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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2352 of 2014
and
M.P No.1 of 2014

The Oriental Insurance Co. Ltd.,
No.2, K.J.R Complex,
16, North Veli Street
Madurai

...Appellant/2nd Respondent

Vs.

1.Deepa
2.Minor Saravanan
3.Minor Saranya
4.Minor Chandru
5.Karuppan
6.Ramayee ...Respondents 1 to 6/ Petitioners

7.Deepa
(Minor rep by their mother
1st Respondent)

... 7th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 03.04.2013 passed in M.C.O.P.No.606 of 2010 by the Principal District Judge, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No Appearance for R1 to R6

Notice served to R7

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J U D G M E N T

The appellant/Insurance Company has filed the instant appeal before this Court challenging the liability.

2. The claimants/respondents 1 to 6 has filed a claim petition before the Tribunal seeking compensation of Rs.7,00,000/- for the death of one Murugesan, who is the husband of the 1st claimant, father of the 2 to 4 claimants and son of the 5th and 6th claimants in a road accident that took place on 24.10.2010.

3. The brief case of the claimants is as follows: On 24.10.2010, at about 6.00 p.m, while the deceased was riding his TVS TVS 50 bearing Registration No.TN-28-E-9817 at the extreme left side of the road, near Vettupalayam Patti Gounder Thottam on Thindamangalam to Keerambur Main Road, the driver of the 407 van bearing Registration No.TN 36 E 4639 drove the vehicle in a rash and negligent manner and dashed against the deceased and he died due to the fatal injuries. According to the claimants, the rash and negligent driving of the driver of the van was the cause of accident and since the first respondent/ owner of the vehicle insured his van with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the appellant/ insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P15 were marked. On the side of the second respondent, two witnesses were examined as RW1 and RW2 and Ex.R1 to R3 were marked. The first respondent remained exparte.

6.After analysing the evidence on record, the Tribunal has awarded a sum of Rs.7,00,000/- as compensation to the claimant under various heads as extracted hereunder.

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Sl No	Heads	Amount in Rs.
1	Loss of future income	6,75,000 (3750 x 12 x15)
2	Loss of consortium to 1st claimant	40,000
3	Love & Affection to 2 to 4 claimants	25,000
4	Funeral expenses	5,000
5	Transport	1,000
	Total	7,46,000
	Award amount is restricted to Rs.7,00,000/- as per the claim made by the claimants.	

Aggrieved over the same, the Insurance Company has filed the present appeal.

7. Heard the learned counsel for the appellant/insurance company and perused the materials on record.

8. The learned counsel appearing for the appellant/insurance company submitted that the entire compensation amount awarded by the Tribunal is highly excessive and there is no discussion in awarding the compensation amount. He also submitted that the Tribunal has awarded excess amount towards Loss of Earnings and Permanent disability and the other heads also and hence, he prayed to set aside the Award passed by the Tribunal.

9. Despite notice has been served to the respondents/claimants 1 to 6, none appeared for them.

10. Now the point for consideration is

1) Whether the Award passed by the Tribunal has to be set aside?

11. Point

According to the appellant/insurance company, the vehicle involved in the accident was 407 van goods vehicle and the driver of the vehicle has violated the policy condition allowing the persons to travel who did not possess valid and effective license to drive the insured mini van. The Tribunal has not considered the contention of the appellant in proper perspective and fixing liability against the insurance company which is contrary to the terms and conditions of the policy.

12. In the award, the Tribunal has observed that as per Ex.R1/driving licence, it is clear that the driver of the offending vehicle was having driving license to drive LMV and as per Ex.R2/Registration Certificate, the vehicle of the first respondent is a light motor vehicle. Therefore, only the driver of light motor vehicle has to obtain badge additionally. If the driver of LMV takes learners training , automatically, the badge will be given to him and the said badge cannot be considered as a special quality to drive a LMV. If the driver did not possess any badge endorsement, it cannot be taken as special quality. As per the evidence, it is proved that the driver of the light motor vehicle/offending vehicle was holding a valid and effective driving licence at the time of of the accident. The insurance policy for the offending vehicle was marked as Ex.P6 and the same was in existence at the time of the accident and hence, the 1st and 2nd respondents are jointly and severally liable to pay the compensation amount.

13. The issues involved in the appeal was already decided by the Hon'ble Supreme Court of India in the case of Mukund Dewangan vs. National Insurance Company Ltd., reported in 2017 14 SCC 663 wherein the Hon'ble Supreme Court has held in paragraph no. 60. 1, 2, 3, 4 as extracted hereunder:

> " 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 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.54/1994.
>
> 60.02 A transport vehicle and omnibus, the gross

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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 28.3.2001 in the form.

60.03. 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.

60.04 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.

The aforesaid decision of the Hon'ble Supreme Court is squarely applies to the present case on hand, where the driver of the vehicle was possessing only driving license to drive light motor vehicle, but he did not possess endorsement to drive 407

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Transport vehicle.

14. Considering the facts and circumstances of the case, and inview of the principles laid down by the Hon'ble Supreme Court cited supra, this Court is of the view that there is no merits in the appeal and the same is liable to be dismissed.

15. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six (6) weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the respondent/claimants 1 to 6 are entitled to withdraw the same as per the apportionment fixed by the Tribunal, after following due process of law.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge,
(Motor Accident Claims Tribunal),
Namakkal.

Copy To

The Section Officer,
V.R. Section, Madras High Court,Chennai-104.

CMA. No.2352 of 2014
and
M.P No.1 of 2014

AJS(CO)
SB(16/09/2021)

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