



C.M.A(MD)No.1264 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.11.2022

Pronounced on : 07.12.2022

CORAM

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

C.M.A(MD)No.1264 of 2016

M/s.Royal Sundaram Alliance
Insurance Co.Ltd.,
TVS Building
Kishna Rayar Theppakulam,
Madurai - 625001.

...Appellant/ 2nd Respondent

Vs

1.M.Muthu

2.A.Muruappan @ Murugan

3.M.Jothi

... 1 to 3 respondents / petitioners

4.M/s.Sri Annamalayar Timber & Saw Mills,
Trichy Main Road,
Kottampatti, Melur Taluk,
Madurai District.

... 4th Respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 28.04.2016 made in E.C.No. 10 of 2014 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, served on 26.05.2016 and allow this CMA.



WEB COPY



C.M.A(MD)No.1264 of 2016

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R3 : Mr.A.Haja Mohideen
For R4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in E.C.No.10 of 2014 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai. The appellant is the second respondent, respondents 1 to 3 are the claimants, fourth respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follow:

The deceased Manikandan was working as a driver in a TATA ACE HD bearing registration number TN 59 AZ 5455 that belong to the first respondent. On 25.01.2010, when the deceased was driving the van in the course of his service, along the Kottampatti to Chokkampatti road, near Durairaj coconut farm, the van capsized. The deceased sustained injuries and he died on the spot. The age of the deceased at the time of accident was 20 years. He was earning Rs.6,500/- per month plus Rs.75/- per day as batta.



C.M.A(MD)No.1264 of 2016

The petitioners are his dependants. They claim a sum of Rs.9,80,000/- as compensation.

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

The petitioner has to prove the case with relevant documents. The petitioner has to prove that the vehicle was insured with the second respondent and the insurance policy was in force. The deceased was not having valid driving licence. The employer and employee relationship to be proved and the petitioner has to prove that the accident has taken place in the course of employment. The age, income and profession of the deceased are to be proved. The claim is excessive.

4.One witness was examined and eight(8) documents were marked on the side of the petitioner. Two(2) witnesses were examined and two(2) documents were marked on the side of the respondent. The labour commissioner, awarded a sum of Rs.4,55,440/- as compensation to be paid by the second respondent.



C.M.A(MD)No.1264 of 2016

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

The Labour Commissioner failed to appreciate that the driver of the vehicle need a badge endorsement in his driving licence to drive commercial vehicles. The findings of the labour commissioner that the driver was holding valid driving license to drive the vehicle is to be set aside.

6. This Civil Miscellaneous Appeal is admitted on 11.11.2022, on the following questions of law:

i) Whether the learned commissioner of Workmen Compensation has committed an error by holding that the driver who was holding only a permanent driving licence to drive light motor vehicle is competent to drive public service vehicles and transport vehicles without an additional driving licence under the provisions of the Motor Vehicle Act?

ii) Whether the learned Commissioner of Workmen Compensation can fasten the liability to compensate the claimant and to indemnify the owner of the vehicle under Sec.149 of the Motor Vehicle Act, when the driver of the insured vehicle was not holding due, valid and effective driving licence at the time of accident?



C.M.A(MD)No.1264 of 2016

7.Issue Nos.1 and 2:

WEB COPY

On the side of the appellant, it is stated that the deceased was not having badge endorsement in the driving licence and that the Tribunal is wrong in giving a finding that the deceased was having valid driving licence. R.W.1- an official from the Motor vehicles department was examined. He has deposed that there was no badge endorsement in the driving licence of the deceased. Copy of the driving licence of the deceased was marked as Ex.R1. R.W.2 has deposed that unless there is a valid driving licence for the driver, the insurance company is not liable to pay compensation. Copy of policy conditions are marked as Ex.R2.

8.The law is now well settled. A judgment of the Hon'ble Supreme Court reported in **2017 (2) TN MAC 145(SC)** in the case of **Mukund Dewangan vs. Oriental Insurance Co. Ltd.**, is referred by this Court, wherein it is held that there was no necessity to obtain specific endorsement to drive Transport Vehicle, if the unladen weight of the vehicle is below 7500 Kgs.

"Held, 'LMV' under Section 2(21) includes Transport Vehicles of that category as per weight prescribed in Section



C.M.A(MD)No.1264 of 2016

WEB COPY

2(21) read with 2(15) and 2(48) - Therefore, no separate endorsement required to be obtained by holder of LMV Licence to drive Transport Vehicle - Decisions in Prabhu Lal, Roshanben and Angad Kol taking contra view, overruled - Decision in Annappa partly overruled."

9.From the copy of insurance policy, it is clear that the unloaded vehicle involved in the occurrence is less than 7000 Kgs. Hence it is decided that badge endorsement in the driving licence is not necessary, if the weight of an unloaded vehicle is below 7500 kgs and that the driver is having valid driving licence.

10.For the above said reasons, it is decided that there is no ground sufficient enough to interfere in the orders of the Labour Commissioner and hence this Civil Miscellaneous Appeal is dismissed.

11.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.4,55,440/- (Rupees Four Lakhs Fifty Five Thousand Four hundred and Forty only) which shall carry an interest at the rate of 12% per annum.



C.M.A(MD)No.1264 of 2016

(ii) The Appellant / Insurance Company is directed to deposit the entire compensation of Rs.4,55,440/- (if not already deposited) to the credit of in E.C.No.10 of 2014 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, within a period of 30 days from the date of receipt of a copy of this order, failing which, the appellant/ insurance company shall deposit the compensation amount along with an interest of 12% from the date of accident till the date of deposit of the compensation, as ordered by the Labour Commissioner.

(iii) On such deposit being made by the appellant / Insurance company, the first and second respondents herein/1 and 2 claimants are permitted to withdraw their share of Rs.2,00,000/- (Rupees Two Lakhs only) **each** with proportionate interest and cost. The third respondent herein / 3rd claimant is permitted to withdraw his share of Rs.55,440/- (Rupees Fifty Five Thousand Four Hundred and Forty only) with proportionate interest and cost.

07.12.2022

Index: Yes / No
Internet : Yes / No

pnn

7 / 8



C.M.A(MD)No.1264 of 2016

R. THARANI, J

pnn

To

- 1.The Deputy Commissioner of Labour, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.1264 of 2016

07.12.2022