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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13054 of 2021

S.Farooq

... Petitioner

Vs.

The Senior Manager,
The Oriental Insurance Company Limited,
Divisional Office,
Build Tech Foundations,
Chittur Road,
Fort Maidan, Palakkad,
Kerala – 678 013.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records of the respondent's impugned communication, dated 28.09.2021 and quash the same and consequently direct the respondent to provide insurance claim for the total loss of the vehicle bearing Registration No.TN 65 AD 7690-TATA ZEST TAXI with an accident in view of the Circular No.RT-11021/44/2017 issued by the Government of India.

[Prayer is amended as per order of this Court dated 02.08.2023]



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For Petitioner : M/s.S.Atham Ali

For Respondent : Mr.C.Karthik

ORDER

This writ petition is filed challenging the impugned communication, dated 28.09.2021.

2. Heard M/s.S.Atham Ali, Learned counsel appearing for the petitioner and Mr.C.Karthik, Learned counsel appearing for the respondent. Perused the material documents available on record.

3. The petitioner is the owner of the vehicle bearing Registration No.TN-65-AD-7690 - TATA ZEST TAXI and has registered the same and insured the vehicle with the respondent insurance company which is valid from 31.05.2017 to 30.05.2018. The petitioner's brother and his family have borrowed the petitioner's car on 03.05.2018. While they were returning from Madurai to Ramanathapuram, the car hit with another vehicle bearing Registration No.TN-29-E-2345. In the said accident, the petitioner's two relatives died. At the



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time of the accident, the driver was having valid license and he has suffered grievous injuries. The petitioner's vehicle was fully collapsed and was declared as total loss by vehicle authority. The First Information Report was registered and claim petition is also pending before the appropriate Forum. The petitioner has approached the Insurance company claiming loss. Through communication, dated 05.08.2019, the respondent has stated that they have sought clarification from the concerned Regional Traffic Officer, whether badge is essential to drive Light Motor Vehicle. Based on the communication from the official respondents in Circular No.RT-11021/44/2017 dated 16.04.2018, wherein it is stated that the vehicle has not exceeded 7500 Kg, the driver holding license for Light Motor Vehicle is competent to drive a transport vehicle or omnibus without any endorsement. In spite of the said circular granting relief, the respondent has not paid the insurance claim of the petitioner, hence the petitioner is before this Court.

4. At the time of admission, the petitioner has filed this writ petition seeking prayer for Writ of Mandamus. In the meanwhile, the respondent has



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submitted that they have already passed an order, on 28.09.2020. However, the petitioner has submitted that the circular was not considered before passing the order. Therefore, the petitioner has filed an amendment petition to amend the prayer and the same was allowed by this Court.

5. On perusal of the rejection order, it is seen that the respondent has stated that the driving license of Mr.Niyas Khan, who was driving the vehicle at the time of accident was authorized to drive LMV and MCWG only and does not have a badge, which is required to drive LMV Transport Vehicle, therefore the petitioner's claim was rejected.

6. The learned counsel appearing for the petitioner submitted that such rejection is against the circular issued by the respondents and the petitioner has relied on the circular issued by the Government of India in Circular No.RT-11021/44/2017 dated 16.04.2018. Under Clause-2 (b) of the Circular it is stated that the batch is not necessary. The relevant portion is extracted hereunder:



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“(b). 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 license 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 to 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 license is required to drive a transport vehicle or light motor vehicle class as enumerated above. A license issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.03.2001 in the form.”

7. On perusal of the said circular, this Court is of the considered opinion that the respondent cannot reject the claim of insurance for the reason that the driver is not having badge. As per the Circular the person having “light motor vehicle” is entitled to drive vehicle where the gross weight of vehicle does to exceed 7500 kg. Admittedly in the present case the gross weight of the vehicle



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does not exceed 7500 kg. Therefore, the impugned rejection is against the circular and the writ petitioner is on the advantageous position.

8. The next contention raised by the respondent is that the circular is only applicable to the 3rd party claim. On perusal of the said circular, nowhere it is stated that such claim is applicable to 3rd party claim. Therefore, the contention of the respondent is rejected.

9. Accordingly, the impugned communication, dated 28.09.2021 is hereby quashed. The respondent is directed to grant the benefits that is applicable to the petitioner within a period of 4 weeks from the date of receipt of a copy of the order. The petitioner is directed to cooperate with the respondents, if any documents are necessary the petitioner shall submit the same.



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10. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs.

02.08.2023

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ksa

To

The Senior Manager,
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S.SRIMATHY, J.

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[2/2]

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