

SMT JUSTICE T. RAJANI

MACMA.No.1677 of 2006

JUDGMENT:

This appeal is preferred by the appellants, who are claimants before the tribunal below, questioning the order passed by the II Additional District Judge – cum – Motor Accidents Claims Tribunal, Srikakulam in OP.No.159 of 2002 dated 05.12.2005 on the ground that the tribunal below erred in restricting the compensation to that payable under the Workmen's Compensation Act while the claim is laid under the Motor Vehicles Act. The tribunal below failed to see that the premium of Rs.135/- was paid to cover the risk of a person loading and unloading the vehicle and the policy is a comprehensive policy and not an act policy.

2. Heard both the counsel.

3. At the hearing, counsel for the respondent fairly conceded that it was not proper on the part of the tribunal below to assess the compensation by invoking the principles of the Workmen's Compensation Act and apportioning the compensation between the owner and the insurance company.

4. Even otherwise the liability of the insurer be it under the Workmen's Compensation Act or under the Motor Vehicles Act is coextensive with that of the owner. There is absolutely no basis on which the tribunal below could have apportioned the compensation between the owner and the insurance company. The tribunal below somehow adopted a strange approach, which cannot be sustained.

Hence, the amount of Rs.37,807/-, which is directed to be paid by the first respondent, is also directed to be paid by the second respondent, as the first respondent is entitled for indemnity from the second respondent being the insurer. The other contention with regard to the adequacy of the compensation cannot be sustained as the income taken by the tribunal is according to the statement made by the claimants. Hence, the award of the tribunal is modified to the extent indicated above and the rest of the award is left uninterfered with.

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

July 7, 2017  
DSK



T. RAJANI, J