



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Pronounced on: 07.12.2020

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THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.171 of 2016

The Chairman,
M/s.IFET College of Engineering
Gengarampalayam, Villupuram,
Tamil Nadu.

... Appellant/1st Respondent

/versus/

1. Arumugam,
2. Saravanan,
3. Ezhumalai,
4. Revathy, ...1 to 4 Respondents/1 to 4 Petitioners
5. The Divisional Manager,
National Insurance Company Limited,
No.110, JN Street, 2nd Floor,
Puducherry. ... 5th Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order dated 03.09.2015 in M.A.C.T.O.P.No.67 of 2012 passed by the III Additional District Judge, Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.P.Veeraraghavan
For R5 : Mr.J.Chandran,

J U D G M E N T

(The case has been heard through video conference)

This Appeal is preferred by the owner of the vehicle aggrieved by the Tribunal fastened with liability to pay the accident victim, in spite of his bus insured under the 5th respondent/Insurance Company.

2. The Appeal arises under the following circumstances:-

On 14.11.2011, at about 18.15 hours, when one Smt.Chandiravadani, aged about 48 years walking alone



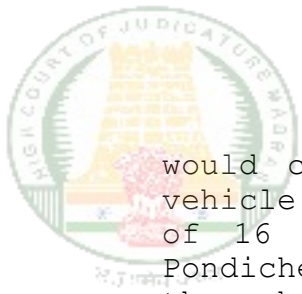
Pondicherry - Villianur Main road, from North-South, the bus bearing registration No.TN-32-2579 owned by the appellant, dashed against Smt.Chandiravadani and caused her death. Claim petition for a sum of Rs.10,00,000/- was filed against the appellant the vehicle owner and the insurer.

3. Both the respondents filed counter. While the Insurance Company contended that there is a permit violation by the vehicle owner. The bus which is suppose to ply within the District of Villupuram in Tamil Nadu State, had entered Union Territory of Pondicherry and has caused the accident. Therefore, the Insurance company is not liable to indemnify the insured, who has violated the permit condition.

4. The appellant/1st respondent is owner of the vehicle, he in his counter had stated that, the said vehicle went to Pondicherry to repair the gear box and while returning back after rectifying the fault, the incident occurred. The accident was due to the fault of the victim, who did not notice the vehicle and cross the road. It was further contended by the vehicle owner that the bus bearing registration No.TN-32-2579 is a private service vehicle. It is used by the appellant to commute students from Cuddalore and Pondicherry to the College at Villupuram and back to their residence. The vehicle is permitted to ply between Cuddalore and Villupuram District with 16 kilometre enclave inside Pondicherry. Therefore, there is no permit violation by the vehicle owner and therefore, the Insurance Company has to indemnify them.

5. The Tribunal, after considering the rival submission and the defence taken by the vehicle owner observed that, R.W.1 the workshop Manager of the Appellant College say that the vehicle is owned by college and used for Transporting students. It has permitted to enter Pondicherry and ply within 16 kilometres. The vehicle on the day of accident came to Pondicherry for attending the fault. However, under the statute this 16 kilometre enclave route is only for goods carrier and not for other vehicles. Therefore, held the vehicle owner is liable to pay the compensation. The Tribunal directed the 2nd respondent/Insurance company to pay and recover from the insured. Considering the other material, fixed the quantum of compensation at Rs.7,22,000/- to be paid to the dependents of the deceased Chandiravadani.

6. In this appeal, the vehicle owner has contended that the Tribunal has failed to consider Section 88 proviso (2) of Motor Vehicle Act and Section 66 of Motor Vehicle Act, which



would clearly prove that for the purpose of repair work, the vehicle can be taken to the non-permitted area, within the limit of 16 kilometres. In this case, the vehicle was taken to Pondicherry to attend the fault of the vehicle. It is proved through evidence it was within 16 kilometre. The Tribunal has wrongly understood the deposition of R.W.1 that the vehicle was taken outside the permitted area to carry passengers.

7. It was contended by the Learned Counsel for the appellant that on comprehensive reading of Section 88 of Motor Vehicle Act and 66 (3) (p) of Motor Vehicle Act, there could be no violation of permitted condition.

8. Per contra, the Learned Counsel for the Insurance Company would submit that in the evidence of R.W.1, it is admitted that the vehicle used to enter Pondicherry to transport students from Pondicherry and Cuddalore District. The permit for the vehicle is restricted to ply only within Villupuram District, where the college is located. The vehicle cannot be used outside the Villupuram District, therefore, the question of enclave route will not arise in this case.

(i). Section 88 of the Motor Vehicle Act reads as below:-

88. Validation of permits for use outside region in which granted.-

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State



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and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

9. The proviso to Sub-Section (1) Section 88 is only for good carries. The exemption from countersignature of the Regional Transport Authority of the other region is applicable when the goods carrier happen to pass through other region to reach the permitted terminal point, and such distance is less than 16 kilometre. Provided the starting point and terminal point must be within the same State. In the case in hand the vehicle involved is not a goods carrier. Hence, this Section have no application.

(ii). Section 66 of the Motor Vehicle Act reads as below:-

66. Necessity for permits. - (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good carriage either when carrying passengers or not :

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.



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(2).....

(3) The provisions of sub-section (1) shall not apply -

(a).....

(b)

(c).....

(d).....

(e).....

(f).....

(g).....

(h) Omitted by Act 27 of 2000, (w.e.f. 11.08.2000).

(i).....

(j).....

(k).....

(l) Omitted by Act 39 of 2001 (w.e.f. 27.09.2001).

(m).....

(n)

(o).....

(p). To any transport vehicle while proceeding empty to any place for purpose of repair.

10. The exemption given to Educational Institutes Vehicle under Section 66(3)(h) M.V.Act, omitted w.e.f 11.08.2000. The application of Section 66 (1) shall apply only if the appellant satisfies the condition under Section 66 (3) (p) of M.V.Act., or else the entry of the appellant bus into the Territory of Pondichery per se become a permit violation.

11. In the light of the above Section, if one look into the permit issued by R.T.O, Villupuram District marked as Ex.R.5 through R.W.3, we find that the route area for which the permit valid is to ply within Villupuram District. Purpose for which permit granted is to carry staff and students of the college. Nowhere in the permit, it is stated that they are entitled to enjoy the privilege of enclave route. Furthermore, it is clear that only if the vehicle is permitted to enter Cuddalore District, the necessity of passing through Pondicherry will arise. When the permit itself is restricted to Villupuram District, there is no question of enclave route and permit to travel upto 16 kilometres within Pondicherry to reach Cuddalore.



12. It is contended by the Learned Counsel for the appellant that the vehicle was taken to Pondicherry for repair work. Therefore, under Section 66(3)(p) of Motor Vehicle Act, permit endorsement not necessary, so there is no permit violation. To accept this plea, there must be some evidence to show that the vehicle went to Pondicherry to attend the repair work or any default. The vehicle owner has not filed document to prove that the vehicle entered Pondicherry (U.T) for repair work.

13. In such circumstances, this Court holds that neither Section 88 nor Section 66 of Motor Vehicle Act, 1988, will help the vehicle owner to get protection from permit violation.

14. Apart from liability, the Appellant herein also questioned the quantum of compensation and fixation of Rs.6,000/- per month as notional income for 54 years old person claiming to be working as mason. This Court holds that, as per the judgment of Hon'ble Supreme Court in Syed Sadiq etc., Vs. Divisional Manager, United India Insurance Company Ltd., fixation of Rs.6,000/- per month for a mason is not excessive and find that there is no material to interfere the quantum of compensation.

15. For the reason stated above, the Civil Miscellaneous Appeal is dismissed. The order of pay and recovery is confirmed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To:-

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Puducherry.

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

C.M.A.No.171 of 2016

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