BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.11.2021**

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A(MD)No.988 of 2009
and
M.P(MD)No.2 of 2009

The United India Oriental Insurance Co.Ltd.,
78, Kamarajar Salai,
Cauvery Nagar,
Kulithalai. ... Appellant / 2nd Respondent

Vs.

1.N.Elango ... 1st Respondent / Petitioner
2.S.Syed Ibrahim ... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the Award made in W.C.No.160 of 2006, dated 26.09.2008, on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli, and praying to set aside the same.

For Appellant	:	Mr.R.Ravindran
For Respondent-1	:	Mr.P.Saravanakumar
For Respondent-2	:	No Appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the award passed in W.C.No.160 of 2006, dated 26.09.2008, by the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli.

2. The facts giving rise to the present appeal are that on 27.01.2006, at about 11.30 p.m, the 1st respondent / claimant driven the vehicle viz., Ambassador Car, bearing Registration No.TN-67-W-6644, belonging to the 2nd respondent, insured with the appellant Insurance Company and when the car was moving towards southern

direction from Tharagampatti to Puthanatham and when the car reaching near the Union Office, Tharangampatti, the car capsized and fell into the river. As a result of which, one Jayalakshmi died on the spot and other passengers in the car sustained multiple grievous injuries, including the 1st respondent / claimant. Immediately, the claimant was given first aid in the Government Hospital at Karur. Then, he was admitted at Government Hospital, Trichy on 28.01.2006, for further treatment.

3. The 1st respondent / claimant has filed a claim petition in W.C.No.160 of 2006, before the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Tiruchirappalli, claiming a sum of Rs.4,00,000/-, as compensation, for the the injuries sustained by the 1st respondent / claimant.

4. Resisting the claim petition, the Appellant Insurance Company/ 2nd respondent, filed a counter affidavit stating that the vehicle involved in the alleged accident is a Light Motor Vehicle Tourist Taxi and to drive the said car, a person should possess an LMV licence with "T"-Board endorsement. At the time of accident, the petitioner only provided with a light motor vehicle driving licence and therefore, the appellant Insurance Company is not liable to pay compensation, since there is violation of policy condition. Further, the claimant driven the commercial vehicle with more passengers than the permitted one, which is also a clear violation of policy condition.

5. To substantiate the case, the claimant examined himself as P.W.1 and marked 10 documents as Ex.P1 to Ex.P10. On the side of the 2nd respondent / appellant Insurance Company, either no witness was examined nor any document was marked.

6. The Workmen Compensation Commissioner viz., Deputy Commissioner of Labour, Tiruchirappalli, upon considering the oral and documentary evidence has awarded a compensation of Rs.1,83,487/- with interest at the rate of 12% p.a., and directed the appellant Insurance Company to pay the compensation amount within a period of thirty days from the date of copy of that order.

7. Aggrieved over the same, the appellant Insurance Company has preferred the present Civil Miscellaneous Appeal.

8. The learned counsel appearing for the appellant Insurance Company would submit that the Workmen Compensation Commissioner viz., Deputy Commissioner of Labour, Tiruchirappalli, erred in finding that the 1st respondent / claimant was working as a driver/workman, under the Workmen's Compensation Act, in the absence of any independent, acceptable and documentary evidence. The owner of the car violated the policy condition by the entrusting the car, bearing Registration No.TN-67-W-6644, to the 1st respondent / claimant, who is not holding a valid and effective Driving License

to drive the vehicle, at the time of accident and therefore, the Insurance Company is not liable to pay the compensation.

9. The learned counsel appearing for the 1st respondent / claimant would submit that the Workmen Compensation Commissioner viz., Deputy Commissioner of Labour, Tiruchirappalli, upon considering the oral and documentary evidence has awarded a just and reasonable compensation, which need not be interfered with and prayed for dismissal of the appeal.

10. I have heard the learned counsel appearing on either side and perused the materials on record.

11. The present appeal has been preferred by the Insurance Company on the ground that the driver of the Car, who was employed by the 2nd respondent herein, drove the vehicle viz., Ambassador Car, bearing Registration No.TN-67-W-6644, belonging to the 2nd respondent, insured with the appellant Insurance Company, had met with an accident on 27.01.2006. The legal issue raised before this Court is that, since it is a tourist vehicle, the driver of the vehicle did not possess a valid driving licence to drive the vehicle and therefore, there is clear violation of policy condition and hence, the compensation cannot be granted.

12. Even though the vehicle is a T-Board vehicle, the driver was admittedly having a valid driving licence to drive the light motor vehicle viz., Ambassidor car. Hence, the contention of the Insurance Company that the driver of the vehicle did not posses a valid driving licence and hence, the compensation need not be paid, cannot be accepted by this Court. In the decision of this Court in ***United India Insurance Co.Ltd., Vs. Ramiah Thevar,*** reported in ***(2005 (1) TNMAC 123)*** it has been clearly held that a person who is having a light motor licence can drive the said LMV vehicle, which cannot said to be illegal, as there is no separate endorsement is required to drive the said Light Motor Vehicle, which may be a transport vehicle.

13. However, coming to the second issue viz., the Ambassador car can carry only six passengers, but in the car there were 7 passengers, at the time of accident and admittedly, there was violation of policy condition. Hence, even though this Court holds that the employee is entitled to get compensation, as the accident has taken place out of and in the course of employment, as there is policy violation, the 2nd respondent employer will have to reimburse the amount payable to the Insurance Company, on account of violation of policy condition.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. The claimant is permitted to withdraw the amount by filing necessary application. The appellant Insurance Company shall be entitled to recover the amount from the owner of the vehicle. No

costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

1.The Workmen Compensation Commissioner
and Deputy Commissioner of Labour,
Tiruchirappalli.

2.The United India Oriental Insurance Co.Ltd.,
78, Kamarajar Salai,
Cauvery Nagar,
Kulithalai.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.988 of 2009
26.11.2021

MGJ(28.01.2022) 4P 5C