SMT JUSTICE T. RAJANI

MACMA No.1829 of 2013

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the I Additional District Judge, Khammam in MATOP.No.590 of 2006 dated 11.06.2013 on the grounds that the Court below ought to have allowed OP against all the respondents; it erred in passing orders only against respondents 6 to 8 exonerating the other respondents; it wrongly concluded that respondent No.5 owner of the vehicle had failed to pay the extra insurance premium for giving the vehicle on hire to RTC under IMT 44 clause and the said ground of non-payment of additional premium was not related to cover the risk of third parties; hence, the judgment of the Court below cannot be sustained.

2. Heard both sides.

3. The Court below, by considering that the owner undertook to pay the liability exonerated APSRTC from liability and by considering that there was no additional premium paid by the insured, respondent No.5, it exonerated the insurance company.

4. The counsel for the appellant seeks to place reliance on a judgment of this Court in APSRTC v. KOTRA ALLAJI[1] wherein the Court very validly held that IMT 44 has application when the hirer of the vehicle requires protection and it does not apply to or abridge the liability of the insurance company insofar as third party risks are

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[1] 2014 LAWSUIT (HYD) 608

concerned. This Court is in total agreement with the said findings in the said decision. Hence, that shall not be a reason on which the insurance company can be exonerated.

5. The counsel for the appellant also relied on a decision of the Supreme Court in KSRTC v. NEW INDIA ASSURANCE CO. LTD.[2] wherein by relying on its earlier decision in *HDFC BANK LIMITED V. RESHMA* [2015 (2) ALD 1 SC] the Supreme Court held that the insurer cannot escape the liability when the ownership changes due to the hypothecation agreement. In the case of hire also, it cannot escape the liability even if the ownership changes. It was observed that even if KSRTC is treated as owner under Section 2(30) of the Act of 1988, the registered owner continues to remain liable. By virtue of the said observation, the converse of it can also be implied, that the ownership from the original owner passed to KSRTC but in spite of the same, the original owner can be held to be liable. Hence, what follows is that the ownership has followed APSRTC in which case, APSRTC also becomes liable jointly and severally, including the owner and the original owner. Hence, the judgment of the Court below to the extent of exonerating the owner and the APSRTC is set aside and the respondents shall be jointly and severally liable. However, APSRTC shall be entitled to recover the amount from the insurer as was held in the decision of the Supreme Court in KSRT's case (2 supra).

6. The counsel also assails the judgment on the ground of inadequacy of the quantum under the head loss of consortium, loss of

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[2] 2015 96) ALD 166 (SC)

estate and funeral expenses. He relies on a decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017]. Hence, following the said decision, Rs.40,000/- is awarded to the first claimant towards loss of consortium, Rs.15,000/- is awarded to loss of estate and Rs.15,000/- is awarded towards funeral expenses.

6. In all, the claimant would be entitled to enhanced compensation of Rs.70,000/- with proportionate costs. The rest of the award shall remain uninterfered with. The apportionment of compensation shall be made in terms of the apportionment made by the Court below. The award shall relate back to the date of decree and the enhanced compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 11, 2017
DSK