

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3179 of 2017
and C.M.P.No.19534 of 2017

M/s.Gurusamy Nadar & Sons Maligai,
Rep. By its owner of Eicher Canter Van,
G.Vijayakumar Babu
333, Rangal Gownder Street,
Coimbatore 641 001. ... Appellant / 3rd Respondent

Vs.

1. M.Alagappan
2. E.Prakash
3. M/s.Tamilnadu State Transport Corporation,
Divisional Office, Managing Director,
No.12, Ramakrishna Road,
Salem -7.
4. M/s.United India Insurance Co. Ltd.,
Branch Office No.IV, 1940 B, Trichy Road,
Ramanathapuram Post,
Coimbatore 45. ... Respondents /Petitioner ,
Respondents 1, 2 and 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.04.2017 made in M.C.O.P.No.412 of 2013 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

For Appellant : Mr.T.Balaji
for Mr.A.Thiyagarajan
For R1 : Mr.Ma.P.Thangavel
For R3 : Mr.D.Venkatachalam
For R4 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant against the award dated 10.04.2017 made in M.C.O.P.No.412 of 2013 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

2.The appellant is the 3rd respondent in M.C.O.P.No.412 of 2013 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.01.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the 2nd respondent, driver of the bus belonging to the 3rd respondent-Transport Corporation as well as the driver of the Eicher van belonging to the appellant and insured with the 4th respondent and directed the respondents 3 and 4 to pay a sum of Rs.3,72,200/- jointly and severally by equal proportion as compensation to the claimants, with liberty to the 4th respondent-Insurance Company to recover their share of the award amount deposited from the appellant.

4.Challenging the said award dated 10.04.2017 made in M.C.O.P.No.412 of 2013, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the 1st respondent failed to prove the negligence on the part of the driver of the Eicher van by examining the eye witness. The driver of the Eicher van was not impleaded as party and hence, cannot fix liability on the appellant. The Tribunal failed to consider the evidence of P.W.1 in proper perspective to fix the composite negligence on the part of the driver of the Eicher van and percentage of contributory negligence. The Tribunal without there being any proof for the age, avocation and income of the 1st respondent, fixed monthly income and awarded compensation excessively. The Tribunal erred in ordering pay and recovery on the ground that the driver of the vehicle belonging to the appellant did not possess badge or endorsement to drive the commercial vehicle and prayed for setting aside the award of the Tribunal.

6.Per contra, Mr.T.Ravichandran, the learned counsel appearing for the 4th respondent-Insurance Company contended that the Tribunal considering the evidence let in by the 4th respondent-Insurance Company, held that the driver of the Eicher van did not possess valid driving license to drive the vehicle

and directed the 4th respondent to pay compensation at the first instance and recover the same from the appellant/owner of the vehicle. There is no error in the said finding and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the respondents 1, 3 and 4 and perused the materials available on record.

8. From the materials on record, it is seen that the 1st respondent has examined P.W.2, the conductor who traveled in the bus and also an injured in the accident. He is an eye witness to the accident. He deposed that the accident occurred only due to rash and negligent driving by the driver of the Eicher van belonging to the appellant herein. The appellant has not examined any independent witness to disprove the evidence of P.W.2. The 4th respondent-Insurance Company has examined R.W.1 to R.W.5 to prove that the driver of the Eicher Van had license to drive the light motor vehicle, but did not possess badge or endorsement for driving the commercial vehicle. The Tribunal considering the fact that the driver of the Eicher van did not possess badge or endorsement to drive the commercial vehicle, ordered pay and recovery. The said finding is contrary to the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 145 (SC) [Mukund Dewangan Vs. Oriental Insurance Co. Ltd.,] relied on by the learned counsel appearing for the appellant. Paragraphs 45 and 46 of the said judgments are extracted hereunder:

"45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or

reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

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."

In the said judgment, the Hon'ble Apex Court has held that once a person possess valid driving license to drive a particular class of vehicle, he is entitled to drive all category vehicles in that class. In the present case, the driver of the Eicher van had valid driving license to drive the light motor vehicle. Applying the ratio of the Hon'ble Apex Court, this Court holds that the driver of the Eicher van is entitled to drive the light commercial motor vehicle without obtaining endorsement or badge. The Tribunal considering the nature of injuries, awarded compensation for injured claimant/1st respondent which are not excessive, warranting interference by this Court.

9. In the result, the appeal is partly allowed, setting aside the order of pay and recovery directing the 4th respondent-Insurance Company to pay the compensation at the first instance and recover the same from the appellant. The 4th respondent-Insurance Company is liable to pay their share of the compensation awarded by the Tribunal to the 1st respondent and is not entitled to recover the same from the appellant. The compensation awarded by the Tribunal at Rs.3,72,200/-, along with interest and costs is confirmed. The respondents 3 and 4 are jointly and severally by equal proportion directed to deposit the award amount along with interest and costs, less the amount already deposited if any 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.412 of 2013. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The learned counsel appearing for the appellant submitted that he has deposited a sum of Rs.25,000/- at the time of filing the appeal. The appellant is permitted to withdraw the said amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.24833

+1 cc to Mr.A.Thiyagarajan, Advocate, S.R.No.24504

C.M.A.No.3179 of 2017
and C.M.P.No.19534 of 2017

NMI (CO)
SSM(24/09/2019).



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