SMT JUSTICE T. RAJANI

MACMA.No.3185 of 2012

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the third respondent before the Court below, assailing the judgment of the II Additional District Judge, Suryapet, Nalgonda in OP.No.148 of 2008 dated 29.06.2012 on the ground that the involvement of the auto in the accident is not proved; the witness, who was examined as P.W.2, was projected as an eye-witness but he was shown as circumstantial witness in the charge sheet, Ex.A5 and he admitted in the cross-examination that he stopped his motor cycle to attend calls of nature and reached the place of accident later, therefore, it is evident that there was no occasion for him to see the vehicle and as such, the impugned award is sought to be set aside.

2. Heard both sides.

3. The only contention raised by the counsel for the appellant is with regard to the involvement of the crime vehicle in the accident. He contends that P.W.2, who was examined as eye-witness was proved to be not an eye-witness, as he admitted in the cross-examination, that he came to the scene of accident after it occurred.

4. The complaint, which was given by the wife of the deceased, shows that the vehicle mentioned therein is an unknown vehicle. The contention of the counsel for the appellant is that if P.W.2 had really seen the vehicle at the place of accident, he would have informed the same to either the police or the complainant and the

vehicle number would have been mentioned in the complaint. But the said argument is not found to be sound, as it cannot be expected that all the witnesses, who witness the accident, would be present at the scene of the accident till the arrival of the police or till the arrival of the relatives of the deceased/injured. Hence, the lapses which occur due to the witness leaving the place of accident cannot be projected against proving the fact of the involvement of the vehicle, which comes to light after due investigation. The respondents did not make any effort to disprove the evidence of the P.W.2 that he went to the scene of accident and saw the vehicle present at the scene of accident.

5. Apart from the above, the contention of the respondent's counsel that in the counter, the appellant has taken a plea that respondent No.2/owner of the vehicle entrusted the vehicle to the driver and permitted him to ply the same on the road and that the same would prove the involvement of the vehicle and also the knowledge of the appellant that the vehicle is involved in the accident. The said argument is very sound. If the vehicle was not involved in the accident and if there was no information of the involvement of the said vehicle in the accident, there would not have been any reason for the appellant herein to take such a plea in the counter filed by it in the Court below.

6. The evidence of P.W.2 is very clear that he saw the auto at the place of accident and that the auto was lying on the road. Without there being any cogent reason to disbelieve the charge sheet, which is filed after due investigation, there need not be any reason to brush aside the contents of the charge sheet. Hence, unless it is disproved by the appellant that the vehicle is involved in the accident or unless it

is proved positively that the vehicle is not involved in the accident, the judgment of the Court below need not be interfered with.

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

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T. RAJANI, J

December , 2017
DSK