

SMT JUSTICE T. RAJANI

MACMA.No.36 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the VII Additional District Judge, Ongole in MVOP.No.58 of 2006 dated 09.10.2007 on various grounds, including the ground that the approach of the court below in dismissing the OP against the insures is erroneous.

2. Heard both sides.

3. The Court below dismissed the OP against the insurer by disbelieving the involvement of the vehicle in the accident, as there was delay in giving the report and that P.W.1 did not identify the driver.

4. Counsel for the appellant contends that the delay in FIR was due to the appellant being hospitalized and that the delay was only four days. The counsel makes an acceptable submission that a person, who sustained injuries, would first endeavour to get treatment for the injuries rather than rushing to the police station to give report. Hence, the aforesaid delay cannot lead the Court to disbelieve the appellant and the information with regard to the vehicle mentioned in the complaint.

5. The Court below was carried away by the fact that P.W.1 did not identify the driver and disbelieved the version of P.W.1 with regard to the accident. But in the considered opinion of this Court, it does not

seem to be a correct approach. The manner in which the accident occurred is very well stated by P.W.1 and also P.W.2, who is an eye-witness and in such circumstances, when the driver of the vehicle does not stop and proceeds after causing the accident due to rash and negligent driving, the possibility of identifying the person driving the vehicle would be bleak. Non-identification of the driver also is a fact which weighed with the Court below in disbelieving the involvement of the vehicle in the accident. The Court below came to the conclusion that there was collusion between the claimant and R1 and awarded compensation against R1. If the Court below had disbelieved the involvement of the vehicle, it ought not to have granted compensation even against R1. For the same reason, for which it awarded compensation against R1, the Court below has to fix the liability on R2 also.

6. However, the above discussion would lead to the conclusion that the vehicle was involved in the accident and as such, R2 also would be liable for compensation. The award of the Court below, to the extent indicated above, stands modified by fixing the liability on both R1 and R2 jointly and severally.

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

November 6, 2017
DSK

T. RAJANI, J