

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.381 of 2014

and

M.P.No.1 of 2014

Manager,
M/s. Shriram General Insurance Company Limited,
E-8, EPIP, RHCO, Sipapura,
Jaipur - 302 022,
Rajasthan State. ... Appellant/2nd Respondent

Vs.

1.N.Mamallan ...1st Respondent/Petitioner

2.Dilli Raja ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.07.2013 passed in M.C.O.P.No.174 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur.

For Appellant : Mr.J.Michael Visuvasam
For R1 : Mr.V.Perumal
For R2 : No appearance

J U D G M E N T

The appellant / Shriram General Insurance Company Limited is the second respondent in M.C.O.P.No.174 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 26.05.2010.

2. The case of the claimant is that on 26.05.2010, he was a pillion rider in a motorcycle bearing Registration No. TN 20 H 3828 on Kadambathur - Perambakkam high way and at about 06.00 P.M., near Perambakkam church, a speeding Auto bearing Registration No. TN 73 Y 0493 hit the motorcycle, as a result of which, he fell down and sustained injuries. According to the claimant, the rash and negligent driving of the driver of the auto rickshaw belonging to the first respondent was the cause of the accident and that since the said auto rickshaw was insured with the present appellant / Shriram General

Insurance Company Limited, the owner and the insurer of the Auto are jointly and severally liable to pay compensation.

3. The second respondent / owner of the Auto remained absent before the Tribunal and therefore he was set ex-parte. The appellant / Shriram General Insurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Chief Judicial Magistrate, Thiruvallur / Motor Accidents Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,75,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further 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, since the driver of the auto rickshaw had no endorsement to drive a transport vehicle on the date of accident. Questioning the quantum of compensation and the liability to pay the award amount, the appellant / Shriram General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.J.Michael Visuvasam, learned counsel for the appellant and Mr.V.Perumal, learned counsel for the first respondent.

5. In the decision in Mukund Dewangan Vs. Oriental Insurance Company Limited reported in (2017) 14 SCC 663, the Hon'ble Supreme Court has held that a person holding licence to drive a light motor vehicle registered for private use, can drive a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, without an endorsement in the licence, as the same is not contemplated under the provisions of the Motor Vehicles Act. It is further held that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward and that when a driver is authorised to drive a light motor vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for the purpose of hire or reward or for carrying goods in the said vehicle. In page 671 of the decision 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, "unladen 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 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."

In the instant case, the driver of the auto rickshaw though had a valid driving licence to drive a light motor vehicle did not have a specific endorsement in his driving licence to drive a commercial Auto. Applying the principles laid down in Mukund Dewangan Vs. Oriental Insurance Company Limited, cited supra, the order passed by the Tribunal

directing the appellant / Shriram General Insurance Company Limited 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. As far as quantum of compensation is concerned, the Tribunal after considering the nature of injuries sustained by the claimant has awarded a just compensation of Rs.1,75,000/- and it cannot be said to be on the higher side.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

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

(iii) The present appellant, Shriram General Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.1,75,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum, to the credit of M.C.O.P.No.174 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent / 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(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To
The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Thiruvallur.

Copy to:
The Section Officer,
V.R.Section,High Court,
Madras.

+1 cc to Mr.J.Michael Visuvasam, Advocate,sr.93665

+1 cc to Mr.V.Perumal, Advocate,SR.93540.

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