

SMT JUSTICE T. RAJANI

MACMA.No.2826 of 2008

JUDGMENT:

This appeal is preferred by the appellant who is the insurer-respondent No.2 before the Court below assailing the judgment of V Additional District Judge, FTC, Anantapur in O.P.No.260 of 2006 dated 02.08.2007, aggrieved by the order made by the lower Court fixing the liability on respondent No.2 in spite of the fact that the driver of the crime vehicle is not holding appropriate driving license and that he is holding license for driving non-transport vehicle, while the vehicle involved in the accident is a transport vehicle.

2. Heard counsel for the appellant.
3. Counsel for the respondent does not appear.
4. A perusal of the record shows that the driving license was marked as Ex.B2. D.W2 was also examined to speak about the said driving license. He categorically stated that the driver did not have license to drive transport vehicle.
5. Counsel however concedes to the extent of passing an order of pay and recover. He relies on judgment of Apex Court in ***Kempaiah and others v. S.S. Murthy and another***¹ wherein in a similar case, the Apex Court by following its judgment in ***National Insurance Co. Ltd v.***

¹ 2017 (4) ALD 93 (SC)

Swaran Singh and others² directed the insurer to satisfy the Award and recover the same from insured.

6. Hence, it would be appropriate to modify the judgment of the lower Court by directing the appellant to first satisfy the award made by the lower Court and later to recover the same from the insured.

7. Accordingly, the order of the Court below is modified to the extent indicated above and the rest of the order is left uninterfered with.

8. In the result, the Appeal is allowed in part. No costs.

9. Pending miscellaneous petitions, if any, shall stand closed.



SMT. T. RAJANI, J

08.09.2017
dv

² 2004 (2) ALD 36 (SC)