

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.414 OF 2008

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 02.02.2007 passed in O.P.No.84 of 2005 by the III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'trial Court').

2. The brief facts of the case are that on 31.10.2014, the appellant/claimant was pillion riding the scooter driven by her son 'Chennayya' and near Auto Nagar, the offending lorry bearing No.AP 27T 786 came in a rash and negligent manner in the opposite direction and hit against the scooter. She obtained treatment at Medicity Hospital, L.B. Nagar, as in-patient. She claims to have sustained fractures and filed the present O.P. against respondents 1 and 2, owner and insurer of the offending lorry, claiming compensation of Rs.2,00,000/-.

3. Before the Court below, the 1st respondent remained *ex parte*. The 2nd 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.

4. After considering the evidence produced by the parties, the trial Court held that due to non-examination of the appellant's son, who was driving the scooter, the trial Court has drawn adverse inference that there is 50% negligence on his part and the remaining 50% negligence is attributed to the lorry driver from the fact that the lorry driver is not examined to establish

that there is no amount of negligence on his part and, hence, both the drivers are guilty of rash and negligent driving in equal ratio and fixed the liability of the respondents @ 50%. With regard to compensation, the trial Court granted total compensation of Rs.1,17,200/- i.e., Rs.60,000/- towards two fractures, Rs.10,000/- towards pain and suffering, Rs.20,640/- towards bills for first time treatment, Rs.11,560/- towards bill for second time treatment, Rs.10,000/- towards loss of amenities and compensation for liming and Rs.5,000/- towards Nutritious food, assistance and transport, and directed the respondents to pay a sum of Rs.58,600/- (Rs.1,17,200/- X 50%) to the appellant with interest @ 7.5% per annum from the date of petition till the date of realization. Dissatisfied with the quantum of compensation, the appellant filed the present appeal seeking enhancement of the same.

5. Heard.

6. Insofar as the Issue No.1 as to whether the accident is occurred due to rash and negligent driving of lorry No.AP 27T 786 by its driver is concerned, the trial Court opined that both the drivers of the scooter as well as offending lorry have extended their contributory negligence as they drove the vehicles in a rash and negligent manner, but this opinion ought not to have been given by the trial Court since there was no examination on the part of the respondents and the drivers of the scooter as well as offending lorry were not examined and in the absence of evidence before the trial Court, this Court comes to a conclusion that the

findings given by the trial Court on Issue No.1 is negated by this Court and the same is answered in favour of the claimant.

7. Insofar as the issue No.2 as to whether the claimant is entitled to compensation and if so, for what sum and against whom, is concerned, the amount of compensation of Rs.1,17,200/- computed by the trial Court shall be paid by the respondents to the claimant.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the trial Court from Rs.58,600/- to Rs.1,17,200/-. The enhanced amount shall carry interest @ 7.5% per annum. No costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

T.AMARNATH GOUD, J

Date: 8th July, 2019

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