

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2020

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

C.M.A.No.2590 of 2016
and
C.M.P.No.18589 of 2016

Shriram General Insurance Co.Ltd.,
E.B.RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan 302 022. ... Appellant/2nd Respondent

/versus/

1.Chinnaraj

2.Selvi ... Respondents/Claimants

3.Naveen Kumar ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of MV Act against decree and judgment dated 29th day of June 2015 made in M.C.O.P.NO.127 of 2014 on the file of Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant :Mr.S.Dhakshnamorthy

For R1 & R2 :Mr.Mukund R.Pandian

For R3 :No appearance

JUDGMENT

(The case has been heard through Vedio Conference)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 2 .

2.This appeal is filed by the Insurance Company aggrieved by the award passed by the Tribunal in a case where one Gopinath sustained head injury in the motor accident occurred on 16.03.2014 and lost his life on the spot. The claimants are parents of the deceased Gopinath. The Tribunal has awarded Rs.12,02,000/- as compensation. Taking note of the fact that the deceased was a mason and his notional income will be around

Rs.300/- per day, after deducting 50% for his personal expenditure being a bachelor, rest of income has been taken as loss of dependency for his parents. On going through the award, the quantum of compensation Rs.12,02,000/- for 20 years old bachelor not filed any income or proof for his skill to earn, this Court finds that the said award is just and fair.

3. In the appeal the insurer has taken a plea that the driver of the insured vehicle had no badge endorsement to drive the goods carrying transport vehicle and therefore being grave violation of terms and conditions of policy the insurance company cannot be fastened with liability. The Tribunal ought to have atleast ordered pay and recovery for the violation committed by the owner of the vehicle.

4. The Hon'ble Supreme Court in Mukund Dewangan v. Oriental Insurance Company Ltd., [2017 SC 3668] = [CDJ 2017 SC 976]; held that it is sufficient the driver possesses LMV license even though there is no badge endorsement and the same will not amount to violation of policy condition. The insurance company cannot deny their responsibility and liability of indemnifying the vehicle owner, for want of badge endorsement.

The full bench of the Supreme court in Mukund Dewangan case, settled this issue as under:-

"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? There is a conflict in the plethora of decisions of this Court. In Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. (1999) 6 SCC 620, S. Iyyapan v. United India Insurance Co. Ltd. and Anr. (2013) 7 SCC 62, Nagashetty v. United India Insurance Co. Ltd. & Ors. (2001) 8 SCC 56, the view taken by this Court was that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle; whereas in New India Assurance Co. Ltd. v. Prabhu Lal (2008) 1 SCC 696, a view had been taken that before 2001 also, it was necessary for a driver possessing driving licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesargi & Ors. (2008) 3 SCC 464, a distinction was made in the legal position which existed before 28.3.2001 i.e. the date of amendment of the form and subsequent thereto. It was

opined that before 28.3.2001 there was no necessity for the holder of a licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class. He could drive transport vehicle of Light Motor Vehicle category on the basis of holding a licence to drive light motor vehicle. In New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. (2008) 8 SCC 253 and Oriental Insurance Co. Ltd. v. Angad Kol & Ors. (2009) 11 SCC 356, the view had been taken that a driver holding licence to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on licence authorizing him to drive a transport vehicle.

" In our considered opinion Prabhu Lal's (supra) question has not been decided correctly. The intendment and definition of the light motor vehicle which was clearly interpreted in Ashok Gangadhar Maratha (supra) in para 10 have not been taken into consideration in the correct perspective. Interpretation of Form 6 was also not correctly made. Even assuming that Ashok Gangadhar Maratha (supra) did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive a transport vehicle, but what emerges from the aforesaid discussion made by us it is clear that there is no necessity of such an endorsement for driving a transport vehicle of the category of light motor vehicle, which is not statutorily enjoined or provided for. The intendment of section 3 has also not been correctly appreciated. It has to be read along with Section 10(2)(d) and (e) and those classes of vehicles which are included in a category 10(2) (a) to (j) can be driven by a person without any further specific endorsement to drive a particular vehicle. Thus, the decision in Prabhu Lal (supra) does not lay down correct proposition of law and is hereby overruled."

5. Therefore, the point raised in the grounds of the appeal is no more res integra. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

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Sub Assistant Registrar

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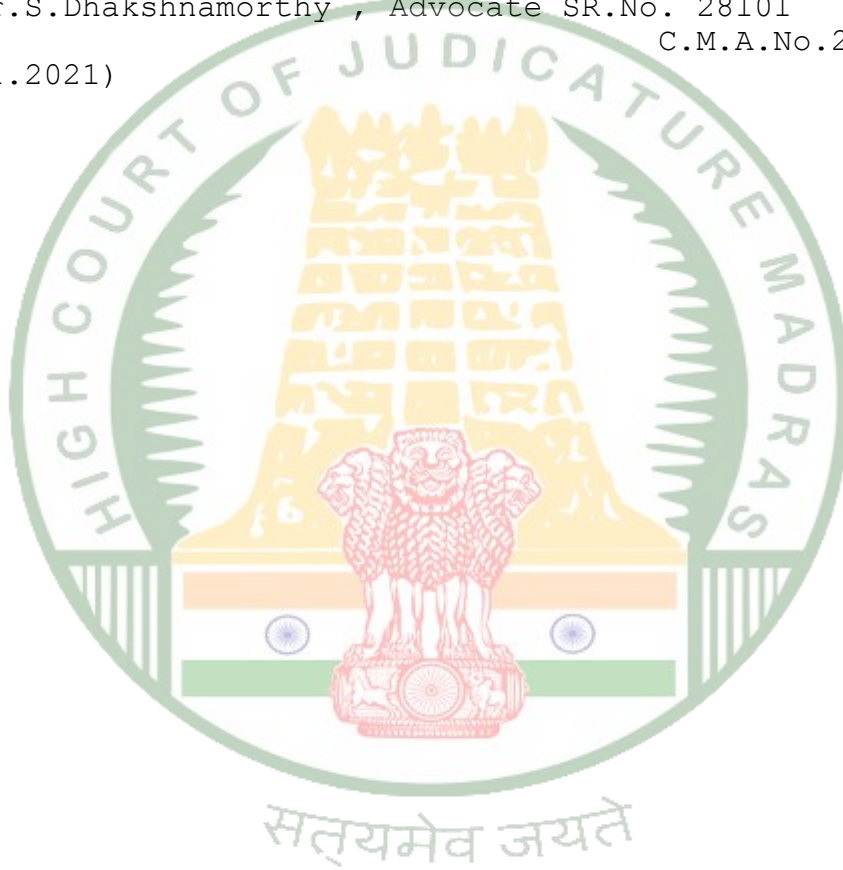
The District Judge,
Motor Accidents Claims Tribunal,
Special District Court), Krishnagiri.

2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.S.Dhakshnamorthy , Advocate SR.No. 28101

C.M.A.No.2590 of 2016

A.SK(19.01.2021)



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