

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

**M.A.C.M.A. No.1493 OF 2006**

**JUDGMENT:**

This appeal is filed by the appellant/2<sup>nd</sup> respondent/insurance company aggrieved by the Order dated 28.04.2006 passed in O.P.No.1094 of 1999 by the Motor Accident Claims Tribunal-cum-VI Additional District Judge, Mahabubnagar (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 and petitioners 2 to 4 are the minor children of the deceased-Somla. On 22.09.1999 the deceased-Somla was going from Chinchold to Nandigam as a pillion rider in the scooter bearing No.AP 28B 2400 in the course of employment under 1<sup>st</sup> respondent. The said scooter was driven by the supervisor of the 1<sup>st</sup> respondent. When the said scooter reached near cement factory 2 KMs from Shadnagar, the said Ramana Reddy drove the scooter with high speed and rash and negligent manner and dashed to a stationed tractor trailer. As a result, the said Ramana Reddy died on the spot and deceased received fatal injuries on all over his body including a head injury. The deceased was shifted to Osmania General Hospital where he was inpatient on 12.10.1999 and he was discharged from the Osmania General Hospital stating that there are no hopes for

survival of the deceased. After discharge from Osmania General Hospital, the deceased was taken to his village. On 21.10.1999, the deceased succumbed to the injuries sustained by him. Prior to the accident, the deceased was aged about 35 years and was working as a group mastri under the 1<sup>st</sup> respondent earning Rs.5,000/- per month and was contributing the same to the petitioners. Hence, the petitioners filed the claim petition claiming compensation originally @ Rs.2,00,000/-, but subsequently enhanced to Rs.4,00,000/-, payable by both the respondents, being the owner and insurer of the offending scooter.

4. Before the Tribunal, the 1<sup>st</sup> respondent remained *ex parte*. The appellant/2<sup>nd</sup> respondent filed its counter.

5. After considering the oral evidence of P.W.1 and R.W.1 and the documentary evidence of Exs.A-1 to A-8 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending scooter and awarded total compensation of Rs.2,32,000/- i.e., Rs.1,92,000/- towards loss of income, Rs.16,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport charges, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents. Aggrieved by the said order, the appellant/2<sup>nd</sup>

respondent/insurance company filed the present appeal, seeking enhancement of the same.

6. Heard.

7. Admittedly in the accident, the driver and the pillion rider of two wheeler died. The accident vehicle is covered under the Act Policy and as per the judgment reported in **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others**<sup>1</sup>, the Apex Court has categorically held that the insurance company is not liable to pay the compensation to the pillion rider in the cases where the vehicle is insured under the Act Policy and the pillion rider and the owner of the two wheeler is not covered under the third party risk. In view of the same, the order passed by the Tribunal is liable to be set aside.

8. Accordingly, the appeal is allowed setting aside the order and decree dated 28.04.2006 in O.P.No.1094 of 1999 passed by the Tribunal by exonerating the appellant/2<sup>nd</sup> respondent/insurance company from the liability. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

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**T.AMARNATH GOUD, J**

Date: 13<sup>th</sup> November, 2019

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<sup>1</sup> (2006) 4 Supreme Court Cases 404