

SMT. JUSTICE T. RAJANI

MACMA No.4653 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the order of I Additional District Judge, Khammam, in O.P.No.218 of 2004 dated 08.09.2008 on the ground that the Court below dismissed the O.P. erroneously by considering that the claimant did not file any record to show that he was admitted in NIMS Hospital. The Tribunal discarded the documentary evidence as it is subsequent to the date of accident and brushed aside the fact of filing charge sheet, lightly.

Heard both the learned counsel.

Learned counsel for the appellant submits that the petitioner having sustained grievous injury, got treatment in NIMS Hospital till 18.12.2003, which is evidenced by Ex.A.3 and the same is testified by the doctor who was examined as P.W.2.

A perusal of Ex.A.3 shows that the petitioner was admitted in NIMS hospital for the injuries sustained in the road traffic accident and he was diagnosed with a fracture of both bones of

left leg. Simply because there are certain suspicious circumstances in the case of the petitioner, the circumstances which go to support the fact of accident need not be brushed aside. In a beneficial legislation, the approach of the Court should be different from what the Court below adopted in this case. The medical certificate, Ex.A.3, and the evidence of the doctor, P.W.2, put together would suggest, very strongly, that the petitioner sustained injuries in the motor vehicle accident. The counter filed by the first respondent is also perused wherein there is no denial of the fact of accident. It was only the negligence of the driver that was denied. Hence, when the owner of the vehicle does not dispute the fact of accident, there is no need for the Court below to go beyond the pleadings of the first respondent and conclude that there was no accident. With regard to the observation of the Court below that there was no record pertaining to the treatment of the petitioner taken with Dr. Ch. Krishna Prasad, learned counsel submits that the petitioner was immediately taken to NIMS Hospital and it was only a first aid that was taken from Dr. Ch. Krishna Prasad. The accident took place at 8.00 p.m. on 25.11.2003 and the admission of the petitioner in NIMS Hospital is at about 1.15 a.m. on the next date. All these circumstances would strongly suggest that the claimant sustained injuries in the motor accident.

Hence, with the above observations, the order of the Court below is set aside and the matter is remitted to the Court below to dispose of the matter afresh by taking into consideration the observations made by this Court.

In the result, the appeal is partly allowed. The matter is remitted to the Court below for fresh disposal.

Pending miscellaneous petitions, if any, shall stand closed.

25th OCTOBER, 2017.

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SMT. T. RAJANI, J

