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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1345 of 2024

Radhakrishnan

... Appellant

.VS.

1.Sarikumar

2.The Branch Manager

IFFCO-TOKIO General Insurance Co., Ltd.,

No.58-A, 2nd Floor, Anjaneya Road,

Puducherry

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order dated 02.01.2019 on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Puducherry.

For Appellants : Mr.Avinash Wadhwani

For Respondents : Mr.J.Michale Visuvasan for R2

JUDGMENT

This appeal has been filed against the Award passed by Motor Accident Claims Tribunal in MACTOP No.982 of 2017, dated 02.01.2019, applying the principle of pay and recovery.





not have a valid temporary permit on the date of the accident and therefore, the Tribunal proceeded to apply the pay and recovery principle.

5.The Tribunal fixed the total compensation at Rs.20,78,000/- and this compensation was directed to be paid with interest at the rate of 7.5% per annum.

6.The Insurance Company after depositing the compensation proceeded to recover the same from the appellant by filing an execution petition. It is at this point of time, the present appeal came to be filed before this Court against the finding of the Tribunal applying pay and recovery principle mainly on the ground that the appellant possessed a valid temporary permit as on the date of the accident.

7.When the matter came up for hearing on 26.06.2024, this Court passed the following order:

When the matter was taken up for hearing today, the learned counsel for the appellant produced the temporary permit that was issued in favour of the permit holder viz., the Appellant. The learned counsel submitted that as on the date of accident on



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04.03.2017, there was a valid permit for the appellant to ply the vehicle to Puducherry. This permit has not been marked as a document before the Tribunal. It is also seen that there is a correction at Column No.10 wherein it has been written that the validity of the permit was from 17.02.2017 to 03.03.2017. Whereas at Column No.6 (4), it shows that the permit expires on 04.03.2017. The learned counsel for respondent corporation shall take instructions with respect to the permit that has now been relied upon by the learned counsel for the appellant.

2.The learned counsel for respondent corporation submitted that the permit was not available with the appellant which is evident from the Accident Register report, which was marked as Ex.P12. That apart, the FIR was registered against the appellant and on completion of investigation, the final report was also filed where the appellant was charged for not possessing a valid permit. The appellant has admitted to the guilt and he also paid the fine in STC No.340 of 2017 dated 09.09.2017 on the file of Judicial Magistrate II, Puducherry. The learned counsel for appellant shall take instructions with respect to this document.

3.If ultimately, the appellant has accepted to the guilt and has paid the fine for not possessing a valid permit, there is no question of once again going into the issue of permit in this case.



4.Post this case under the same caption on 18.07.2024.

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8.The case was thereafter listed for hearing on 18.07.2024 and this Court passed the following order:

Pursuant to the earlier order passed on 26.06.2024, the matter was listed for hearing today.

2.The learned counsel for appellant submitted that the owner of the vehicle was not made as an accused in this case and only the driver was made as an accused and he had pleaded guilty before the Criminal Court. Therefore, it was contended that the driver pleading guilty before the Criminal Court cannot be put against the owner of the vehicle.

3.The learned counsel for Insurance company submitted that Section 192A of the Motor Vehicles Act, makes it punishable not only the person who drives the motor vehicle but also the person who allows the motor vehicle to be used without a valid permit. Therefore, it was contended that the driver of the vehicle pleading guilty will bind the owner of the vehicle.

4.The learned counsel for Insurance company also produced the attested copy of the permit by the Regional Transport Authority (RTA), Tindivanam. What has been produced before this Court is in line with what has been shown by the



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learned counsel for appellant during the previous hearing.

5.This Court wants to get a clarity from the concerned authority regarding the validity of the permit in this case. In view of the same, the learned Additional Government Pleader shall take instructions from the Regional Transport Authority, Tindivanam and clarify as to why there is a discrepancy between Column 6 (iv) and Column10 of the permit issued insofar as the expiry date of the validity period. The Regional Transport Authority, Tindivanam, shall explain this discrepancy and also come up with a specific stand as to the exact period of validity of the permit in this case.

6.Post this case under the same caption on 30.07.2024.

9.When the matter was taken up for hearing today, the learned Additional Government Pleader submitted the report of the Regional Transport Authority, Tindivanam along with the relevant records. For proper appreciation, the relevant portions in the report are extracted hereunder:

2.It is submitted that as per the records available in this office, the special permit issued in respect of vehicle TN23AP7725 in R.No.A3/4509/2017 in T.P.No.469/TP/2017 was valid from 17.02.2017 to 03.03.2017. However, while entering the data on to the system software, it was wrongly entered as 18.02.2017 to 04.03.2017 (in column No.10). There was no



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option available in the software to edit the correct validity date. Hence, the special Permit print out taken for the vehicle TN23AP7725 was manually corrected as from 17.02.2017 to 03.03.2017 and attested on the date of issue. However, due to oversight the correction was not carried out in column No.4 of the permit.

3.Further, it is submitted that the original disposal of the above transaction was transacted to the yea 2017. The disposal was closed as one year disposal. Hereafter, lapse of one year, the above disposal was sent to destruction as per the District Office Manual. The copy of the register for temporary permit and copy of destruction of the records related to the year 2017 is enclosed herewith.

10.It is quite evident from the report and also the materials that have been placed before this Court that the temporary permit was valid only for the period from 17.02.2017 to 03.03.2017. Which means that as on the date of the accident on 04.03.2017 there was no valid temporary permit.

11.Heard Mr.Avinash Wadhwani, learned counsel appearing on behalf of the appellants and Mr.J.Michael Visuvasam, learned counsel appearing on behalf of the 2nd respondent.



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12. This Court has carefully considered the submissions made on either side and also the materials available on record.

13. The short issue that was raised by the learned counsel for the appellant is that there was a valid temporary permit as on the date of the accident on 04.03.2017 and therefore, the Tribunal ought not to have applied the pay and recovery principle.

14. This Court on going through the copy of the temporary permit that was filed by the learned counsel for the appellant, had its doubt regarding the period of the validity of the permit, since there was some discrepancy. In view of the same, this Court called for a report from the Regional Transport Authority, Tindivanam. In the report, the authority has taken a stand that the temporary permit was valid from 17.02.2017 to 03.03.2017.

15. There is yet another fact that has to be taken into consideration by this Court. Immediately after the accident, an FIR came to be registered and on completion of investigation, final report was filed and it was taken on file in



STC No.340 of 2017 by the learned Judicial Magistrate No.II, Puducherry. The driver of the offending vehicle went before the Tribunal and pleaded guilty and paid the fine. It was contended on the side of the appellant that the driver pleading guilty cannot be put against the owner of the vehicle. Therefore, it will not amount to an admission of the guilt by the owner of the vehicle.

16.A careful reading of Section 192A of the Motor Vehicle Act shows that it is not only the driver of the motor vehicle but also a person who causes or allows a motor vehicle to be used in contravention of the provisions of Section 66(1) or in contravention of any other condition, who will be held liable and punishable for the offence. Therefore, even though the driver of the offending vehicle had pleaded guilty, the very fact that the owner of the vehicle had permitted the vehicle to be used without a valid permit, makes the owner also liable. Hence, pleading guilty by the driver will bind the appellant also since the appellant is the owner of the vehicle.



N. ANAND VENKATESH., J

ssr

17.In the light of the above discussion, this Court does not find any illegality in the Tribunal applying the principle of pay and recovery and such finding rendered by the Tribunal is hereby sustained.

18.In this result, this civil miscellaneous appeal stands dismissed. No Costs.

30.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal cum Additional Sub Court, Puducherry.

CMA No.1345 of 2024