

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.152 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the tribunal below, against the judgment of the District Judge, Ongole in MVOP.No.418 of 2006 on the ground that the approach of the tribunal in holding that the deceased contributed to the accident is not related to any evidence on record and that the observation made by the tribunal in that regard is totally misconceived.

2. The tribunal took into consideration the fact that was mentioned in the report that the deceased, at the time of the accident, was underneath the lorry but the reading of the report shows that the deceased was traveling in the lorry for the purpose of loading the fruits plucked by them from the nearby garden and the lorry was parked by the side of the road. While fruit collection was going on at about 5 PM there was a sudden rain and hence, the complainant along with the deceased and others went underneath the lorry to take shelter. The DCM lorry driver without observing the said fact started the lorry. But the appreciation made by the tribunal seems to be misconceived. The conduct of the driver in moving the lorry without checking whether the deceased and others boarded the lorry, would clearly suggest negligence on the part of the driver of the lorry, as it is his duty to check whether the persons, who were supposed to travel in the lorry, have boarded the lorry or not. Hence, without observing the same, the

driver has driven the lorry, as can be seen from the evidence, which is nothing but sheer negligence on his part.

3. Hence, this Court opines that the finding of the tribunal that the deceased contributed to the accident is not based on proper appreciation of report and the evidence on record. Hence, the award of the tribunal so far as holding the deceased contributing 20% to the accident is misconceived and is liable to be set aside. On the premise that 20% of negligence was on the part of the deceased, the tribunal made deduction to the extent of 20% from the total compensation amount of Rs.3,40,000/- and awarded Rs.2,72,000/-. Hence, the appellants are entitled to total compensation of Rs.3,40,000/-. Since the appellants restricted their claim to Rs.3,21,500/-, the total compensation arrived at Rs.3,40,000/- is restricted to Rs.3,21,500/-.

4. This Court is not inclined to interfere with the rate of interest awarded by the tribunal as it is on par with the rate of interest awarded by nationalized banks. This award shall relate back to the date of decree.

The civil miscellaneous appeal is allowed. As a sequel, the miscellaneous applications, if any, shall stand disposed of as infructuous. There shall be no order as to costs.

February 17, 2017
DSK

T. RAJANI, J