

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.844 of 2005

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 order and decree dated 29.09.2001, passed by the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad, in O.P.No.498 of 1996, awarding compensation of Rs.1,45,000/-.

2. The respondent Nos.1 to 3/petitioners filed the above Original Petition under Section 166 of the Act read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989 claiming compensation of Rs.2,50,000/- on account of the death of one Yerrolla Papaiah (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 17.11.1995.

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 17.11.1995 at about 06:30 p.m, while the deceased was going on a cycle towards Phulong, Nizamabad, and when he reached at Phulong bridge, at that time the driver of the lorry bearing No.ABV.456 came from opposite direction with high speed in a rash and negligent manner and gave dash to the deceased, due to which the deceased fell down and sustained multiple crush injuries. He was admitted in the Government Hospital, Nizamabad, and died while undergoing treatment in the hospital. The deceased was aged 23 years at the time of accident and used to earn Rs.3,000/- p.m by working as cleaner-cum-driver on the lorry and was contributing his entire earnings to the petitioners who are his father, mother and brother. The accident occurred due to rash and negligent driving of the lorry bearing No.ABV.456 by its driver only. The respondent No.1 is the owner and respondent No.2 is the insurer of the lorry bearing No.ABV.456 and the insurance policy was in force at the time of accident, as such they are jointly and severally liable to pay compensation to the petitioners.

5. Before the Tribunal, respondent No.4/respondent No.1 remained *ex parte*.

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

The second respondent put the petitioners to prove the manner of accident, age and income of the deceased and also specifically stated that the driver of the lorry has not drove the vehicle in a rash and negligent manner 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 & 2 and got marked Exs.A.1 to A.4 on their behalf. On behalf of the contesting respondent, no oral or documentary evidence got adduced.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.ABV.456 and awarded compensation of Rs.1,45,000/- along with interest at 12% p.a to the petitioners.

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

10. The learned counsel appearing for the appellant/second respondent only contended that the rate of interest of 12% p.a awarded by the Tribunal is high and excessive and prayed the Court to reduce the interest in view of the judgment of the Hon'ble Supreme Court in ***Chanderi Devi and another v. Jaspal Singh and others***.

11. The appeal against respondent No.1 is dismissed for default vide C.O. dated 03.01.2012.

12. On the other hand, the learned counsel appearing for respondent Nos.2 & 3/petitioners stated that in view of the judgment of the Hon'ble Supreme Court in ***Chanderi Devi's case*** (cited supra), wherein the Hon'ble Supreme Court awarded interest at 9% p.a from the date of the petition till the date of payment, the Court can reduce the rate of interest to 9%.

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 to 3/petitioners or not?
2. Whether the appellant/second respondent is entitled to reduce the award passed by the Tribunal or not?
3. Whether the appellant/second respondent is entitled to set aside the rate of interest awarded by the Tribunal or not?

14. **P O I N T S:** A perusal of the record shows that there is no dispute of the fact that the accident occurred on 17.11.1995 due to the rash and negligent driving of the driver of the lorry bearing No.ABV.456, in which the deceased died. Petitioners are the parents and brother of the deceased. As per the evidence of PWs.1 & 2, petitioner used to work as cleaner on the lorry of his uncle, earn Rs.3,000/- p.m and was aged 25 years at the time of accident. The Tribunal considering the evidence of PWs.1 & 2 rightly assessed the compensation and awarded Rs.1,45,000/- to the petitioners. The said finding also needs no interference.

15. The main grievance of the appellant is that the Tribunal awarded excess rate of interest at 12% p.a and it has to be reduced. In this regard, he has placed reliance on the judgment in **Chanderi Devi's case** (cited supra) and prayed the Court to reduce the rate of interest from 12% p.a to 9% p.a from the date of the filing the appeal till the date of realization. Thus, considering the facts and circumstances of the case and in view of the settled law of the Hon'ble Supreme Court, I am of the view that the rate of interest shall be reduced from 12% p.a to 9% p.a from the date of appeal till the date of realisation.

16. Therefore, in view of the above discussion, the appeal is partly allowed confirming the quantum of compensation awarded by the Tribunal, but reducing the rate of interest awarded by the Tribunal from 12% p.a to 9% p.a from the date of appeal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 09.10.2015

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