

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. NO.1540 OF 2006

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company questioning the Judgment and Decree of the Motor Accident Claims Tribunal-cum-Additional Metropolitan Sessions Judge for the Trial of Communal Offence Cases-cum-XXI Additional Chief Judge, Hyderabad (for short, the Tribunal) in M.V.O.P.No.2787 of 2003, dated 24.04.2006.

2. The brief facts of the case are that respondent No.2 is the wife, respondent No.3 is the daughter, respondent No.4 is the grandmother and respondent Nos.5 and 6 are the parents of the deceased, Kadali Malleshham. On 13.02.2003 at about 6.30 PM., while the deceased was proceeding on his Hero Honda Motorcycle and when he reached near Arur village, he dashed to a stationed lorry bearing No.AP28T 2338, parked in the middle of the road, from its back side as he could not see the lorry due to focus of lights of another lorry coming in opposite direction, as a result of which, he sustained injuries and died on the spot. Respondent Nos.2 to 6 herein filed the aforesaid MVOP against owner of the lorry (respondent No.1 herein) and insurer (appellant herein), claiming compensation of Rs.7,00,000/- for the death of the deceased.

3. Before the Tribunal, owner and insurer of the lorry filed separate counters denying the allegations and contended that the amount claimed is highly excessive and that they are not liable to pay the compensation and therefore, prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry and awarded total compensation of Rs.6,31,928/- under various heads, with interest at the rate of 7.5% per annum. Aggrieved by the said order, the appellant-insurance company filed the present appeal.

5. Sri V.Sambsiva Rao, learned counsel appearing for the appellant-insurance company submitted that the tyre of the lorry which is said to have been involved in the accident was burst and the same was parked with parking lights and that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased and therefore, he sought to allow the appeal. He further submitted that for any reason if the Court comes to the conclusion that compensation has to be awarded to the claimants, he pleaded for contributory negligence on the part of the deceased and compensation needs to be apportioned among the deceased as well as insurance company.

6. Per contra, Sri Kota Subba Rao, learned counsel appearing for the claimants-respondents contended that the insurance company has not adduced any evidence for fastening the contributory negligence on the part of the deceased. That apart, on the strength of the evidence of P.W.2 who categorically stated that the deceased who was going on the road on his motorcycle and hit the lorry parked in the middle of the road without any precautions, the Tribunal held that the accident had occurred due to the wrong parking of the lorry. He further submitted that the lorry was

insured with the appellant insurance company and was covered with a valid policy and therefore, the insurance company is liable to pay the compensation awarded by the Tribunal.

7. A perusal of the record, it is clear that the appellant-insurance company, though took a plea that the lorry was parked with parking lights and the accident took place due to the rash and driving of the deceased, did not adduce any evidence to prove the same. Moreover, the Tribunal, on evidence, came to the conclusion that the accident had occurred due to the wrong parking of the lorry, on the strength of the evidence of P.W.2. In the facts and circumstances of the case, this Court is of the opinion that the Tribunal passed a well considered judgment and the same needs no interference.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

Date: 24-10-2019.
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T.AMARNATH GOUD, J