

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**MACMA No. 2365 of 2006**

**JUDGMENT:**

The first respondent, namely Mohd. Yousuf, in OP No. 1201 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad, is the present appellant.

2. Aggrieved by the order, dated 25.07.2006, whereby and whereunder, an amount of Rs.29,000/- with interest at 7.5% p.a., granted for the injuries sustained by the petitioner Mohd. Arief, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the instant appeal challenging the finding recorded by the Tribunal wrongly comprehending that the petitioner was a pillion rider and thereby fastened liability on the owner alone who is the appellant herein, though, in fact, the petitioner was a third party waiting at the bus stage to board a bus, during which time, since the scooter was driven in a rash and negligent manner and unable to control the speed of the vehicle, the scooterist dashed the petitioner. In fact, the pillion rider has filed a claim in OP No.1185 of 2003 on the very same file and against the award of amount the second respondent - United India Insurance Company preferred the appeal in MACMA No.2700 of 2006.

3. For the sake of convenience, the parties hereinafter referred to as arrayed in the Original Petition before the

Tribunal.

4. The facts, in brief, are that on 21.12.2001 at about 7.00 AM, while the said Mohd. Arief was waiting for bus at Burravagu bus stage on National Highway-7, a scooter bearing registration No.AP-22A-518 came from Kothakota proceeding towards Mahabubnagar and driven at high speed in a rash and negligent manner along with pillion rider, dashed him, due to which he fell down and received injuries and even pillion rider also received injuries. He laid the claim for Rs.1,50,000/- mentioning that he was 20 years old, working as a driver earning Rs.3,000/- per month.

5. Before the Tribunal, both the respondents filed their counters opposing the claim and various pleas were raised by them respectively.

6. The Tribunal, in fact, framed the following three issues about the responsibility for the accident.

“1. Whether the accident occurred due to the rash and negligent driving of the driver of the respondent No.1’s vehicle?

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

3. To what relief?”

7. During enquiry, the first petitioner, besides examining himself as PW.1, has examined Dr. N.V. Jai Kumar as PW.2 and marked Exs.A1 to A4. On behalf of the respondents, no witnesses were examined and no documents were filed.

8. As seen from the order, the Tribunal, somehow, comprehended that the petitioner was a pillion rider instead of third party and proceeded on that premise and determined the compensation at Rs.29,000/- for the injuries sustained by the petitioner, while exonerating the Insurance Company, mulcted the liability on the owner who is the first respondent in the OP. That has been the reason, the first respondent preferred the instant appeal challenging the order in fastening liability on him alone despite the fact that the vehicle was insured with the second respondent – Insurance Company and policy was in force on the date of accident.

9. Heard Sri K. Asad Ahmed, learned counsel for the appellant and Sri R. Venkat Rao, learned counsel for the second respondent – Insurance Company. No representation for the first respondent.

10. Admittedly, no cross-objections are filed. Now the short point that requires consideration is whether the request of the appellant can be acceded to in fastening liability on the second respondent as the insured is a third party, and not the pillion rider?

11. Nothing more is required to probe into, since the evidence on record through PW.1 and Exs.A1 to A4 would clinchingly establish that, the petitioner was waiting at Burravagu bus stage to board a bus, at which time the scooter along with pillion rider came and hit him due to which he sustained injuries. In which event, certainly, the second respondent is obligated with the duty to indemnify the first respondent and, therefore, the order challenged herein is modified fastening the joint and several

liability on respondents 1 and 2, the owner and insurance company respectively, to pay the amount of Rs.29,000/- with interest at 7.5% p.a., as ordered by the Tribunal. It is unnecessary at this point of time to remit the matter on this short ground to treat the petitioner in the original petition as a third party instead of pillion rider and to dispose of the claim petition.

12. Accordingly, the appeal is allowed. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in this appeal shall stand closed.

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**A. SHANKAR NARAYANA, J**

Date: 12.03.2015.

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