



C.M.A(MD)No.1388 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.08.2022

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

C.M.A(MD)No.1388 of 2011

ICICI Lombard General Insurance Co.ltd.,
245, Nungambakkam High Road,
Chennai.

.. Appellant

Vs.

1.Chellathai

2.K.Muthukumar

3.Narayanapandi

4.The Divisional Manager,
New India Assurance Co. Ltd.,
84-A, Thiruvananthapuram Road,
Palayamkottai.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 13.05.2011,made in M.C.O.P.No.359 of 2007, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1	: Mr.R.Krishnan
For R2 to R4	: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 13.05.2011, made in M.C.O.P.No.359 of 2007, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli. The appellant herein is the second respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent and the respondents 3 and 4 herein are the respondents 3 and 4 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.359 of 2007, is as follows:

On 27.01.2007, at about 11.00 am., the petitioner and her daughter were travelling in an Auto rickshaw bearing registration No.TN-69-Y-0473, when the Auto rickshaw was nearing Vanarapettai roundana at Tirunelveli-Palayamkottai road, a mini van bearing Registration No.TN-69-T-0585, driven by it driver in a rash and negligent manner, hit against the Auto rickshaw and the Auto rickshaw capsized. The petitioner sustained multiple injuries. She was taken to Sakthi Hospital, Vannarapettai at Tirunelveli, then



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she was admitted in TVMC Hospital as inpatient. The petitioner claimed a sum of Rs.5,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent in M.C.O.P.No.359 of 2007, is as follows:

The manner of the accident is denied. The accident has occurred only due to the rash and negligent driving of the third respondent/ driver. The first respondent vehicle was insured with the second respondent. The age, income and the injuries sustained in the accident, are all denied.

4. Brief substance of the counter filed by the second respondent in M.C.O.P.No.359 of 2007, is as follows:

The first respondent is not responsible for the accident. Though F.I.R was registered against the driver of the first respondent, after investigation, the F.I.R was closed. As per the final report filed by the police, the accident has happened only due to the rash and negligent driving of the third respondent. The third respondent/driver had no driving licence. The age, and income of the petitioner are all denied. The compensation claimed is excessive. The petitioner is not entitled to 12% interest.



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5. Brief substance of the counter filed by the third respondent in M.C.O.P.No.359 of 2007, is as follows:

The manner of the accident is denied. This respondent is no way responsible for the accident. The accident has occurred only due to the rash and negligent driving of the first respondent/ mini van driver, F.I.R was registered only against the first respondent. The age, income and injuries sustained in the accident, are all denied.

6. Brief substance of the counter filed by the fourth respondent in M.C.O.P.No.359 of 2007, is as follows:

The accident has happened only due to the rash and negligent driving of the first respondent. The third respondent was not having valid driving licence. There is no coverage for the passengers in the Auto rickshaw. The Auto driver was not having Badge. Policy conditions are violated and the fourth respondent is not liable to pay compensation. The age, income and injuries are all denied. The claim is exorbitant. The claimant is not entitled for interest at the rate of 12%.



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7. Two witnesses were examined and nine documents were marked on the side of the petitioner. Three witnesses were examined and two documents were marked on the side of the respondent. One document was marked as Ex.X1. The Tribunal awarded a sum of Rs.1,10,000/- as compensation.

8. Against the award amount, the second respondent filed this appeal on the following grounds:

The Tribunal failed to consider that the appellant, is not liable to compensate the claimant and to indemnify the owner of the vehicle. The driver of the vehicle was not holding effective driving licence and fundamental conditions of the policy of insurance was violated and only the owner is liable to pay compensation and not the insurance company.

9. The Tribunal failed to consider the evidence of R.W.2. The Tribunal failed to consider that after due enquiry, the police filed a final report as mistake of fact. Without appreciating Ex.R1 and the evidence of R.W.1, the Tribunal has decided the issue only on the basis of the oral evidence of P.W.1. The accident took place only on account of the negligence on the part of the



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driver of the third respondent only and the third and fourth respondents are liable to pay compensation. The Tribunal failed to pass an order for pay and recover. The Tribunal failed to consider that there was no damage to the auto rickshaw and that the auto rickshaw was not involved in the accident. The vehicle of the first respondent was not involved in the accident. The appellant is not liable to pay compensation. R.W.2 was examined and Ex.R1 was marked to show that there was no badge endorsement in the driving license of the auto driver. The insurance policy of the auto was marked as Ex.R2.

10.On the side of the respondent it is stated that the claimant travelled in an auto. The van belong to the first respondent was insured with the second respondent. Observation Mahazar and rough sketch were marked as Ex.P3 and Ex.P4. MVI report was marked as Ex.P5 and Ex.P6. A judgment of this Court reported in **2006(2) TNMAC 21** in the case of **The Managing Director, Zoological Park, Vandalur and another vs S.Kalyana Raman and others**, is cited.

11.From Ex.R1, it is seen that the police closed the First Information Report as mistake of fact. On the side of the appellant it is stated that there



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was no proof that Ex.R1 was sent to the concerned Court and that RCS notice was issued to the complainant and that the appellant was heard by the concerned Court. R.W.1 has admitted that the auto hit the van, which clearly reveals that two vehicles were involved in the accident and that the auto capsized. In Ex.P4, rough sketch, it was mentioned that the auto was on the left side of the road and seen that the van came out from the company without observing the traffic.

12.Ex.R1 was not properly proved and the criminal Court records are not binding on the Tribunal. Hence, the contention of the appellant is not correct. It is seen that the van was coming out of the company. While entering the main road, the driver of the van should be very cautious and hence it is decided that the van driver is responsible for the accident.

13.On the side of the appellant it is stated that the driver of the auto was not having badge endorsement for driving a passenger vehicle. On the side of the appellant, it is stated that Badge endorsement is not necessary. A judgment of the Hon'ble Supreme Court, reported in **2017(2)TNMAC 145 (SC)**, in the case of **Mukund Dewangan Vs Oriental Insurance Co.Ltd.**, is cited, wherein, it is held that,



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"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 Vehicles 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 as post amended position of Form 4 as amended on 28.03.2001. 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 Vehicles, the validity period of such licence hold good and apply for the Transport Vehicle of such class also 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:



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(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 Sections 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 ehicle weight of which does not exceed 7500 kg. or a Motor Car or tractor or Road Roller, the "unladenn 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 & 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)



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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) & Section 2(41)[sin 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.

47.In the light of aforesaid answer, let matters be placed for hearing on merits before the appropriate Bench."

In view of the above citation, it is decided that the contention raised by the appellant is not sustainable.



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14.The compensation awarded by the Tribunal under various heads are reasonable. There is no necessity for the Tribunal to consider the criminal Court records in deciding the case under the MV Act. The appellant failed to produce any document or examined any witnesses, as to the non availability of bade endorsement in the driving license of the driver of the van. In view of the above circumstances, it is decided that there is nothing sufficient enough grounds to interfere with the order of the Tribunal and the appellant is liable to be dismissed.

15.The Civil Miscellaneous Appeal is dismissed. No costs.

(i) The Appellant Insurance company, is directed to deposit the entire compensation of Rs.1,10,000/- (Rupees One Lakh Ten Thousand only) (if not already deposited) together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.359 of 2007 on the file of Motor Accidents Claims Authority(Chief Judicial Magistrate), Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.



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(ii) On such deposit being made by the appellant insurance company, the claimant is permitted to withdraw the award amount, with interest as per the terms fixed by the Tribunal, less any amount already withdrawn.

05.08.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal (Chief Judicial Magistrate),
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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