BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.(MD)No.1523 of 2010

The New India Assurance Company Limited,
Opposite to Stadium Building,
Nagercoil Village, Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.
(represented through its Branch Manager)
... Appellant / 3rd respondent

- Vs -

1.Sudha

2.Minor Pradeep Kumar

3.Minor Pratheba Devi ...Respondents 1 to 3 / Petitioners

4.Pon Ramachandran ...4th respondent /1st respondent

5.S.Jeyalakshmi ...5th respondent /2nd respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2010 passed in M.C.O.P.No.43 of 2009 on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge, Nagercoil.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : No Appearance

J U D G M E N T

This appeal has been filed challenging the liability fixed by the Tribunal on the appellant / Insurance Company.

2.According to the appellant, the driver of the vehicle viz., TATA Tempo bearing registration No.TN 74 B 5799 drove the vehicle with Light Motor Vehicle licence. In this regard, he has also marked photo copy of the licence as Ex.R2. Ex.R2 was marked through R.W1. R.W.1 in his cross examination clearly deposed that the licence issued only for driving Light Motor Vehicles. Therefore, he would submit that at the time of accident, the driver of the Tempo was not holding valid and effective Driving License to drive the said vehicle. At the time of accident he was holding only LMV licence without "Batch Endorsement" to drive the commercial vehicle and also violated the terms and conditions of the Insurance policy, in respect of the aforesaid Motor Vehicle. Hence, the appellant/Insurance Company is not liable to pay the compensation to the claimants. He would contend that without considering the same, the Tribunal fixed the entire liability on the appellant / Insurance Company, since the vehicle was insured with the appellant / Insurance Company. According to him, batch endorsement is required for driving Tempo vehicle, which is not a Light Motor vehicle. Therefore, he submitted that pay and recovery may be ordered. The learned counsel for the appellant / Insurance relied on the Judgment of this Court in *Shamanna v. Divisional Manager, The Oriental Insurance Co.Ltd. (2018 Legal Eagle 627)*, wherein it has been held as follows:-

> "7.*As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third party risks. The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, does not fulfill the requirements of law or not will have to be determined in each case."*

3.Heard the learned counsel for the appellant / Insurance Company and perused the materials available on record. None appeared on behalf of the respondent / claimants, inspite of service of notice. Since this matter is of the year 2010, upon hearing the learned counsel for the appellants, this Court is inclined to dispose of this matter on merits.

4.Admittedly, the driver of the Tempo vehicle was carrying Light Motor Vehicle Licence alone and upon considering the oral and documentary evidence, the Tribunal has fixed the entire liability against the driver of Tempo, which was insured with the appellant / Insurance Company and therefore, directed the appellant to pay the entire compensation.

5.Now the issue is whether TATA Tempo is a Light Motor Vehicle or not?

6.Section 210 r/w Section 221 of the Motor Vehicles Act, 1988, defines the Light Motor Vehicles, wherein if any vehicle is having weigh below 7,500 may be treated as light motor vehicle. According to the appellant / Insurance Company, the Tempo vehicle is not a light motor vehicle. The appellant has not adduced any evidence to establish his submission that the Tempo is not a light motor vehicle. Further, with regard to the contention that the 'batch endorsement' is required for the driver to drive Tempo, for the vehicle having weigh of 7,500, batch endorsement is not required and the person, who is having licence of Light Motor Vehicle can drive the vehicle. Since the appellant has not produced any evidence that the present vehicle is not a Light Motor Vehicle, the Court below has come to the conclusion that the driver of the vehicle, owner of the vehicle as well as the appellant / Insurance Company are jointly and severally liable to pay the compensation.

7.Admittedly, in the present case, it has not been established by the appellant /Insurance Company before the Tribunal that TATA Tempo is a light motor vehicle or heavy motor vehicle and according to the claimants, it was a light motor vehicle only.

8.When that being the case, without adducing any evidence for the submission of the appellant, it is only a mere statement without substantiating any evidence by way of oral and documentary. In these circumstances, the contention of the appellant cannot be accepted and hence, the dictum laid down in the above said judgment of this Court, cannot be made applicable to this case. Therefore, this Court is of the view that there is no infirmity or irregularity in the award passed by the Tribunal and the same does not require any interference at the hands of this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 07.06.2009 passed in M.C.O.P.No.43 of 2009 by the Principal Subordinate Judge, Motor Accidents Claims Tribunal, Nagercoil, is confirmed. The appellant / Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, by filing necessary application. No Costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Nagercoil.

Copy to

The Record Keeper,(2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B. VIJAY KARTHIKEYAN, Advocate (SR-100135[F] dated 21/11/2019)

C.M.A.(MD)No.1523 of 2010
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VB(19.12.2019) 4P 5C