THE HONOURABLE JUSTICE SMT. T.RAJANI

MACMA. No.760 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the second respondent, New India Assurance Company Limited, insurer, in the lower Court against the judgment of the IV Additional District Judge, Guntur made in MVOP. No.426 of 2006 on 22.01.2008.

The contentions raised by the learned counsel for the appellant, during the hearing, are with regard to two aspects; one is that the claim petition itself is not maintainable as it is filed by the claimants under Sections 140, 163-A and 166 of the Motor Vehicle Act, which is prohibited by Section 163-B. But in the considered opinion of this Court, the said provision cannot be interpreted in a manner which could come into conflict with the very object and theme of the Act. Mere quoting of wrong provision shall not be taken into consideration for disallowing the claim in toto and this has been the spirit of law, which was promoted by the higher Courts. Hence, mere mentioning of both the provisions cannot be considered for dismissing the claim. Moreover the appellant did not take this plea in his written statement and consequently no issue was framed by the Tribunal on that aspect. The Tribunal proceeded to decide the claim as if it was filed under section 166, by framing an issue on negligence and deciding it. Section 163B seems to be only a guiding provision but not a provision which defeats the claim on the ground that two provisions of law are mentioned. No intention to disentitle the victims, on that ground, can be gathered from the said provision.

The second aspect is with regard to the driver not possessing valid driving licence. The vehicle involved in the accident is transport auto and the driver is proved to have been in possession of the driving licence for only non transport vehicle. Ex.B-2 is the driving license. B2 does not specify the weight of the vehicle. Though RW2 stated that the driver holding Ex.B2 driving license can drive light motor vehicle, no basis can be seen for his said statement. Light Motor vehicle as defined in the Motor vehicles Act should be a transport vehicle of laden weight of 7500 kilograms. No evidence on the weight of the crime vehicle is adduced. Hence the auto cannot be termed as a light motor vehicle.

In the case of S.IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER[1] the Apex Court had categorically held that the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of amount in the event there has been violation of any condition of the insurance policy. In the case on hand, it is not the case of the appellant that the driver of the auto did not possess any driving licence but he possesses non transport driving licence, which according to him is not a valid driving license. Taking into consideration the observation made by the Apex Court in supra, this Court is of the opinion that the appellant needs to pay the awarded amount to the claimants and if so advised, may recover the same from the insured.

As a result, the appeal is partly allowed, to the extent of permitting the appellant to satisfy the award and recover the same from the insured. As a sequel, miscellaneous petitions, if any stand closed. There shall be no order as to costs.

JUSTICE SMT. T.RAJANI

Date: 17.02.2017
LSK

[1] (2013) 7 Supreme Court Cases 62