



C.M.A.No.1297 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.02.2024	Pronounced on 21.03.2024
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1297 of 2021

and

C.M.P.No.6594 of 2021

The Chairman,
Vidya Nethra Matric.School,
VNI Campus, Pollachi,
Udumalpet Highway, Comangalam,
Pollachi - 642 107.

...Appellant

Vs.

1.Umsalma
2.Minor.Nesama Begum
3.Minor.Mohamed Nesheer
(Minors represented by their Guardian-Mother Umsalma
4.Noorjahan
5.The New India Assurance Co.Ltd.,
"CLAIMS HUB", 2nd Floor,
133/31-1, Trichy Main Road,
Gugai, Salem - 636 006

...Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 22.09.2017 made in M.C.O.P.No.860 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.



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For Appellant : Mrs.Ramya V.Rao
For R1 to R3 : Mr.J.Franklin
For R4 : No appearance
For R5 : Mr.J.Chandran

JUDGMENT

The owner of the private bus is the appellant herein.

2. The respondents 1 to 4 are the claim petitioners before the Tribunal, had filed M.C.O.P.No.860 of 2016, claiming compensation for death of one Mr. Basheer @ Mohammed Basheer in the road transport accident on 03.12.2015.

3. The factum of the accident, manner of the accident and rash and negligent on the part of the driver of the school bus belong to the first respondent-the appellant herein are not in dispute.



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4 (a) The appellant-Insurance Company, as a second respondent before the Tribunal filed a counter statement alleging that the vehicle bearing Registration No.TN 41 AH 7671 Eachar van is a school van owned by the first respondent herein.

(b) The Regional Transport Authority, Pollachi, has followed the Tamil Nadu Government Regulation and Rules of Transport Department for the issuance of Education Institutional vehicle permit and accordingly issued the permit for school van of the first respondent - school herein as a "Education Institutional Bus" and the validity of the permit between 26.06.2013 and 25.06.2018 on the conditions that are stipulated under such permit as a education institutional bus.

5. On the date of the accident, the driver is not having necessary qualification namely 5 years of experience in driving the L.M.V vehicle and therefore it amounts to violation of policy condition and the Insurance has to be exonerated from any liability.



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6. During the trial, the claim petitioner was examined as P.W.1 and occurrence witness was examined as P.W.2 and Exs.P1 to P16 were marked and on behalf of the Insurance Company, on court summons R.W.1 Chandrasekar, staff from the Insurance Company was examined and policy of Insurance Company is marked as Ex.R1, Driving License of the driver of the school van is marked as Ex.R2, letter addressed by the Insurance Company to the owner of the vehicle is Ex.R3 and acknowledgment is Ex.R4.

7. On court summons, the staff from the R.T.O office, Pollachi was examined as R.W.1 and he was marked as Ex.X1, Authorization Letter to depose before the Court and Ex.X2 R.T.O letter addressed to the first respondent/owner of the bus.

8. On consideration of both oral and documentary evidence, the Tribunal had come to the conclusion that the accident has took place due to the rash and negligent driving of the driver of the school van and accordingly, held that the owner of the bus is liable to pay the compensation and assessed the compensation at Rs.12,87,500/-.



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9. Based upon the evidence of R.W.1, Assistant from the R.T.O office, the Tribunal has held that the driver of the vehicle Kanagaraj does not have requisite qualification to drive the school bus. Therefore, held that the same amounts to violation of policy condition and hence, ordered for pay and recovery.

10. Aggrieved against the said order, the owner of the school bus has filed this appeal.

11. The learned counsel for the appellant-owner of the school bus contended that the decision of Hon'ble Supreme Court in 2017(2) TANMAC 145 (SC) [OIC Vs.Mugund Devang] and also drew my attention to Ex.R2 - Policy.

12. The learned counsel for the appellant-school van owner contended that the condition that was referred by R.W.1, R.T.O officer is intended only for the safety of the students who are travelling inside the bus and therefore, had been any accident consequent thereto an injury is caused to the occupant of the



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school bus namely (school children) in that factual situation alone, the clause stipulating the 5 years experience of driving L.M.V vehicle will come into operation and further contended that however, in the instant case, the deceased is a third party who was outside the bus (viz., was travelling in his two wheeler) and he is a third party and therefore, the condition contemplated in the above G.O may not be applicable to facts and circumstances of this case.

13. In short, the contention of the learned counsel for the appellant-school bus is that, had there been any injury consequent thereto, a claim petition had been filed by the passenger of the bus and in such event, the policy being a comprehensive policy at that time, only the disqualification of the driver to drive the school bus will come into operation and not otherwise.

14. On factual situation, on 03.12.2015, when the deceased Basheer @ Mohammed Basheer was travelling in his two wheeler bearing Registration No.TN 41 B 1717 around 07.45p.m, the Eicher van which belongs to the appellant school was driven by the driver in a rash and negligent manner and dashed against him and consequently, he died of accidental injuries.



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15. The points for consideration in this appeal is as follows:-

(i) Whether the conditions stipulated by the Tamil Nadu Government Regulation and Rules (Transport Department) for issuance of permit as educational industrial bus wherein a condition has been incorporated that the driver of the vehicle should necessarily have the qualification of 5 years of experience in driving the L.M.V vehicle, is directory as pleaded by the appellant - (bus owner) or mandatory as pleaded by the Insurance Company.

(ii) If so on violation of the said condition whether the Insurance Company can be exonerated from his liability under the contract of insurance

(iii) Whether the clause stated in the above said rules Tamil Nadu Government Regulation Rules is confined only to a claim petition filed by the passenger who travelled in the bus or applicable to any person claiming compensation for the injuries / death caused by such vehicle

(iv) Whether pay and recovery clause ordered under Oriental Insurance Company Vs.Mugund Devang in 2017 (2) TANMAC 145 (SC) be invoked in such cases.

16. On bare perusal of the Tamil Nadu Government Regulation Rules Transport Department (in short rules), it is noticed that an additional condition has been prescribed as the qualification for the driver to drive the vehicle which are classified as education institutional bus / van.



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17. The object of such a G.O is to the effect that due to the pathetic past experience happened for the school children in the road transport accident when the school bus / van met with an accident and further it is to ensure that the safety of the students, travelling as a passenger in the school bus has to be ensured and hence an additional qualification of minimum period of 5 years as experience in driving has been prescribed and therefore, at no stretch of an imagination, it can be termed as only directory in nature.

18. As contended by the appellant-bus owner it is a mandatory in nature and hence the contention of the learned counsel for the Insurance Company that such a rule prescribing additional qualification for the driver to drive the school bus is only a mandatory in nature and any violation therefore, amounts to violation of the policy of the terms and conditions of the Insurance policy and hence, in such a situation if on evident on record, it has come to the light that on the date of the accident, the driver who was driving the bus / van does not possess minimum 5 years of driving experience in such circumstances it will amounts to the violation of the rules which in turn amounts to violation of the terms and conditions of the insurance policy and hence the above points 1&2 are answered accordingly.



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19. Coming to the factual matrix of the case, I find that on Court summons the staff from R.T.O office, Pollachi was examined as R.W.1 and has marked as Ex.R1, Authorization letter given for evidence before the Hon'ble Court and Ex.X2 is a letter addressed to the first respondent - owner of the bus.

20. On an close perusal of the permit issued for the vehicle in question, it is permit No.45/TN41/EIB/213 it is categorically mentioned as educational institutional bus in column No.VI and hence, this Court has considered in the view of the permit issued by the R.T.O office to the bus in question is an education institutional bus permit.

21. The evidence of R.W.1 namely staff from the R.T.O office is that based upon Ex.X1, communication received from the Court he appeared and submitted Ex.X2 and as per the rules stated in Ex.X2 which is in respect of Education Institutional vehicle, the driver must have possessed driving experience of 5 years. As per Ex.R2 Driving License of the Kanagaraj the driver who was driving the vehicle at the time of accident. The license was issued on 15.12.2021. As per Exhibit P1, F.I.R the accident took place on



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03.12.2015 and hence, on the date of accident, he was having only 4 years of experience and not 5 years of experience as required under the statutory regulations fixed by the Transport Department for driving Education Institution bus and hence, I have no hesitation to come to the conclusion that it amounts to violation of policy condition.

22. Since there is a violation of terms of policy in respect of holding of driving license, the Hon'ble Supreme Court in the above said Mugund Devang's case as ordered for pay and recovery.

23. In other words, the Insurance Company is required to honour the award by payment and with a liberty to recovery, the same from the owner of the offending vehicle. In this case, even in cases of violation of driving license as required in the above said rules, it also falls under the same category.

24. It remains to be stated that merely because the driver is possessing a valid driving license, the same will not stretch too far to say and contended that he possess valid driving license. In the absence of necessary driving experience as prescribed in the above said rules.



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25. Accordingly, this Court holds that the driver of the vehicle Kanagaraj who drove the vehicle on the date of the accident does not satisfy the 5 years driving experience fixed in the above said rules and the same is mandatory in nature in respect of education institutional bus and non compliance of the above said rules amounts to violation of the statutory mandate under the said G.O and on the breach of the conditions stipulated for the education institutional bus permit, the same automatically amounts to violation of terms and conditions of the policy and therefore, the Insurance Company is exonerated from any liability. Similar finding rendered by the Tribunal is hereby confirmed to different reasoning as discussed supra and it is further held that even in such cases, the ratio laid down by the Hon'ble Supreme Court in Mugund Devang's case is applicable.

26. As off suit, the pay and recovery ordered by the Tribunal is just and fair cannot be held to be unsustainable in law and hence, the same is held to be in accordance with law laid down by the Hon'ble Supreme Court and the order of pay and recovery ordered by the Tribunal is hereby confirmed.



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27. Accordingly, this Civil Miscellaneous Appeal is dismissed confirming the compensation awarded by the Tribunal dated 22.09.2017 made in M.C.O.P.No.860 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. No costs. Consequently, connected C.M.P is closed. The Insurance Company is hereby required to honour the award within a period of eight weeks from the date of receipt of a copy of this order and permit to liberty to recover the same from education institutional as per the established procedures.

21.03.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/no

To

1. The Motor Accidents Claims Tribunal,
Special District Court, Salem
2. The Section Officer,
V.R.Section, High Court of Madras, Chennai.



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RMT.TEEKAA RAMAN.J.

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Judgment made in
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Dated:21.03.2024