

SMT JUSTICE T. RAJANI

M.A.C.M.A. No.832 of 2008

JUDGMENT:

This appeal is preferred by the appellant—APSRTC, who is respondent before the Court below, assailing the judgment of the IV Additional District and Sessions Judge, Mahabubnagar in O.P. No.494 of 2000 dated 20.12.2007 on the ground that the lower Court relied on the FIR and came to the conclusion that there is negligence on the part of the appellant and the evidence of PW.2 is also invalid as he was not consistent on the aspect of witnessing the incident.

2. Heard learned Standing Counsel for appellant. Respondent does not appear.

3. Learned Standing Counsel for appellant reiterates the grounds that the lower Court relied on FIR and the negligence aspect and relied on the judgment of this Court in *National Insurance Company Limited vs Islavath Chinnamma*¹. This Court however held that the contents of FIR cannot be taken into consideration for holding that the aspects are conclusively proved.

4. However, the judgement of the lower Court shows that apart from the contents of FIR, the evidence of PW.2 was also there on the record. It was observed in respect of the evidence of PW.2, that at one stage he stated that the police did not examine him

¹ 2006 (4) ALD 268

and at another stage he denied the suggestion that he was not an eye witness to the incident. The lower Court, considering the fact the name of PW.2 was mentioned in charge sheet took into consideration his evidence. This approach of the Court below cannot be found fault with. When he was cited as a witness in the charge sheet, it cannot be said that he was not an eye witness to the incident. His evidence before the Court below that he was not examined by police was might have been given in a state of confusion and the same need not be given much importance. The manner in which police record statements may be such as not to give a clear understanding that 'the statement' was recorded. With regard to compensation being excessive, the contention of the learned Standing Counsel for the appellant is that there was no evidence with regard to income of the deceased.

5. A perusal of the judgment shows that Rs.1500/- per month was taken as the monthly income of the deceased, which can be considered adequate, as the deceased was aged 56 years.

6. Hence, with the above observation, the appeal is dismissed.

7. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

Date:05.10.2017
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