

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A. No. 461 of 2004

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JUDGMENT:

The 2nd respondent—Insurance Company preferred the appeal aggrieved by the order/award in O.P.No.124 of 2000 on the file of Chief Judge, City Civil Court, Hyderabad, (for short, 'Tribunal') awarding compensation of Rs.1,83,000/- with interest at 12% p.a. against the claim of Rs.3,00,000/- in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2. Heard learned standing counsel for appellant—insurer (R-2 before the Tribunal) and learned counsel for respondents Nos.1 to 4—claimants. Respondent No.5—owner of the auto failed to attend in the appeal even before the Tribunal contested through advocate, hence taken as heard. Respondent No.6 of the appeal is also one of the legal heirs of the deceased. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as oral submissions of learned counsel for appellant/ insurer are that, the Tribunal gravely erred in awarding the compensation awarded excessively so also rate of interest exorbitantly, that the Tribunal should have seen that the accident was occurred for the auto in which they were traveling is with overloading with violation of permit and thereby, the insurer cannot be made liable, hence to set aside the award fixing joint liability.

4. Whereas it is the contention of the learned counsel for claimants that the award of the Tribunal, but for no cross objections to enhance; requires no interference including on rate of interest to reduce and hence to dismiss the

appeal.

5. Now the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal fixing joint liability on the owner and insurer of the auto is unsustainable besides excessive so also the rate of interest and if so it requires interference by this Court while sitting in this appeal and with what observations and to what extent?

2. To what result?

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Point No.1:

6. On 08.10.1999 at about 4.00 pm the deceased, his wife PW.1 and another eye witness PW.2 and others were proceeding in an auto bearing No.AP 22 T 8850 with seating capacity of only 1 + 3, towards Kandivanam Village from Shadnagar and when they reached the outskirts of Mogiligidda Village, Mahabubnagar District, the driver of the auto drove the same with high speed due to which he could not control the same, as a result, the auto turned turtle and all of them fell down and sustained grievous injuries and the deceased died in the hospital due to grievous injuries.

7. The respondent No.6 (respondent No.3 to the claim petition) shown as one of the legal heirs of deceased along with the claimants 1 to 4. The contest of respondent No.6 is that she was the only legal heir being the first wife and not the claimant No.1 much less claimants 2 to 4. The respondent No.6 (R-3 to the claim petition) herein filed counter before the Tribunal but did not adduce any evidence much less cross examined the claimant witnesses. However, the fact remains from the claim petition para No.26 that the respondent No.3 of the claim petition is also one of the legal heir along with the four claimants, being the 1st wife of the deceased whose marital tie not dissolved and thus the

Tribunal went wrong in negating share to the respondent No.3 merely because she did not come to witness box. In this regard there are no cross objections, the Appellate Court within the discretionary power under Order XLI Rule 33 CPC though not enhance compensation can interfere with that finding to set aside and apportion compensation to the claim petition respondent No.3—1st wife.

8. Now coming to quantum of compensation, the deceased was about 50 years as per Ex.A5—post mortem report even claimed as 42 years, for the persons aged between 46-50, as per **Sarla Verma vs Delhi Transport Company Limited**, the multiplier applicable is '13'. The earnings of the deceased claimed at Rs.3,000/- per month. The accident was occurred on 18.10.1999, the Tribunal has taken only Rs.1500/- per month. Following the expression in **Latha Wadhwa vs State of Bihar** the monthly earnings of the deceased is taken at Rs.2,600/- per month. As the claimants are five in number, as per Sarla Verma (supra) 1/4th to be deducted towards personal expenses, then it comes to Rs.1,950/-. The loss of dependency comes to Rs.3,04,200/- (Rs.1950/- X 12 X 13). Apart from it, Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to 4th claimant, leave about others are just attaining majority by the time of claim petition. Thus, in all, it comes to Rs.4,49,200/- and what the Tribunal awarded of Rs.1,83,000/- is no way excessive but for no cross objections to enhance vide **Ranjane Prakash vs. Divisional Manager**. Coming to rate of interest, the Tribunal awarded at 12% per annum from the date of claim petition till the date of realization, which is highly excessive and exorbitant reduced to 7.5% per annum from the date of appeal till the date of realisation as per the settled expressions in **TN Transport Vs. Raja Priya** and **Rajesh Vs. Rajbir Singh**. Accordingly, the Point-1 is answered.

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Point No.2

9. In the result, the appeal is partly allowed by confirming the compensation of Rs.1,83,000/- (Rupees one lakh eighty three thousand only) and interest at 12% per annum from the date of claim petition till the date of appeal, modified and reduced to 7.5% per annum only from the date of appeal till realization/ deposit with notice. If any of the amount has already been deposited, the insurer and owner of the auto are directed to pay or deposit the remaining amount of compensation within one (1) month from the date of receipt of a copy of the judgment, failing which the claimants and respondent No.3 to the claim petition can execute and recover. It is left open to respondent No.3 to the claim petition to approach the Tribunal for apportionment of compensation afresh to her and to the four claimants. There is no order as to costs.

10. Miscellaneous Petitions, pending if any in this appeal, shall stand closed.

Dr.B.SIVA SANKARA RAO, J

6th March, 2015

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C.M.A. No. 461 of 2004

Date:06.03.2015

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