IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2367 of 2019

TNT Rajasekar .. Appellant

Vs.

1. Rani

2. M/s.Bajaj Alliance General
Insurance Company Ltd.,
Bagavathy Palace, 2nd Floor,
J-Block, No.13, 3rd Avenue,
Anna Nagar East,
Chennai-102. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2013 made in MACT. OP.No.305 of 2010 on the file of the I Additional District Judge, Motor Accidents Claims Tribunal, Tiruvallur

For Appellant	:	Mr.P.Chandrasekar
For Respondents	:	Mr. M.B,Gopalan R2
		R1 – No appearance

J U D G M E N T

This appellant, who is the owner of the vehicle, has come forward with this appeal, against the judgment and decree dated 28.10.2013 made in

MACT. OP.No.305 of 2010 on the file of the I Additional District Judge, Motor Accidents Claims Tribunal, Tiruvallur

2.Brief fact which are necessary for disposal of this appeal are as follows:-

On 18.07.2008 at about 19.30 hours while the claimant was walking on the left side of the road, at that time, the auto bearing Reg. no.TN 09 AF 7908 driven by its driver, owned by the appellant, in a rash and negligent manner, hit the claimant and another, due to which, she sustained injuries. Thereby, the claimant has filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.1,00,000/-

3. Before the Tribunal, during trial, in order to prove the case, on the side of the appellant, three witnesses were examined viz., PW1 to PW3 and marked 7 documents viz., Exs.P1 to P7, On the side of the respondent/Insurance company, two witnesses were examined and eight documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.87,500/- and pay and recover

method has been ordered. Aggrieved by the same, the appellant, who is the owner of the auto, has filed this appeal before this Court.

4. Learned counsel appearing for the appellant submitted that the appellant was set ex-parte by the Tribunal and no opportunity was provided to the appellant to put forth his defence. It is the further submission of the learned counsel that the appellant had sold his vehicle, which is alleged to have involved in the accident way back in the year 2006, while the accident had happened in the year 2008. It is the further submission of the learned counsel that even otherwise, it is the stand of the appellant that he was possession of a valid driving licence and merely because, he was not having the necessary badge would not be a ground for the Tribunal to accede to the stand of the insurance company in not indemnifying the appellant. In this regard, learned counsel placed reliance upon the decision of the Apex Court in ***Mukund Dewangan – Vs – Oriental Insurance Co. Ltd. (2017 (14) SCC 663)***.

5. Per contra, learned counsel appearing for the 2nd respondent/insurance company fairly submitted that the validity of the

licence held by the appellant is not in issue and that only the appellant not being possessed of the necessary badge to drive the vehicle was the ground to absolve the insurer of its liability to pay the compensation, but invoking the pay and recovery method, the Tribunal has directed the insurance company to pay the compensation and recover the same from the owner of the vehicle/appellant herein, which is, on the basis of the materials available on record, just and reasonable and the same does not call for any interference.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The accident is not disputed and so also the involvement of the victim/1st respondent is not disputed. The whole case is based on the validity of the driving licence held by the appellant. It is the stand of the appellant that he had sold the vehicle as early as on 21.06.2006, while the accident had happened on 18.07.2008. The stand of the insurer is that the driver, who drove the vehicle, had no valid badge to drive the vehicle, though he is

possessed of a valid driving licence. However, the respondent/insurer had not ventured to find out as to who is the owner of the vehicle, as whether it is the person, who had driven the vehicle or someone else. In this regard, the appellant had produced the necessary materials to substantiate the fact that he had sold the vehicle even during June, 2006, which vehicle met with the accident during July, 2008. The fact that the name of the owner had not been transferred in the records of the Regional Transport Authority cannot be a ground to fasten liability on the appellant to pay the compensation.

8. Further, it is not the case of the 2nd respondent/insurer that the driver, who drove the vehicle was not in possession of a valid driving licence. The ground on which the insurer seeks to absolve itself from its liability is that the driver of the vehicle was not possessed of the requisite badge, as evidenced through the deposition of R.W.1 and, therefore, the insurer would not be liable to compensate the claimant.

9. In this regard, the decision of the Apex Court in *Mukund Dewangan case (supra)* clearly defeats the contention of the 2nd respondent/insurer, where, the Supreme Court, in unequivocal terms, has

held that there is no necessary for obtaining an endorsement in the licence to drive a transport vehicle, so long as the person, who is driving the vehicle is possessed of a valid driving licence to drive a particular category of vehicle. The relevant portion of the judgment is quoted hereunder for reference :

> *"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 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 license 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. From the aforesaid decision, it is clear that so long as the driver of the vehicle is having a valid driving licence to drive a particular category of vehicle, the mere fact that there is no endorsement in the licence permitting

the driver to drive a transport vehicle cannot be the basis for the insurer to contend that it is a violation of policy condition and, therefore, the insurer cannot indemnify the insured. The case on hand stands squarely covered by the aforesaid decision.

11. For the reasons stated above, this Court sets aside the award in respect of the method "pay and recover" and directs the the Insurance company to deposit compensation before the Tribunal as ordered with 7.5% interest per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant through RTGS within a period of two weeks thereafter.

12. With the above direction and observation, the civil miscellaneous appeal is allowed. No costs.

21.11.2023

rli

M.DHANDAPANI,J.

Rli

Index : Yes

Speaking Order : Yes

To

The I Additional District Judge,

Motor Accidents Claims Tribunal, Tiruvallur

C.M.A.No.2367 of 2019

21.11.2023