

SMT JUSTICE T. RAJANI

MACMA.No.1460 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the respondents before the Court below, assailing the judgment, dated 22.02.2012, passed by the XI Additional Chief Judge, City Civil Court at Hyderabad, in O.P.No.1000 of 2010, on the grounds that the Court below did not consider the quantum of negligence on the part of the injured who was driving the motor cycle overtaking the bus; the Court below erred in holding that the driver of the bus was negligent and it also erred in considering the income of the injured as Rs.5,000/- per month, without there being any evidence.

2. Heard the learned counsel on either side.
3. The facts of the case briefly are that on 04.12.2009 at 8.00 p.m., when the petitioner - claimant was going on the extreme left side of the road on a Hero Honda motor cycle, an APSRTC bus bearing No. AP 10 Z 4697 came in the same direction in a rash and negligent manner and dashed the motor cycle from its behind, as a result the petitioner sustained injuries. Earlier to the accident, the petitioner was earning Rs.10,000/- per month and, due to the injuries, he lost the said income.
4. The respondents filed counter denying the averments in the petition contending that there was contributory negligence on the part of the petitioner.

5. The Court below, after framing appropriate issues, which are as follows:

“1. Whether the accident occurred on 4.12.2009 at about 20 hours at Udamgadda, Mailardevpally, Rajendranagar mandal, RR District resulting injuries to Jitta Narsimha? If so, whether the said accident does not occur due to the rash and negligent driving of the APSRTC bus bearing No. AP 10 Z 4697, by its driver?

2. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?

3. To what relief?”,

conducted the trial of the case, during which PWs.1 to 4 were examined and Exs.A1 to A6 were marked on behalf of the petitioner and no evidence was adduced on behalf of the respondents.

6. After considering the evidence and material on record, the Court below awarded Rs.1,35,500/- as compensation, as against the claim of Rs.4,00,000/-, jointly and severally against the respondents.

7. Now the contention of the counsel for the appellants is that the accident is the result of contributory negligence of the petitioner also, who was driving the motor cycle. But, in the considered opinion of this Court, this is a case of res ipsa loquitor, where the thing speaks for itself. The hit by the RTC bus is from behind. Hence, at any stretch of imagination, no negligence can be attributed to the petitioner. Moreover, the charge sheet – Ex.A2, which is filed after due investigation, supports the contention of the petitioner that the accident occurred due to negligence of the driver of the RTC bus. The

respondents did not adduce any evidence to rebut the contents of Ex.A2 and the evidence of PW.1. Hence, there is absolutely no reason to differ with the findings recorded by the Court below on issue No.1.

8. The counsel for the appellants also contends that the income of the petitioner taken as Rs.5,000/- per month is on higher side. But, the Court below, by considering the description of the petitioner made in the charge sheet, considered the petitioner as a contract worker and took his income as Rs.5,000/- per month, which, in the considered opinion of this Court, is appropriate and the same needs no interference.

9. Hence, the appeal stands dismissed. No order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

August 10, 2018
v v



T. RAJANI, J