

THE HONOURABLE JUSTICE SMT. T.RAJANI

MACMA. No.448 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the insurer, National Insurance Company Limited, respondent No.2 in the lower Court, assailing the judgment on various grounds. But the only ground, which was importantly urged at the time of hearing is with regard to the manner of the accident.

The learned counsel for the appellant contends that pleadings are in conflict to the evidence of the P.W.2, an eye witness. He contends that as per the claim petition, the deceased and the cleaner were proceeding in the lorry and when they reached Medchal village the lorry was broke down and the deceased stopped the lorry on the road side and was attending the repairs under the lorry. Then the offending lorry came in a rash and negligent manner and dashed the lorry of the deceased from behind due to which, the lorry of the deceased ran over the deceased and the deceased died on the spot while the cleaner of the lorry of the deceased sustained grievous injuries. The learned counsel contends that these facts are contrary to the evidence of the P.W.2, eye witness and cleaner of the lorry, who states that after stopping the lorry on Ballary – Alluru road due to battery power cut, the driver was checking the battery by sitting under the lorry and he was standing on the lorry showing battery light to the deceased. The averment in the claim petition was that both of them were sitting under the lorry and attending repairs. But proper reading of the contents of the claim petition shows that there is no real and serious contradiction between the contents of the claim petition and the evidence of P.W.2. Narration in the claim petition cannot be taken as strict evidence. It might mean that both of them were attending repairs, meaning to say that participating in the repair works by making their contribution to get the repairs done, which may

include providing source of light for carrying out the repairing work. The evidence of P.W.2 can be treated as further explanation of the facts stated in the petition but not as a contradiction. His evidence standing on the lorry showing battery light to the deceased need not be taken as contrary to what is stated in the claim petition that both of them were attending repairing works. Such interpretation of the evidence in a beneficial legislation would not meet the objects of the enactment and would run contrary to the theme of the Act.

In the background of the evidence of P.W.2, who stated that he was holding battery light, it has to be understood that there was some light available which could have stopped the crime lorry from dashing against the lorry of the deceased. Hence, it can be understood that there was negligence on the part of the driver of the crime vehicle. Hence, the award of the lower Court is not required to be interfered with and this appeal is liable to be dismissed and accordingly, it is dismissed.

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

Date: 17.02.2017
LSK

JUSTICE SMT. T.RAJANI