HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2759 OF 2004

J U D G M E N T:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the judgment and decree dated 15.04.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad, in O.P.No.31 of 2002, awarding compensation of Rs.5,21,600/-.

2. The respondent Nos.1 & 2/petitioners filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.6,00,000/- on account of the death of one Mukka Prem Sudhakar (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 07.12.2001.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 07.12.2001 at about at about 06:30 p.m, the deceased was proceeding on his motorcycle bearing No.AP.10.N.3991 from Ramayampet towards Nizamabad side very slowly on the side of the road. One Kummari Yadagiri was travelling as pillion rider on the motorcycle and at about 06:30 p.m, when they reached near Dargah at Daggi forest on Hyderabad to Nagpur NH-7 road, one lorry bearing No.MP.09.KB.1002 driven by its driver in rash and negligent manner without blowing horn came from his behind and dashed against the motorcycle of the deceased, due to which the deceased and the pillion rider fell down and received fracture injuries. Immediately after the accident, the deceased was shifted to Amrutha Laxmi Super Speciality Hospital, Nizamabad, for treatment, where he died on 16.12.2001 while undergoing treatment. The pillion rider Kummari Yadagiri also received severe fracture injuries. At the time of accident, the deceased was hale and healthy, doing agriculture and contract work, earning Rs.10,000/- p.m and contributing his entire earnings to the petitioners, who are his parents. The petitioners suffered irreparable loss and they do not have any property or any other source of income, except depending on the earnings of the deceased. The accident took place due to rash and negligent driving of the first respondent and

therefore, both the respondents are jointly liable to pay compensation to them.

5. Before the Tribunal, respondent No.3/respondent No.1 remained *ex parte.*

6. The brief averments made in the counter filed by the third respondent/second respondent are as follows:

The second respondent put the petitioners to prove the manner of accident, age and income of the deceased and stated that the owner and insurer of the motorcycle were not made as parties. Hence, the petition is liable to be dismissed for non-joinder of necessary parties. The respondent also stated that the first respondent has not informed about the accident to the Insurance Company and they came to know about the accident only after receiving the notice from the Court and further stated that the person who drove the vehicle does not possess valid and proper driving license and finally stated that the compensation claimed by the petitioners is high and excessive and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioners got examined PWs.1 to 3 and got marked Exs.A.1 to A.9 & Exs.X1 & X2 on their behalf. On behalf of the contesting respondent, no witness was examined, but Ex.B1 got marked.

8. After considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.MP.09.KB.1002 and in that accident, the deceased died and awarded Rs.5,21,600/- along with interest at 9% p.a to the petitioners.

9. Being aggrieved by the award passed by the Tribunal, the second respondent/appellant preferred the present appeal.

10. The learned counsel appearing for the appellant/second respondent argued that the petitioners failed to prove that they are the dependants on the income of the deceased and also deceased is an income tax assessee and no sales tax particulars were filed and Ex.A8 does not contain the name of the deceased. It is also argued that the deceased must have been earning only Rs.3,000/- p.m, therefore, the Tribunal was wrong in assessing the income of the deceased as Rs.6,000/- p.m. It is also argued that the Tribunal without

considering the judgment of the Apex Court awarded rate of interest at 9% p.a and the said interest has to be reduced and finally prayed the Court to allow the appeal.

11. On the other hand, the learned counsel for respondent No.1 argued that the Tribunal after considering the oral and documentary evidence awarded just and reasonable compensation. Further, in view of the latest judgment of the Apex court, the age of the deceased has to be taken for calculating the loss of dependency and further, the income of the deceased taken by the Tribunal @ Rs.6,000/- p.m is just and reasonable and needs no interference and prayed the Court to dismiss the appeal.

12. Appeal against respondent Nos.2 & 3 is dismissed for default vide C.O.dated 23.09.2011.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/second respondent is liable to pay compensation to respondent Nos.1 & 2/petitioners or not?

2. Whether the appellant/second respondent is entitled for reduction of rate of interest awarded by the Tribunal or not?

14. **<u>P O I N T S:</u>** A perusal of the evidence shows that PW.2 is the eye witness to the accident. According to him on 07.02.2011, himself and the deceased were proceeding to Ramayampet to Nizamabnad on a motorcycle vehicle bearing No.AP.10.N.3991 driven by the deceased. PW.2 was going on it as a pillion rider. At the time of accident, the deceased was driving the motorcycle very slowly. When they reached near Dargah at Daggi forest area, one lorry bearing No.MP.09.KB.1002 driven by its driver came in a rash and negligent manner and dashed the motorcycle, due to which the deceased fell down and received grievous injuries and lorry ran over the deceased. While undergoing treatment, he died in the hospital. Police registered the case against the driver of the lorry in Cr.No.130 of 2001 and issued Ex.A1-First Information Report. The Investigating Officer after completing the investigation filed the charge sheet under Ex.A2 against the driver of the above vehicle. To disprove the

evidence of PW.2, the appellant did not choose to examine the driver of the lorry or any other witness to prove that there is no negligence on the part of the driver of the lorry. In the absence of any rebuttal evidence the respondents/petitioners proved that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.MP.09.KB.1002.

15. Coming to the quantum of compensation is concerned, PW.1 who is the father of the deceased, stated that his deceased son was working as a contractor and he was unmarried. He was also doing cultivation and earning Rs.2,00,000/- p.a. PW.1 also stated that the deceased was hale and healthy prior to the accident and he is the only son to them and after his death, none is looking after them. PW.3, who is the contractor under whom the deceased worked, stated that the deceased used to supply loose soil, brick metal, granites, steel etc., for construction work and he used to earn Rs.10,000/- to Rs.12,000/- p.m as income. He also stated that deceased was doing agriculture work and earning Rs.1,00,000/- on agriculture. Though some documents were filed by PW.1 i.e., Exs.X1 and X2 account registers, they show that the deceased used to supply material to PW.3 and used to get 3% commission. To disprove the evidence of PW.3 and the documentary evidence, the appellant have not produced oral or documentary evidence. Considering the evidence of PWs.1 & 3, the Tribunal assessed the income of the deceased that he could able to earn Rs.200/- per day and after making deductions towards personal expenditure, the contribution of the deceased to his family fixed per month as Rs.4,000/- i.e., Rs.48,000/- p.a. After applying the relevant multiplier, the Tribunal came to a conclusion that loss of dependency comes to Rs.5,01,600/- and awarded the same. The Tribunal awarded Rs.15,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and thus an amount of Rs.5,21,600/- was awarded as compensation along with interest at 9% p.a. Therefore, I am of the view that the Tribunal has rightly assessed and awarded the compensation and the said finding of the Tribunal needs no interference.

16. The learned counsel for the appellant contended that the Tribunal awarded interest at 9% p.a against the judgments of the Hon’ble Apex Court and prayed the Court to reduce the rate of interest at 7.5% p.a. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***, the Hon’ble Apex Court granted interest @ 7.5% p.a. In ***Rebeka Minz and others v.***

Divisional Manager, United India Limited Insurance Company Limited and another, the Hon'ble Apex Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest granted by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a from the date of petition filed before the Tribunal till the date of realisation.

17. Ex.B1 is the copy of policy filed by the appellant shows that the crime lorry involved in the accident was insured with the appellant and the policy was valid and in force on the date of accident. Therefore, the appellant along with the owner of the lorry are jointly liable to pay compensation to the petitioners.

18. Therefore, in view of the above discussion, the Appeal is allowed in part, not interfering with the compensation awarded by the Tribunal, but reducing the rate of interest from 9% to 7.5% p.a from the date of petition filed before the Tribunal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 27.11.2015

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