

SMT JUSTICE T. RAJANI

MA CMA No.297 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the 3rd respondent-Insurance Company, questioning the judgment, dated 04.06.2007, passed by the VI Additional District Judge, Visakhapatnam, in M.O.P.No.1364 of 2005 on the grounds that the court below failed to see that the cover note No.053201, covering the period from 09.11.2004 to 08.11.2005 relied upon by the claimant was not issued by the appellant and it was a fake cover note; that the court below grossly erred in holding that the appellant company is also liable to pay compensation of Rs.40,000/- with interest at 7.5% p.a.; that the learned judge ought to have seen that the accident took place on 30.11.2004 while the policy, Ex.B1, issued towards the crime vehicle covered the period from 13.10.2003 to 12.10.2004. On the above grounds, the appellant seeks to set aside the judgment of the lower court.

2. Heard both the counsel.

3. The issue involved in this appeal is very short. The contention of the appellant's counsel is that the policy was taken by the 1st respondent on 30.10.2003 covering the period from 13.10.2003 to 12.10.2004 and subsequently, another policy was taken with effect from 01.12.2004 to 30.11.2005 which expires on the midnight of 30.11.2005. He contends that the accident took place in the interregnum period where there

was no policy in existence. The lower court, drawing an inference from the fact that the appellant did not choose to file the policy, which was allegedly taken by the 1st respondent with effect from 01.12.2004, and accepting the contention of the petitioners that the cover note was issued with effect from 09.11.2004, held that there was a valid insurance as on the date of accident.

4. This court is not in a position to differ from the finding rendered by the lower court, as the failure of the appellant to file the subsequent policy cannot be appreciated otherwise. There is absolutely no reason for them to suppress the policy, which was taken with effect from 01.12.2004. Hence, in the light of the said fact, drawing of an adverse inference by the lower court, is held to be proper. In view of the above, this court opines that the judgment of the lower court needs no interference.

Accordingly, the MACMA is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

August 3, 2018
LMV