

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**M.A.C.M.A. No.199 OF 2011**

**JUDGMENT:**

This appeal is filed by the appellants/claimants aggrieved by the Order and Decree dated 16.06.2006 passed in O.P.No.738 of 2002 by the Motor Accidents Claims Tribunal (I Additional District Judge), at Mahaboobnagar (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1<sup>st</sup> petitioner is the wife, petitioners 3 to 4 are the sons and the 5<sup>th</sup> petitioner is the mother of the deceased-Palle Ram Reddy. On 13.09.2001, one Nakka Jalander was coming from Tipraspally on his scooter bearing No.AP 13-A/5509 along with the deceased-Palle Ram Reddy and another. Nakka Jalander was driving the scooter. While so, after crossing Tipraspally, a jeep bearing No.AP.22-E/2778 came in high speed and rash and negligent manner from Narayanpet side and dashed the scooter. As a result, the driver Jalander died on the spot and Palle Ram Reddy sustained multiple injuries and was shifted to NIMS Hospital, Hyderabad. While undergoing treatment, he succumbed to injuries on 15.09.2001. Hence, the petitioners claimed compensation of Rs.8,00,000/-, payable by both the respondents, being the owner and insurer of the offending jeep.

4. Before the Tribunal, the 1<sup>st</sup> respondent remained *ex parte*. The 2<sup>nd</sup> respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-8, the Tribunal has actually calculated total compensation @ Rs.11,33,000/-, but granted only 50% of it, since the Tribunal has fixed 50% contributory negligence on the deceased driver of the scooter and 50% contributory negligence on the driver of the offending vehicle. Since the deceased was the pillion rider of the scooter, the Tribunal has fixed 50% of the contributory negligence on him also. Therefore, the Tribunal awarded total compensation of Rs.5,66,000/-, with interest @ 7% per annum from the date of petition till the date of realization, payable by both the respondents. Dissatisfied with the finding given by the Tribunal in fixing the liability on the deceased, who was the pillion rider and one Jalander, who was riding a motor cycle at the time of the accident at 50% and praying to fasten the total liability on the insured and the insurer of the offending jeep for payment of the entire award amount of Rs.11,33,000/- to the claimants without apportioning the liability, the appellants filed the present appeal.

6. Heard. Perused the material record.

7. Sri T.Damodar, learned counsel for the appellants/claimants, prayed to set aside the finding given by the Tribunal in fixing the liability on the deceased, who was the pillion rider and one Jalander, who was riding a motor cycle at the time of the accident at 50% and praying to fasten the total liability on the insured and the insurer of the offending jeep for payment of the entire award amount of Rs.11,33,000/- to the claimants without apportioning the liability.

8. Mr.Satish Reddy, learned standing counsel for the 2<sup>nd</sup> respondent/insurance company, relied upon the evidence of P.W.2 and contended that the accident could have been avoided if the driver of the either of the vehicles would have reduced the speed.

9. Admittedly, in the evidence of P.W.2, he admitted that the driver of the offending jeep is exclusively responsible for the accident and he further admitted that the offending jeep was having only one head light and there is curve at the scene of offence and the jeep and also the scooter came in equal speed and that the accident could have been avoided had the driver of the either of the vehicles reduced the speed and P.W.2 was travelling in the offending jeep. On the failure of not having proper lights, it is the sheer negligence of the offending jeep and hence, this Court finds that there is no contributory negligence on the part of the scooter.

10. It is not the case of the respondents that travelling triple riding on a scooter is the cause for the accident. The respondents have not made out their case and not adduced any evidence before the Tribunal. In view of the above, this Court feels that it is just and proper if 100% liability is fastened on the insured and the insurer of the crime jeep i.e., respondents 1 &

2. Accordingly, the said finding is set aside and the appellants/claimants are entitled to full compensation that has been considered by the Tribunal amounting to Rs.11,33,000/-.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.5,66,000/- to Rs.11,33,000/- payable by both the respondents jointly and severally, by fastening the liability on them @ 100%. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.8,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

**T.AMARNATH GOUD, J**

Date: 19<sup>th</sup> December, 2019/  
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