

THE HON' BLE SMT. JUSTICE T.RAJANI

M.A.C.M.A.No.2291 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the VI Additional District Judge, Rajahmundry, in MVOP No.1226 of 2002, dated 10.07.2006, on the grounds that the Court below erred in holding that the driver of the lorry is not at fault and the Court below ought to have seen that the police registered a case against the driver of the lorry and erred in holding that not filing of the charge sheet is fatal to the case of the petitioner.

2. Heard both the counsel.

3. A perusal of the lower Court's judgment shows that under issue No.1, it discussed about the manner of accident and negligence and came to a conclusion that there was no fault on the part of the driver of the crime vehicle. It took up a very close scrutiny of the evidence of PW.2 and discredited him and disbelieved his evidence. The reasons for disbelieving his evidence are that there is variance between the evidence of PW.2 and PW.1 with regard to the manner of accident. It observes that PW.1 stated that he fell down on the road due to the hit of the hook of the crime vehicle and PW.2 stated that it was a hit of the back door of the crime vehicle. In my considered opinion, such a strict scrutiny of the evidence is not warranted, more so, when it is a claim under a beneficial legislation. Apart from that, it can also be observed that the Court below completely ignored the report that was given by none other than the driver of the lorry and a reading of the said report would clearly show that there was an admission on the part of the driver

of the lorry himself that the accident occurred due to his own act. He narrates the manner of the accident stating that there was a scooter coming from his opposite direction, carrying the injured and another person and when they reached near the mile stone 268/ 6 at Bendapudi village, at the same time, the driver seems to have opened the door (the contents of the report are not very clear) and due to that, PW.1 sustained injuries and fell down. The driver stopped his lorry immediately and observed that PW.1 sustained injuries and he took him to the hospital. It is not understood as to why the lower Court, which scrutinized the evidence of PWs.1 and 2 so closely, failed to scrutinize the contents of the complaint given by the driver of the lorry. The minor inconsistency between the evidence of PWs.1 and 2 shall not be allowed to defeat the claim under a beneficial legislation. There should be proper appreciation of evidence of PWs.1 and 2 to dispel the perception of said inconsistency by the lower Court. PW.1 states that the hook of the door hit him, while PW.2 says that the door itself hit him. It does not imply that the door was not opened by the driver by considering that it is only the hook of the back door that hit PW.1. The approach of the lower Court is far from a just approach. It can be interpreted that it is the hook of the door which exactly hit PW.1, when it was opened.

Failure to file the charge sheet also does not affect the case of the claimant as the report given by the driver of the lorry himself would show that there was no negligence on the part of the claimant or the rider of the scooter and that he himself was at fault. The contention of the respondents counsel that there was no eye witness to the accident also get answered by the contents of the complaint wherein the driver of the lorry states that there were two persons travelling on the scooter

which in all probability is PW.2. Hence, the judgment of the lower Court to the extent of dismissing the petition on the ground that there was no negligence on the part of the driver of the crime vehicle is liable to set aside and the same is set aside.

In the result, the appeal is allowed by setting aside the judgment, dated 10.07.2006, passed in MVOP No.1226 of 2002, by the VI Additional District Judge, Rajahmundry, East Godavari District. The respondents 1 and 2 are liable to pay the compensation that was awarded by the lower Court which is Rs.52,000/- . As no interest was awarded by the lower Court, the amount awarded shall carry interest at 7.5%per annum from the date of petition till the date of realization, with proportionate costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

August 18, 2017
KTL

T. RAJANI, J

