

SMT JUSTICE T. RAJANI

MACMA.No.415 of 2012

JUDGMENT:

This appeal is preferred by the appellant – Insurance Company, who is the 3rd respondent before the Court below, assailing the judgment, dated 07.04.2011, passed by the I Additional District Judge, Khammam, in M.V.O.P.No.1096 of 2002, on the grounds that the Court below did not consider the contention of the Insurance Company that it has no liability to pay the amount, since the tractor, which is meant for agriculture purpose, was being used for commercial purpose at the relevant point of time.

2. Heard the learned counsel for both sides.
3. The counsel for the appellant makes a feeble attempt to sustain the contention, which was also raised before the Court below, that the tractor involved in the accident was, in fact, being used for commercial purpose and hence, no liability can be fixed on the appellant, as the tractor is meant to be used only for agriculture purpose. But, the Court below seems to have taken up an elaborate discussion on the contention raised in that regard. It also relied on the judgment in **MATAJI BEWA AND OTHERS v. HEMANTA KUMAR JENA AND ANOTHER¹** and also in **NEW INDIA ASSURANCE CO. LTD., v. LOGANAYAGI AND OTHERS²**. The appreciation made by the Court

¹ 1994 ACJ 1303

² 2011 (1) T.A.C. 538 (Mad.)

below cannot be found fault with, as admittedly no evidence was adduced by the appellant in the Court below, to show that the tractor was being used for commercial purpose. Simple transportation of sand cannot constitute to be a commercial purpose. Hence, this Court does not find any reason to differ with the approach of the Court below in arriving at the conclusion that the tractor was not being used for commercial purpose and consequently there cannot be liability on the appellant and, thus, there is no reason to interfere with the judgment of the Court below.

4. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

August 10, 2018
v v



T. RAJANI, J