

SMT JUSTICE T. RAJANI

MACMA.No.3525 of 2011

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, Tirupati in MVOP.No.702 of 2005 on the grounds that the Court below failed to appreciate the charge sheet, which is filed after due investigation, wherein the driver was chargesheeted for the offence under Section 3 read with 181 of the Motor Vehicles Act and that the Court below failed to appreciate the evidence of R.W.1, who was examined on behalf of the appellant and Exs.B1 to B6.

2. Heard both sides.

3. The counsel for the appellant, at the hearing, apart from the above two grounds, urged that the driver was not holding valid driving licence and that the vehicle was not involved in the accident. The counsel contends that P.W.2, who is an eye-witness, though stated that he observed the vehicle from a distance of 10 feet and that the water tanker belongs to Bhavani Water Supply, does not mention the number.

4. The evidence of P.W.2 would show that he clearly stated that he saw the vehicle and observed that it belonged to Bhavani Water Supply. He also stated that he did not observe the number. The possibility of observing the number is less when compared to observing the caption on the vehicle, which indicates that it belongs to

Bhavani Water Supply. Hence, there is no unnaturality in the evidence of P.W.2 in saying that he did not observe the vehicle number, though he stated that it belongs to Bhavani Water Supply.

5. The counsel for the appellant tries to draw support to his contention, by relying on the contents of the claim petition, wherein it was mentioned the driver left the spot by leaving the vehicle at the spot.

6. But in the considered opinion of this Court, the contents of the claim petition are at best only hear say statement of P.W.2, who is the eye-witness, who informed about the accident to the claimants. Hence, when there is no basis for the said averment in the claim petition, much importance need not be attached to the same. The Court below, by considering the contents of the charge sheet, which is filed after due investigation, believed the involvement of the vehicle and there is no reason for this Court to differ with the said approach adopted by the Court below.

7. As regards the absence of driving licence, the counsel for the appellant contends that Exs.B3 to B5 would show that there is no driving licence to the driver and also relies on the fact that the driver was prosecuted for the offence under Section 3 read with Section 181 of the Motor Vehicles Act.

8. But in the considered opinion of this Court, the contents of the charge sheet, to that extent, are not conclusive proof of the fact of absence of driving licence. Non-production of driving licence at the time when the driver was prosecuted would also make him liable for

the offence under Section 3 read with Section 181 of the Motor Vehicles Act. The appellant ought to have taken steps to prove the absence of licence by examining the concerned officials from the RTA office. Hence, at this stage, it cannot be said there was no driving licence.

The civil miscellaneous appeal fails and is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

December 14, 2017
DSK

T. RAJANI, J

