IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. Nos.573 and 574 of 2022 &
C.M.P.Nos.4222 & 4223 of 2022

C.M.A.No.573 of 2022

The Manager,
Shriram General Insurance Company Limited,
Branch Office at No.5 F, 1st Floor, Front Portion,
Sachin Plaza, Reddiyar Block No.1,
Sriram Nagar,
Alagapuram, Salem - 4. ...Appellant/2nd Respondent

Vs.

1.Bakkiyalakshmi

2.Minor Yakeshsaran

3.Minor Chandru

(Minor respondents 2 and 3 are represented by their Next Friend / Guardian and mother the first respondent Bakkiyalakshmi)

4.Savithiri

5.Murugan
All are residing at
Vadamangalam Village and Post,
Pochampalli Taluk,
Krishnagiri District.

6.Madhaiyan ...Respondents/Petitioners 1 to 5 & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Award dated 08.04.2021 made in M.C.O.P.No.27 of 2018, on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthangarai.

For Appellant : Mr.S.Dhakshnamoorthy

C.M.A.No.574 of 2022

The Manager,
Shriram General Insurance Company Limited,
Branch Office at No.5 F, 1st Floor, Front Portion,
Sachin Plaza, Reddiyar Block No.1,
Sriram Nagar,
Alagapuram, Salem - 4. ...Appellant/2nd Respondent

Vs.

1. Minor Yakesh Saran
Represented by his Next Friend /
Guardian and mother Bakkiyalakshmi)
S/o.Late Iyappan,
Residing at Vadamangalam Village and Post,
Pochampalli Taluk, Krishnagiri.

2. Madhaiyan ...Respondents/Petitioner & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Award dated 08.04.2021 made in M.C.O.P.No.28 of 2018, on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthangarai.

For Appellant in Both CMA's : Mr.S.Dhakshnamoorthy

COMMON JUDGMENT

Judgment of the Court was delivered by K.KALYANASUNDARAM. J.

These appeals have been preferred by the Insurance Company challenging their liability to pay compensation to the award passed in M.C.O.P.Nos.27 and 28 of 2018, on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai, dated 08.04.2021.

2. M.C.O.P.No.27 of 2018 was filed by the legal heirs of the deceased Iyappan, while M.C.O.P No.28 of 2018 was filed by the injured Yakesh Saran. It is their case that on 02.04.2017, at about 04.30 hours, when the deceased Iyappan was riding his two wheeler along with his minor son-Yakesh Saran and one Duraisamy, near Tamil Nadu Water Board Pump House, on the Irumathur to Vadamangalam Road, at that time, a TATA ACE pick up van bearing registration No.TN-29-AU-6316 came in a rash and negligent manner and dashed against the two wheeler. In the impact, deceased sustained grievous injuries all over his body and succumbed to the injuries in the hospital on 05.04.2017, and the minor Yakesh Saran sustained injuries.

3.In the counter affidavit filed by the Insurance Company, it is stated that the driver of the Tata ACE pick up van drove it in a moderate speed as per rules, but the deceased was riding the motorcycle in a rash and negligent manner and dashed against the Tata ACE pick up van. It is further stated that the clam was excessive.

4.Before the Tribunal to substantiate the case, on the side of the claimants P.W.1 to P.W.3 were examined and Exs.P1 to P16 were marked. On the side of the appellant/Insurance Company, one Divya, Junior Assistant, RTO, Krishnagiri was examined as R.W.1 and Exs.R1 to R3 were marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the owner cum driver of the TATA ACE pick up van was responsible for the accident and awarded compensation of Rs.21,74,000/- to the claimants in C.M.A.No.573 of 2022 , and Rs.43,000/- to the claimant in C.M.A.No.574 of 2022 along with interest at the rate of 7.5% per annum. Assailing the award, the appellant/Insurance Company have filed these appeals.

6.The learned counsel for the appellant contended that the driver of the vehicle did not possess a valid driving license and hence, the liability cannot be fastened on the insurance company. We are unable to agree with the submission of the learned counsel for the reason that the Hon'ble Apex Court in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017(2) TN MAC 145 held that the requirement of law is that a driver to hold a licence with respect to the clause of vehicle and not with respect to the types of vehicles. For a person who is holding a licence to drive one clause of vehicles, no separate endorsement is required to drive such vehicle. The relevant paragraph 46 is extracted hereunder:-

> "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.

(iii) 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.
>
> (iv) 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."

7.In the instant case, it is not in dispute that the offending vehicle is classified as light motor vehicle and the unladen weight of it does not exceed 7500 Kg. Admittedly, the driver was holding licence to drive light motor vehicle. As per the decision referred supra, there is no need to get a separate endorsement to drive transport vehicle. So, we find no reason to interfere with the decision reached by the Tribunal.

8.Insofar as the quantum is concerned in C.M.A.No.573 of 2022, the Tribunal held that as there was no proof of age of the deceased, considering Ex.P2-postmortem certificate, taken the age of the deceased as 33 years and fixed the notiional income of the deceased at Rs.8,000/- per month. By adding 40% towards future prospects, fixed income at Rs.11,200/-. Since the claimants are five in number, deducted the 1/5th of the income and arrived the income at Rs.8,960/- (Rs.11,200/- - Rs.2,240/-) and by applying the multplier of '16' arrived the total loss of dependency as Rs.17,20,320/- [Rs.8,960 x 12 x 16]. In addition, the Tribunal awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and awarded a sum of Rs.2,00,000/- under the head of loss of consortium, as the claimants are five in number. Considering the Ex.P11-medical bills, the Tribunal awarded a sum of Rs.2,23,408/- under the head of medical expenses. In total, the Tribunal awarded a sum of Rs.21,74,000/- along with interest at the rate of 7.5% per annum. In the considered view of this Court, the Award is fair and reasonable and therefore, it is confirmed.

9.Insofar as the quantum is concerned in C.M.A.No.574 of 2022, the injured is a minor claimant, who is aged about 3 years and as per Ex.P13 wound certificate, it is seen that the injured had sustained simple injuries and therefore, the Tribunal has awarded a sum of Rs.25,000/- for the injuries sustained by him. Though the injured claimed a sum of Rs.1,00,000/- under the head of medical expenses, no records have been produced and hence, the Tribunal has awarded a sum of Rs.18,100/- under the head of medical expenses as per Ex.P15-medical bill. In total, the Tribunal has awarded a sum of Rs.43,000/- towards compensation together with interest at the rate of 7.5% per annum for the simple injuries sustained by the injured in the accident. The amount appears to be fair and reasonable and it is confirmed.

10.For the above reasons, the Civil Miscellaneous Appeals fail and the same are dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such compliance, the major claimants are permitted to withdraw their share and the entire share of the minor claimants shall be deposited in a Fixed Deposit in a Nationalized Bank. The guardian of the minors is permitted to withdraw the accrued interest once in three months directly from the Bank. On attaining majority, their share shall be disbursed forthwith. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

r n s

To

The Motor Accidents Claims Tribunal,
The Sub Court,
Uthangarai.

Copy To

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

PA(CO)
RGA(10/06/2022)