

SMT JUSTICE T. RAJANI

MACMA.No.89 of 2006

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the V Additional District Judge, Anantapur in OP.No.411 of 1999 dated 16.08.2005 on the grounds that the policy does not provide any coverage for the risk of passengers being carried in the vehicle and the Court below erred in directing the respondents to pay and recover the award amount from the owner in spite of finding that the insurance company is not liable for the death of the passengers travelling in a goods vehicle.

2. Heard counsel for the appellant. Counsel for the respondent did not appear.

3. The short question involved in this appeal is whether the appellant-insurance company can be mulcted with the liability of paying the award amount and recovering the same from the insured in spite of there being no liability under the policy.

4. The counsel for the appellant relies on a decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. BOMMITHI SUBBHAYAMMA¹ in support of his contention that even the order of pay and recover cannot be sustained, as the Supreme Court held that the insurer cannot be made liable for the death of passengers, especially gratuitous passengers, who were neither contemplated at

¹ (2005) 12 SCC 243

the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people. The counsel also brings to the notice of this Court my judgment in MACMA.No.759 of 2006 dated 16.06.2017 wherein the appeal preferred by the claimants against the dismissal of OP against the insurance company was dismissed in the said case. The Court below dismissed the OP considering that the victim therein was travelling as gratuitous passenger in the crime vehicle. Following the decision supra, this Court dismissed the appeal.

5. However, it appears that, at the time of admitting the appeal, this Court directed the appellant to deposit half of the award amount with interest and costs. The counsel could not inform the Court whether the same was withdrawn by the claimants or not. However, since the amount is already deposited, the claimants can be permitted to withdraw the said amount and for the balance half of the award amount, the liability would be that of the insured only. The appellant shall be entitled to recover the amount already paid from the insured.

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

August 11, 2017
DSK

T. RAJANI, J