

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1744 of 2015

and

M.P.No.1 of 2015

The Oriental Insurance Co.Ltd.,
No.4, Bharathidasan Road,
2nd Floor, Trichy - 620 001. ...Appellant/2nd Respondent

Vs.

1.Selvaraj ... 1st Respondent /Claimant
2.Thamizharasan ... 2nd Respondent/
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.10.2014 made in M.C.O.P.No.1094 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.MA.P.Thangavel for R1
No appearance for R2

J U D G M E N T

The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.10.2014 made in M.C.O.P.No.1094 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

2. The judgment and decree dated 28.10.2011, passed in M.C.O.P.No.1094 of 2013 is to be assailed in this Civil Miscellaneous Appeal.

3. The accident took place on 14.10.2012 at about 3.30 P.M., near Perumal Koil at Mavulipatty Village, Kattuputhur Police Station has registered a case in Crime No.204 of 2012 under Sections 279 & 337 I.P.C. On account of the accident, the claimant took treatment as an in-patient for about one month in M.M.Hospital, Namakkal and even after the discharge from the hospital, he was continuing treatment as an out-patient and accordingly, the claim petition was filed claiming Rs.10,00,000/- as compensation. The insurance company opposed the claim and the trial Court adjudicated the issues raised between the parties regarding the compensation as well as the quantum of compensation to be granted. The injuries succumbed by the victim are established before the Tribunal through the Medical Report and as far as the accident is concerned, the Tribunal arrived a finding that on account of negligence on the part of the first respondent the accident took place. As per Ex.P1 and Ex.P4, the accident took place on account of negligence by the driver of the Ambassador Car. With reference to the fixation of quantum of compensation, the Tribunal considered the monthly income of the claimant as Rs.5,000/- and accordingly, applied the multiplier 13. Thus, the Tribunal arrived a conclusion that the claimant is entitled for compensation of Rs.6,29,900/-. The said quantum of compensation was arrived including the medical expenses, nutritious food, pain and suffering, transportation charges, attendant charges, loss of earning power and therefore, this Court do not find any perversity or infirmity as such. The main ground raised by the appellant/insurance company is that the driver was not having endorsement in the driving licence at the time of accident and therefore, the insurance company is not liable to pay compensation. Such endorsement is not required pursuant to the judgment of the Hon'ble Supreme Court of India in the case of Mukund Dewangan v. Oriental Insurance Co. Ltd., reported in (2017) 14 SCC 663 wherein held as follows:

"60. Thus, we answer the questions which are referred to us thus:

60.1. "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.

60.2. 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 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 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.

60.3. 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.

60.4. 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.

61. In the light of the aforesaid answer, let matters be placed for hearing on merits before the appropriate Bench."

4. In view of the judgment, now it is mandatory to verify the endorsement in the driving licence and even in the absence of any such endorsement, claim cannot be negative. Such a relaxation is granted with reference to the light motor vehicle licences and in the present case admittedly, the driver was holding the light motor vehicle licence and that judgment squarely applies. This being the factum, no further interference is required as well as the quantum of compensation is concerned and accordingly, judgement and decree dated 28.10.2014 passed in M.C.O.P.No.1094 of 2013 is confirmed. Consequently, C.M.A.No.1744 of 2015 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

5. It is brought to the notice of this Court that the entire award amount with accrued interest had already been deposited and claimant had already withdrawn a sum of Rs.3,50,000/- with proportionate accrued interest and therefore, the respondent/claimant are permitted to withdraw the balance amount by filing an appropriate application and all the payments are made through the RTGS.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To
The Motor Accidents Claims Tribunal,
Additional District Court,
Namakkal.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 18809
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 18572

C.M.A.No.1744 of 2015

RSV(CO)
RMP(07/01/2021)

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