



C.M.A.(MD)No.1235 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.10.2022

Delivered On : 08.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1235 of 2012

The Divisional Manager,
New India Assurance Co.Ltd.,
Kamarajar Salai,
Madurai-625 009.

.. Appellant / 2nd Respondent

Vs.

1.M.Shanmugavel

.. 1st Respondent / Petitioner

2.M.Thangavelu

.. 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the order, dated 17.04.2012, made in W.C.No.97 of 2006, on the file of the Workmen Compensation Commissioner, (Commissioner of Labour), Madurai.

For Appellant

: Mr.G.Prabhu Rajadurai

For Respondents

: Mr.C.M.Arumugam for R1

: R2 - Dispensed with



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the order, dated 17.04.2012, made in W.C.No.97 of 2006, on the file of the Workmen Compensation Commissioner, (Commissioner of Labour), Madurai. The appellant herein is the second respondent, the respondent herein is the petitioner and the second respondent herein is the petitioner before the Workmen's Compensation Tribunal.

2. Brief substance of the petition filed by the petitioner, in W.C.No.97 of 2008, is as follows:

The petitioner is the driver working under the first respondent. On 13.04.2004, when the petitioner was driving an Auto bearing Registration No.TN – 58 – C - 5022 along the Madurai – Dindigul main road, the auto dashed against a tamarind tree. The petitioner sustained injuries, he was admitted in Madurai Rajaji Government Hospital and took treatment as inpatient from 13.04.2004 till 06.05.2004. The petitioner was aged about 28 years, he was receiving a salary of Rs.4,000/- per month, including batta. His eye sight was affected, he could not continue his work, he lost the 3rd and 4th fingers in his left hand and he claimed a sum of Rs.5,00,000/- as compensation.



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W.C.No.97 of 2008, is as follows:-

There is no relationship of employer and employee between the petitioner and the first respondent. The petitioner has to prove that he had valid driving license and the accident has happened during the course of the employment. The injuries, treatment particulars are all denied. The petitioner has to prove his age and income. The petitioner is doing his work as before the accident. The claim is baseless and the petition is liable to be dismissed.

4. 1 witness was examined and 10 documents were marked on the side of the petitioner. 2 witnesses were examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.1,16,404/- as compensation.

5. Against the award, the claimant filed an appeal before this Court in CMA(MD)No.569 of 2009 and the second respondent-Insurance Company has filed an appeal in CMA(MD)No.76 of 2009. In both the appeals a common judgment was passed by this Court, on 17.08.2009, wherein, CMA(MD)No.569 of 2009 was allowed and the case was remitted back to the file of the Commissioner of Labour, Madurai, for production of relevant document for proving that the claimant



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undergone amputation. The other appeal in CMA(MD)No.76 of 2009 was dismissed without costs. After the case was remitted back to the Deputy Commissioner of Labour, 2 witnesses were examined as P.W.2 and P.W.3 and 1 document was marked as Ex.P11 on the side of the claimant. The Labour Commissioner awarded a sum of Rs.1,94,007/- as compensation.

6. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Deputy Commissioner of Labour failed to consider that the first respondent was not having valid driving licence on the date of accident. The Labour Commissioner is wrong in enhancing the award amount, after the case was remanded.

7. On the above grounds, this Court, by its order dated 12.10.2012, has admitted this appeal on the following substantial questions of law:-

(I) Is it correct in law to direct the insurer to pay the compensation when the vehicle was driven by a driver holding a expired license?

(II) Is it correct in law to award compensation to a driver who has disintitled himself by driving a vehicle without having any license?



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Issue Nos.I and II:

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8. On the side of the appellant, it is stated that at the time of accident the claimant was not having the badge for driving a commercial vehicle, which amount to absence of valid driving licence. An official from the Regional Transport Office was examined as R.W.1 and he has deposed that badge in the LMV driving licence has to be renewed once in three years, but, the claimant has renewed the badge only on 07.04.2004 and that on the date of accident that is on 13.04.2004, there was no badge endorsement. R.W.2 has deposed that there was no badge endorsement in the licence of the claimant.

9. On the side of the respondent, it is stated that the claimant lost his eye sight and two of his fingers were amputated. He sustained more than 60% disability. The age of the claimant at the time of accident was 27 years and prayed the compensation to be enhanced.

10. It is seen that the claimant was an Auto driver and that there was no badge endorsement at the time of accident. A judgment of the Hon'ble Supreme Court in a case of ***Mukund Dewangan Vs Oriental Insurance Co.Ltd., reported in 2017(2)TNMAC-145 (SC)***, is referred by this Court, wherein, it is held 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\(2\)\(e\)](#) 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



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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.



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(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.*“

11. As per the dictum of the Hon’ble Supreme Court as stated above, badge endorsement for driving a vehicle below the unladen weight of 7500 Kgs is not necessary. The earlier appeal filed by the Insurance Company was already dismissed by this Court. Both the questions raised by the appellant are questions of facts and not questions of law.

12. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Commissioner of Labour. Hence, this Appeal is dismissed. No costs.

08.11.2022

Index : Yes/No
Internet : Yes/No
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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Workmen Compensation Commissioner,
(Commissioner of Labour),
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1235 of 2012

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