

SMT. JUSTICE T.RAJANI

MA.CMA.NO.375 OF 2012

JUDGMENT

This appeal is preferred by the appellant, who is the respondent No.2 before the lower court, assailing the judgment of the Principal District Judge in MVOP.No.303 of 2008 dated 13.06.2011, on the ground that the court below ought to have seen that the deceased did not have licence to drive a two wheeler. The deceased was driving a two wheeler without having a licence to drive the same and, therefore, a presumption ought to have been drawn that he contributed to the accident. The lower court ought to have seen that according to Ex.B-1, the deceased was having license to drive only light motor vehicle and, therefore, he could not have worked as a driver to a heavy goods vehicle or tipper, as claimed by the claimants and as contended by P.W.2. It ought to have seen that P.W.2 issued the salary certificate only to help the claimants. The lower court erred in taking the income of the deceased at Rs.7,000/- per month.

Based on the above grounds, the appellant seeks to set aside the order of the court below.

Heard both the counsel.

This is a case of death of the deceased in a motor accident, which occurred on 30.04.2008. The deceased is stated to be working as driver

on a tipper lorry, earning Rs.7,000/- per month. He was aged 31 years as on the date of the accident. The claimants are the wife, son and parents of the deceased.

The lower court by accepting the evidence of P.W.2, who is the employer of the deceased, took the monthly income of the deceased as Rs.7,000/- per month.

Learned counsel for the appellant now assails the approach of the lower court in appreciating the evidence of P.W.2. She contends that the driving licence of the deceased, which is marked as Ex.A-8, shows that he was holding driving licence only to drive a light motor vehicle and in that background, the evidence of P.W.2 ought to have been doubted and it could not have been held that the deceased was earning Rs.7,000/- per month.

In the considered opinion of this court, simply going by the driving licence, which permits the deceased to drive light motor vehicle, it cannot be said that he was not driving heavy motor vehicle, more so, when the said fact is supported by the evidence of P.W.2, against whom no motives are attributed to speak in favour of the deceased.

Even otherwise, if the deceased was considered as having licence to drive light motor vehicle, he can be considered as earning Rs.5,000/- per month in the least. Going by the judgment of the Apex court in the

case of NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017], if the future prospects at the rate of 40 per cent are added to the said income, the monthly income of the deceased would come to Rs.7,000/-, which was the income taken by the lower court. Hence, there would be no difference of compensation amount, even if the contention of the appellant's counsel is accepted.

As regards contributory negligence, the counsel does not make much argument, being conscious of the fact that no evidence was adduced to prove the said fact.

In view of the above, this court is not inclined to interfere with the judgment of the court below. Hence, the appeal is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.RAJANI,J

DATE:27—07—2018

AVS