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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 2450 of 2018

and

CMP.No. 18663 of 2018

R.Raja ..Petitioner/1st Respondent

Vs

1. Rajammal 1st Respondent/Petitioner

2. M/s. New India Assurance Company Limited,
Shreewari Shopping Mall,
Near ARRS Theater,
Meyyanur, Salem-4.

...2nd Respondent/2nd Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P. No.2271 of 2013, dated 13.04.2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge -II), Salem.

For Petitioner : Mr.M.Sivakumar

For Respondents: NA for R1
Mr.S.Manivannan for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the owner of the Tractor challenging the pay and recovery order passed by the Tribunal made in M.C.O.P.No.2271 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge-II, Salem.

2. The appellant is the owner of the vehicle. The Tribunal fixed the negligence on the part of the driver of the Tractor. There is no dispute on these aspects. The Insurance Company also admitted the said fact and challenge is only against the "pay and recovery" order passed by the Tribunal.

3. According to the learned counsel appearing for the appellant, the Tribunal ordered pay and recovery due to the



reason that the driver who drove the vehicle, did not have the "Badge" endorsement and "Transport Vehicle" endorsement in the license. Further, the learned counsel submitted that as long as the driver who drove the vehicle does not have unladen weight of 7500 kilograms, the driver need not hold the Badge endorsement. In this regard, he referred to the judgment of the Supreme Court in case of Mukund Dewangan v. Oriental Insurance Company Limited, reported in [2017 (2) TNMAC 145] : [2017 ACJ 2011]. By referring the above judgment, the learned counsel submitted that the Badge endorsement is not required. This aspect has not been considered. Therefore, the present appeal is filed by the appellant to set aside the order passed by the Tribunal to the extent of pay and recovery alone.

4. Per contra, the learned counsel appearing for the Second Respondent/Insurance Company fairly made submissions supporting the award passed by the Tribunal. The issue is no more res integra, in view of the law laid down by the Apex Court in the case of Mukund Dewangan v. Oriental Insurance Company Limited, reported in [2017 (2) TNMAC 145] : [2017 ACJ 2011]. By referring to the above said judgment, the learned counsel for the appellant submitted that the driver, who is driving the unladen vehicle below 7500 kilograms, need not have the license with the said endorsement. Further, he submitted that in the present case, the driver who drove the vehicle, is only Tractor, which is within 7500 kilograms limit. He fairly submitted that the driver who drove the Tractor, need not have badge endorsement in his license.

5. In view of the above submissions made by the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and upon a perusal of the issues, there need not be any Badge endorsement in the driving license for those who are driving the unladen vehicle below 7500 kilograms.

6. In view of the principles law laid down by the Apex Court, in the said decision, this Court is of the view that the driver of the Tractor bearing Registration No. TN-27-AT-2603 who drove the vehicle need not have the license with Badge endorsement. Thus, this Court is of the view that the judgment and decree passed by the Tribunal to the extent of "pay and recovery" order against the owner of the Tractor, is not proper and the same is liable to be set aside. Thus, this Court is of the view the judgment and decree passed by the Tribunal in M.C.O.P. No.2271 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge-II, Salem, is set aside to the extent of pay and recovery alone. With regard to all other aspects, the judgment and decree passed by the Tribunal is hereby confirmed.



7. Accordingly, the Civil Miscellaneous Appeal is allowed.
No order as to costs. Consequently, connected Civil
Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

msm

To

The Motor Accident Claims Tribunal,
(Special Sub Judge -II),
Salem.

Copy To

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

+1cc to Mr.Prabakaran, Advocate, S.R.No.26499

C.M.A.No. 2450 of 2018
and
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MG(CO)
RGA(08/10/2021)