

SMT JUSTICE T. RAJANI

MACMA.No.810 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the V Additional District Judge, Nizamabad in O.P.No.604 of 2004 dated 15.11.2007 on the ground that the lower Court erred in not fixing liability on respondent No.2—Insurance Company though the appellant was third party to the vehicle insured with 2nd respondent.

2. Heard both the counsel.

3. The facts of the case are that the claimant was travelling in a lorry as a cleaner and driver of another lorry has applied sudden breaks due to which the claimant's lorry dashed against the other lorry and inmates of the lorry sustained grievous injuries. The lower Court, on considering that the deceased was a gratuitous passenger, dismissed the claim against the Insurance Company.

4. Learned counsel for appellant submits that in a connected matter, this Court in M.A.C.M.A. No.627 of 2008 fixed liability on the 2nd respondent and there is no dispute with regard to the injured, in this case, being a third party to the lorry, which is insured with 2nd respondent. Hence the negligence of driver of

the lorry in which the claimant was travelling does not become relevant for fixing liability on respondent No.2. Hence, the award of the lower Court is modified to that extent and both the respondents 1 and 2 are jointly and severally liable to pay compensation.

5. The counsel for appellant contends that the compensation also needs to be enhanced as there is only one simple injury in addition to the injuries which are sustained by the claimant in M.A.C.M.A. No.627 of 2008, which is already set-aside by this Court and then Rs.2,000/- was awarded for one simple injury. But in this case there are two simple injuries apart from three grievous injuries. Hence, another Rs.2,000/- is awarded towards second simple injury in this case.

6. Hence, in all, the claimant is entitled to an enhanced compensation of Rs.2,000/- (second simple injury), and the rest of the award as regards the compensation is left uninterfered with. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below. Respondents 1 and 2 are jointly and severally liable for the award amount.

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

T. RAJANI, J

Date:06.10.2017
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