

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. NO.804 OF 2013

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company questioning the Award of the Motor Accident Claims Tribunal-cum-IX Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Tribunal) in M.V.O.P.No.1536 of 2011, dated 18.12.2012.

2. The brief facts of the case are that respondent No.1 is the wife, respondent Nos.2 and 3 are the minor children and respondent Nos.4 and 5 are the parents of the deceased, N.Mohan Reddy. On 23.04.2011 at about 7.30 PM., when the deceased went to Yacharam Village on his motorcycle bearing No.AP29BC 9719, the lorry bearing No.AP16TT 5532, which was proceeding from Nagarjuna Sagar towards Hyderabad, which was negligently stopped by its driver in front of Laxmi Durga Rice Mill without any signals or indicator. While so, the deceased dashed against the said stained lorry from its back side as he could not see the same due to dazzling of lights of opposite coming vehicles. As a result, the deceased sustained multiple injuries and head injury and died on the spot. The respondents 1 to 5 herein filed the aforesaid MVOP against the owner of the lorry (respondent No.6 herein) and the insurer (appellant herein), claiming compensation of Rs.8,00,000/- for the death of the deceased.

3. Before the Tribunal, owner of the lorry, remained *ex parte*. The appellant-Insurance Company filed its counter denying the allegations and contended that the amount claimed by the

claimants is highly excessive and that it is not liable to pay any compensation and 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 parking of the lorry and awarded total compensation of Rs.7,06,000/- under various heads, with interest at the rate of 7% per annum. Aggrieved by the said order, the appellant/Insurance Company filed the present appeal.

5. Heard.

6. It is only the case of the appellant-insurance company that the Tribunal erred in not fixing the contributory negligence on the part of the deceased as he was driving his motorcycle and dashed from backside of the stationed lorry and died on the spot. R.W.1 who worked as Assistant Manager in appellant-insurance company deposed that the accident has taken place only due to the rash and negligent driving of the deceased.

7. A fair reading of Ex.A6 scene of offence panchanama and evidence of P.W.2 goes to shows that though lorry was parked on the left side of the road, but part of the lorry occupied the road. At the time of accident, a bus was coming in opposite direction to the motorcycle of the deceased and in the head lights of the said bus, the deceased could not see the stationed lorry due to dazzling of eyes. Admittedly, Ex.A6 is the document prepared by the police at the scene of offence and police being the un-interested party, the

documents prepared by them needs to be relied and thus, in the light of Ex.A6 and evidence of P.W.2, this Court is of the opinion that contributory negligence has not been made out. Hence, the appeal filed by the insurance company fails and the same is liable to be dismissed.

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

Date: 21-08-2019
Shr

T.AMARNATH GOUD, J

