

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. No.2687 OF 2002

JUDGMENT:

This appeal is filed by the appellant-3rd respondent-owner of the vehicle aggrieved by the Order and Decree dated 23.01.1998 passed in O.P.No.333 of 1995 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Adilabad District (for short, the Tribunal).

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

3. The brief facts of the case are that on 09.03.1995 at about 9.00 a.m. on the main road Bhainsa Town near Nagesh dresses, when the deceased was going towards his tailoring shop, the 1st respondent came on scooter bearing No.AP I C 446 in a rash and negligent manner with high speed and dashed the deceased due to which the deceased fell down and sustained severe head and other grievous injuries over other parts of the body and he was shifted to the Government Hospital, Bhainsa Town and due to the severe injuries and pain, he succumbed to the injuries on 16.03.1995 in the Government Hospital, Nizamabad. The deceased was hale and healthy at the time of the accident and used to earn Rs.2,500/- per month in the tailoring shop and used to maintain his family. The claimants filed the aforesaid OP claiming compensation of Rs.1,50,000/- against respondent Nos.1 to 3 in the OP, the owner, insurer of the Scooter and the driver of the Scooter, for the death of the deceased.

4. Before the Tribunal, respondent No.3 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that unless it was established that the rider of the scooter having valid subsisting driving licence and the claimants are the legal heirs of the deceased, and also the vehicle was insured with the 2nd respondent, the 2nd respondent was not liable to pay the compensation. The 2nd respondent further contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 scooter bearing No.AP 1 C 446 by its driver and in the absence of the policy not being filed before the Tribunal, it has drawn an adverse inference and exonerated the insurance company from the liability and has fastened the liability on the respondents 1 and 3 and awarded total compensation of Rs.1,50,000/-, with interest @ 15% per annum from the date of petition till the date of realization payable by respondents 1 to 3. Aggrieved by the said order, the 3rd respondent owner filed the present appeal.

6. Heard.

7. During the pendency of the appeal, the appellant has placed before this Court the Insurance Policy issued by the New India Assurance

Company, Nirmal, Adilabad, and the said policy is valid from 28.12.1994 to 27.12.1995 and the date of accident is 09.03.1995. Thus, since the vehicle is covered under the valid policy, this Court finds that the 1st respondent New India Assurance Company is liable to pay the compensation and therefore, the liability against the 3rd respondent – owner of the vehicle (Scooter) is exonerated. However, this Court feels that as the interest awarded at 15% is excessive, the same is reduced to 7.5%.

8. In the result, the Civil Miscellaneous Appeal is allowed and the liability against the appellant - 3rd respondent – owner of the vehicle (Scooter) is exonerated. The 2nd respondent Insurance Company is directed to pay the compensation amount of Rs.1,50,000/- as awarded by the Tribunal along with proportionate costs and interest to the claimants. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

August 27, 2019

KTL