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C.M.A.No.1849 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1849 of 2005

and

CMP.No.10211 of 2005

National Insurance Company Ltd.,
No.1, LRN Colony, II Floor,
Sarada College Road, Salem – 7.

...Appellant

Vs.

1. Ganesan

2. V.Gunasekaran

...Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 as against the order of the Learned Commissioner for Workmen's compensation, Salem made in W.C.No.76 of 2003 dated 09.12.2004.

For Appellants : Mrs.N.B.Sureka

For Respondents : Mr.C.Mahendran, for R1
No Appearance, for R2



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JUDGEMENT

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2. The case of the appellant is that, the 1st respondent filed a petition under the Workmen Compensation Act, claiming a compensation of Rs.3,00,000/- on the ground that, on 19.07.2002, at about 4.30 p.m., when the 1st respondent was travelling as a cleaner in the tanker lorry bearing Regn.No.TDL-2930, owned by the 2nd respondent, insured with the appellant insurance company, as the driver of the above said lorry driven the vehicle in a rash and negligent manner, the lorry turned upside down, due to which, the 1st respondent sustained grievous injuries all over his body. After contest, the Commissioner for Workmen's compensation, vide impugned order, awarded a compensation of Rs.1,26,633/- in favour of the 1st respondent, payable by the appellant/ insurance company. Aggrieved by the said order, the insurance company has preferred this Appeal questioning the liability of the insurer.



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3. Learned counsel for the appellant submitted that, the driver of the 2nd respondent vehicle was not in possession of valid licence as mandated under Rule 9(3) of the Central Motor Vehicles Rules, 1989, since there is no specific endorsement in his driving licence to the effect that he is authorised to drive a goods carriage carrying goods of hazardous nature. For better appreciation, the relevant portion is extracted hereunder:

9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.—

.....
(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. ”

4. In view of the above, when there is no specific endorsement as mandated under Rule 9(3) of the Central Motor Vehicles Rules, 1989 in the driving licence, the driver of the 2nd respondent cannot carry any passenger in the vehicle and even though it is alleged by the 1st respondent/claimant that he is employed as cleaner under the 2nd respondent, the violation of the mandatory condition under Rule 9(3) by the driver of the vehicle, would absolve the appellant/insurance company



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of its liability to pay compensation. However, the said fact was not properly considered by the Commissioner for Workmen's compensation, which has allowed the claim made by the 1st respondent, which is not sustainable and the impugned order has to necessarily be interfered with.

5. Learned counsel appearing for the 1st respondent submitted that, merely because the necessary endorsement is not available in the license of the driver as submitted by the appellant/insurance company, cannot be a ground to deny the claimant from getting the requisite compensation under the Workmen's Compensation Act, as it is a benevolent legislation and any infraction of the provisions, the insurance company has to indemnify the claimant and proceed against the owner of the vehicle. After appreciating the above said facts, the Commissioner of Workmen's compensation passed the impugned order, awarding compensation in favour of the 1st respondent, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

6. Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the material documents placed on record.



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7. The only ground on which, the appellant/insurance company has come up with this appeal is that, insofar as the vehicle carrying hazardous materials, it is necessary for the driver of the vehicle to have necessary endorsement as mandated under rule 9(3) of the Central Motor Vehicles Rules, 1989. Since the necessary endorsement is not available in the driving licence of the driver of the vehicle, the insurance company cannot be fastened with any liability.

8. A perusal of rule 9(3) of the Central Motor Vehicles Rules, 1989, makes it clear that there is clear stipulation that where hazardous materials are carried in a tanker lorry, there should be necessary endorsement in the driving licence of the driver of the said vehicle, permitting carrying of other passengers in the vehicle.

9. In the case on hand, there is no such endorsement in the driving licence of the driver of the vehicle in question. Therefore, even if the claimant claims to be the cleaner of the vehicle, he cannot travel in the lorry along with the driver, since the driver is not authorised to carry any person apart from him in the said vehicle and infraction of the same is



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definitely a violation of the policy condition which will absolve the insurance company from paying compensation.

10. However, notwithstanding the said fact, in view of the order passed by the Commissioner of Workmen's compensation, directing the insurance company to pay compensation, a ground has been taken by the appellant/insurance company in the present appeal that, if at all this Court intends to give the benefit of benevolent legislation to the claimant, the appellant/insurance company may be permitted to pay the compensation awarded by the Commissioner of Workmen's compensation to the claimant/1st respondent and take steps to recover the same from the owner of the tanker lorry/the 2nd respondent, in view of the terms and conditions of the insurance policy.

11. In view of the above said stand taken by the appellant/insurance company in its appeal and also taking into consideration the fact that there is no endorsement in the driving licence of the driver of the tanker lorry owned by the 2nd respondent, this Court while confirming the order of the Commissioner for Workmen's Compensation, modifies



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the direction with regard to fastening the liability on the insurer to pay compensation and directs the insurer to pay the compensation awarded and recover the same from the owner of the vehicle/the 2nd respondent in the manner known to law.

12. Accordingly this Appeal stands disposed of by modifying the order passed by the Commissioner for Workmen's Compensation by directing the appellant to pay the award amount to the 1st respondent and recover the same from the 2nd respondent in accordance with law. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

06.10.2023

skt

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

To

- 1.The Commissioner for Workmen's compensation,
Salem.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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