the said person does not obtain any badge which is violation of policy condition and hence they are not liable to pay compensation.

3. The brief facts of the case in CMA.No.874 of 2018 is as follows:

3(a) On 15.05.2012 at 03.00 p.m., when the petitioner was travelling in TATA ACE van bearing Regn.No.TN 23 BW 6555 in Patchur to Kotthur Road, near Samagoundanur bus stop, due to rash and negligent driving, the driver of the vehicle viz., Veeramani, hit against the TVS 50 bearing Regn.No.TN-23-U-6723, due to which, the petitioner sustained grievous injuries all over the body. Immediately, she was

admitted in the Hospital, for medical treatment. Subsequently, a case was registered in Cr.No.199 of 2011 under Sections 279 & 337 and 338 of IPC in Natrampalli Police Station. The claimant/Neelaveni claimed that the TATA ACE was driven by the first respondent which is insured with the Insurance Company and hence, they are liable to pay Rs.50,000/- as compensation to them.

3-b) The Insurance Company denies the averments made by the petitioner and states that the accident happens due to the negligence of the rider of the motorcycle who had suddenly cross the road without noticing the TATA ACE vehicle. Moreover, the petitioner travelled in the said TATA ACE is an unauthorised passenger. Hence, the respondent need not indemnify the first respondent who is the owner-cum-driver of the TATA ACE vehicle. He has not possess valid driving license at the time of accident. The said person is only possessing LLR to drive non-transport vehicle and hence, he violated the policy condition by driving the said vehicle.

4.The Tribunal after analyzing the evidence and documents placed before it, has awarded a sum of Rs.10,17,025/- as compensation to the claimants of the deceased in CMA.No.873 of 2018 and Rs.25,000/- to the petitioner in CMA.No.874 of 2018 respectively and directed the second respondent/Insurance Company to pay the said amount with interest at 7.5% p.a., from the date of petition till the date of deposit. Aggrieved against the compensation and liability, the appellant/Insurance Company, who is the second respondent therein has preferred this appeal.

5. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents and perused the materials available on record in both the appeals.

6. On perusal of records, it is seen that the Tribunal observed that the accident occurred only due to the rash and negligent driving on the part of the driver of the TATA ACE vehicle, viz., S. Veeramani/owner. The second respondent/Insurance Company, being insurer of the said vehicle, is made liable to pay compensation to the tune of Rs. Rs.10,17,025/- and Rs.25000/- in CMA.Nos.873/2018 and 874/2018 respectively.

7. The appellant/Insurance Company contended that the vehicle involved in the accident is a commercial vehicle which cannot be used for learning without proper permission and instructor. In such a case, the owner and the driver are bound to use the vehicle only in accordance with the

provisions of Sections 3 and 5 of the Motor Vehicles Act. In spite of the evidence placed before the Tribunal, i.e., RW1 and RW2 and Exs.R1 and R5, the Tribunal has failed to appreciate the same and has given a finding that the driver of TATA ACE has caused the accident and fixed the liability on the Insurance Company, which is not a reasonable one. In the present claim petition, the driver is yet to qualify for valid driving license and the same is absent in this case. Further, it is contended that cases relied upon by the Tribunal for fixing the liability on the Insurance Company is not correct.

8. It is submitted by the claimants of the deceased in CMA.No.873 of 2018 that the deceased was the only earning person who was very hale and healthy and by doing cleaner work and agriculture, he was earning money and hence, they claimed a sum of Rs.15,00,000/- as compensation.

9. On the other hand, the Insurance Company contended that due to the negligence of the deceased who crossed the road suddenly is solely responsible for causing the accident and further he did not possess valid driving license except LLR at the time of accident. It is seen that RW1 and RW2 were examined and Exs.R4 and R5 were marked. Ex.P6 is the Learner's License of the first respondent which clearly proves the fact that at the time of accident, the first respondent is provided with only LLR to drive light motor vehicle. Whereas the Tribunal by observing the Rule 3 of Motor Vehicles Act, 1988(59 of 1988) Sections 149(2), 2 (10) & 2(19)-CENTRAL MOTOR VEHICLE RULES, 1989, which states that a person holding learners license is duly a license to drive a vehicle and the same is also valid, has rejected the contention of the Insurance Company.

10. In CMA.No.873 of 2018, the contention placed before the Tribunal by the Insurance Company is that the driver of the TATA ACE is having only learner's license to drive light motor vehicle. To substantiate the said contention, the RTO officer was examined and Ex.R5/Insurance Policy was marked. The letter of the RTO was marked as Ex.P6/learners license of the first respondent which clearly proves the fact that on the date of accident, the first respondent/driver of the TATA ACE was provided only with LLR to drive the light motor non-transport vehicle.

11. In CMA.No.874 of 2018, the appellant herein contended before the Tribunal that he is not liable to indemnify the first respondent who has violated the policy condition since the claimant/injured person travelled in the said vehicle as a gratuitous passenger and further, the said

first respondent's vehicle had no driving license to drive the TATA ACE vehicle. Further, the injured person travelled in the back side of the vehicle. Ex.P3 is the policy that is placed before the Tribunal, which says that the vehicle bearing Regn.No.TN23 B W 6555 is the goods vehicle and the first respondent has paid premium under Indian Motor Tariff 16.

"IMT 16. Personal Accident to unnamed passengers other than insured and the Paid Driver and Cleaner {For vehicles rated as Private cars and Motorized two wheelers (not for hire or reward) with or without side car) } . "

On careful perusal of IMT 16, it is quiet evident that the insured has paid premium to cover the additional risk of unnamed passenger. The said fact evident the fact that the second respondent entered into the contract to cover the passenger not exceeding two in the vehicle.

12. The appellant/Insurance Company in both the appeals have contended before the Tribunal that the driver of the said vehicle is having only LRR to drive the light motor vehicle and he did not possess effective valid driving license to drive the transport vehicle and has not substantiate the same. The officer from RTO was examined as RW2 and documents Exs.R4 and R5 were marked. Ex.R5 revealed the fact that on the date of accident, the driver/first respondent was provided with LRR for driving light motor vehicle only. In that aspect, the appellant refers Section 10 of the Motor Vehicles Act which requires a driver to hold a license with respect to clause of vehicles and not with respect to type of vehicles. Section 10 of the Motor Vehicles Act is extracted hereunder:

"Section 10 in The Motor Vehicles Act, 1988
10. Form and contents of licences to drive.—
(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—
(a) motor cycle without gear;
(b) motor cycle with gear;
(c) invalid carriage;
(d) light motor vehicle; 1[(e) transport

vehicle;] 1[(e) transport vehicle;]"

- (i) road-roller;
- (j) motor vehicle of a specified description."

In one class of vehicle, 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 vehicle also, a holder of light motor vehicle license can drive all the vehicles of the class including transport vehicles.

13. In this aspect, the Tribunal has observed as follows:

"When that being the case as per the Judgment of the Hon'ble Court the learners license is deemed to be an effective license then the claim of the 2nd respondent that the 1st respondent have no valid license to drive the vehicle cannot be accepted by the tribunal and the same is rejected by this Tribunal".

The Tribunal has relied upon paragraph No.46 of the judgment of the Hon'ble Supreme Court, in Mukund Dewangan Vs. Oriental Insurance Company Limited, wherein it is held as follows:

" 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 vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. 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 vehicles' 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 section 2(15) and 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 and 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) 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."

14. It is seen that the qualification of the said driver has to be assessed by the authority concerned and proper license will be issued to him for driving the said vehicle in respect of the evidence and documents placed before the Tribunal. The findings of the Tribunal based on those judgments are not relevant to this case as stated by the appellant. In the above cited case, the driver of the said vehicle is possessing effective driving license to drive light motor vehicle but there is no endorsement that is badge is required to drive the transport vehicle. But in the present case, the driver of the TATA ACE was having learner's license only to drive a light motor vehicle, hence, this judgment is not applicable to the facts and circumstances of the case.

15. In respect of the petitioner/injured in CMA.No.874 of 2018, the appellant has contended before the Tribunal that the petitioner was a passenger who travelled on the back side of the vehicle and she herself claimed that she travelled as a passenger. She ought to have travelled in the cabin of the vehicle, but the said person travelled on the back side of the vehicle and hence, the Insurance Company is not liable to pay compensation. The Tribunal elaborately discussed IMT 37 A and also Rule 2, 35 of the Motor Vehicles Rules, if 6 persons are permitted to travel in a goods vehicle, then it cannot be expected that all the six persons can sit in the cabin. So, the Tribunal has discussed Rule-2, 38 as well as Section Rule 2-39 and for the terms in Section 147 of the Act, there cannot be any

restriction for the owner of the goods or its representative to travel, along with goods. Hence the observation made by the Tribunal whether the injured person travelled in the cabin or not is not taken into consideration. Hence the claim of the injured person was considered by the Tribunal but regarding liability, the appellant/Insurance Company contended that as per the evidence of RW2, the driver of the said vehicle did not possess effective driving license to drive the said vehicle because he was possessing only the LLR to drive the light motor vehicle. Hence from the evidence as well as documents, it is observed that the respondent is owner-cum-driver of the TATA ACE vehicle viz., Veeramani and he was not possessing valid driving license at the time of accident. He was driving the said vehicle only with LLR to drive non-transport vehicle and thereby he has violated the policy condition. Hence, the observation has been made by the Tribunal by relying upon the case in Mukund Dewangan Vs. Oriental Insurance Company Limited.

16. In the present case, the driver is possessing LLR license to drive the non-transport vehicle. That is why, the appellant referred the contents of Section 3 in The Motor Vehicles Act, 1988 which is extracted as under:

"Section 3 in The Motor Vehicles Act, 1988

3. Necessity for driving licence.-

(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do."

17. The holder of learner's license cannot drive the transport vehicle whereas the first respondent is the learner of non-transport vehicle at the time of accident, but he drove the transport vehicle. Hence, in view of the

argument advanced by the appellant/Insurance Company and in view of the evidences as well as the documents placed by the appellant before the Tribunal, it is clear that the driver of the said TATA ACE vehicle did not possess any valid and effective driving license to drive the transport vehicle at the time of the accident.

18. The case relied upon by the Tribunal is not applicable to this case because in this case, the driver is yet to qualify for any valid driving license and he was possessing only LRR for driving non-transport vehicle. Hence, it is at the risk of owner-cum-driver, the vehicle was operated and hence Insurance company is not liable to pay the compensation. Hence, it would be proper to direct the Insurance Company to pay compensation to the claimants and permit them to recover the same from the owner of the vehicle, as he violated the policy conditions by allowing the driver of his TATA ACE vehicle, who has not possess valid license.

19. In view of the above discussion, the appellant/Insurance Company is directed to pay Rs.10,17,025/- as compensation to the claimants in CMA.No.873 of 2018 and Rs.25,000/- to the claimant in CMA.No.874 of 2018, at the first instance and granted liberty to recover the compensation from the owner of the vehicle/first respondent by way of separate proceedings.

20. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gv

To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Tirupattur.

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

+1cc to Mr.S.Arunkumar , Advocate SR.No.

+2ccs to Mr.Pa.Sudesh , Advocate SR.No. 68837,68838

C.M.A.Nos.873 & 874 of 2018
and

C.M.P.Nos.7238 & 7239 of 2018

A.SK(31/10/2019)