



CMA(MD).No.1103 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1103 of 2017

and

C.M.P(MD)No.11214 of 2017

The Oriental Insurance Company,
Represented by its Divisional Manager,
Shobha TSM Complex,
Opposite to Town Railway Station,
Railway Station Road,
Palakkad, Kerala State.

....Appellant/2nd Respondent

Vs.

1.P.Pandian

... Respondent/Petitioner

2.V.Senthil

... Respondent/1st Respondent

3.Velmurugan

... Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.1,72,500/- (Rupees One Lakh Seventy Two Thousand Five Hundred only) passed in M.C.O.P.No.10 of 2013, dated 28.07.2017 on the file of the Motor Accident Claims Tribunal cum chief Judicial Magistrate, Dindigul.



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For Appellant : Mr.K.Balasubramanian
For R1 : Mr.S.Anand Chandrasekar
for M/s.Sarvabhuman Associates
For R2 : Mr.R.Thangapandian

J U D G M E N T

The present appeal has been filed by the insurance company challenging the award of the Motor Accident Claims Tribunal primarily on the ground of liability.

2. According to the injured claimant, while he was a pillion rider in a TVS-XL vehicle, a Tata Ace vehicle coming from the opposite direction was driven in a rash and negligent manner and it dashed against the two wheeler and he had sustained injuries. The claimant prayed for a sum of Rs.9,00,000/- towards compensation.

3. The owner of the offending vehicle, namely the Tata Ace had remained ex parte and the insurance company had filed a counter disputing the quantum and also contending that the driver of the Tata



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Ace was having only a LMV non-transport driving license and he was not having a valid and effective driving license to drive a transport vehicle, namely Tata Ace. They have further contended that the accident has not happened due to the rash and negligent driving of the vehicle belonging to the 1st respondent. They have also disputed the quantum of compensation.

4. The driver of TVS-XL had filed M.C.O.P.No.185 of 2012 before Motor Accident Claims Tribunal, Dindigul for the injury sustained by him. In the said claim petition, it was stated that one Thavidan was the driver of the offending vehicle, namely Tata Ace. The tribunal after considering the oral and documentary evidence arrived at a finding that the driver of the Tata Ace had driven the vehicle in a rash and negligent manner. The tribunal further found that the said driver was not having an effective driving license and proceeded to grant an order of pay and recovery after fixing the total compensation at Rs.2,04,900/-.

5. While the present claim petition in M.C.O.P.No.10 of 2013 was pending, the claimants had filed an application in I.A.No.277 of 2015



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was filed seeking to implead one Velmurugan as the 3rd respondent to the claim petition on the ground that he was the driver of the offending vehicle, namely Tata Ace. The said application was allowed.

6. However, the column no.16 of the claim petition wherein the driver name was mentioned as Thavidan was not amended.

7. The tribunal after considering the oral and documentary evidence came to a conclusion that the accident has happened only due to the rash and negligent driving of the driver to the Tata Ace vehicle owned by the 1st respondent herein.

8. The tribunal further had found that since the driver was holding a valid driving license, the contention of the insurance company was rejected. The tribunal proceeded further fixed the quantum at Rs.1,72,500/- and directed the respondents 1 and 2 to pay the amount jointly and severally. This award is under challenge in the present appeal.



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9. According to the learned counsel appearing for the appellant, after the accident when F.I.R was lodged, the name of the driver of the offending vehicle was not reflected in the F.I.R. The first M.C.O.P. in M.C.O.P.No.185 of 2012 was filed by the driver of TVS-XL, disclosing the fact that the offending vehicle was driven by one Thavidan and the same was accepted by the tribunal and an award came to be passed. However, the second M.C.O.P was filed by the pillion rider of TVS-XL originally indicating that the Thavidan is the driver of the offending vehicle. Later, without amending column no.16 of the claim petition, the claimants have filed an application to implead one Velmurugan as a 3rd respondent in the claim petition. It was alleged in the impleading petition that Velmurugan is the driver of the offending vehicle at the relevant point of time. Therefore, according to the learned counsel appearing for the appellant, the claimants have played fraud and the claim petition is surrounded by suspicious circumstances.

10. The learned counsel for the appellant further pointed out that the name of Thavidan is still reflected in coloumn no.16 of the claim petition and therefore, the claimants were not sure about who had driven



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the offending vehicle at the relevant point of time. He further contended that since Thavidan was having only LMV licence and the tribunal has ordered pay and recovery in M.C.O.P.No.185 of 2012, the claimants have attempted to change the driver in the second claim petition in M.C.O.P.No.10 of 2013. Therefore, the claimants have not approached the Court with clean hands and the claim petition ought to have been dismissed as against the insurance company mulcting the liability upon the owner of Tata Ace vehicle. Therefore, he prayed for allowing the appeal.

11. Per contra, the learned counsel appearing for the respondents/ claimants had contended that the claim petition was originally filed indicating the fact that one Thavidan was the driver of the offending vehicle. Later, on enquiry, it came to know that one Velmurugan is the driver of the offending vehicle. There is no dispute that the Thavidan also was having an LMV driving license. As per the judgment of the Hon'ble Supreme Court reported in **2017 (14) SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)**, an endorsement is not required in case of LMV class of vehicles. Therefore, whether



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Thavidan had driven the vehicle or Velmurugan had driven the offending vehicle at the time of accident is not going affect the liability of insurance company in any manner.

12. The learned counsel appearing for the respondent had further contended that the impleading application was allowed by the tribunal which was not challenged by the insurance company. Therefore, at this length of time, the insurance company cannot raise a plea that the Velmurugan was not the driver at the relevant point of time. He further contended that since Thavidan as well as Velmurugan were having effective and valid driving license at the relevant point of time, the question of pay and recovery would not arise. Hence, he prayed for confirming the award passed by the tribunal.

13. I have carefully considered the submissions made on either side and perused the records.

14. The main ground on which the present appeal has been filed by the insurance company is that the claimants have attempted to change the



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driver in order to get over the fact that the original driver, namely Thavidan was not having valid and effective driving license at the time of accident.

15. A perusal of the award in M.C.O.P.No.185 of 2012 will clearly indicate that the tribunal has arrived at a finding that the said Thavidan was having LMV driving license, but he was not having any endorsement for driving a transport vehicle. In view of the judgment of the Hon'ble Supreme Court reported in **2017 (14) SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.)**, the Tata Ace being an LMV vehicle, the question of having an endorsement for driving the transport vehicle does not arise. The said non-holding of the badge cannot be considered to be violation of policy conditions. Therefore, even assuming that only Thavidan had driven the offending vehicle at the time of accident, the claimants would be entitled to receive compensation from the insurance company and there is no question of mulcting the liability upon the owner of the offending vehicle.



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16. In view of the above said discussion, I do not find that there are any merits in the appeal and the same is liable to be dismissed. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The Motor Accident Claims Tribunal
cum chief Judicial Magistrate,
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)No.1103 of 2017

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