

SMT JUSTICE T. RAJANI

MACMA.No.340 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the District Judge, Karimnagar in OP.No.832 of 2005 dated 07.07.2007 on the grounds that the Court below failed to see that the driver, who is the accused before the criminal Court, was convicted and the same was admitted by R.W.2 in the cross-examination and the Court below in spite of coming to the conclusion that the vehicle was involved in the accident came to a conclusion that the evidence of P.W.2 cannot be believed.

2. Heard both the counsel.

3. A perusal of the judgment of the Court below would show that it was completely carried away by the evidence of P.W.1, who stated that the vehicle is an unknown vehicle and that the same is reflected in the complaint also but after filing the complaint, a case was registered and investigation was taken up by the police department and charge sheet shows P.W.2, who was examined before the Court below as a witness, but the Court below very minutely analyzed the evidence of P.W.2 and observed that P.W.2 stated before the Court that he witnessed the accident but out of fear he left for his native place. It observed that there is no evidence that the witness belongs to Siddipet that there is no record to show that he is native of Siddipet and that after accident he went to Siddipet out of fear and he did not explain for how long he stayed at Siddipet. Basing on the above,

the Court below came to the conclusion that P.W.2 is not trustworthy witness but the claim being under a beneficial legislation, does not require such meticulous examination of the evidence of a witness whose trustworthiness is not put to question by the respondents and whose creditworthiness is not brought into question.

4. The criminal Court, however, appears to have disbelieved the evidence of P.W.2. In the charge sheet, P.W.2 is shown as a witness, who intimated about the crime vehicle. The Court below, on the premise that the judgment of the criminal Court is not binding, and that the law is well settled on that aspect, did not consider the judgment of conviction and came to its own conclusion, based on the disbelief as regards the evidence of P.W.2. But the law, that is settled, that the judgment of a criminal Court is not binding on the civil Court, is based on the difference in the standards of proof in a criminal case and a civil case. In a criminal case, standard of proof is on a higher plane, it being beyond reasonable doubt, whereas in civil cases preponderance of probabilities would suffice as a proof of fact. When preponderance of probabilities would suffice as a proof of fact in civil case and when there is a judgment rendered in a criminal case by adopting higher standard of proof, there cannot be any reason to disbelieve the said judgment. Hence, the approach of the Court below cannot be upheld by upholding the judgment passed by it.

5. When the owner of the vehicle is also shown as witness and when the charge sheet is filed, after considering all the statements made by the witnesses, which include that of the owner, there need not be any reason to come to the conclusion that the vehicle was not

involved in the accident. There is admittedly 40 days delay in giving the report. The delay is very much explained by P.W.1 in the report. The deceased was admitted in the hospital. She states in the report that he was still in the hospital by the date of giving report and she had to stay with the deceased as there was no one to attend on him. There is nothing unnatural in her behaviour. When a person sustains injuries, his kith and kin would endeavour their best to save his life by getting him treated. His death which followed the injuries and the treatment would show the graveness of the injuries. The charge sheet supports the evidence of P.W.2. He is stated to be the person who informed about the number of the vehicle and gave the number of the vehicle.

6. The lower Court observed that the evidence of P.W.2 given before the criminal Court is at variance with the evidence given by him before it. Ex.B6 is the deposition of P.W.2 in the criminal Court where he stated that on 11.08.2004 while he was going on foot to a shop to purchase bread he came across a lorry bearing No.AP21 T 1188 stationed on road side at B-Power House gadda. While he was returning, he noticed a Suzuki motorcycle lying on the road, which was splattered with blood near the spot, where he had seen the lorry. The said lorry was not there by the time. He noted down the lorry number and also the number of the Suzuki motorcycle and intimated the same to the police. Before the Court below, his evidence is that on the date of accident when he went to purchase bread near the power house gadda and the said lorry came from Godavarikhani side from opposite direction dashed to the TVS Suzuki motorcycle,

as a result, two persons traveling on the motorcycle fell down; due to fear, he did not inform the same to anybody at that time; he went to Siddipet and came back to Godavarikhani five months later and on coming to know that one of the persons injured in the accident has died he intimated to the police about the accident on 27.01.2005. The charge sheet, as already observed, supports the version of P.W.2 that he intimated to the police at a later date and not immediately after the accident. The Court below observed that before the criminal Court he stated that while he was returning he did not see the lorry at the place of accident. But such a strict interpretation of evidence may not be required while appreciating a claim under a beneficial legislation. His cross-examination does not elicit any fact which would discredit him as a witness and there is no unnaturality in the behaviour of P.W.2, who might not have felt the responsibility to inform the police immediately and went to attend his work and that after coming to know that one of the persons, who met with the accident died, he felt that he has to inform the police and as such informed the Police.

7. There is ample evidence coming from the other witnesses and the documents show that the vehicle is very much involved in the accident. Hence, in view of the above, the judgment of the Court below is set aside. The Court below, however, took pains to arrive at the compensation amount, which is not assailed in this appeal. But it, did not specify the interest that the award amount should carry; hence, this Court awards interest at the rate of 7.5% on the awarded amount from the date of petition till the date of realization with proportionate costs.

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.

August 11, 2017
DSK

T. RAJANI, J

