

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2334 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 10.06.2005 in M.V.O.P.No.648 of 2002 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Bhimavaram (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-Insurance Company and perused the record. The appeal against respondent No.2-driver of mini-lorry and respondent No.5-owner of the Hero Honda Passion (two wheeler) was dismissed on 05.01.2012 for default. In spite of service of notice on respondent Nos.1, 3 and 4, there is no representation on their behalf. Even in their absence also, this appeal can be determined basing on the submissions made on behalf of the appellant and on the record available.

3. Learned counsel for the appellant-National Insurance Company would contend that due to the rash and negligent driving of the driver of Mini-lorry bearing No.AP 5T 4424, the accident occurred and the deceased-Nadimpalli Rama Raju died. The Tribunal erroneously held that the owner of the Hero Honda Passion bearing No.AP 31 S 6111 is also liable to pay the compensation along with other respondents. In another O.P. filed by the rider of the motorcycle in O.P.No.653 of 2002, liability was fastened against the driver, owner and insurer of the

mini lorry bearing No.AP 5T 4424 and further contended that without there being any fault, fixing the liability against the appellant is erroneous and ultimately prayed to set aside the same.

4. While dealing with the subject matter of the O.P.No.652 of 2002, the Tribunal held that the driver of the Mini-lorry bearing No.AP 5T 4424 was responsible for occurrence of the accident and for the death of the deceased (rider of the motor cycle). The criminal case record also substantiates the same. The Tribunal assessed the compensation payable to the claimant at Rs.45,000/- and ultimately directed the respondents i.e., owner and insurer of motorcycle bearing No.AP 31 S 6111 and also driver, owner and insurer of Mini-lorry bearing No.AP 5T 4424 to pay the same.

5. The impugned O.P. is filed under Section 166 of the Motor Vehicles Act. When there is a finding that the accident occurred due to the rash and negligent driving of the driver of mini-lorry bearing No.AP 5T 4424, the Tribunal ought not to have directed the appellant-National Insurance Company to pay the compensation jointly and severally along with other respondents.

6. As far as assessment of compensation for the injuries suffered by the claimant is concerned, the Tribunal assigned the reasons and awarded the same. Hence, no interference is warranted.

7. In the result, the appeal is allowed as prayed for setting aside the impugned order insofar as the appellant-

Insurance Company and respondent No.5-owner of the Hero Honda Passion bearing No.AP 31 S 6111 are concerned. The driver, owner and insurer of the mini-lorry bearing No.AP 5T 4424, who are respondents 2, 3 and 4 herein are jointly and severally liable to pay the compensation to the injured-claimant.

The Miscellaneous Petitions, if any, pending shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 16.07.2018
ssp

