

SMT JUSTICE T. RAJANI

MACMA No.447 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari at Eluru in O.P.No.765 of 2002, dated 31.10.2007, on the grounds that the Court below ought to have seen that R3 did not adduce any evidence to establish that R1-Driver was not having any valid driving licence; that the Court below ought to have seen that it is not the case of R3-Insurance Company that R1 was not having valid driving licence; that the Tribunal erred in holding that the appellant was 'Banta Maistry', whose primary duty is to supply the labourers.

2. Heard both sides.

3. At the hearing, the counsel for the appellant does not press upon the grounds with regard to the validity of the driving licence, as the same did not come for issue before the Court below and nothing was ruled in that aspect against the claimant. The only controversy is with regard to the definition of the petitioner as 'Banta Coolie' or 'Banta Maistry', as the case may be.

4. The counsel for respondent No.3 contends that the observations of the Court below, under issue No.2, at paragraph (9)(e) that "... in the petition it is mentioned that the petitioner

was in the truck of the tractor on the load of bricks as a 'Banta Maistry'. The testimony of the petitioner as P.W.1 is also to the same effect. It is not disputed that a Banta Maistry is the one, who will supply labourers on request, for some commission..."

Hence, when such is the case, there is no coverage for 'Banta Maistry' under the policy.

5. A perusal of the deposition of PW1 would only show that there was no basis for the Court below to arrive at a conclusion with regard to the fact that the claimant was a 'Banta Maistry'. So also that he will supply labourers on some commission. From where the Court below gathered the said information is not understandable. The evidence of PW1, in the chief-examination, is categorical on the aspect that he was going in the vehicle to unload bricks in Bhimavaram along with others. Though he stated that he is working as 'Banta Maistry', his evidence that he was going for unloading the bricks along with others would imply that he also participated in the unloading of the bricks.

6. The counsel for respondent No.3 contends that the pleadings of the claimant do not specify that the claimant was travelling for unloading of the bricks. In the pleadings, it is very well stated that he was working as 'Banta Maistry' with R1. The evidence that he was going in that capacity to unload the bricks does not come in conflict with the pleadings. It only stands as a further explanation or elaboration of his nature of work. The counsel for respondent No.3 does not dispute that

there is coverage, for labourers travelling in the vehicle, under the policy.

Hence, in view of the above, this Court holds that the judgment of the Court below to the extent of holding that there is no coverage of 'Banta Maistry' under the policy is set aside and respondents 1 to 3 are jointly and severally made liable for the compensation that was awarded by the court below.

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

November 7, 2017
LMV



T. RAJANI, J