

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1493 OF 2005

JUDGMENT:

This appeal is filed by the appellant/5th respondent aggrieved by the Order dated 08.07.2004 passed in O.P.No.912 of 2000 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, at Nalgonda, at Suryapet (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 petitioners are the parents of the deceased-Kiran Kumar. On 08.05.2000, the deceased-Kiran Kumar along with his friends were going on a scooter bearing No.AP 24C 8641 from Takkellapahad in order to go to Miryalguda. When they reached near Sri Ram Nagar Colony, a Tractor and Trailer bearing No.AAL 7595 and 7596 respectively came in opposite direction from Miryalguda side in a speed, rash and negligent manner and dashed the scooter. Consequently the scooter fell down, all of three were crushed to death. The deceased Kiran Kumar received serious injuries and died. The deceased was hale and healthy prior to the accident. The respondents 1 to 4 being the owners and 5th respondent being the driver of the crime vehicle involved in the accident are liable to pay the compensation amount of Rs.1,20,000/- claimed by the petitioners.

4. Before the Tribunal, the respondents contended that 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 R.W.1 and the documentary evidence of Exs.A-1 to A-7, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer bearing Nos.AAL 7595 and 7596 and awarded total compensation of Rs.1,20,000/- with interest @ 9% per annum from the date of petition till the date of deposit, payable by respondents 4 & 5. Aggrieved by the said order, the appellant/5th respondent filed the present appeal.

6. Heard.

7. The grievance of the appellant herein is that the liability cannot be fastened upon him and he prayed to exonerate him. The appellant pleaded that he was driving the Tractor-Trailer at 10 kmph speed, and at the turning point, a scooter, with three persons on it, came in the opposite direction, in a rash and negligent manner at 60 to 70 kmph speed and dashed against the said tractor, and thus, the accident took place, as a result of which, the three persons were succumbed to injuries. According to the appellant, the owner of the vehicle as on the date of accident is one Biksha Reddy, and he is employed with him. Both the driver and the owner of the vehicle are parties before

the Tribunal, but the owner remained *ex parte*. The vehicle is not insured with any insurance company.

8. On 08.11.2019, when this Court has expressed its view that there is no wrong with the order passed by the Tribunal, the learned counsel appearing for the appellant has placed reliance upon a judgment of the Supreme Court in **Pushpa Thakur v. Union of India**¹, wherein the driver of a motor van had caused an accident and on the principle of sovereign immunity of the State for the acts of its servants, the driver was exempted from the liability and the Union of India was held liable to pay the compensation. This case law has no relevance to the facts of the case on hand, as the appellant is not the servant of the sovereign and therefore, he cannot claim any immunity on that basis.

9. Further, the appellant has placed reliance upon the judgments of the erstwhile High Court of Andhra Pradesh in **APSRTC, Hyderabad v. Smt. T.Yasodha**² and **United India Insurance Company Limited v. K.Anjaiah**³, as regards fastening of contributory negligence. These case laws are also of no avail to the appellant/5th respondent.

10. In the absence of any contrary evidence supporting the claim of the appellant to the effect that there is contributory

¹ 1984 ACJ 559

² 1996(4) ALT 1133

³ 2004 AIHC 1627

negligence on the part of the rider of the scooter, the same cannot be accepted.

11. Learned counsel for the appellant brought to the notice of this Court that the Tribunal erred in appreciating the evidence of P.W.2 coupled with Exs.A-1-FIR & A-2-Inquest Panchanama, which categorically say that it is a case of triple riding of the scooter and the evidence of P.W.2 says that two persons were on the scooter. Moreover, the appellant has categorically denied the part of negligence of the driver of tractor & trailer and stated that the accident has occurred because of the contributory negligence of the driver of the scooter in triple driving. The contents of the counter affidavit of the appellant/5th respondent as well as the evidence of R.W.1 has not been dealt with by the Tribunal in the order.

12. *Prima facie*, this Court is not inclined to apportionate contributory negligence on the driver of the scooter, but for since it is a triple riding, unless it is otherwise proved through evidence that because of the triple riding, the driver of the scooter lost control and the accident has occurred. In the background of so many contradictions and inconsistent statements and in the absence of the Tribunal not appreciating the oral evidence and documentary evidence, this Court feels that the order of the Tribunal needs to be remanded for better appreciation of the evidence and appropriate orders need to be passed.

13. Accordingly, the appeal is allowed setting aside the order and decree dated 08.07.2004 in O.P.No.912 of 2000 passed by the Tribunal and remanding the matter to the Tribunal. The Tribunal shall pass a reasoned order after affording reasonable opportunity to both sides, as expeditiously as possible since the accident has taken place on 08.05.2000. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 13th November, 2019

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