



C.M.A.(MD).No.521 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.12.2023

Delivered On : 09.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.521 of 2012

M.Velappan

... Appellant

Vs.

1.A.Velappan

2.Saleem

2.The New India Assurance Co. Ltd.,
T.C.No.42/82, IInd Floor Govt. Press Road,
Thiruvananthapuram,
Thiruvananthapuram District,
Kerala State.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and award passed in M.C.O.P.No. 22 of 2004 on the file of the Motor Accident Claims Tribunal (Sub Judge), Padmanabhapuram dated 25.01.2010.



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For Appellant : Mr.V.M.Balamohan Thambi
For R3 : Mr.B.Vijay Karthikeyan
For R1 & R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/petitioner, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (Sub Judge), at Padmanabhapuram in M.C.O.P.No.22 of 2004 dated 25.01.2010.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.22 of 2004.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a case of injury and the petitioner is a motor mechanic aged 19 years. On 25.09.2002 at about 17.00 hours, the second respondent driver of the Bajaj light goods three wheeler vehicle bearing registration No.KL-01-C-8271 dashed against the petitioner, who was walking in the footpath in the extreme left side of the road. As the result of the accident, the petitioner sustained grievous injuries and was admitted at Issac



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hospital, Marthandam immediately on the same day and took treatment as in patient till 27.09.2002. Thereafter, for better treatment, he was shifted to Morris Mathias hospital on 28.09.2002 wherein he was treated till 03.03.2003. He was treated for the fracture of right femur and left Trochantric and renal failure. Hence, seeking a compensation of Rs. 5,00,000/- for the said injury sustained by him, the petitioner had filed the claim petition.

4.The first respondent is the owner of the vehicle, the second respondent is the driver of the vehicle and the third respondent is the insurance company with which the vehicle was insured. The third respondent had filed a counter before the learned Tribunal refuting all the allegations set forth in the claim petition.

5.The learned Tribunal has framed five issues. One witness P.W.1 was examined on the side of the petitioner and Ex.P1 to Ex.P10 were marked. On the side of the respondents, three witnesses R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R3 were marked. The learned Tribunal on considering the evidence deposed by the witnesses and various



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documentary evidences and appreciating the arguments putforth by all the parties, proceeded to conclude that the accident had happened due to rash and negligent driving of the second respondent driver. The learned Tribunal further relied upon the evidence of R.W.2, the person working at RTO Office, Marthandam who had deposed that the second respondent was given with licence to drive light motor vehicle. The licence of light motor vehicle was also marked as Ex.R2. The learned Tribunal further relied upon the evidence of R.W.3, who was working as Assistant Motor Vehicle Inspector at Parasala RTO Office through whom the registration certificate for the vehicle bearing registration No.KL-01-C-8271 was marked as Ex.R3. Further the contention of R.W.3 that the respondents 1 and 2 violated the permit conditions by driving the vehicle in Tamil Nadu, and that they had permission/permit to ply the vehicle only in the State of Kerala was also taken into account. The said permit has not been produced by the third respondent before the Court. Hence, the learned Tribunal observed that the third respondent failed to prove that the respondents 1 and 2 violated the terms of permit. However, the respondents had proved that the second respondent had driven a heavy motor vehicle without having valid licence at the time of accident. Ex.R1



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is the insurance policy which categorically provides that the insurer is not liable for the acts of the driver without having valid driving licence.

As such the learned Tribunal concluded that the third respondent insurance company is not liable to pay the compensation and it is not necessary for the third respondent insurance company to indemnify the respondents 1 and 2.

6.As far as compensation is concerned, the learned Tribunal observed that the evidence of P.W.1 would make it clear that he would have undergone medical treatment atleast for five months and he has also marked the medical bills to prove the same. A partial permanent disability certificate has also been issued by the Professor/H.O.D of Orthopedic Medical College Hospital, at Trivanthapuram. Despite diligent efforts by the petitioner to examine the Doctor, the Doctor did not turn up. As a result of which, the disability certificate was not marked and the same is available in the bundle and was referred at the time of pronouncing the award by the learned Tribunal. Since the said partial permanent disability certificate was not marked, the learned Tribunal was handicapped in calculating the loss under the head partial permanent



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disability. However, the loss of earning was calculated by fixing the monthly income of the petitioner as Rs.3,000/- for five months and the compensation was awarded by the learned Tribunal under following heads:-

Head	Compensation awarded
(I) Loss of Earning for five months:	Rs.15,000/-
(ii) Pain and suffering	Rs.50,000/-
(iii) Transportation:	Rs.3,000/-
(iv) Medical Expenses:	Rs.91,675/-
(v) Extra Nourishment:	Rs.10,000/-
Total compensation awarded:	Rs.1,69,675/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, the appellant/petitioner has filed this Civil Miscellaneous Appeal.

8.The learned counsel for the appellant/petitioner vehemently contended that the learned Tribunal ought to have ordered pay and recover since the currency of insurance policy was subsisting on the date of accident.



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9.Per contra the learned counsel for the third respondent submitted that the absence of valid licence by the second respondent was duly proved by the third respondent. As the result of which, the learned Tribunal passed appropriate order to pay the compensation by the respondents 1 and 2 and the said award need not be interfered with.

10.In the instant case, though the third respondent had failed to prove that the vehicle involved in the accident had been plied into the State of Tamil Nadu without having permit for the same and that the said vehicle had permit only to be plied in Kerala, the third respondent had duly proved that the second respondent was not holding a valid driving licence to drive heavy motor vehicle, but only a licence to drive light motor vehicle.

11.The Hon'ble Apex Court in the case of ***Mukund Dewangan v. Oriental Insurance company Ltd.***, reported in ***2017 (2) TNMAC 145 (SC)***, has dealt with a similar issue with regard the question of driver possessing driving licence to drive light motor vehicle and the relevant



portion of which is extracted as follows:-

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“1. In the reference, the main question involved is whether a driver who is having a licence to drive ‘light motor vehicle’ and is driving ‘transport vehicle’ of that class is required additionally to obtain an 3 endorsement to drive a transport vehicle? There is a conflict in the plethora of decisions of this Court. In Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. (1999) 6 SCC 620, S. Iyyapan v. United India Insurance Co. Ltd. and Anr. (2013) 7 SCC 62, Nagashetty v. United India Insurance Co. Ltd. & Ors. (2001) 8 SCC 56, the view taken by this Court was that when a driver is holding a licence to drive ‘light motor vehicle’, he is competent to drive a ‘transport vehicle’ of that category without specific endorsement to drive the transport vehicle; whereas in New India Assurance Co. Ltd. v. Prabhu Lal (2008) 1 SCC 696, a view had been taken that before 2001 also, it was necessary for a driver possessing driving licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesargi & Ors. (2008) 3 SCC 464, a distinction was made in the legal position which existed before 28.3.2001 i.e. the date of amendment of the form and subsequent thereto. It was opined that before 28.3.2001 there was no necessity for the holder of a licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of



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that class. He could drive transport vehicle of Light Motor Vehicle category on the basis of holding a licence to drive light motor vehicle. In New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. (2008) 8 SCC 253 and Oriental Insurance Co. Ltd. v. Angad Kol & Ors. (2009) 11 SCC 356, the view had been taken that a driver holding licence to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on licence authorizing him to drive a transport vehicle.

34. Coming to conflicting decisions of this Court entailing reference in Ashok Gangadhar Maratha (supra), this Court has considered the definition of 'light motor vehicle' and held thus: "10. The definition of "light motor vehicle" as given in clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in clause (28) of Section 2 of the Act. A light 43 motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well." No doubt about it, that in addition thereto the Court while dealing with the matter comprehensively has gone in question as to the pleadings and the evidence adduced and it was observed that since there was neither a pleading nor a permit produced on record, the vehicle remained a light motor vehicle. If we proceed on the basis of



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the definition itself, we reach to the same conclusion that for driving transport vehicle of light motor vehicle category, no separate endorsement is required on a licence. Even when a light motor vehicle is used for carrying goods or for hire or rewards, it becomes a transport vehicle, though it remains included in the category of light motor vehicle as per Section 2(21) of the Act. The interpretation of the definition in Ashok Gangadhar Maratha (supra), makes it clear that light motor vehicle cannot always be a light goods carriage. It can be a non-transport vehicle as well. The definition of a light motor vehicle includes light goods vehicle and light transport vehicle also. The interpretation of the definition of light motor vehicle in aforesaid extracted para 10 is sound and we are in unison with the same. It was not necessary for the Court to go into the question of pleadings and evidence in Ashok Gangadhar Maratha (supra).

45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for



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the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended 58 that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

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



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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 59 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



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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 60 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



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holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

12. Adopting the principle dealt with by the Hon'ble Apex Court in the aforesaid case that the person holding licence to drive light motor vehicle is not required to obtain specific endorsement to drive transport vehicle of that category and light motor vehicle includes transport vehicles as well, I am inclined to appreciate that the second respondent driver possessed the licence for light motor vehicle at the time of accident, though he was driving a transport vehicle and the currency of the said licence was also subsisting at the time of accident.

13. In view of the same, I am inclined to modify the award to the extent that the third respondent insurance company is directed to pay the compensation as awarded by the learned Tribunal and thereafter, recover the same from the respondents 1 and 2.



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14.The petitioner/claimant is entitled to a sum of Rs.1,69,675/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The third respondent/insurance company is directed to deposit Rs.1,69,675/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

15.Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs.

09.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

Mrn

To

- 1.Motor Accident Claims Tribunal
(Sub Judge),
Padmanabhapuram.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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