

SMT JUSTICE T. RAJANI

MACMA No.34 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the II Additional District Judge, Nizamabad in OP.No.2017 of 2002 dated 19.07.2007 on the grounds that the Court below erroneously dismissed the petition considering that no steps were taken to issue summons to the owner and that the court below ought to have granted the entire compensation by believing the evidence of P.W.2.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that though there was a discussion taken up with regard to the injuries and the expenditure incurred towards treatment and medicines, no compensation was arrived at. The OP was dismissed on the ground that the basic liability for payment of compensation is on the owner and since the claimant did not take steps to get the notice served on the owner, the petition was dismissed.

4. The counsel for the appellant relied on a decision of a Division Bench of this Court in M. CHAKRA RAO v. Y. BABU RAO¹, wherein this Court held that if the claims tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the

¹ 2001(1) ALT 495 (DB)

Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the insurance. Hence, dismissing the petition on that ground cannot be sustained.

5. But in this case, the Court below did not decide the amount of compensation though it discussed about the injuries and treatment etc. Hence, though the issue of negligence went in favour of the claimant, I consider it fit to remit the matter to the Court below for deciding the amount of compensation even in the absence of the owner. By considering that the matter is of the year 2007, the Court below is directed to dispose of the matter within a period of two (2) months from the date of receipt of a copy of this judgment.

The civil miscellaneous appeal is accordingly disposed of and the matter is remitted to the Court below. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

October 13, 2017
LMV

T. RAJANI, J