

SMT JUSTICE T. RAJANI

MACMA.No.342 of 2012

JUDGMENT:

This appeal is preferred by the appellant - APSRTC, who is the second respondent before the Court below, assailing the judgment of the Chairman, Motor Accidents Claims Tribunal (District Judge), Eluru in OP.No.260 of 2007 dated 02.08.2007 on the grounds that the Court below did not consider the negligence aspect properly in spite of the fact that it is a case of head on collision and that the Court below erred in taking the income of the deceased as Rs.5,000/- per month.

2. Heard both sides.

3. This is a case of death of the deceased in a motor accident, which occurred on 13.04.2006. The deceased is stated to be working as a clerk cum coolie and his income was stated to be Rs.5,000/- per month, but the Court below took the income of the deceased as Rs.3,500/- per month and awarded compensation.

4. Now the counsel for the appellant assails the judgment of the Court below on the aspect of negligence, stating that it is a head on collision between two heavy vehicles and hence, negligence has to be attributed to the driver of the lorry in which the deceased was travelling.

5. Even if negligence is concluded against the driver of the lorry, in respect of the deceased, who is a third party to the lorry, it would be a case of composite negligence and he has an option to choose the

tortfeasors against whom he has to proceed. Hence, that cannot be a ground for disallowing the claim of the claimants.

6. With regard to the income taken by the Court below, the counsel for the appellant made a feeble attempt to assail the same. But the law is well settled that even a coolie would be earning Rs.4,500/- per month. Hence, there is absolutely no error in the approach of the Court below in taking Rs.3,500/- per month as the income of the deceased.

Hence, the appeal fails on both counts and is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

July 20, 2018  
DSK



T. RAJANI, J