

SMT JUSTICE T. RAJANI

M.A.C.M.A. No.938 of 2011

JUDGMENT:

This appeal is preferred by the appellants—APSRTC, who are respondent Nos.1 and 2 before the Court below, assailing the judgment of the V Additional Metropolitan Sessions Judge (Mahila Court)—cum—XIX Additional Chief Judge, City Criminal Courts at Hyderabad, on the ground that the Court below has not appreciated the contributory negligence on the part of the driver of the lorry and it also awarded excessive compensation.

2. Heard both the learned counsel.

3. Learned Standing Counsel for appellants contends that contributory negligence on the part of the lorry is evident from the fact that the bus was damaged on the right side. But, unfortunately the said argument does not seem to be sound. The Court below clearly observed that according to the scene of offence panchanama, the lorry was found to be lying on the edge of the left side of the road. Hence, the lorry is running on the correct side of the road and when there is a hit, it need not necessarily be a head on collision. Even if the RTC bus is on right side and hits the lorry at any point of the vehicle, it would amount to negligence on the part of the RTC bus. The crime was registered against the RTC bus driver and charge sheet also laid

against him. The self serving evidence of RW.1, who was the driver of the RTC bus, cannot be appreciated, to disbelieve the contents of the FIR and charge sheet.

4. As regards the quantum of compensation, a perusal of the judgment of the Court below shows that while awarding compensation for loss of salary during the period of treatment, rest and recovery, it is observed that there is absolutely no evidence adduced by the claimant with regard to her avocation, but saying so, the Court below took the salary as stated by her at Rs.10,000/- per month and awarded Rs.60,000/- by taking the period of rest as six months. There is absolutely no evidence with regard to the period of rest also and the same was observed by the Court below. Hence, after making such observation, awarding of such compensation cannot be said to be correct. Considering that the petitioner sustained fracture injuries, three months can be assumed as the period of treatment, rest and recovery. In the absence of any evidence with regard to the avocation and income of the petitioner, except Ex.A10, which is a salary slip, not proved by examining anyone concerned with it, the salary of the injured is taken at Rs.3,000/- per month and Rs.9,000/- is awarded under the head of loss of income during the period of treatment, rest and recovery. The other amounts under other heads seem to

adequate and hence do not require any interference. Hence the award amount stands reduced by Rs.51,000/-.

5. In the result, the claimant is entitled to Rs.3,33,510/- and the rest of the award is left uninterfered with. The award shall relate back to the date of decree and the compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

6. The Civil Miscellaneous Appeal is partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any, shall stand closed.

Date:29.11.2017
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T. RAJANI, J

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