

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.105 of 2008

JUDGMENT:

This appeal is preferred by the appellant/United India Insurance Company against the judgment of the III Additional District Judge, Ongole in OP.No.245 of 2004 on the grounds that the driver was not holding a valid licence on the date of the accident and that the tribunal failed to follow the established law laid down in *NATIONAL INSURANCE CO. LTD v. KUSUM RAI* [2006 ACJ 1336] modifying the judgment in *NATIONAL INSURANCE CO. LTD. v. SWARAN SINGH* [(2004) 3 SCC 297].

2. At the time of arguments, counsel for the appellant, however, did not press the grounds that were urged in the grounds of appeal, but only requested the Court to give a direction to the tribunal to make an amend in the decree, which did not carry the operative portion of the judgment wherein a direction was made to the appellant herein to pay and recover the same from the insured.

3. The decree has to follow the judgment. However, on a perusal of the judgment, though para 11 shows that there was a direction to R2 to first pay compensation and then recover from R1, the same was not specified in the operative portion of the judgment, for which obvious reason, the said direction did not form part of the decree. Hence, considering that the judgment is to the effect of directing the appellant herein to pay and recover from the insured, the required amendment in the decree is directed to be carried out.

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

February 10, 2017
DSK

T. RAJANI, J

