SMT JUSTICE T. RAJANI

MACMA.No.1074 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the District Judge, Ongole in OP.No.557 of 1998 dated 30.04.2002 on the ground that the Court below dismissed the claim petition against the insurance company on the ground that the claimant did not give the particulars with respect to the insurance of the crime vehicle.

2. Counsel for the appellant is heard while the counsel for the respondent remained absent.

3. The only question that is raised in the appeal is whether the non-mentioning of insurance particulars by the claimants would disentitle them from claiming the award against the insurer. The Court below, under issue No.2 at para 11, observed that the second respondent denied the insurance of the crime vehicle and in spite of the second respondent specifically taking such a plea, no evidence was adduced on behalf of the claimants in that regard and in the petition, except stating that the second respondent is the insurer of the crime vehicle, they did not give the policy number and there is no material on record that the vehicle involved in the accident was insured with the second respondent. It was also observed that the burden is on the claimants to establish the fact that the second respondent was the insurer of the said vehicle, which they failed to establish and as such, exonerated the second respondent.

4. The Court below lost sight of the fact that in many instances the claimants would not be in a position to secure the particulars of the insurer and hence, they would not be able to mention the particulars in the claim petition. Counsel for the appellant also submits that there was an interlocutory application, I.A.No.58 of 2003, filed by the claimants along with xerox copy of the policy, seeking to admit the same into evidence but the same was dismissed. When the second respondent denies its liability, it is the burden of the second respondent to specifically put forth evidence regarding non-existence of the policy in respect of the crime vehicle. The burden cannot be placed on the claimants even after the insurance company enters appearance. However, the record shows that an attempt to get the policy marked was made by the claimants and that attempt was not successful due to the dismissal of the interlocutory application filed in that regard. Hence, there cannot be any further time lost in concluding that the judgment of the Court below, to the extent of exonerating the insurance company, is liable to be set aside.

The civil miscellaneous appeal is allowed in part setting aside the judgment of the Court below to the extent indicated above. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

August 16, 2017
DSK