

SMT JUSTICE T. RAJANI

MACMA.No.180 of 2006

JUDGMENT:

The appellant, who is the fourth respondent before the Court below, preferred this appeal assailing the judgment of the II Additional District Judge, Nellore in OP.No.724 of 1999 dated 28.02.2005 on the ground that the Court below erroneously apportioned the negligence as 50:50 and it ought to have seen that there is no negligence on the part of the vehicle insured with the appellant. The tribunal ought to have fixed the entire liability on the T.P. vehicle/Jeep considering the evidence of R.W.2 and Exs.A1 and B1.

2. Heard counsel for the appellant. Counsel for the respondents did not appear.

3. The OP was disposed of by way of a common order along with four other OP's. This appeal is stated to have been preferred only against OP.No.724 of 1999. Issue No.1 was decided in common in all the OP's. The evidence of R.W.1, which can be categorized as self-serving, was rightly refused to be relied upon by the Court below. It appears that the case was booked against the driver of the jeep also and that it abated since the driver died in the accident. The Court below has carefully evaluated the evidence on the aspect of negligence. The suggestion that the driver of the jeep was sleeping at the time of the accident was denied by P.W.2, who is the eye-witness and so also he denied the suggestion that the lorry was not coming in a rash and negligent manner. The contents of Ex.A1, which showed that the lorry came in opposite direction to the jeep and the evidence of R.W.1, which is contrary to that, that the jeep came from behind

and dashed against the lorry, was considered in the right perspective and on the basis of the evidence of R.W.1 which is contrary to Ex.A1, the Court below, in my opinion, rightly disbelieved the evidence of R.W.1. In spite of disbelieving the evidence of R.W.1, the Court below apportioned negligence equally on the two vehicles involved in the accident. Hence, absolutely there appears no reason to interfere with the order of the Court below on the aspect of negligence.

4. Though there is no ground raised in the appeal with regard to quantum of compensation, counsel made a feeble attempt to assail the judgment on the aspect of quantum also, which perhaps seems to be the reason, which prompted the appellant to file this appeal. Rs.2,46,500/- was awarded to the claimants. The appellant counsel submits that the deceased, in this case, was a labourer and that he would be aged around 30 years. Hence, in the light of the above two facts, the amount awarded cannot be termed as exorbitant.

5. The plea of the counsel to direct the compensation to be apportioned in the ration of 50:50 against both the insurance companies cannot be accepted as, firstly, no such plea was raised in the grounds and secondly, it runs contrary to the award made in the connected OP's.

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

T. RAJANI, J

June 23, 2017
DSK