BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.01.2023

Delivered On : 2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.567 of 2019

The United India Insurance Company Limited,
through its Branch Manager,
Office at Number 4, Royal City,
Karur Road, Tiruchirappalli – 620 002. ... Appellant / 2nd respondent

Vs.

1.Muthuselvi
2.Minor Padmapriya
3.Minor Gokula Mathavan
(Minor R 2 & R3 rep. through their mother
& guardian Muthuselvi R1 herein)
4.Mahalingam
5.Subbammal ... Respondents 1 to 5 /Petitioners 1 to 5
6.Suganthi ... 6th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, made in M.C.O.P.No. 903 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal – Principal District Judge, Tirunelveli.

For Appellant : Mr.C.Karthik

For Respondents : Mr.V.Sasikumar for R1 to R5

: Mr.D.Kirubakaran for R6

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.903 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal – Principal District Judge, Tirunelveli. The appellant herein is the second respondent, the respondents 1 to 5 herein are the claimants and the sixth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No. 903 of 2017, is as follows:-

On 13.02.2017, at about 12.30 am., when the deceased was riding a motor bearing Registration No.TN-67-AA-5403 keeping the extreme left side of the road, a Tanker lorry bearing Registration No.TN-45-BH-6953 came from the opposite direction in a rash and negligent manner, hit against the motorcycle. The deceased sustained injuries. He was taken to Government Hospital, Punalur and he was declared dead. The deceased was aged about

32 years, he was a Mason and was earning Rs.20,000/-per month. The petitioners are his dependants and they claim a sum of Rs.50,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No. 903 of 2017, is as follows:-

The age, income and occupation of the deceased are all denied. The manner of accident as narrated in the petition is denied. The driver of the Tanker lorry was not having valid driving licence. The accident has taken place due to the rash and negligent driving of the deceased himself. The lorry had no valid insurance policy. The compensation claimed is excessive. The respondent is not liable to pay compensation.

4. Three (3) witnesses were examined and 12 documents were marked on the side of the petitioner. One (1) witness was examined and 2 documents were marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 19,59,400/- as compensation to be paid by the second respondent.

5. Against the award, the appellant - Insurance Company has filed this Appeal on the following grounds:-

The driver of the lorry was not having heavy transport vehicle (HTV) licence. Hence, the Insurance Company is not responsible to pay compensation. An official from the R.T.O office was examined as R.W.1. Extract of the driving licence was marked as Ex.R2. The driver was having only Light Motor Vehicle (LMV) licence. The Tribunal failed to order for "pay and recover" from the owner. There is no proper evidence for the monthly income. There is no possibility of getting regular or permanent work and the Tribunal failed to consider this aspect. The award is excessive.

6. On the side of the appellant, it is stated that the driver of the lorry was not having heavy motor vehicle licence. The driver was having only Light Motor Vehicle licence. R.W.1, an official from the R.T.O office was examined. Extract of the driving licence was marked as Ex.R2 and prayed an order for "pay and recover" from the owner of the vehicle.

7. On the side of the sixth respondent- owner of the vehicle, it is stated that R.W.1 has deposed that the driver of the lorry was having driving

licence with an endorsement for transport vehicle. Since there is an endorsement to drive transport vehicle, the driver is entitled to drive medium and heavy motor vehicle. A judgment of the High Court of Punjab and Haryana at Chandigarh, made in ***F.A.O. 3997 of 2015, dated 08.02.2018 (Subash Chand V. United India Insurance Co.Limited***) is cited, wherein, it is stated as follows:-

> *"..As per provisions of the Act, there is no such classification of vehicles or licences LMV transport or HTV transport. Rather, classification of vehicles as medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle, that has been done away by the legislature in the year 1994. The insurance company did not examine a witness from the Licensing Authority, always to prove that in view of endorsement made on licence possessed by the driver, he was authorized only to drive a transport vehicle which falls in the definition of light motor vehicle under Section 2(21) of the Act. In this view of the matter, I find merit in contention of the appellant that the Tribunal has misdirected itself by accepting plea of the insurance company that driver was not competent to drive the heavy goods vehicle with gross vehicle weight 16,200 Kgs. As such, findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and liable to be set aside."*

8. Another Judgment of the Hon'ble Supreme Court reported in ***2017-14-SCC-663 (Mukund Dewangan V. Oriental Insurance Company Limited)*** is cited, on the side of the sixth respondent, wherein, it is stated as follows:

> *"16. Prior to the amendment in 1994, licence for transport vehicle was clearly covered as per Section 10(2) in five categories ie. Section 10(2)(d) light motor vehicle, Section 10(2)(e) medium goods vehicle, Section 10(2)(f) medium passenger motor vehicle, Section 10(2)(g) heavy goods vehicle and Section 10(2)(h) heavy passenger motor vehicle. The licence for "light motor vehicle" has been provided in Section 10(2)(d). The expression "transport vehicle" has been inserted by virtue of Amendment Act 54 of 1994 in Section 10 (2)(e) after deleting four categories or classes of vehicles ie. medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle. Earlier Section 10 did not contain the separate class of transport vehicles.*
>
> *.....*
>
> *21..... Form 4 makes it apparent that "light motor vehicle" is a description of the kind of vehicle as defined in Section 2(21). A transport vehicle of a light motor vehicle category is not at all excluded from the form. Even otherwise the form cannot control the substantive provisions carved out in Sections 10 (2)(d) and 10(2)(e). The interpretation of the form*

is also to be in tune with the statement of objects & reasons and the provisions of the Act inserted by virtue of the amendment. Though it appears that in the amended form, "medium passengers motor vehicle" remains that appears to be more due to oversight. Thus, as intended, the simplification of the procedures and policy liberalisation has taken place by introducing in the form category of "transport vehicle" instead of medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle. The policy of liberalisation became necessary with an introduction of newer types of vehicles and fast increasing numbers of both personal and commercial vehicles in the country. In case it was intended to take transport vehicle out of the category of the light motor vehicle then it was necessary to amend Section 2(21) and Section 10(2)(d) also which has not been done. Thus, the intendment of the amendment has to be taken by addition of "transport vehicle" of the aforesaid categories of medium and heavy vehicles only so that a person is required to apply for licence, only once to drive aforesaid four kinds of vehicles as per the amended provision of Section 10(2)(e) and the form."

9. On the side of the appellant, it is stated that the vehicle involved is a lorry, which is heavy transport vehicle. There is no necessity to get a transport endorsement for driving Light Motor Vehicle and Medium Motor

Vehicle. The citations referred by the respondent are not relevant to decide whether heavy transport vehicle licence was necessary or not. The decision is clear even now a Heavy Motor Vehicle Licence is necessary to drive a Heavy Transport vehicle.

10. The owner of the vehicle remain exparte before the Tribunal. He has not chosen to file a counter or to participate in the trial. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.P1-F.I.R, Ex.P2-translated version of Ex.P1, Ex.P4 and Ex.P5-M.V.I. Reports, the Tribunal has decided that the lorry driver was responsible for the accident.

11. On the side of the appellant, it is stated that the driver of the lorry was not having valid driving licence and P.W.1 - an official from the R.T.O. office was examined on the side of the appellant.

12. Driving licence of the lorry driver was marked as Ex.R2. Both the cases cited on the side of the sixth respondent is with regard to the endorsement to be made in driving transport or goods vehicles. The above citations are not applicable to the facts of the present case. Admittedly, the driver of the lorry was having licence only to drive light motor vehicle. The

endorsement itself is not sufficient to decide that the driver is entitled to drive Heavy Motor vehicles. As per the citations referred by the sixth respondent, no endorsement is necessary to drive Light Motor Vehicle. Transport vehicle and motor vehicles with below the unladden weight of 7500 Kgs.

13. For the reasons above, it is decided that the driver of the vehicle was not having valid driving licence to drive heavy transport vehicle. Since the driving licence is not valid, the appellant is directed to pay the compensation at the first instance and the appellant is permitted to recover the same from the owner of the vehicle. There is no dispute regarding the quantum. Hence, it is decided that the quantum of compensation fixed by the Tribunal is reasonable.

14. With the above observation, this appeal is partly allowed.

(ii) The **appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.19,59,400/-** together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Thereafter, the appellant is permitted to recover the same from the owner of the vehicle**.

(ii)On such deposit being made, the Tribunal may permit the respondents 1, 4 and 5 herein/ major claimants are permitted to withdraw their shares as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them.

(iii) The Tribunal is directed to deposit the share of the minor claimants / respondents 2 & 3 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first respondent herein, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any. No costs.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

To

1.The Motor Accidents Claims Tribunal –
Principal District Judge,
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.567 of 2019

17.03.2023