

SMT JUSTICE T. RAJANI

MACMA.No.69 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.400 of 2006, dated 12.07.2007, on the ground that the Court below erred in concluding 50% of negligence on the part of the rider of the scooter on which the deceased was going as a pillion rider.

2. Heard counsel for the appellants. No representation for the respondents.

3. A perusal of the record discloses that the deceased was travelling as a pillion rider on a scooter, which was being driven by a person, who was examined as P.W.2 in this case. The Court below considering that there was a head-on-collision between two vehicles, attributed negligence at the rate of 50% to each of the drivers of the two vehicles and accordingly, granted 50% of the compensation. But, the deceased was a third party to both the vehicles. It is a case of composite negligence but not contributory negligence. In a case of composite negligence, the claimants would have an option to make claim against both of the tortfeasors or any one of the tortfeasors. The claimants cannot be deprived of

the compensation simply because they did not make a claim against any tortfeasor.

4. Hence, the approach of the Court below cannot be sustained and hence, the compensation of Rs.3,91,000/- arrived at by the Court below shall be the compensation entitled to by the claimants with the same apportionment as made by the Court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

5. The Civil Miscellaneous Appeal is accordingly allowed with proportionate costs. Pending miscellaneous applications, if any, shall stand closed.

Date: 23.10.2017
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T. RAJANI, J

