

SMT JUSTICE T. RAJANI

MACMA.No.921 of 2013

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the III Additional Chief Judge, Hyderabad in OP.No.1213 of 2011 dated 21.01.2013 on the grounds that the approach of the Court below in dismissing the petition on the ground that the petition was filed both under Sections 166 and 163-A of the Motor Vehicles Act is erroneous and that the approach of the Court below in failing to rely on the attested copy of FIR, which is marked before the Court below, which was not assailed by the respondents is not sustainable.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that the OP was dismissed on the ground that the petition was filed both under Sections 163-A and 166 of the Motor Vehicles Act (for short 'the Act') and while dismissing the petition, the Court below relied on a decision of the Supreme Court in *ORIENTAL INSURANCE CO. LTD. v. DHANBAI KANJI GADHVI* [2011 ACJ 721].

4. The counsel for the claimant, however, submits that in a similar case, a Division Bench of this Court has remitted the matter to the Court below for fresh consideration. A copy of the said judgment is also furnished, which was rendered in MACMA.No.1491 of 2013, dated 19.09.2013, wherein the Division Bench took into consideration the statement made by the learned counsel appearing for the appellant

that the claim under Section 163-A of the Act requires to be disposed of in accordance with the Second Schedule of the Act, if the deceased was having annual income of less than Rs.40,000/- and as the claim of the appellant in that case was that the deceased was drawing Rs.1,08,000/-, the application filed by the claimant has to be treated as one filed under Section 166 of the Act. The Division Bench observed that the counsel placed reliance on *JATAVATH KOMTI @ LAKSHMI v. K. JANGAIAH* [2014 (4) ALD 423 (DB)] and *NATIONAL INSURANCE CO. LTD. v. J. YELLAPPA* [2004 ACJ 180] and considering that since the income of the deceased in that case was Rs.1,08,000/- the judgment of the Supreme Court in *ORIENTAL INSURANCE CO. LTD. v. DHANBAI KANJI GADHVI* [2011 ACJ 721] was held as having no application and it was held that the claim of the claimant can be considered under Section 166 of the Act.

5. Hence, following the same reasoning in this case also, the claim petition filed by the claimant can be directed to be considered by the Court below as one filed under Section 166 of the Act, as the income of the deceased in this case is also Rs.8,000/- x 12 = Rs.1,08,000/- per annum.

6. The other ground on which the Court below dismissed the claim petition is that the claimant did not file authenticated document and he filed only attested copy of FIR. But the document seems to have been marked before the Court below and there was no objection raised by the respondents while marking the said document. Hence, there is no embargo for the Court below to place reliance on the said document; moreover, it is a document, which is attested by the police officials in

whose custody the original document is lying. Hence, this Court opines that it is a fit case to be remitted to the Court below for fresh disposal by treating the petition as filed under Section 166 of the Act and by relying on the FIR, which is filed by the claimant.

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

November 27, 2017
DSK

T. RAJANI, J

