

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.440 of 2008

JUDGMENT:

This appeal is filed by the appellants, respondents in the OP, assailing the order of the District Judge, Guntur passed in M.V.O.P.No.1096 of 2004 dated 05.09.2007 on the grounds that the tribunal ought to have seen Exs.B1 to B18, which show that the OP's filed by the claimants and other similar persons were dismissed as not pressed having received Rs.1,00,000/- towards compensation as full and final settlement. The tribunal ought to have taken into account the conduct of the claimants in filing a fresh OP in 2004 having not pressed the earlier OP.No.1196 of 1998 before the District Judge, Nalgonda. The tribunal ought to have considered the written statement filed by the third respondent in the OP in proper perspective. The tribunal ought to have considered that the driver of the lorry was acquitted in a criminal case as there was no negligence on his part and ought to have considered that the accident occurred not due to the negligence of the driver of the crime lorry but due to the reason that the lorry was giving way to the vehicle coming from behind, which was trying to overtake it. The tribunal ought to have considered that the appellants already paid the terminal benefits to the claimants.

2. During the arguments, the counsel for appellants mainly harped on two issues viz. one with regard to negligence and other with regard to ex-gratia that paid by the Government.

3. With regard to negligence, though a plea was taken by appellants, none on behalf of the appellants was examined in the

lower court to disprove the evidence adduced by the claimants on the aspect of negligence. Two vehicles were involved in the accident and in the absence of any evidence coming forth from the appellants with regard to the accident and negligence and in the backdrop of the fact that it is a head on collision between two vehicles, the tribunal cannot be expected to have any other option except to apportion the liability on the owners of the vehicles equally, which the tribunal had rightly done. The acquittal of the driver in the criminal case does not become an automatic basis for a conclusion on his negligence in this case, as the standard of proof in civil and criminal cases is different. Whereas it is beyond reasonable doubt in a criminal case, preponderance of probabilities would suffice in a civil case. Hence, there need not be any difference of opinion on the aspect of negligence.

4. With regard to ex-gratia that is claimed to have been paid by the appellants, there is no dispute that the claimants have received Rs.1,00,000/- but the contention is that the said amount has to be deducted from the compensation that was granted to the claimants. In that regard, the decision of the Supreme Court in *HELEN C. REBELLO v. MAHARASHTRA STATE ROAD TRANSPORT CORPORATION*¹ can be taken as guidance.

5. In this case Ex.B1 under which Rs.1,00,000/- was paid to claimants, does not spell about the details of the nature of ex-gratia, as to whether it is the contribution made by the deceased or whether it paid consequent to the death of the deceased. Hence, no guidance can be sought from the said exhibit. Except the above document, there is

¹ 1999 ACJ 10 = 1999 (1) SCC 90

no other document filed with regard to the payment of ex-gratia. There is no proof of direct nexus between the pecuniary advantage received by the claimants and the death of deceased in the motor vehicle Accident. Hence no deduction can be made on that count.

6. The other contention that the OP's filed by the claimants earlier were not pressed considering ex-gratia as full and final settlement of the claim is not supported by any document. The withdrawal of the petitions, as rightly observed by the tribunal, was without any reasons. Hence, it cannot be inferred that the withdrawal is due to their receiving Rs.1,00,000/- towards full and final settlement of the claim. Apart from that, the observation made by the tribunal that the appellants cannot contract themselves out from the statutory liabilities is well settled and it is against public policy. Hence, in view of the above, this Court does not find any reason to interfere with the judgment of the tribunal.

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

February , 2017
DSK

T. RAJANI, J