IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4553 of 2019
and C.M.P. No. 25829 of 2019

S. Thanigaivel .. Appellant/Ist respondent

Vs.

1.The Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
No.1, Subramanyam Building, 2nd Floor,
Club House Road, Anna Salai,
Chennai 2.

2.Olive Dhansingh Jacab

3.D. Vasanth Singh

4.D. Nirmal .. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.12.2015, made in M.C.O.P.No.52 of 2015, on the file of the I Special District Court, (Motor Accident Claims Tribunal I), Tiruvallur.

For Appellant : Ms. Ramya V. Rao

For Respondents: Mr. E. Raja Durai (for R1)
for M/s. M.B. Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 16.12.2015, made in M.C.O.P.No.52 of 2015, on the file of the I Special District Court, (Motor Accident Claims Tribunal), Tiruvallur.

2.The appellant is 1st respondent in M.C.O.P.No.52 of 2015, on the file of the I Special District Court, (Motor Accident

Claims Tribunal), Tiruvallur. The respondents 2 to 4/claimants filed the above claim petition, claiming a sum of Rs.9,00,000/- as compensation for the death of one M. Dhansingh Jacab, who died the accident that took place on 01.05.2012.

3.According to the respondents 2 to 4, on the date of accident, while the deceased was walking on the extreme left side of the road, the driver of the Tata Indica Car belonging to the appellant, drove the vehicle in a rash and negligent manner and dashed against the deceased and caused the accident. The accident occurred only due to rash and negligent driving by the driver of the Car belonging to the appellant. Hence, the appellant as owner and 1st respondent as insurer of the vehicle are jointly and severally liable to pay compensation to the respondents 2 to 4.

4.The appellant remained exparte before the Tribunal.

5.The 1st respondent-Insurance Company filed counter statement and denied all the averments made by the respondents 2 to 4. The 1st respondent had contended the manner of accident and involvement of the alleged vehicle in the accident. The driver of the Car was not possessing valid and effective driving license at the time of accident. For breach and violation of the terms and condition of the insurance policy, the 1st respondent-Insurance Company is not liable to pay any compensation to the respondents 2 to 4 and prayed for dismissal of the claim petition.

6.Before the Tribunal, on behalf of the respondents 2 to 4, two eye-witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Exs.P1 to P10. The 1st respondent has examined one witness as R.W.1 and marked 2 documents as Exs.R1 & R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the Car belonging to the appellant and directed the 1st respondent-Insurance Company as insurer of the vehicle to pay a sum of Rs.8,85,000/- as compensation to the respondents 2 to 4 at the first instance and recover the same from the appellant on the ground that driver of the Car was not possessing badge endorsement at the time of accident.

8.Challenging the portion of the award ordering pay and recovery, by award dated 16.12.2015, made in M.C.O.P.No.52 of 2015, the appellant has come out with the present appeal.

9.Learned counsel appearing for the appellant contended that the Tribunal erred in ordering pay and recovery only on the ground that the driver of the Car belonging to the appellant did not possess badge endorsement in the driving license. The said reasoning for ordering pay and recovery is erroneous. In view of the various judgments of the Hon'ble Apex Court, especially, the judgment reported in 2017 (2) TN MAC 145 (SC) [Mukund Dewangan Vs. Oriental Insurance Co. Ltd.], the Tribunal ought to have fastened the entire liability on the Insurance Company.

10.Per contra, the learned counsel appearing for the 1st respondent -Insurance Company contended that the driver of the Car belonging to the appellant did not possess badge or driving license and thereby, the appellant violated the policy and permit condition by allowing the person without possessing badge to drive the transport vehicle. The Tribunal has given valid reason for ordering pay and recovery and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

12.From the materials on record, it is seen that the Tribunal has ordered pay and recovery on the ground that the driver of the appellant did not possess badge endorsement to drive a transport vehicle. The said reasoning is not correct. The driver of the vehicle possessed driving license to drive light motor vehicle, but it was used as transport vehicle. The Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 145 (SC) (referred to above), has held that once a person possess valid driving license to drive a particular class of vehicle, he is entitled to drive all commercial vehicles in that class and there is no necessity to obtain badge or endorsement. The ratio in the judgment of the Hon'ble Apex Court referred to above is squarely applicable to the facts of the present case. In view of the above, the portion of award ordering pay and recovery is set aside and the 1st respondent-Insurance Company is directed to pay the compensation as there was valid insurance for the vehicle at the time of accident.

13.In the result, the appeal is allowed, setting aside the portion of the award ordering pay and recovery. However, the amount awarded by the Tribunal at Rs.8,85,000/- along with interest and costs is confirmed. The 1st respondent-Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 52 of 2015. On such deposit, the respondents 2 to 4 /claimants are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The I Special District Judge,
(Motor Accident Claims Tribunal),
Tiruvallur.

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

+2cc to M/s.A.N.Viswanatha Rao Advocate sr106096

C.M.A.No.4553 of 2019

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