THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3441 of 2009

JUDGMENT:

The main ground on which the dissatisfied Insurance Company filed the instant MACMA is that driver of crime lorry was having only licence to drive Light Motor Vehicle (LMV) of non-transport type but he drove the lorry which is a Heavy Motor Vehicle (HMV) and therefore, he was not duly licensed to drive the type of vehicle involved in the accident and in those circumstances the Tribunal ought to have exempted the liability of Insurance Company.

2) The facts are that the deceased-Boya Ranganna and others travelled in the crime lorry bearing No.AAQ 337 as Hamalis on 23.05.2005 as they went to Ragulapadu village Vajrakarur Mandal to get groundnut husk to Adoni and after loading the lorry with groundnut husk the lorry left Ragulapadu to go to Adoni and on the way when the lorry reached Kamalapadu bus stop on Uravakonda—Guntakal road the drover drone the lorry in a rash and negligent manner and lorry turned turtle and the deceased died on the spot and other Hamalis received injuries. Consequently the petitioners who are LRs. of the deceased filed OP No.402 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “MV Act”) claiming compensation of Rs.4 lakhs against respondents 1 and 2 in the OP who are owner and insurer of the crime lorry.

3) After full-fledged trial the lower Tribunal awarded Rs.2,70,000/- with costs and interest @7.5% per annum. Considering the plea of the Insurance Company that driver had only licence to drive LMV non-transport vide Ex.B2 and he was not authorized to drive heavy motor vehicle and also considering the decision of the Apex Court reported in ***NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH***, the Tribunal directed the Insurance Company to pay compensation and recover the same from owner of the crime vehicle i.e. 1st respondent in the OP.

The Insurance Company challenges the said finding in the instant appeal.

4) Heard arguments of Sri K.Mohana Krishna, learned counsel for appellant/Insurance Company and Sri I.Venkata Prasad, learned counsel for respondents 1, 3 to 5/claimants. Notice sent to R2 and R6 served but no representation on their behalf.

5) The point for determination in this appeal is:

"Whether the finding of the Tribunal directing the Insurance Company to pay compensation and recover from the owner is sustainable?

6) **POINT**: A perusal of Ex.B2 shows that driver of the crime lorry was having driving licence to drive LMV non-transport type of vehicle during the relevant period. Thus, it is clear that he was not authorized to drive the crime lorry which is a HMV. To this extent the Insurance Company is right. However, as per the ruling of Apex Court in ***Swaran Singh***'s case (1 supra) the Insurance Company cannot be absolved on the mere ground that there is deficiency in driving licence of the concerned driver. The Insurance Company in order to be absolved has also to establish that the owner has consciously allowed the unauthorized licensed person to drive the vehicle and further, the lack of or defective licence of the concerned driver was the fundamental cause for the accident. In the instant case, the Insurance Company could only establish that the concerned driver was not duly authorized but it has not established the other facts. Therefore, the Tribunal was right in directing the Insurance Company to pay compensation at first and recover from the owner of the vehicle. I find no merits in the contention of the appellant.

7) In the result, this MACMA is dismissed by confirming the judgment of the Tribunal in OP No.402 of 2006. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 30.09.2015

Murthy