

THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.96 of 2012

JUDGMENT:

This appeal is preferred by the appellant, National Insurance Company Limited, who is the 2nd respondent before the Court below, assailing the judgment dated 07.12.2010 passed in M.V.O.P. No.372 of 2006 by the Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Tirupati, on the grounds that the Court below erred in not considering the evidence of R.W.1 and Ex.B-2, which reveals that the rider of the motorcycle has driven it under intoxication and he himself contributed to the accident; the Court below also erred in deducting 1/3rd towards personal expenses of the deceased instead of 50% as the deceased was a bachelor; and that the compensation awarded by the Court below is excessive.

Heard the learned counsel for the appellant and none appears for the respondents.

The learned counsel for the appellant, however, at the time of hearing, restricts his arguments only to the aspect of negligence. He relies on Ex.B-2, Postmortem report of the deceased, wherein alcohol is noted as found in the stomach of the deceased and the learned counsel persuades this Court to infer from the said fact that the deceased was also negligent. But, unfortunately, the evidence on record does not support his contention. There is a witness examined as P.W.3, who categorically spoke about the negligence on the part of the driver of the crime vehicle. The appellant herein did not choose to adduce any rebuttal evidence with respect to negligence but, however, on behalf of the appellant R.W.1, Branch Manager of the Insurance Company, was examined and only he deposed to the effect that the bus was insured with their company. Due to the failure of the appellant to prove that the

deceased was negligent, negligence cannot be attributed to him, only on the ground of intoxication. Hence, the approach of the Court below in concluding that there is negligence on the part of the driver of the crime vehicle cannot be found fault.

In view of the above, the appeal fails and is liable to be dismissed. Accordingly, the appeal is dismissed. There shall be no order as to costs.

JUSTICE T. RAJANI

Date: 13.07.2018
LSK

