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In the High Court of Judicature at Madras

Dated: 23.03.2021

Coram

The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A. No.3840 of 2011

and

M.P.No.1 of 2011

M/s.ICICI Lombard General
Insurance Company Ltd.,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai-600 051.

... Appellant/4th Respondent

..Vs..

1.Bhuvaneswaran

... 1st Respondent/Appellant

2.Subramanian

... 2nd Respondent/1st Respondent

3.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
(Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore District.

... 3rd Respondent/2nd Respondent

4.Chinnathambi
(R4 set ex-parte in Lower Court)

...4th Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Principal Subordinate Judge, (MACT), Tiruppur in M.C.O.P.No.777 of 2008 dated 18.07.2011.

For Appellant : Ms.Shobana
for Mrs.Sree Vidhya

For Respondent-3: Mr.Sundaravadanam

Respondent - 2 : Served
Respondent - 1 : Unserved

J U D G M E N T

Challenging the award passed by the learned Principal Sub Judge, (MACT), Tiruppur in M.C.O.P.No.777 of 2008 dated 18.07.2011, the appellant/Insurance Company has preferred the instant appeal.



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2. Heard Ms. Shobana, learned counsel appearing on behalf of the Insurance Company and Mr. R. Sundaravanam, learned counsel appearing on behalf of the third respondent. With the consent of the learned counsel for the appellant, the matter has been taken today through Video Conferencing.

3. The first respondent/claimant has filed the claim petition seeking a compensation for a sum of Rs. 7 lakhs. According to the claimant, the accident that took place on 29.03.2008 was due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation in the course of his employment under the second respondent. Tata Ace vehicle was driven by the claimant which is owned by the third respondent/offending owner of the vehicle. Before the Tribunal, on the side of the claimant, PW.1 and P.W.2 were examined and the documents P1 to P5 were marked as exhibits whereas on the side of the respondents, RW1 to RW3 were examined and documents R1 to R6 were marked as exhibits. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs. 3,49,000/- towards compensation to the claimant and directed the respondents jointly or severally to pay the said compensation to the claimant.

4. Aggrieved over the same, the appellant Insurance Company has come forward with the present appeal.

5. According to the appellant, there is no valid driving licence produced by the driver of the insured vehicle nor the owner of the vehicle. Therefore, fastening the liability as against the appellant/Insurance Company was liable to be set aside. According to the appellant/Insurance Company, the Tribunal has discussed that the driver of the offending insured vehicle has produced the driving licence of Light Motor Vehicle and he had not obtained badge to drive Tata Ace Vehicle. R.W.3 was examined. He admitted the said fact that he possessed the driving licence for Light Motor Vehicle but no badge was obtained to drive Tata Ace Vehicle. Therefore, the Tribunal, without considering the case of the appellant in a perspective manner, on premise, fasten the liability against the appellant/Insurance Company which is unsustainable and the same is liable to be set aside.

6. Notice has been served to the respondent/owner of the offending insured vehicle. Though notice was served on the second respondent, who is the owner of the vehicle, none appeared on his behalf. The learned counsel for the third respondent appeared before this Court and was heard.

7. On considering the above said submissions of the learned counsel for the appellant/Insurance Company, Tata Ace was driven by the claimant/driver of the offending insured vehicle without possessing any valid driving licence. He only possessed light motor vehicle licence to drive light motor vehicle but he did not possess any badge or any endorsement to



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drive the Tata Ace/the offending transport vehicle. On a similar issue, which came before the Hon'ble Supreme Court in the case Mukund Dewangan V. Oriental Insurance Company Ltd., reported in 2017 (14) SCC 663, wherein Section 10(2)(e) was elaborately discussed and it was held that there was no requirement to obtain separate endorsement to drive transport vehicle and if a driver is holding to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. Further held that even otherwise, the Form could not control the substantive provisions carved out in Sections 10(2)(d) & 10(2)(c) and the interpretation of the Form has also to be in tune with the 'Statement of Objects & Reasons' and the provisions was inserted by virtue of certain amendment. Thus, the transport vehicle and omni bus in gross 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 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 kg. All the facts of the case regarding light motor vehicle has been placed before the claim petition but no material has been placed by the appellant before this Court to prove that the offending insured vehicle exceeded 7500 kg. On the available materials and discussions made by the Tribunal in the claim petition and following the judgment of the Hon'ble Supreme Court in Mukund's case (supra), the ground raised by the appellant/Insurance Company in the present appeal is unsustainable and the same is liable to be dismissed.

8. In fine, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to pay the entire amount, less the amount already deposited, if any, with proportionate interest within a period of six weeks before the Tribunal from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the compensation amount less the amount already withdrawn by him, if any, with proportionate interest on filing appropriate petition before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Deputy Registrar
(Spl Cell CJ Conf)

//True Copy//

Sub Assistant Registrar

DP



To

1.The Principal Subordinate Court,
(The Motor Accident Claims Tribunal)
Tiruppur.

2.The Record Keeper,
V.R. Section, High Court, Madras.

+lcc to Mr.R.Sreevidhya, Advocate, S.R.No. 18327

C.M.A. No.3840 of 2011
and
M.P.No.1 of 2011

SMI (CO)
GN(12/10/2021)