SMT JUSTICE T. RAJANI

MA CMA No.49 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, assailing the judgment of the Motor Accidents Claims Tribunal-cum-Family Court-cum-VI Additional District Judge, Kadapa, dated 29.09.2011, in MVOP No.262 of 2007, by virtue of which the lower court granted a sum of Rs.2,27,000/- along with interest @ 6% per annum only against R1, while exonerating R2 on the grounds that the owner, who is also the Driver of the crime vehicle at the relevant point of time, did not prove that he was holding valid driving licence and that the charge sheet shows that he was prosecuted for not having driving licence. The claim is for the injuries sustained by the appellant in the motor accident.

2. Being aggrieved by the said judgment, the appellant preferred this appeal on the grounds that the Tribunal failed to see that in the charge sheet i.e., Ex.A3, it was said that the accused failed to take driving licence and also failed to take insurance and, as such, the Tribunal ought not to have believed the version of R2 that R1 is not having driving licence inasmuch as it is an admitted fact that there is an insurance policy and, as such, the averment in the charge sheet cannot be believed as it is without any corroboration. The court below ought to have seen that the appellant had suffered grievous injuries all over his body and he lost eye sight and also memory. The Tribunal is not

correct in saying that R1 was prosecuted for not possessing driving license, basing on the charge sheet i.e., Ex.A3 and as per Ex.A3, the averment is that there is no insurance policy also and hence, Ex.A3 cannot be a criteria to hold that R1 is not having driving license.

3. Heard both the counsel.

4. The counsel for the appellant contends that the reliance placed, by the lower court, on the contents of the charge sheet is erroneous and the charge sheet cannot be treated as evidence. The counsel for the respondent does not dispute the said fact, but, he contends that the burden is on the claimant to prove that R1 was holding driving licence. In support of the said contention, he relies on the decision of the apex court reported in *United India Insurance Co. Ltd., vs. Rakesh Kumar Arora & Ors*[1]. A reading of the said judgment does not show that any specific finding was given on the aspect of the manner of proof of the driving licence. Hence, the same cannot be applied to this case. This court opines that though the owner chose to remain *ex parte* and did not choose to prove that he was having valid driving licence, as on the date of accident, the burden continues to be there on the insurance company, to prove the absence of driving licence, until the liability to indemnify the insured continues.

5. In the case on hand, R2 did not choose to adduce any evidence. The contents of the charge sheet, to the extent of

[1] 2009(3) ALD SC 136

prosecuting R1 for the offence under Section 181 of the M.V.Act for not possessing valid driving licence, cannot be taken as a proof of the said fact. Under what circumstances, he was charge sheeted for the same has to be proved. In the absence of any evidence regarding the same, it cannot be taken as a fact, proved beyond doubt.

6. Hence, in the above circumstances, this court opines that the judgment of the court below exonerating R2 from liability is liable to be set aside.

7. In the result, the appeal is partly allowed and the compensation amount, which was awarded by the court below, shall be paid by both R1 and R2 as they are jointly and severally held liable.

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

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T. RAJANI, J

July 13, 2018
LMV