

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1072 OF 2004

JUDGMENT:

The 3rd respondent-Insurer among the three respondents including driver and owner of the Tipper bearing No.AEV 8217 of the O.P.No.54 of 2000 on the file of the learned Chairman of the Motor Accidents Claims Tribunal—cum-IV Additional District Judge, East Godavari, at Kakinada (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), by the claimants viz, parents of the deceased, for the claim of Rs.2,00,000/- (Rupees two lakhs only), since granted Rs.1,10,000/- with interest at 9%p.a. fixing liability against all the respondents; preferred this appeal impugning the award of the tribunal dated 19.12.2003, with the contentions in the grounds of appeal as well as submissions during the course of hearing that award of the tribunal is unjust, and the quantum of compensation is highly excessive and exorbitant so also the rate of interest, that the tribunal gravely erred in not exonerating the Insurer from liability despite driver of the tipper not possessed valid driving license which is reflected in Ex.B.2 charge sheet filed by police after investigation mentioning Section 181 of the Act, hence to set aside the award by allowing the appeal exonerating the Insurer.

2. Whereas, it is the contention of the learned counsel for the claimants, from the respondents 3 and 4 of the appeal who remained *ex parte* before the tribunal did not turn up in spite of service of notice, taken as heard, that the award of the tribunal holds good and requires no interference by this Court while sitting in appeal either to reduce quantum of compensation as well as rate of interest or with the liability fixed to the Insurer-appellant herein on the contention that the driver not possessed valid driving license and the owner's allowing him with conscious knowledge, hence to dismiss the appeal.

3. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4. Now the points that arise for consideration in the appeal are:

1. *Whether the 3rd respondent-Insurer of the claim petition is liable to be exonerated from liability from the contention that the driver not possessed valid driving license, if not, rate of interest and quantum*

of compensation are excessive to reduce, if so, with what compensation and what observations?

2. To what result?

Point No.1:

5. There is no oath against the oath for the respondent-Insurer contesting before the tribunal much less anything from the cross-examination of P.Ws.1 and 2 but for placing reliance on Ex.B.2 charge sheet filed by police saying the charge sheet showing inclusion of Section 181 of the Act against driver for not having valid driving license but nothing even shown by examination of any employee of the Insurer much less by issuance of any notice to the owner to produce license particulars and establish therefrom much less by cause summoning and examining by proof of the fact. Hence, the tribunal is right in holding to that the Insurer failed to prove his contention of driver not having valid driving license. Thus for this Court, while sitting in appeal, there is nothing to interfere with the joint liability so also regarding quantum of compensation but for no cross-objections to enhance. Coming to the rate of interest, no doubt, 9% p.a. is excessive and the same is to be reduced to 7.5% p.a. as per the settled expressions of Apex Court in **TN Transport Corporation v. Raja Priya**, and **Rajesh** (supra), in which it is held that the steep fall in the bank interest rate for the past several years which is to be kept in mind while awarding interest and awarded therefrom at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in **DDA Vs. Joginder S. Monga**. Accordingly, point No.1 is answered.

POINT No.2:

7. In the result, the appeal is partly allowed while confirming the compensation but reducing the rate of interest from 9% to 7.5% p.a. from the date of petition (MVOP) till realization/deposit with notice. Rest of the award holds good. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02.04.2015

VVR