SMT JUSTICE T. RAJANI

MACMA.No.201 of 2006

JUDGMENT:

This appeal is preferred by the insurance company - third respondent in OP.No.352 of 2000, assailing the order of the Chairman, Motor Accident Claims Tribunal – cum – IV Additional District Judge, Kakinada dated 01.04.2005 on the ground that the facts of the case would reveal that five persons were traveling in the auto and hence, it amounts to overloading of the vehicle for which the insurance company cannot be made liable and also on the ground that the interest granted by the tribunal is exorbitant.

2. Heard counsel for the appellant. Counsel for the respondents did not appear.

3. Regarding the contention about non-liability of the insurance company on the ground of overloading of the vehicle, this Court opines that the law settled is otherwise and the overloading of the vehicle itself would amount to negligence of the driver for which the owner of the vehicle would vicariously be liable and in turn the insurer would be liable to indemnify the owner. Hence, there need not be any time lost in concluding that the insurance company would be liable to pay the compensation. In support of the observation that the law is settled as such, the said decisions are cited hereunder:

The Supreme Court in LAKHMI CHAND VS RELIANCE GENERAL INSURANCE[1] considered the case law on the said aspect as under:

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[1] (2016) 3 SCC 100

"…in the case of *B.V. NAGARAJU V. ORIENTAL INSURANCE CO. LTD DIVISIONAL OFFICER, HASSAN* [(1996) 5 SCC 71] the insurance company had taken the defence that the vehicle in question was carrying more passengers than the permitted capacity in terms of the policy at the time of the accident. The said plea of the insurance company was rejected. This Court held that the mere factum of carrying more passengers than the permitted seating capacity in the goods carrying vehicle by the insured does not amount to a fundamental breach of the terms and conditions of the policy so as to allow the insurer to eschew its liability towards the damage caused to the vehicle. This Court in the said case has held as under:-

"It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry six workmen, excluding the driver. If those six workmen when travelling in the vehicle, are assumed not to have increased risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the pose, keeping apart the load it was carrying. In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which by themselves, had gone to contribute to the causing of the accident." (emphasis laid by this Court) Further, in the case of *NATIONAL INSURANCE COMPANY LTD. V. SWARAN SINGH & ORS.* [(2010) 10 SCC 567] a three judge bench of this Court has held as under:-

"Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach."

4. The aspect whether the insurer should be exonerated in cases of overloading of the vehicle by the driver, is no longer *res integra*. Hence no necessity is felt to interfere with the impugned judgment on that aspect.

5. Counsel for the appellant also contented that interest awarded by the tribunal at 9% per annum is also exorbitant. But this Court is not inclined to interfere with the rate of interest awarded by the tribunal as it is on par with the bank rates of interest during that period.

The civil miscellaneous appeal is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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T. RAJANI, J

July 6, 2017
DSK