SMT JUSTICE T. RAJANI

MA CMA No.335 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, questioning the judgment, dated 29.12.2011, passed by the IV Additional District Judge, Kurnool, in M.V.O.P.No.192 of 2008 on the grounds that the court below awarded meagre compensation and exonerated the 3rd respondent-Insurance Company, on the ground that the driver of the offending vehicle was not having proper licence, but as per the settled law, the Insurance Company is liable to the amount and recover the same from the owner; it did not award compensation for the injuries sustained by the claimant. On the above grounds, the appellant seeks to set aside the judgment of the court below.

2. Heard both the counsel.

3. The counsel for the appellant contends that the driver of the vehicle was holding driving licence for light motor vehicle non-transport, while the vehicle is of maxi cab, which is a light motor vehicle, transport. He relies on the decision of the apex court in *S.Iyyapan v. United Indian insurance Company Limited and another*[1] to support his contention that the insurance company has to be directed to pay the compensation and to later recover the same from the insurer.

[1] (2013) 7 SCC 62

4. In the aforesaid ruling, the apex court, at paragraph 18, has observed as follows:

> "18. In the instant case, admittedly the driver was holding a valid driving licence to drive the light motor vehicle. There is no dispute that the motor vehicle, in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is therefore, liable to be set aside."

5. In view of the above, though the driver drove the light motor vehicle, transport, by holding driving licence for light motor vehicle, non-transport, the Insurance Company would be liable. Hence, the judgment of the trial court to the extent of exonerating the Insurance company-3rd respondent, is set aside and the 3rd respondent is jointly and severally liable along with respondents 1 and 2.

6. As regards the quantum of compensation, the counsel for the appellant, except contending that the medical bills, which were filed by him, were not accepted by the court below, does not assail the award on the other grounds.

7. A perusal of the judgment shows that the medical bills for a total sum of Rs.1,79,298/- were filed by the claimant. But nobody was examined to testify about the genuineness of the said bills. The court below observed that the medical bills

also do not bear the patient's name and that no corresponding prescriptions were there for the medical bills. Hence, in the light of the said fact, the entire amount under the medical bills cannot be accepted. But, however, the medical records pertaining to the claimant, which are marked as Ex.A7-case sheet; Ex.A2-copy of wound certificate; Exs.A5 and A6-discharge summary and Discharge card can be considered and enhancement can be made towards the medical expenditure, which shall be Rs.20,000/-.

8. Hence, to the extent indicated above, the award shall stand modified.

The MACMA is accordingly allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

August 3, 2018
LMV