

THE HONOURABLE JUSTICE SMT. T.RAJANI

MACMA. No.130 of 2008

JUDGMENT:

This appeal is preferred by the insurer, against the judgment and decree dated 13.06.2007 made in MVOP. No.329 of 2002 by the V Additional District Judge, Vijayawada on the grounds that the deceased dashed against the crime vehicle; the lower Court, having observed that the evidence of P.W.3 is eschewed, erred in considering the very same evidence against the insured and the insurance company by awarding the compensation, and the lower Court erred in not considering the evidence of the RW-1 and the reason given by the lower Court for not considering the evidence of RW-1 is erroneous because of the observation that the plea taken in cross examination was considered. The lower Court erred in considering that the charge sheet and other documents were not proved by the respondents and erred in assuming that the case has been made out, that there was rash and negligent driving of the driver of the crime vehicle.

At the hearing, the counsel for the appellant mainly rested his argument on the aspect of contributory negligence by the deceased and he relies on the evidence of RWs.1 and 3. RW.1, driver of the crime vehicle, being a self serving witness, would naturally allege the negligence on the deceased and has accordingly deposed as such. According to his evidence, he was coming from Bhimadolu to Vijayawada, driving the milk tanker. While the vehicle reached Nidamanuru, the road was blocked on one side and all the vehicles were being driven on the road leading to Eluru. He stated that on the road, one RTC bus was coming from Vijayawada towards Gannavaram. One Hero Honda motor cycle over took the said RTC bus and in that process, hit the bus and thereafter hit the bumper of his vehicle on the right side. The handle of the motor cycle hit the bumper of his van and the driver of the motor cycle fell down on the road. That is the manner of accident on which the

counsel for the appellant wanted to support his contentions. In order to uphold the argument of the counsel, this court sees that apart from RW.1 being the self serving witness, his evidence is not supported by any other credible evidence. R.W.3 is the driver of the RTC bus. It is spoken to by R.W.3 that he is the person who gave the first information report to the Police. In the evidence, he says that on the date of accident he was proceeding from market to Nidamanuru and when he reached near Ramanagar bus stop and waiting for boarding of passengers, suddenly in front of his bus, at about 20 yards, one motor cyclist was hit by the milk tanker. Due to that the deceased sustained several injuries and was shifted to hospital and he has no connection to the accident. The cross examination of R.W.3 is that the oil tanker was coming in opposite direction to his vehicle when the accident took place. He also gave evidence in the criminal Court in the case filed against the driver of the oil tanker.

After having spoken about the details of the manner in which the accident occurred, he, however, admits that he did not see the accident. But, the narration of the manner of the accident by R.W.1 does not receive support from R.W.3. Though it was elicited in the cross examination that he did not see the accident, the fact remains that he did not state that the deceased hit his vehicle, as stated by the R.W.1. Hence, absolutely there is no corroboration by any evidence, be it oral or documentary, to the evidence of R.W.1. More over, the report given by R.W.3 is to the effect that he stopped his vehicle, having noticed the oil tanker coming in a high speed. Hence, even if, in the cross examination he accepted to have not witnessed the accident, the fact stated in the report would tilt in favour of the negligence of the driver of the oil tanker. Rule 476(7) (iii) of the Andhra Pradesh Motor Vehicles Rules permits the Tribunal to proceed to award the claim on the basis of first information report. Hence, taking FIR as a basis is not illegal.

The counsel for the appellant seeks the Court to invoke the principle of 'Res ipsa loquitor' to appreciate the negligence of the drivers. For invoking the said principle, the circumstances under which the accident occurred should be such as to speak for themselves. But except the evidence of RW 1, no witness spoke about the circumstances and the condition of the road, which the counsel argues, should form the basis for invoking the said principle. The repair of the road due to which, allegedly, vehicles were going on one side of the road, is not even suggested to R.W.3 and he also did not speak about the said fact. Even if that is accepted, when the accident has nevertheless happened, it cannot be said that no negligence aspect comes into play. Either of the drivers of the vehicles have to be negligent, for an accident to occur. In this case, the probabilities of the case preponder in favour of the negligence of the driver of the oil tanker. P.W.3, who is projected as an eye witness for the accident, is also shown as witness in the charge sheet as an eye witness. For that matter, R.W.3 was also shown as eye witness. P.W. 3's evidence was eschewed as he did not turn up for cross examination by R3. Hence, his evidence cannot be looked into. But the above discussion would dispel the contentions of the appellant. This Court does not find any additional material on the basis of which the order of the lower Court can be interfered with. Hence, no merits are found in the appeal and hence it is dismissed. As a sequel, miscellaneous petitions, if any, stand closed. There shall be no order as to costs.

JUSTICE SMT. T.RAJANI

Date: 10.02.2017

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