

SMT JUSTICE T. RAJANI

MACMA No.525 of 2012

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.254 of 2010 dated 10.03.2011 on the grounds that the Court below did not appreciate the aspect of negligence, in spite of the fact that the accident is a collision between two vehicles and it erred in taking the income of the deceased as Rs.6,000/-, in the absence of any evidence.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that the negligence aspect was discussed under issue No.1 and observed that the second respondent in spite of hectic effort failed to disprove the evidence of P.W.1 with regard to negligence. There was no evidence adduced by the respondents, in support of their contention that there was contributory negligence on the part of the deceased, who was driving the auto, which was involved in the accident.

4. In the absence of any rebuttal evidence and in the light of the fact that the appellant was not successful in discrediting the evidence of P.W.2, it has to be concluded that the accident occurred in the manner as narrated by P.W.2. Hence, there need not be any reason to differ with the finding of the Court below given on the aspect of negligence.

5. With regard to compensation, the counsel for the appellant contends that Rs.6,000/- was taken as the income of the deceased, in spite of their being no evidence. The Court below considered the evidence of P.W.3, who was also a driver and who stated that the deceased was earning Rs.10,000/-. The Court below, however, did not accept the evidence of P.W.3 and took only Rs.6,000/- as the income of the deceased. Even according to the settled law as per the decision of the Supreme Court in RAMACHANDRAPPA v. MANGAER, ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.¹, the income of the deceased in the least has to be taken at Rs.4,500/- and if the future hike in the salary is taken as per the decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017], then it would come to more than Rs.6,000/-. Hence, in view of the same, this Court does not find any reason to interfere with the judgment of the Court below.

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

T. RAJANI, J

December 12, 2017
DSK

¹ 2011 ACJ 2436