

SMT JUSTICE T. RAJANI

M.A.C.M.A. No.661 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the II Additional District Judge, West Godavari District, Euru in O.P. No.725 of 2005 dated 24.12.2007 on the ground that the Court below ought to have seen that the accident occurred due to negligence of the driver and that the deceased boarded the lorry along with oil tins and that the Court below erroneously observed that the 3rd respondent—Insurance Company is not liable for payment of compensation.

2. Heard learned counsel for the appellants and learned Standing Counsel for 3rd respondent—Insurance Company.

3. A perusal of the judgment shows that the claim petition was dismissed against 3rd respondent because the deceased was travelling as unauthorised passenger in the crime vehicle. The Court below evaluated the evidence and came to the above conclusion, which cannot be said to be incorrect because the charge sheet and other documents nowhere show that the deceased boarded the lorry along with oil tins. For the deceased to be considered as travelling along with goods, there should be clear evidence that he had goods while travelling in the lorry. But

as there is no such evidence adduced, the finding of the lower Court, that the deceased is a gratuitous passenger cannot be interfered with. But, however, the Court below failed to award compensation and fix liability on respondent Nos.1 and 2, who are the driver and owner of the crime vehicle respectively, simply because they remained *ex parte* before the lower Court. Even the reasons for dismissing the claim against respondents 1 and 2 are not stated in the award. Hence, this appeal needs to be remitted to lower Court for fresh consideration.

4. 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.

Date:06.10.2017
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T. RAJANI, J