

SMT JUSTICE T. RAJANI

MACMA.No.1114 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the second respondent before the Court below, assailing the judgment of the II Additional District Judge, Vijayawada in MVOP.No.153 of 2010 dated 12.12.2011 by virtue of which the tribunal below awarded compensation of Rs.2,98,000/- with proportionate costs and interest at 7.5 % per annum from the date of petition till payment, facilitating the second respondent, in case he deposits the entire compensation amount, to initiate the execution proceedings against the first respondent for recovery of the same.

2. The appeal is preferred impugning the said judgment on the grounds that the tribunal below failed to appreciate that the appellant – insurance company has no liability to pay any compensation to the claimants, as the owner-cum-driver of the insured vehicle did not have valid licence to drive the vehicle involved in the accident; that the tribunal below, without considering the evidence of R.W.2, came to the conclusion that if a person was holding licence to drive light motor vehicle, can also drive tractor and trailer and it also erred in coming to the conclusion that the accused driver was holding valid licence. The tribunal failed to appreciate the evidence adduced by R.Ws.1 and 2 and proved that the owner-cum-driver did not have valid and effective driving licence as on the date of accident.

3. Heard the counsel for the appellant. None appears for the respondents.

4. The appeal is based on the sole ground that the driver of the crime vehicle did not have valid driving licence to drive the crime vehicle, which is a tractor and trailer. The driver of the crime vehicle was holding licence to driver only transport vehicle and light motor vehicle. The tribunal below had considered the case law on the said aspect and fixed the liability on the insurance company also with liberty to recover the said compensation from the owner of the vehicle.

5. The counsel for the appellant is not in a position to submit any case law, which is contrary to the case law, which was relied upon by the tribunal below.

6. However, apart from the case law, which was relied upon by the tribunal below, the following decision also can be relied upon in support of the said finding. 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.”

Hence, in view of the above, this Court does not find any ground to interfere with the judgment of the tribunal below.

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

May 2, 2018
DSK



T. RAJANI, J