

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.08.2020	Pronounced on: 06.08.2020
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CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2222 of 2016

and

C.M.P.No.15803 of 2016

National Insurance Company Limited,
Erode Branch,
Having Office at 1272-1273,
Palaniappa Complex,
Mettur Road,
Erode 638 011.

... Appellant/2nd Respondent

/versus/

1.S.Madheswari

2.Minor Suvalakshmi
D/o late Saravanan,
Rep.by guardian next friend mother
S.Madheswari

3.Minor S.Monish
S/o Late Saravanan,
Rep.by guardian next friend mother
S.Madheswari

4.R.N.Kannan

5.K.Kowshalya ...1 to 5 Respondents/1 to 5 Petitioners

6.G.Kumaresan ... 6th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.01.2016 in M.C.O.P.No.230 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Erode.

For Appellant : Mrs.R.Sree Vidhya
For R1 to R5 : Mr.A.Sundaravadhanam
For R6(left) : No appearance

J U D G M E N T

(The case has been heard through video conference)

The appeal preferred by the insurance company centres on the point, "whether the insurance company can deny their liability on the ground of policy condition violation when a driver possessing LMV license without batch endorsement, causes accident while driving a Bajaj LMV 3 wheeler Auto?."

2.The Tribunal while considering the claim petition framed a point for consideration on this issue and held that badge endorsement is not essential in the driving license to drive Bajaj 3 wheeler auto (the offending vehicle in this case) and it is not a policy violation to order pay and recover. Having held so, the Tribunal awarded compensation of Rs.15,26,985/- to the claimants/dependants for the death of 39 years old man. The factors taken into consideration for fixing the above compensation were his age, (39 years), income (Rs.6,500/- p.m.), future prospect (50%) and number of dependants (mother, father, wife and 2 minor children age about 14 and 9 years.

3. The award break up is as under:-

For loss of consortium	Rs.50,000-00
For Funeral Expenditure	Rs.25,000-00
For Loss of Love and Affection	Rs.50,000-00
For Transportation	Rs.10,000-00
For Medical Expenditure	Rs.75,825-00
For Loss of Income	Rs.13,16,160-00
Total	Rs.15,26,985-00

4. In this appeal, it is reiterated by the insurance company that they are not liable to pay compensation, since the driver of the offending vehicle Bajaj mini Auto bearing

registration No. TN -30- W-9316 had license to drive Light Motor Vehicle (LMV) without any batch endorsement to drive transport vehicle. It amounts to policy violation. In view of the policy violation, the insurance company cannot be held liable for the act of the driver-cum-owner who has violated the policy condition.

5. The prime contention raised in this appeal was, the Tribunal erred in relying the judgment of the Hon'ble Supreme Court rendered in Kulwant Singh and others -vs- Oriental Insurance Company Ltd (2015 (2) SCC 186), when the issue has been referred to larger bench in Mukund Dewangan -vs- Oriental Insurance Co. Ltd case in view of conflicting views expressed by different Benches of same strength.

6. In the light of the above submission, it is necessary to track the march of law on this point.

7. In Kulwant Singh case cited supra, the Tribunal held that the death was on account of negligence of the driver of the offending Tempo (Tata-407) bearing No.DL-1LD3186. The vehicle was insured with the Insurance Company and the driver was having valid LMV driving licence. The offending vehicle was 'light goods vehicle' and the claimants were entitled to compensation payable by the insurance company. The Insurance Company preferred an appeal before the High Court with the plea that it was entitled to recovery rights as the driving licence was for driving 'light motor vehicle'. It could not be equated with 'light goods vehicle'. The High Court accepted the contention of the Insurance Company and modified the Tribunal award with the following observation:

"Driving licence of the driver was for driving a light motor vehicle. In no manner can it be said that a 'light motor vehicle' can be equated with a 'light goods vehicle'. In this scenario, it is clear that there was a breach of the policy condition and driver of the vehicle did not have a valid and effective driving licence at the time of the accident. Recovery rights should have been granted by the Tribunal against the owner. The award is modified. Recovery rights are granted in favour of the Insurance Company."

Aggrieved by the Judgment of the High Court, the appellants-the owners of the vehicle in question preferred appeal. The Hon'ble Supreme Court relying upon S. Iyyapan vs. United India Insurance Company Limited and Another (2013) 7 SCC 62)and

National Insurance Company Ltd. vs. Annappa Irappa Nesaria Alias Neseearagi and Others (2008) 3 SCC 464) held, " we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights". As a result, the appeal by the vehicle owner allowed and the Tribunal award confirmed.

8. The Tribunal which dealt the instant case, followed the dictum of Kulwanth Singh case and the insurance company was mulched with the liability to pay. Since at that time, a reference was made to the Larger Bench and pending before the Hon'ble Supreme Court in Mukund Dewangan case, the appellant herein had preferred this appeal, to interfere the Tribunal finding on its liability.

9. Pending appeal, the Larger Bench of the Hon'ble Supreme Court has decided the reference made to it in Mukund Dewangan -vs- Oriental Insurance Company on 03.07.2017 reported in (CDJ 2017 SC 976).

10. The questions referred and the decision of Hon'ble Supreme Court in Mukund Dewangan case is extracted below.

The following questions were referred for decision to the Larger Bench :

1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?

2. Whether '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 licence to drive the class of "light motor vehicle" as provided in Section 10(2) (d) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kgs or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kgs ?

3. What is the effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor

vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression 'transport vehicle' Under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of Amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "Light Motor Vehicle" has been changed ?"

11. Bench decision:

"In the reference, the main question involved is whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle?"

"Section 10 (2) (a) to (j) lays down the classes of vehicles to be driven, not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10 (2). This Court has rightly observed in Nagashetty case reported in (2001 (8) SCC 56) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our

considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle."

.....
"Transport vehicle has been defined in Section 2 (7) 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 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 maxi cab, 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 authorized 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.

" 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 28.03.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2 (21) of the provisions of Section 10(2)(d). Rule 8 of the Rules 1989, other provisions and also the forms, which are in the 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.54/199.

(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 28.03.2001 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." (emphasis added)

12. Thus, the view of the Kulwant Singh judgment relied by the Tribunal has been upheld and confirmed by the Larger Bench in Mukund Dewangan case. Therefore, this issue is no more res integra in view of the authoritative pronouncement by the Larger Bench of the Apex Court. Hence, the contention of the appellant that they are not liable to pay compensation, in view

of absence of batch endorsement in the driving license of the offending vehicle (Bajaj Auto - 3 wheeler) driver is rejected.

13. In the result, this Civil Miscellaneous Appeal is dismissed. The judgment and decree passed by the Motor Accident Claims Tribunal (Special District Judge), Erode made in M.C.O.P.No.230 of 2014 dated 22.01.2016 is confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS II)

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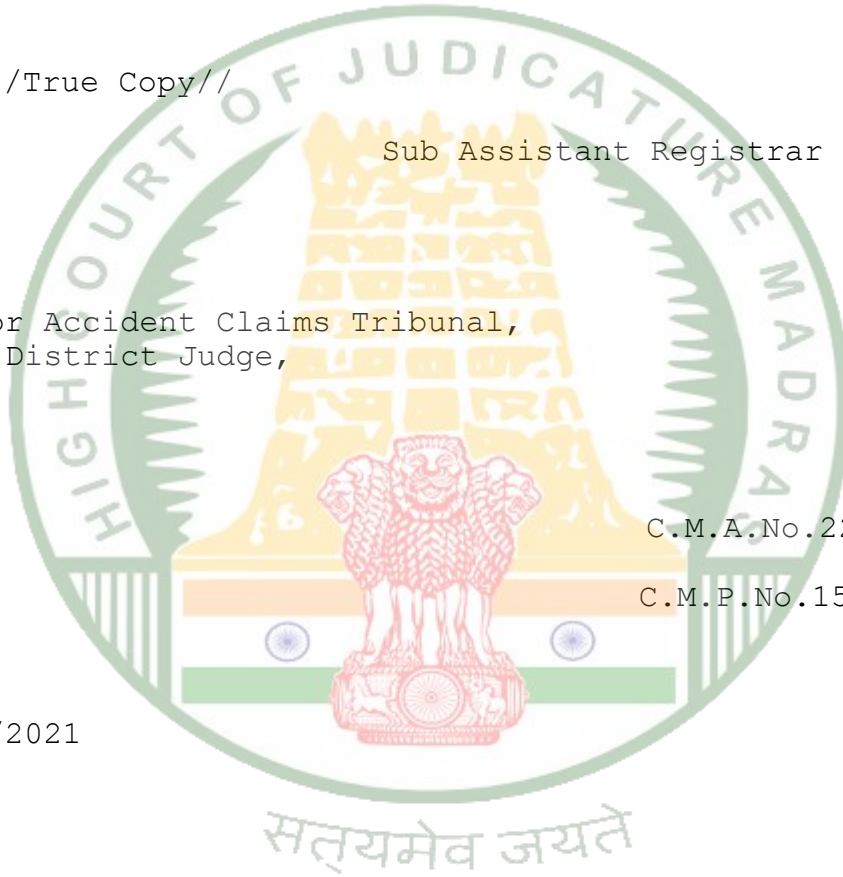
Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Special District Judge,
Erode.

C.M.A.No.2222 of 2016
and
C.M.P.No.15803 of 2016

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