

SMT JUSTICE T. RAJANI

MA CMA No.290 of 2013

JUDGMENT:

This appeal is filed by the appellant, who is the 2nd respondent before the court below, assailing the judgment of the Principal District Judge, R.R.District at L.B.Nagar, Hyderabad, in OP No.1252 of 2008, dated 17.08.2012, on the grounds that the court below erred in holding that the appellant company is liable to pay compensation awarded by it; it erred in holding that the accident took place due to the rash and negligent driving of the driver of the DCM Van; it failed to appreciate that as per Ex.A6, the deceased met with an accident involving car outside the factory and that the DCM Vehicle was not involved in the accident. The court below ought to have seen that the evidence of PW2 and Ex.A6 would clearly establish that the DCM van is not involved in the accident. The court below also failed to appreciate that the driver did not possess valid driving licence to drive the crime vehicle and that he was only having driving licence to drive the light motor vehicle non transport and while admittedly the vehicle is transport vehicle. The court below failed to observe that the person, who issued Ex.A6, was not examined. It erred in taking monthly income of the deceased as Rs.3,000/-.

2. Heard the counsel for the appellant/Insurance Company as well as the counsel for the respondents/claimants.

3. The counsel for the appellant contends that the court below did not properly appreciate the aspect of negligence. There was admittedly a U-turn at the place of accident. The court below observed that the deceased was taking U-turn and in such circumstance, it ought to have come to an understanding that the deceased was also at fault.

4. There is absolutely no reason to disbelieve the evidence of the witnesses, who witnessed the accident. An automatic inference does not come from the fact that the person taking U-turn would necessarily be negligent. The facts reveal that while taking U-turn, the crime vehicle came from the other side of the road and dashed against the deceased. Hence, there is no cogent reason made out by the appellant's counsel to defer with the judgment of the court below on that aspect.

5. As regards, the discrepancy in the vehicle, Ex.A6 is only a salary certificate in which it was incidentally mentioned that the deceased was hit by a car outside the factory. In the ordinary parlance, even vans could be construed as cars sometimes and it must have been such error which crept into Ex.A6. When there is positive evidence proving the involvement of the DCM Van in this accident and when the motor vehicles inspectors' report would evidence the damages sustained to the crime vehicle, the simple fact, which is mentioned in a document, in which there is no need for any mention about the nature of the vehicle, cannot be taken as a basis to brush aside the overwhelming evidence pointing towards the involvement of the DCM Van in the accident.

5. The other contention, that the driver did not possess valid driving licence and that he possessed only driving licence for Light Motor Vehicles non-transport, was met with by the court below very elaborately.

6. This Court, in MACMA.Nos.484 and 486 of 2008, dated 17.03.2017, held as under:

“The admitted fact is that the driver was holding the driving licence for light motor vehicle non transport. The light motor vehicle is defined in Section 2 clause 21 as *meaning a transport vehicle, the unladen weight of which, does not exceed 7,500 kilograms.* By virtue of that the transport vehicle, gets included in the definition of light motor vehicle. The observation of the lower Court, with regard to the weight of the vehicle, is that no evidence is adduced in that regard. Hence on the failure of the appellant to prove the weight of the vehicle, the vehicle has to be construed as a light motor vehicle, below the weight of 7,500 kilograms. In such circumstances, the driver of the crime vehicle stands holding valid driving licence as on the date of the accident.

In the case of *S.IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER* [(2013) 7 SCC 62] the Apex Court had categorically held “*The insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of amount in the event there has been violation of any condition of the insurance policy.*”

7. Hence, in the light of the above, the appeal fails and is liable to be dismissed.

Accordingly, the MACMA is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

December 26, 2017
LMV

