

SMT JUSTICE T. RAJANI

MACMA.No.949 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the second respondent before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.996 of 2005 dated 11.04.2007 on the grounds that the Court below failed to see that there was no negligence on the part of the offending vehicle, as the deceased girl was crossing the road without observing the vehicles and that Ex.A1 clearly shows that same and the vehicle is also an unknown vehicle; the Court below ought to have seen that the police booked a case against the driver of the vehicle only on the basis of the evidence of hearsay witness.

2. Heard both the counsel.

3. At the hearing, counsel for the appellant, by relying on the evidence of R.W.1 contends that P.W.2 cannot be considered as an eye-witness, as the evidence of R.W.1 shows that L.Ws.5 and 6 did not come to the scene of offence as eye-witness but they arrived at a later point of time, as per their investigation.

4. A perusal of the judgment of the Court below shows that P.Ws.2 and 3 were examined to speak about the manner of accident; they are no other than L.Ws.5 and 6 referred to by R.W.1. Their evidence before the Court is that they witnessed the accident and that the accident occurred due to the negligence of the driver of the crime vehicle. P.W.2 denied the suggestion that he came to the scene of

accident after the occurrence. The Court below rightly disbelieved the evidence of R.W.1 by considering it as self-serving.

5. A reading of the deposition of R.W.1 would show that no reliance can be placed on his deposition; he is not consistent in his version; he admits that he filed charge sheet and he states that he came to know about the vehicle number through L.W.6 and that the complaint was given against an unknown vehicle but it is only after the information given by L.W.6 that this vehicle's involvement in the accident came to light. His evidence that L.Ws.5 and 6 did come to the scene of offence as eye-witness but they arrived at a later point of time is not at all supported by any authenticated documents. On the basis of which and what he stated as such is not made clear. His evidence, nevertheless, shows that L.W.6 is the person, who informed about the vehicle and it implies that he might have been an eye-witness to the accident. Except stating that as per their investigation they came to know that L.Ws.5 and 6 are not eye-witnesses, he does not state about the contents of their statements, which were, admittedly, recorded by him. Hence, unless the statement of the witnesses are produced before the Court and unless it is made out from their statements that they did not witness the accident, there cannot be any basis for the evidence of R.W.1 that their investigation revealed that they are not eye-witnesses. Hence, the approach of the Court below in appreciating the evidence of R.W.1 cannot be found fault with.

Resultantly, the civil miscellaneous appeal fails and is dismissed.

As a sequel, the miscellaneous applications, if any, shall stand closed.

There shall be no order as to costs.

October 10, 2017
DSK

T. RAJANI, J

