BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA(MD)No.1079 of 2009
and
M.P(MD)No.2 of 2009

National Insurance Company Limited,
Rep. by its Branch Manager,
Angu Vilas Building,
North Car Street,
Nagercoil. ... Appellant

vs.

1. P.Marimuthu
2. P.Paramasivan
3. N.Ramakrishnan ... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.07.2008 made in MCOP.No.227 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Tirunelveli.

For Appellant : Mr.D.Sivaraman
For R1 to R3 : No appearance

JUDGMENT

Challenging the finding of the Tribunal fixing liability on them, the insurance company has come up with this appeal.

2. In an accident which occurred on 16.12.2006, the 1st respondent/claimant sustained injuries. He filed a claim petition claiming compensation of Rs.5,00,000/-. The appellant insurance company with which the offending Load Auto was insured, resisted the claim by filing counter affdiavit denying their liability, contending that the driver who drove the Load Auto at the time of accident, did not possess a badge endorsement in his licence to drive the same, as such, there was a breach of policy conditions. The Tribunal considering the pleadings, oral and documentary evidence adduced on either side, held that the driver of the Load Auto insured with the appellant was responsible for the accident and therefore, directed the appellant to pay the compensation of Rs.51,000/- with 7.5% interest per annum from the date of petition till the date of deposit. Aggrieved over the liability fastened on the insurance company, this appeal is field.

3. The only contention made by the learned counsel for the appellant is that the owner of the Load Auto insured with the appellant permitted the person who did not have required badge endorsement in his licence, to drive the said vehicle, thereby, there was a deliberate breach of policy conditions and therefore, the insurance company is not liable to pay compensation, but the Tribunal relying upon the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Annappa Irappa Nesaria and others,** reported in **2008(1) T.A.C. 812 (SC),** wherein, the Apex Court held that a person holding licence to drive light motor vehicle, can drive the transport vehicle looking to the weight of the vehicle, has erroneously fixed liability on the appellant. Hence, the learned counsel seeks interference of this Court.

4. We have heard the learned counsel for the appellant. Despite service of notice and the names are being printed in the cause list, there is no appearance by the respondents either by themselves or through counsels.

5. Be that as it may, the issue as to whether non possession of badge endorsement in the driving licence will amount to breach of the policy conditions, is no longer *res integra* in view of the judgment of the Hon'ble Supreme Court reported in **2017 (2) TN MAC 145 (SC) Mukund Dewangan vs. Oriental Insurance Co. Ltd.,** wherein, the Apex Court has held as follows:-

> *46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles.* ***As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.*** *It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and*

apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) 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 licence 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 not 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 licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d)

continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.''

6. The offending Load Auto involved in the accident falls under the same class of vehicles namely, Light Motor Vehicle and therefore, as

per the aforesaid judgment, non possession of badge endorsement by the driver of the Load Auto at the time of accident, will not amount to violation of policy conditions. Hence, the contention of the appellant in this regard cannot be accepted. Even the judgment of the Apex Court in **National Insurance Co. Ltd. vs. Annappa Irappa Nesaria and others** reported in **2008(1) T.A.C. 812 (SC),** relied upon by the Tribunal to hold the insurance company liable, has also been referred to by the Apex Court in **Mukund Dewangan's case** (cited supra).

7. In view of the above, the finding of the Tribunal fixing liability on the appellant is confirmed. Since the quantum of compensation is not questioned by the appellant, the same is confirmed. The appellant is directed to deposit the compensation of Rs.51,000/- awarded by the Tribunal with 7.5% interest per annum from the date of petition till the date of deposit along with costs, to the credit of the claim petition, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the same before the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes / No **14.03.2024**
Neutral Citation :Yes / No
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To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.2,
Tirunelveli.

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

V.BHAVANI SUBBAROYAN, J.

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JUDGMENT MADE IN
CMA(MD)No.1079 of 2009
DATED : 14.03.2024