The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.475 OF 2010

JUDGMENT:

1 This appeal is preferred by the fifth respondent – insurance company assailing the judgment and award dated 24.04.2009 passed in MVOP No.236 of 2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole, wherein and whereby an amount of Rs.1.00 lakh was awarded as compensation to the petitioners.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed in the O.P.

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

4 On 18.02.1995 one U.Pitchamma (hereinafter referred to as 'the deceased') and others were engaged as coolies by one Tumu Gurava Reddy, who was the owner of the tractor and trailer bearing No.AP 27 T 4173 and 4174 (hereinafter referred to as 'the crime vehicle') to attend cooli work in his fields and in that connection they boarded the crime vehicle. When the crime vehicle reached near the left bank of N.S. Canal, the driver of the crime vehicle drove the same in a rash and negligent manner due to which the accident took place causing the instantaneous death of the deceased and some others. In connection with the said accident, the Station House Officer, Talluru police station registered a case in Cr.No.7 of 1995 under section 304-A IPC against the driver of the crime vehicle. By the date of accident, the deceased was aged about 20 years and was earning Rs.3,000/- p.m. The petitioners are dependants on the income of the deceased. First respondent is the driver of the crime vehicle and respondent Nos.2 to 4 are the legal representatives of the owner of the crime vehicle by name Gurava Reddy. As on the date of accident, the crime vehicle was insured with the fifth respondent. Therefore, respondent Nos.1 to 5 are jointly and severally liable to pay compensation to the petitioners. Hence, the petitioners filed the petition seeking compensation of Rs.1,00,000/- from the respondents.

5 Third respondent filed counter denying all the averments made in the petition, inter *alia* contending that there was no rash or negligent act on the part of the driver of the crime vehicle and that the unfortunate accident occurred due to the mechanical defect in the crime vehicle. The driver of the crime vehicle was having a valid and effective driving licence as on the date of accident. Since the crime vehicle was insured with the 5th respondent as on the date of accident, the 5th respondent alone has to pay compensation to the petitioners. Respondent Nos.2 and 4 adopted the counter filed by the 3rd respondent.

6 Fifth respondent – insurer filed counter denying the material averments made in the petition, inter *alia* contending that the owner of the crime vehicle violated the terms and conditions of the policy by permitting the deceased and others to travel in the crime vehicle which was meant for the purpose of transportation of goods. The driver of the crime vehicle was not having valid and effective driving licence to drive the crime vehicle as on the date of accident. The petitioners filed petition under Section 140 of the Motor Vehicles Act and the same was allowed holding that the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident and that itself is sufficient ground for dismissal of this petition. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Therefore, this respondent is not liable to pay compensation to the petitioners. Hence the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues for trial:

i. Whether the deceased died due to rash and negligent driving of the driver of the tractor and trailer of R.2-4?

ii. What is the correct age & income of the deceased in each of the thirteen cases as on the date of accident?

iii. Whether the respective claim / petitioners are entitled for compensation? If so, to what extent and from whom respectively?

iv. To what relief?

8 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 and Exs.C.1 to C.3 were marked.

9 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and allowed the petition in toto by awarding compensation of Rs.1.00 lakh. Feeling aggrieved by the said judgment and award passed by the Tribunal, the insurance company preferred this appeal.

10 The contention of Sri Kota Subbarao, the learned counsel for the insurance company is two fold.

a. The owner of the crime vehicle violated the terms and conditions of the insurance policy by permitting more number of persons to travel in the trailer than the number of coolies covered under Ex.B.1.

b. The interest awarded by the Tribunal is on higher side.

10 *Per* contra, Sri Madhavarao Nalluri, the learned counsel for the petitioners submitted that the Tribunal has rightly considered the various aspects and awarded just and reasonable compensation to the petitioners. He further submitted that there are no grounds to interfere with the well considered judgment and award of the Tribunal. Heard Sri T.Sridhar, the learned counsel for the respondent Nos.2 to 4.

11 Now the points for consideration in this appeal are:

(i) Whether the owner of the tractor and trailer had violated the terms and conditions of Ex.B.1 - insurance policy?

(ii) Whether the rate of interest awarded by the Tribunal is on higher side?

Point No.1:

12 There is no dispute between the parties with regard to the manner of the accident and the factum of the death of the deceased. Therefore, I am fully agreeing with the findings recorded by the Tribunal on issue No.1.

13 The following admitted facts can be culled out from the oral and documentary evidence available on record. The crime vehicle belongs to one Gurava Reddy. On the date of accident, the deceased and 16 others were engaged as coolies by the said Gurava Reddy for the purpose of harvesting paddy crop in his fields. The deceased and others were traveling in the crime vehicle at the time of accident. Unfortunately 17 coolies died in the said accident. The crime vehicle was insured with the 5th respondent – insurance company under Ex.B.1 as on the date of accident. Ex.B.1 insurance policy covers risk of six coolies. It is not the case of the 5th respondent that the proximate cause of the accident was travelling of 17 coolies in the trailer. Mere allowing of more than six coolies in the trailer by itself would not amount to fundamental breach of the terms and conditions of the policy so as to absolve the liability of the 5th respondent.

14 The relevant question to be determined is whether the insurance company has to pay the compensation in respect of all the claim petitions or only to six claim petitions. The Tribunal, while placing reliance on the ratio laid down in ***National Insurance Company Limited Vs. Anjana Shyam***[1]***,*** allowed the claim petitions and fastened liability on the insurance company in respect of six highest claims out of the 17 claims. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the appellant - insurance company that the first respondent had violated the terms and conditions of the insurance policy so as to absolve its liability in respect of six highest claim petitions. This point is answered accordingly.

Point No.2:

15 A perusal of the record reveals that the Tribunal awarded interest @ 9% p.a. Section 171 of the Motor Vehicles Act enjoins the Tribunal to award interest. But the said section is silent with regard to the rate of interest to be awarded. From a perusal of the said section at a glance it is manifestly clear that the Act confers discretionary power on the Tribunal to award reasonable rate of interest. In order to award certain rate of interest, the Tribunal or the Court has to take into consideration the prevailing price index and prevailing market rate of interest as well as the guidelines issued by the Reserve Bank of India from time to time. Suffice it to say, the High Courts are awarding interest ranging from 6% to 12% p.a depending upon the facts and circumstances of each case. The Tribunal has to exercise its discretionary power judiciously basing on the sound principles of law. Normally, the appellate Court shall not interfere with the discretionary power exercised by the Tribunal. In the instant case, the batch of O.Ps were disposed off in the year 2008. At this juncture, this Court is placing reliance on the ratio laid down in ***Puttamma Vs. K.L. Narayana Reddy***[2] wherein the Hon'ble Apex Court held at para No.62 as follows:

> In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

16 A perusal of the record reveals that the accident occurred in the year 1995 whereas the O.P. was filed on 07.05.2008. The Tribunal disposed of the matter on 24.04.2009 i.e. within one year from the date of its filing. It clearly indicates that the respondent – insurance company has fully cooperated with the Tribunal for early disposal of the matter. Viewed from any angle, this Court cannot attribute any laches on the part of the insurance company. Having regard to the facts and circumstances of the case and also the principle enunciated in Puttamma case (2

supra), this Court is of the considered view that awarding of interest at 8% p.a. is justifiable instead of 9% as awarded by the Tribunal. This Court is not inclined to express any opinion with regard to the findings recorded by the Tribunal on other aspects of the case.

17 In the result, this appeal is partly allowed only to the extent of reducing the rate of interest from 9% p.a. to 8% p.a without interfering with the findings of the Tribunal in all other aspects. No order as to costs. As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

T. Sunil Chowdary, J.

Date: 25th February, 2015
Kvsn

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[1] (2007) 7 SCC 445
[2] (2013) 15 SCC 45