SMT JUSTICE T. RAJANI

MACMA.No.198 of 2006

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is respondent No.2 before the Court below, assailing the judgment of the District Judge, Adilabad in OP.No.760 of 2002 dated 23.03.2004 on the grounds that the Court below, having observed that the trailer ran over the deceased, ought to have directed the claimants to implead the owner and its insurer by mulcting the entire liability on them and ought to have exonerated the appellant from its liability having seen that the appellant had not undertaken to indemnify the liability of the trailer; the Court below ought to have taken the net salary for calculating the loss of dependency but it took the gross salary of the deceased.

2. Heard both the counsel.

3. At the hearing, counsel for the appellant, though initially contended that the judgment of the Court below is questioned by him on the ground the Court below took the gross salary of the deceased, who was stated to be an employee in Singareni Collieries, does not take his argument further on the said aspect by fairly conceding that as on the date of deciding the OP by the Court below, the law was that net salary has to be taken but the law is well settled now that only statutory deductions can be made from the gross salary of the deceased and the deduction made in that manner may not make much difference in the compensation amount under that head. On the aspect of liability, the counsel contends that the accident had occurred

involving only the trailer, as the evidence of the claimants is that the deceased was ran over by the trailer and contends that since the trailer is not insured with the insurance company and it is not the tractor, which ran over the deceased, the insurance company cannot be mulcted with any liability.

4. In answer to the said contention, counsel for the respondent relies upon a decision rendered by a Division Bench of this Court in UNITED INDIA INSURANCE CO. LTD. v. KODURU BHAGYAMMA[1] wherein the Division Bench, after discussing the law on the said aspect and by considering the earlier decisions of this Court and by interpreting and understanding the meaning of the expression of 'motor vehicle or vehicle' as defined under Section 2(28) of the Motor Vehicles Act, as under:

> "*Section 2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding (twenty five cubic centimetres)*"

> held as follows:

> "6. So by the said definition, the motor vehicles are those vehicles which are mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. Under Sub-section (44) of Section 2 of the Act tractor is defined as a motor vehicle which is not itself constructed to carry any load. Tractor is a special type of motor vehicle which cannot by itself carry any load, but all the same it is a motor vehicle. Sub-section (46) of

[1] 2008 (2) ALD 273 (DB)

> Section 2 of the Act defines trailer as a vehicle which is intended to be drawn by a motor vehicle. So if Sub-sections (28), (44) and (46) of Section 2 of the Act are read together, it becomes clear that a trailer is not a motor vehicle, but becomes part of a motor vehicle when it is drawn by a motor vehicle because Sub-section (28) of Section 2 of the Act makes a special reference to a trailer and trailer cannot be moved on roads except by a propulsion transmitted thereto from a motor vehicle. Therefore, in our view, a trailer attached to a motor vehicle is a part of the motor vehicle itself.

5. The counsel for the appellant could not raise any quarrel on the proposition that is laid down by the Division Bench of this Court in the decision supra. Hence, bound by the said decision, this Court does not see any necessity to interfere with the judgment of the Court below.

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 27, 2017
DSK