



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.10.2021

Delivered on : 08.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.757 of 2014

and

M.P.(MD)No.4 of 2014

The Divisional Manager,
United India Insurance Company Limited.,
Salai Road, Dindigul District. ... Appellant / 2nd Respondent

Vs.

1.Arumugam ... 1st Respondent/ Petitioner
2.P.Pandi ... Respondents / Respondents 1

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and executable order, dated 14.02.2012, passed in M.C.O.P.No.268 of 2009, on the file of the Chief Judicial Magistrate, Dindigul.

For Appellant	: Mr.B.Rajesh Saravanan
For R1	: Mr.D.Venkatesh
For R2	: No appearance

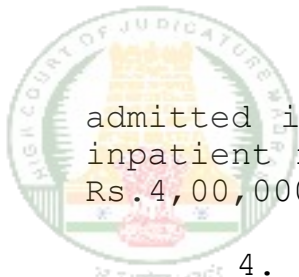
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 14.02.2012, passed in M.C.O.P.No.268 of 2009, on the file of the Chief Judicial Magistrate, Dindigul.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition.

3.Brief substance of the petition, in M.C.O.P.No.268 of 2009, is as follows:-

On 07.07.2009, at about 7.00 pm., when the petitioner was travelling in his bi-cycle, a Milk Van, bearing Registration No.TN-55-K-8178 that belonged to the first respondent, was driven by its driver in a rash and negligent manner, came from the back side of the cycle, dashed against the petitioner. The petitioner was



admitted in Dindigul Government Hospital and he took treatment as inpatient for a period of ten days. The petitioner claimed a sum of Rs.4,00,000- as compensation.

4. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.268 of 2009, is as follows:-

The driver of the Milk van was having only Light Motor Vehicle licence, to drive light weight motor and he is not permitted to drive a transport vehicle. Since there is policy violation, the second respondent is not liable to pay compensation.

5.The first respondent was set *exparte*. On the side of the petitioner, two witnesses were examined and four documents were marked. On the side of the second respondent, two witnesses were examined and two documents were marked. The Tribunal, after considering both sides, has awarded a sum of Rs.70,000/- as compensation. Against the award, the second respondent / appellant has preferred this Appeal.

7. On the side of the appellant, it is stated that the Tribunal has failed to note that the vehicle is a Milk Van and the driver ought to have had a valid and effective driving licence. The Tribunal has failed to appreciate the evidence of R.W.1 and R.W.2 and the owner of the vehicle is under the obligation to entrust the vehicle with a driver, who is having a valid driving licence. R.W.1 has deposed that the driver of the Van was having valid driving licence, to drive the light motor vehicle and the copy of the L.M.V. was marked as Ex.R1. R.W.1 has deposed that there was no endorsement for transport vehicle in the licence of the driver of the Van. The Tribunal ought to have fixed the liability on the owner of the vehicle and not on the appellant. There was no specific endorsement in the licence of the driver. The Tribunal has failed to appreciate the evidence of R.W.1 and R.W.2. The award is excessive.

8. Now the law is well settled, if the unladen weight of the vehicle is below 7,500 Kg, no endorsement in the driving licence is necessary. In the judgment of the Hon'ble Supreme Court reported in **2017-ACJ-2011 (Mukund Dewangan V. Oriental Insurance Company Limited)**, it is stated as follows:-

"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as



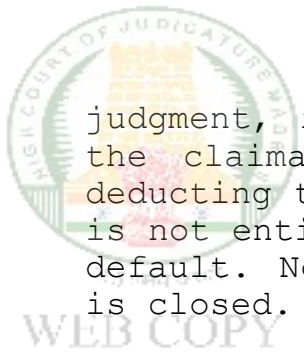
amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) '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.

(ii) A transport vehicle and omnibus, the gross 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.

9. In view of the above, it is decided that the appellant is liable to pay the compensation. No cross objection was filed on the side of the claimant. There is no serious dispute regarding the quantum. Hence, the order of the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed.

10. The appellant / Insurance Company is directed to deposit Rs.70,000/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of 4 weeks from the date of receipt of a copy of this



judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire amount, after deducting the amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

Ls

To

1.The Chief Judicial Magistrate,
Dindigul.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-38243[F] dated 10/12/2021)

C.M.A(MD)No.757 of 2014

08.12.2021

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