

SMT JUSTICE T. RAJANI

MACMA.No.31 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the respondent No.1 before the Court below, assailing the judgment of the VII Additional District Judge, Ongole in OP.No.365 of 2005 dated 28.05.2007 on several grounds which, at the hearing, were restricted with regard to negligence and the provision of compassionate appointment to the wife of the deceased.

2. Heard both the counsel.

3. A perusal of the judgment of the Court below would show that there was an elaborate discussion on the aspect of negligence. It was a case of collision between two vehicles and the Court below held that the drivers of the two vehicles were equally responsible and were negligent and apportioned the compensation amount in the ratio of 50:50 between both the vehicles. The counsel could not make any further argument that what was made before the Court below in order to alter the proportion of the negligence that was made by the Court below. Hence, the proportion arrived at by the Court below cannot be altered.

4. With regard to the second aspect, the law is well settled by now that the provision of compassionate appointment for a person in the family of the deceased shall not be a factor, which would impact the grant of compensation for which the family is entitled due to the loss caused by the death of the deceased. It is relevant to cite a few cases,

GEETHAKUMAR v. RUBBER BOARD¹, KRISHNA KINRA v. DALIP SINGH², BHOJ RAJ v. ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.³, KUSUMALATA TRIVEDI v. STATE OF MADHYA PRADESH⁴, and MRS. HELEN C. REBELLO v. MAHARASTRA STATE ROAD TRANSPORT CORPN⁵.

5. In Geethakumari case (1 supra), Krishna Kinra case (2 supra), Bhoj Raj case (3 supra), Kusumalata Trivedi case (4 supra) and Mrs. Helen C. Rebello case (5 supra), the Courts held that the fact that an heir of a deceased victim in a motor vehicle accident was given compassionate appointment or that family pension is being received by them or that they received insurance claim consequent on the death of the victim from his life insurance claim cannot be taken into consideration for arriving at the contribution of the deceased victim to his dependents, for arriving at the damages payable to the claimants in an accident. In fact, in Mrs. Helen C. Rebello case (5 supra) the Supreme Court clearly held that all benefits or advantages or amounts etc. the legal representatives of a deceased victim in a motor vehicle accident could have received, even if he did not die due to a motor vehicle accident, cannot be taken into consideration for arriving at the compensation payable to the legal representatives of a deceased victim in a motor vehicle accident. Hence, there need not be any further discussion on this aspect.

The civil miscellaneous appeal fails on both the contentions raised by the appellant and is dismissed. As a sequel, the

¹ 1994 ACJ 795

² 1994 ACJ 1308

³ (1989) ACC 195

⁴ 1992 ACJ 242

⁵ AIR 1998 SC 3191

miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

September 4, 2017
DSK

T. RAJANI, J

