

SMT JUSTICE T. RAJANI

MACMA No.2028 of 2012

JUDGMENT:

This appeal is filed by the appellants, who are the claimants before the court below, assailing the judgment of the VII Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Ongole in MVOP.No.241 of 2007, dated 03.10.2008, on the grounds that the Court below dismissed the claim petition erroneously observing that the claimants failed to prove the negligence; it failed to see that the FIR itself speaks about the accident and that the Court below ought to have taken 80% negligence on the part of the driver of the crime vehicle.

2. Heard the counsel for the appellants. None appears for the respondents.

3. The counsel for the appellants, at the stage of hearing, submits that whole of the negligence is on the part of the driver of the crime vehicle and that hence, the ground taken in the appeal that 80% negligence can be taken at least as the negligence on the part of the driver of the crime vehicle, need not be considered and that it is only pleaded as an alternative.

4. The court below dismissed the claim petition considering that PW1, who spoke about the accident, was not an eye witness and that no other evidence was adduced to prove the negligence on the part of the driver of the crime vehicle.

5. The counsel for the appellants now relies on a decision of the High Court of Chattisgarh at Bilaspur reported in *M.Vijay Laxmi vs. Laxmi Prasad Yadav* ¹, wherein it was held that when the claimants have specifically pleaded and adduced evidence to establish that the accident occurred between offending car and motor cycle, resulting in death of motorcyclist and when the record of the criminal case was filed before the Tribunal and when the insurance company did not deny the occurrence of the accident, but failed to lead evidence to establish the same by invoking the maxim *res ipsa loquitor*, the criminal record can be looked into. It also held that Sections 158(6) and 166(iv) of the Motor Vehicles Act, provides for adjudication of the claim before the Tribunal on the basis of FIR, without filing claim application. Hence, this Court finds that above rationale is a sound rationale and the contents of the FIR can be looked into, to understand the aspect of negligence.

6. The informant is a third party. He states that while the deceased was crossing the road, suddenly the crime vehicle came and dashed against him. The counsel for the appellant submits that mere crossing of the road cannot be taken as a factor contributing to the negligence, unless it is proved that the deceased crossed the road negligently. This court is convinced with the said argument. Further, there is also no evidence adduced by the respondents on the aspect of contributory negligence. Hence, in such circumstances, holding that the deceased also contributed to the accident, is not warranted.

¹ 2017 ACJ 1983

7. Hence, concluding that the negligence is proved to be on the crime vehicle, R1 and R2, who are the owner and insurer of the vehicle, are held to be jointly and severally liable for the amount arrived at by the court below at Rs.2,44,500/-, though not awarded, with interest at 9% per annum from the date of petition till the date of realisation. The respondents are directed to deposit the amount within two months from the date of this judgment. Since no apportionment is made, this court makes the apportionment as Rs.1,25,000/- to the 2nd claimant, mother; Rs.75,000/- to the 1st claimant, father; and Rs.44,500/- to the 3rd claimant, brother. The claimants are permitted to withdraw their respective shares after deposit of the compensation amount along with proportionate interest and costs.

Accordingly, the MACMA is partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 6, 2017
LMV