



WEB COPY



C.M.A.Nos.381 & 382 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.381 & 382 of 2019

C.M.A.No.381 of 2019:

K.Rangasamy

...Appellant

Vs.

1. The Manager,
M/s.Subam Textiles,
37 A, Bharathidasan Street,
Srinivasapuram, Avinashi Taluk.
2. The New India Assurance Co. Ltd.,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur.

...Respondents

C.M.A.No.382 of 2019:

K.Arunachalam

...Appellant

Vs.

1. The Manager,
M/s.Subam Textiles,
37 A, Bharathidasan Street,
Srinivasapuram, Avinashi Taluk.
2. The New India Assurance Co. Ltd.,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur.

...Respondents



C.M.A.Nos.381 & 382 of 2019

Prayer in C.M.A.No.381 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 11.12.2009 passed in M.C.O.P.No.373 of 2006 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

Prayer in C.M.A.No.382 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 11.12.2009 passed in M.C.O.P.No.370 of 2006 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

For Appellant : Mr.S.S.Swaminathan
(in both appeals)

For Respondents : No appearance [R1]
(in both appeals) Mr.K.Vinod [R2]

COMMON JUDGEMENT

These matters are listed under the caption “For Being Mentioned” at the instance of the Court.

2. It is seen from the records that though the claimants have filed the appeal seeking enhancement of compensation, however, this Court has not enhanced the compensation but only confirmed the compensation awarded by the Tribunal. However, in para-11 of the order dated 10.11.2023, it has been erroneously typed as “Allowed”, but it should have been shown as “Dismissed”. Therefore, it is submitted that requisite correction may be made in the said order.



3. This Court perused the order dated 10.11.2023, more particularly para-11 and finds that erroneously, in the first line of the said para, instead of noting the appeals as dismissed, erroneously it has been typed as 'allowed' and, therefore, the same requires to be corrected.

4. Accordingly, para-11 of the order dated 10.11.2023 shall stand replaced with the following paragraph :-

*“11. Applying the ratio, the Civil Miscellaneous Appeals are **dismissed** confirming the order passed by the Tribunal and the second respondent/insurance company is directed to deposit the compensation amount as awarded by the Tribunal to the credit of M.C.O.P.Nos.373 and 370 of 2006 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed transfer the award amount along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, directly to the bank account of the appellant in both the appeals through RTGS within a period of two weeks thereafter. Thereafter, the second respondent/insurance company is at liberty to recover the said compensation amount from the first respondent/owner of the vehicle in the*



WEB COPY



C.M.A.Nos.381 & 382 of 2019

manner known to law. Though the first respondent was set ex-parte before the Tribunal, however, liberty is granted to the first respondent to canvass before the Tribunal when the second respondent/insurance company raises a claim. No costs."

5. All the other observations made in the earlier order dated 10.11.2023 shall remain intact.

6. Registry is directed to carry out the aforesaid corrections and issue fresh order copies to the parties.

21.12.2024

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes / No

To

1.The Motor Accident Claims Tribunal,
Principal Sub Judge,
Tirupur.

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



WEB COPY



C.M.A.Nos.381 & 382 of 2019

M.DHANDAPANI, J.

skt

C.M.A.Nos.381 & 382 of 2019

21.12.2024



WEB COPY



C.M.A.Nos.381 & 382 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.381 & 382 of 2019

C.M.A.No.381 of 2019

K.Rangasamy

... Appellant

Vs.

1.The Manager,
M/s.Subam Textiles,
37 A, Bharathidasan Street,
Srinivasapuram,
Avinashi Taluk.

2.The New India Assurance Co. Ltd.,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur.

... Respondents

C.M.A.No.382 of 2019

K.Arunachalam

... Appellant

Vs.

1.The Manager,
M/s.Subam Textiles,
37 A, Bharathidasan Street,
Srinivasapuram,
Avinashi Taluk.

2.The New India Assurance Co. Ltd.,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur.

... Respondents



Prayer in C.M.A.No.381 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 11.12.2009 passed in M.C.O.P.No.373 of 2006 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

Prayer in C.M.A.No.382 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 11.12.2009 passed in M.C.O.P.No.370 of 2006 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

For Appellant : Mr.S.S.Swaminathan
(in both appeals)

For Respondents : No appearance [R1]
(in both appeals) Mr.K.Vinod [R2]

COMMON JUDGEMENT

Both the appeals arise out of a single accident.

2. C.M.A.No.382 of 2019 is filed challenging the award in M.C.O.P.No.370 of 2006 which is filed by the claimant/K.Arunachalam claiming compensation of a sum of Rs.5,00,000/- for the injuries sustained by him in a road accident on 05.02.2006, when he was driving his motorcycle bearing Regn.No.TDE 4664 along with one K.Rangasamy as a pillion rider on the said vehicle. The said K.Rangasamy has filed M.C.O.P.No.373 of 2006



C.M.A.Nos.381 & 382 of 2019

claiming compensation for a sum of Rs.5,00,000/- for the injuries sustained by him, against which, the appeal in C.M.A.No.381 of 2019 has been filed. For brevity, the appellant in both the appeals shall hereinafter be referred to as 'claimants' and the 2nd respondent in both the appeals shall hereinafter be referred to as 'Insurance Company'.

3. On 05.02.2006 at about 07.00 hours, K.Arunachalam/appellant in C.M.A.No.382 of 2019 was riding his motorcycle bearing Regn.No.TDE 4664 along with K.Rangasamy/appellant in C.M.A.No.381 of 2019 as pillion rider towards South near Black Mariamman Kovil, Avinashi to Vanjipalayam Road, Railway Gate, Tirupur. At that time, the driver of van bearing Regn.No.TN-40-Y-2217, belonging to the first respondent and insured with the second respondent, driven the said vehicle in a rash and negligent manner and dashed against the motorcycle, thereby, the rider and the pillion rider sustained grievous injuries. Thereafter, they filed claim petitions in M.C.O.P.Nos.373 and 370 of 2006 claiming compensation of Rs.5,00,000/- respectively.

4. Before the Tribunal, the petitioners examined three witnesses viz., P.W.1 to P.W.3 and marked 9 documents viz., Ex.P1 to Ex.P.9. On the side of the respondents, they examined four witnesses viz., R.W.1 to R.W.4 and



marked four documents viz., Ex.R.1 to Ex.R.4. After adjudication, the Tribunal awarded Rs.1,31,000/- and Rs.1,54,000/- respectively as compensation by fixing the liability as against the first respondent/owner of the van, on the ground that, at the time of accident, the driver of the van driven the goods van was only in possession of LMV driving licence. Aggrieved by the same, the claimants have filed the above appeals.

5. The learned counsel appearing for the appellant in both the appeals submitted that in view of the violation of the policy conditions, the Tribunal fastened the liability as against the owner of the offending vehicle and not against the insurance company. He further submitted that that the issue arises in these appeals is no longer res-integra and the same has already been decided by the Division Bench of this Court. Accordingly, he prays for allowing the appeals.

6. The learned counsel appearing for the insurance company/second respondent in both the appeals submitted that, at the time of accident, the driver of the first respondent was not possessed of a valid driving license, thereby the Tribunal has fastened the entire liability as against the first respondent, which cannot be interfered with. Accordingly, he prays for dismissal of the appeals.



7. Heard the learned counsel appearing for the appellants in both the appeals and the learned counsel appearing for the second respondent in both the appeals and also perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant in both the appeals is with regard to the liability fixed as against the first respondent by the Tribunal on the ground that the driver of the first respondent's vehicle possessed only LMV vehicle driving license, however the involvement of the vehicle is goods van and the LMV driving licence holder is entitled to drive only a LMV, but the van, being a HMV, the driver is not entitled to drive the HMV.

9. The issue raised in the present appeal has already been decided by the Apex Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited***, wherein the Apex Court had distinguished that the licence is based on the class of vehicle and does not relate to a particular vehicle and, therefore, possession of a valid driving licence for a particular class of vehicle would allow the person to drive any type of vehicle within the said class. In the said decision, the Apex Court held as under :



WEB COPY



C.M.A.Nos.381 & 382 of 2019

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



WEB COPY



C.M.A.Nos.381 & 382 of 2019

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.

10. In the case on hand, both the vehicles belong to the same class and therefore, non-possession of a HMV licence would not invalidate the LMV licence and would not render the claimant from driving the instant vehicle which also belongs to the same class and therefore, the insurer cannot absolve



itself of the liability to pay the compensation indemnifying the insured.

WEB COPY

11. Applying the ratio, the Civil Miscellaneous Appeals are allowed and the second respondent/insurance company is directed to deposit the compensation amount as awarded by the Tribunal to the credit of M.C.O.P.Nos.373 and 370 of 2006 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed transfer the award amount along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, directly to the bank account of the appellant in both the appeals through RTGS within a period of two weeks thereafter. Thereafter, the second respondent/insurance company is at liberty to recover the said compensation amount from the first respondent/owner of the offending vehicle in the manner known to law. Further, though the first respondent was set *ex-parte* before the Tribunal, liberty is granted to the first respondent to canvass before the Tribunal when the second respondent/insurance company raises a claim. No costs.



C.M.A.Nos.381 & 382 of 2019

10.11.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

sp



C.M.A.Nos.381 & 382 of 2019

To
WEB COPY

- 1.The Motor Accident Claims Tribunal,
Principal Sub Judge,
Tirupur.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



C.M.A.Nos.381 & 382 of 2019

M.DHANDAPANI, J.,

sp

C.M.A.Nos.381 & 382 of 2019

10.11.2023