

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

MACMA NO. 1586 OF 2006

JUDGMENT:

Heard learned counsel for the appellant and learned counsel for the respondents/claimants.

2. Feeling aggrieved by the order dated 17.10.2005 in O.P.No. 549 of 2004 passed by the Chairman, III Motor Accidents Claims Tribunal, Warangal (for short 'the Tribunal'), the appellant/New India Assurance Company Limited filed the present appeal.

3. Vide the aforesaid order, the Tribunal, on considering the depositions of PWs.1 and 2, documents Exs.A.1 to A.11 on behalf of the claimant and RW.1, Exs.B.1 and B.2 on behalf of the respondent, granted an amount of Rs.4,31,000/- towards compensation along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization and directed the 2nd respondent to deposit the compensation amount and also an amount of Rs.1,000/- towards advocate fee.

4. The only ground urged by the appellant/Insurance Company is that the Tribunal erred in not making the apportionment and not fixing the liability on the owner/insurer of Hero Honda bearing No.AP 36 H 1580.

5. Learned counsel for the appellant contended that the driver of the auto bearing No. AP 13 V 6376 drove it in a rash and negligent manner, hit the Hero Honda bearing No. AP 36 H 1580 and the said Hero Honda, inturn, hit the motor cycle bearing No.AP 36 D 717 (Bajaj Kawasaki) and the deceased – Thogaru

Raju, who was on the Bajaj Kawasaki motor cycle died. It is also contended that the cause of death of the deceased was due to negligence on the part of the driver of Hero Honda motor cycle bearing No. AP 36 H 1580. Therefore, prayed that the owner/insurer of the said Hero Honda is also liable to pay the compensation.

6. On the other hand, learned counsel for the claimants contended that the cause of death was due to rash and negligent driving of the driver of the auto and that there was no negligence on the part of the driver of the Hero Honda. It is also contended that Ex.A.1-FIR, Ex.A.2-charge sheet and other documents and also the evidence of PW.2-pillion rider of the Bajaj Kawasaki would show that the cause of death of the deceased was due to rash and negligent driving of the driver of the auto and that there was no rash and negligent driving of the driver of the Hero Honda. Therefore, there is no error committed by the tribunal in the impugned order and hence, prayed for dismissal of the appeal.

7. On perusal of the entire material available on record it is clear that the accident was occurred due to rash and negligent driving of the driver of the auto and the said auto hit the Hero Honda motor cycle, which in turn hit Bajaj Kawasaki motor cycle where the deceased and PW.2 were traveling. As per the contents of Ex.A.1-FIR and Ex.A.2-charge sheet and also evidence of PW.2, the accident was occurred due to rash and negligent driving of the driver of the auto. On the critical analysis of the entire evidence on record, the Tribunal gave specific finding that the accident was occurred due to rash and negligent driving of the driver of the auto.

In the absence of proof of rash and negligent driving of the driver of the Hero Honda by the Insurance Company, it is difficult to hold that the Tribunal committed error in not fixing the liability on the owner/insurer of the Hero Honda motor cycle and therefore, the question of apportionment on the owner/insurer of the Hero Honda motor cycle does not arise. This Court satisfied with the reasons recorded by the Tribunal.

8. In view of the above discussion and also the specific finding of the Tribunal in the impugned order, this Court did not see any ground or circumstance, which warrants interference in the impugned order and therefore, the appeal fails and the same is liable to be dismissed.

9. Accordingly, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

Date: 21.01.2020.
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K.LAKSHMAN,J