



C.M.A(MD)No.1498 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.06.2022

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

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and

M.P(MD)No.3 of 2011

National Insurance Company Limited
represented by its Branch Manager,
Angu Vilas Building,
Post Box No.112, North Car street,
Nagercoil.

... Appellants

Vs

1.Bino

2.Jenela

3.M/s.Aravind Road Carriers Private Ltd.,
No.A-10, Mahendra Park, GTK Road,
Delhi.

4.National Insurance Company Ltd.,
By its Divisional Manager,
First Floor, C-3, Pooja House,
Community Centre, Kurmpuram,
New Delhi.

... Respondents



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PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Principal District Court, Pudukkottai, in M.C.O.P.No.740 of 2005 dated 19.02.2008.

For Appellants : Mr.D.Sivaraman

For R2 : Mr.P.Ganapathy Subramanian

For R1,3 and 4 : No appearance

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.740 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Pudukkottai. The appellant herein is the second respondent in the claim petition. The first respondent is the claimant. Respondents 2 to 4 are respondents 1,3 and 4 respectively, in the claim petition.

2.Brief substance of the petition filed by the claimant is as follows:

On 07.04.2005 at about 1.30 pm, the petitioner was travelling in Ambassador Car bearing registration number TN 72 D 6040, when the car was



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nearing Thalavaiputhur Esakkiamman Kovil temple, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against the lorry bearing registration number HR 38 D 7110. The petitioner sustained injury and he took treatment from 07.04.2005 till 19.04.2005 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 is as follows:

The age, profession and monthly income of the petitioner / claimant are to be proved. The first respondent already sold the Ambassador car bearing Registration No.TN 72 D 6740 to one Santhanaselvan, S/o. Appadurai, a resident of Mayiladi. The sale consideration of the vehicle was Rs.1,45,000/-. After receiving the entire consideration amount, the first respondent signed the documents and handed over the same to the said Santhanaselvan. He has also intimated the same to the Insurance Company. Subsequently, the said Santhanaselvan insured the vehicle before the second respondent again. Since the vehicle was already sold by the first respondent, there is no necessity for the first respondent to pay any compensation. The first respondent is an unnecessary party to the case.



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4. Brief substance of the counter filed by the second respondent is as follows:-

The age, avocation and income of the petitioner/claimant are denied. The driver of the Ambassador car was not having Badge at the time of accident. The Insurance policy conditions are violated and hence the second respondent is not liable to pay compensation.

5. The third respondent was declared ex-parte. The fourth respondent adopted the counter of the second respondent. Two witnesses were examined and eleven documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of respondents. The Tribunal awarded a sum of Rs.2,27,832/- to be paid by the second respondent and there is an order for pay and recover.

6. Against the order of the Tribunal, the appellant has preferred this appeal on the following grounds:-

The driver of the Ambassador car did not have any valid licence to drive the Taxi at the time of accident. Light Motor Vehicle licence is not sufficient to drive transport vehicles. A specific endorsement (Badge) is



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required to drive the transport vehicles as contemplated under Section 10(2)(e) of the M.V.Act. The Tribunal erred in directing the insurer to pay compensation and to recover the same from the owner of the vehicle. In case of driver not having driving license, it is the duty of the owner of the vehicle to pay compensation. Pay and recovery order can be passed only by the Hon'ble Supreme Court in exercising the special power under Article 142 of the Constitution of India which is not available to the other Courts. Since the only liability under Section 149(2) of M.V.Act, is under dispute, the permission under Section 170 of Motor Vehicles Act, is not necessary.

7.On the side of the respondent, 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,

"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



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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:

(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.



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(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) 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.



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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.

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

8.A perusal of the records reveals that except non availability of badge endorsement, there is no other objections on the side of the appellant. Only a vague objection regarding the quantum of compensation awarded by the Tribunal was raised by the appellant. In the judgment reported in 2017 2 TNMAC 145, the Hon'ble Supreme Court has held that no specific endorsement in the driving license is necessary, by virtue of Amendment Act 54/1994 & 28.3.2001. There is no necessity for an endorsement in the driving license, for driving a vehicle, the unloaded weight of the vehicle is below 500 kilograms.



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9.A perusal of the records reveals that the quantum of compensation awarded by the Tribunal is reasonable. In the above circumstances, there is nothing sufficient enough to interfere with the orders of the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

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Index: Yes / No

Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal, Principal District Court, Pudukkottai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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