The Hon'ble Smt. Justice T.Rajani

M.A.C.M.A. No.507 of 2008

Date: 03.10.2017

Judgment:

This Appeal is preferred by the appellant- Insurance Company, which is respondent No.2 in OP.No.483 of 2001 on the file of the Motor Vehicle Accidents Claims Tribunal –cum- IX Additional District Judge, Guntur (hereinafter referred as 'the Tribunal), assailing the Judgment, dated 22.11.2006, passed therein on the ground that the law is well settled that once the Insurance Company denies Insurance, the burden lies on the party claiming Insurance to prove the same, but the Tribunal did not appreciate the said fact.

Heard the learned Counsel for the appellant and the learned Counsel for respondent No.4.

The learned Counsel for the appellant contends that the Tribunal fixed the liability on the appellant in spite of there being no insurance coverage for the subject vehicle.

A perusal of the record shows that two witnesses were examined on behalf of the appellant. RW.1, who was the Administrative Officer of the appellant, deposed that unless he verifies the Cover Note Register and the Policy Register pertaining to the years 1984 and 1985, he cannot say whether he can produce them or not. RW.2, who is a Senior Assistant in the appellant-

Company, stated that when he requested the Divisional Office, Vijayawada, to furnish the copy pertaining to the policy number furnished in the petition, the latter informed that it is not possible for them to verify the same as they were destroyed, having been eaten away by white ants and termites. Hence, from the above, it can be understood that the appellant is unable to produce the Cover Note Registers and Policy Registers pertaining to the years 1984 and 1985, during which the policy was allegedly taken.

The contention of the learned Counsel for the appellant that it is the burden of the party, which asserts the existence of Insurance, to prove the same cannot be held to be sound, as the witnesses, who deposed on behalf of the appellant- Company, have categorically stated that the Cover Note Registers and the Policy Registers containing the details of the policy shall be maintained in their office and by virtue of such statement, they took upon themselves the burden of proving the existence or otherwise of the policy. The destruction of the records cannot prejudice the rights of the third parties and it is the duty of the Insurance Company to maintain the records in a safe condition. Having failed to do so, the appellant cannot be permitted to take advantage of its own negligence and contend that the claimants have to prove the existence of the policy. The approach of the Tribunal in appreciating the evidence of RWs.1 and 2 is proper.

Hence, no interference with the impugned order of the Tribunal is required.

With the above observation, the Appeal is dismissed.

As a sequel to dismissal of the Appeal, interim order, dated 04-03-2008, is vacated and MACMAMP.No.1249 of 2008 is disposed of as infructuous.

(T.Rajani, J)

Dt: 3rd October, 2017
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