

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.No.2067 of 2015

JUDGMENT:

1 This appeal is filed under Section 173 of M.V.Act challenging the award and judgment dated 26.02.2015 passed in M.V.O.P.No.849 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Kothagudem wherein and whereby an amount of Rs.2,49,400/- was awarded as compensation to the claimants, by fastening the liability on the appellant only.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On the intervening night of 20/21.03.2011 at about 12.30 am, the driver of the Bolero Jeep bearing No.AP 20 TB 1005 drove the same in a rash and negligent manner and hit a stationed lorry bearing No.AP 16 TY 2011 at Yellaram bus stage at high speed resulting the inmates of the said Bolero vehicle sustaining injuries. Immediately the injured were shifted to Government Hospital, Kodad in 108 ambulance where the deceased – Shivarathri Sagar succumbed to injuries at 3.15 am. The deceased was aged 21 years old and was earning Rs.50/- per day. Therefore, the petitioners being the parents of the deceased filed the claim petition claiming compensation of Rs.5,00,000/- from all the respondents.

5 Respondent Nos.2 and 4 filed counters denying the various averments made in the petition *inter alia* denying the manner of accident and prayed to dismiss the petition.

6 On appreciation of oral and documentary evidence available on record, the Tribunal awarded a total compensation of Rs.2,49,400/- to the petitioners by fastening the liability on respondent Nos.1 and 3 i.e. the owner and insurer of the Bolero Vehicle and exonerated the respondent Nos.2 and 4 i.e. the owner and the insurer of the lorry.

7 Aggrieved thereby the second respondent i.e. insurer of the Bolero vehicle preferred this appeal.

8 As seen from the impugned judgment, the findings of the Tribunal in Para Nos.15 and 17 are contradictory to each other since the Tribunal gave a finding in Para No.15 that the accident occurred due to the rash and negligence on the part of the drivers of both the vehicles, whereas in para No.27, it opined that the accident occurred due to the rash and negligence on the part of the driver of Bolero Jeep bearing No.AP 20 TV 1005.

9 As seen from the record it is manifest that at whose fault the accident occurred is not known to anyone because neither the claimants nor any eyewitness spoke to that effect. Ex.A.2 – charge sheet shows that the drivers of both the vehicles were shown as accused Nos.1 and 2. In the instant case the drivers of both the vehicles were not shown as parties. Had they been shown as parties to the

litigation, the truth would have come out. In such circumstances, it is appropriate to presume that the accident occurred due to the rash and negligence on the part of the drivers of both the vehicles. Since the lorry bearing No.AP 16 TY 2011 was insured with the fourth respondent, the respondent Nos.2 and 4 are jointly and severally liable to pay the compensation to the claimants. However, there is no dispute with regard to the quantum of compensation awarded by the Tribunal.

10 In the result, the appeal is allowed in part, fastening the liability on respondent Nos.2 and 4 to pay the compensation to the petitioners jointly and severally as awarded by the Tribunal. Except the above, the award impugned in this appeal does not require any further modification. No order as to costs.

T. AMARNATH GOUD, J.

Dt: 22.7.2019
Kvr