

SMT JUSTICE T. RAJANI

MA CMA No.323 of 2012

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company, who is R2 before the court below, assailing the judgment of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor, dated 21.12.2006, in MVOP No.222 of 2003, on the ground that the lower court did not appreciate the aspect of contributory negligence by the deceased; the court ought to have appreciated the evidence on record, which reveal that the accident was caused when the lorry was in a stationed condition and the rider of the Motor Cycle came and dashed the stationed lorry; the lower court ought to have seen that there is no use of the lorry at the time of accident, as the same was stationed; the lower court ought to have rejected the claim as not maintainable on the ground that the cause of accident is the negligence on the part of the rider of the motor cycle, on which the deceased was proceeding; the lower court ought to have seen that the lorry was not involved in causing the accident as there is no negligence on the part of the lorry; the lower court ought to have seen that the appellant is not liable to pay any compensation as the negligence was on the part of the lorry; the lower court erred in converting the claim from Section 166 to 163-A of the Motor Vehicles Act, 1988 (for short, "the Act"); the lower court erred in fixing the income of the deceased at Rs.2,000/- per month; the lower court erred in awarding Rs.15,000/- towards loss of consortium.

2. The claim is for the death of 47 year old person, who is stated to be a Cultivator and Electrician by profession, earning Rs.5,000/- per month. The application was filed under Section 166 of M.V.Act and was later converted to 163-A of the Act. Section 163A(1) can be extracted hereunder for the benefit of quick reference, which reads as follows:

“[163A](#). Special provisions as to payment of compensation on structured formula basis.— [\(1\)](#) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).”

3. The usage of a vehicle in a public place would suffice to make the vehicles involved in the accident liable. The conversion of the application to 163A is not done by the court but it was done by the claimants themselves and they are permitted to do so by law and there is no bar on such conversion. Hence, the approach of the lower court in not going into the issue of negligence and fixing the liability on the driver of the lorry, considering the fact that there was no denial that a lorry was involved in the accident being negligently stationed at a public place, needs no interference. That apart, the deceased was going as a pillion rider. Negligence is alleged against the

rider of the vehicle on which he was going and to which also he is a third party. The case then falls into composite negligence, where the victims have a choice to claim compensation from either of the two vehicles or both. Hence, there is no error in the award of the court below.

4. With regard to the quantum of compensation, this court does not find any reason to interfere with the judgment of the lower court and the counsel for the appellant is not able to make out any argument which needs interference.

MA CMA is, accordingly, dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

July 13, 2018
LMV



T. RAJANI, J