

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4640 OF 2008

JUDGMENT:

The injured claimant who maintained the claim in O.P.No.869 of 2003 under Section 166(1)(a) of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-VIII Addl. District and Sessions Judge, Nizamabad (*for short, 'Tribunal'*), for compensation of Rs. 6,00,000/- against the respondents 1 and 2, owner and Insurer respectively of the lorry bearing No.AP 21 T 377 for the injuries sustained in the accident dated 07.05.2003, from the contest by the 2nd respondent-Insurer for the 1st respondent-owner remained ex-parte, the tribunal by its award dated 17.07.2008 granted of Rs.3,36,000/- with interest at 7.5%per annum fixing joint liability against both the respondents, preferred the appeal impugning said quantum as utterly low, with the contentions in the grounds of appeal vis-à-vis the oral submissions during the course of hearing that the tribunal gravely erred in not considering huge amount incurred for nearly Rs.6,00,000/-by the claimant who sustained fracture of shaft femur right, femoral condyle right, metacarpal right hand, fracture of radius right wrist, multiple and grievous injuries on head, chest, hands and other parts of the body and for the prolonged treatment effecting his life source from the neurological surgeries and what the tribunal awarded of Rs.3,36,000/- is since utterly low, to allow the appeal by granting as prayed for.

2. Whereas, the 1st respondent owner of the vehicle even remained ex-parte before the Tribunal, thereby not a necessary party to the appeal.

3. Heard and perused the material on record.

4. The Tribunal held that the accident was the result of the rash and negligent driving of the driver of the lorry of the 1st respondent insured with the 2nd respondent. The scooter in question is a triple rider though meant for rider and pillion rider only. PW.1 along with his sister-in-law, Gangubai and one Musku Raju were going and the accident took place at Ankapur Village at 05.15 p.m in the broad day light and the lorry was coming in opposite direction. They were going to attend marriage party, though denied the suggestion of the marriage party. They were fully drunk and rode the vehicle in a drunken condition. The injured sustained four fractures and two other injuries as per Ex.A.3-wound certificate. From the evidence on record, when it is amply proved that there is a contribution to the accident by the injured by proceeding in triple riding in the broad day light with inability to control and dashing the lorry. Once the contribution depends on the size of the vehicle and some other factors like width of the road etc., it is just even to take 20%contribution of him and for 80%on the part of the lorry driver. From that what the Tribunal awarded of Rs.3,36,000/- no way requires interference.

5. In the result, the appeal is dismissed. There is no order as to costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 28.10.2016
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Dr. B. SIVA SANKARA RAO, J