**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A. No.619 OF 2009**

**JUDGMENT:**

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 06.12.2008 passed in M.V.O.P.No.250 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows: On 24.09.2005, Shaik Raffiunnisa (hereinafter referred to as 'the deceased') after purchasing the fish in Singarayakonda boarded an auto bearing No.AP 27 V 6374 to go to Kandukur. When the auto reached near Kandukur Check Post, the driver of the auto had driven the same in a rash and negligent manner and dashed against the stationed tractor and tanker bearing No.
AP 27 F 2045 and 2046. The deceased succumbed to injuries while undergoing treatment in Government Hospital, Kandukur. The Station House Officer, Kandukur Police Station registered a case in Crime No.36 of 2005 under Sections 337 and 304-A I.P.C. against the driver of the auto. By the time of death, the deceased was aged about 45 years and used to earn Rs.150/- per day. The petitioner is the husband and respondent Nos.3 to 6 are the children of the deceased. Hence, the petition is filed claiming compensation of Rs.3 Lakhs. The auto bearing No. AP 27V 6374 which belongs to respondent No.1 was insured with respondent No.2.

4. Respondent Nos.1, 3 to 6 remained *ex-parte.* Respondent No.2 filed written statement denying all the material averments made in the petition *inter alia* contending that there was no rashness or negligence

on the part of the driver of the auto. The accident occurred due to the negligence on the part of the auto driver as well as the driver of the tractor and tanker, therefore, the driver, owner and insurer of the tractor and tanker are necessary and proper parties to this petition. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Respondent No.7 filed written statement contending that he sold the auto to respondent No.1 much prior to the date of accident. However, the policy stands in his name. Respondent No.2 has to indemnify the liability of respondent No.7. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the deceased died due to rash and negligent driving of the driver of R1/R7 auto?

(2) What is correct age & income of deceased as on the date of the accident?

(3) Whether the petitioner is entitled for compensation, if so, to what extent and from whom?

(4) To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the contesting respondents, RW.1 was examined and Exs.B.1 and B.2 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto and allowed the petition by awarding compensation of

Rs.3,00,000/- by directing respondent No.1/respondent No.7 and respondent No.2 jointly and severally to deposit the amount with a liberty to respondent No.2 to recover the same from respondent No.1/respondent No.7.

9. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

10. Heard Sri Kota Subba Rao, the learned counsel for respondent No.2 – Insurance Company (appellant) and
Sri Madhava Rao Nalluri, the learned counsel for the petitioner.

11. The contention of the learned counsel for respondent No.2 is three fold: (1) The Tribunal ought to have dismissed the petition in view of dismissal of O.P.No.37 of 2006, which arises out of the same accident; (2) The Tribunal wrongly fastened the liability on respondent No.2 having held that respondent No.1/respondent No.7 had violated the terms and conditions of the policy; and (3) The Tribunal awarded higher rate of interest.

12. Per contra, the learned counsel for the petitioner submitted that there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal.

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

1. Whether respondent No.1/respondent No.7 had violated the terms and conditions of policy so as to absolve the liability of respondent No.2 – Insurance Company or not?

2. Whether the rate of interest granted by the Tribunal is on higher side or not?

***Point No.1:***

14. There is no much dispute between the parties with regard to the manner of the accident and *factum* of death of the deceased. Basing on the material available on record, the Tribunal arrived at a

conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal.

15. Learned counsel for respondent No.2 fairly submitted that the Insurance Company is not disputing the quantum of compensation. Hence, I am not inclined to express any opinion with regard to the quantum of compensation awarded by the Tribunal as the petitioner has not filed regular appeal or cross objections. I have carefully perused the judgment of the Tribunal. The Insurance Company has not taken any steps to file certified copy of the judgment and award in O.P.No.37 of 2006. Respondent No.2 – Insurance Company has not taken such a plea before the Tribunal. If really the Tribunal dismissed the O.P.No.37 of 2006, what prevented respondent No.2 – Insurance Company to file the certified copy of the same before the Tribunal? In the absence of documentary evidence, it is not safe to place reliance on the submissions made by the Insurance Company.

16. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for respondent No.2 – Insurance Company (appellant) that O.P.No.37 of 2006 was dismissed by the Tribunal.

17. The oral testimony of RW.1 coupled with Ex.B.2 reveals that the driver of the auto was having driving licence to drive the light motor vehicle non-transport. The fact remains that the driver of the auto drove the passenger auto at the time of accident. Respondent Nos.1 and 2 have not filed appeal or cross-objections challenging the finding of the Tribunal so far as the pay and recovery is concerned. In the absence of regular appeal, it is not fair on the part of this Court to interfere with the findings recorded by the Tribunal. Mere driving of the

passenger auto by the driver having a licence to drive the light motor vehicle non-transport would not amount to fundamental breach of terms and conditions of the policy. In such circumstances, respondent No.2 has to indemnify the liability of the insured.

18. Viewed from any angle, I am unable to accede to the contention of the learned counsel for respondent No.2 that respondent No.1/respondent No.7 had violated the terms and conditions of policy so as to completely absolve the liability of respondent No.2. Hence, the point is answered accordingly.

***POINT No.2:***

19. A perusal of the record reveals that the Tribunal awarded interest at the rate of 9% per annum. Section 171 of the Motor Vehicles Act, 1988 (for short, 'the Act') confers discretionary power on the Tribunal to award interest. However, Section 171 of the Act is silent with regard to the rate of interest. The Tribunal has to exercise its discretionary power judiciously basing on the sound principles of law. While awarding the rate of interest, the Tribunal has to take into consideration the rate of interest charged in the locality as well as the guidelines issued by the Reserve Bank of India from time to time.

20. At this juncture, this Court is placing reliance on the ratio laid down in **Puttamma Vs. K.L.Narayana Reddy**[1], 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."

21. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the Tribunal has awarded reasonable rate of interest. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

22. In the result, the Appeal is dismissed. There shall be no order as to costs.

23. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 03.03.2015
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[1] (2013) 15 SCC 45