THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No.550 of 2005

JUDGMENT:

This appeal is filed by the appellant/respondent No.2 under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 16-10-2004, passed by the I Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Nizamabad, in O.P.No.1114 of 2002, awarding compensation of Rs.2,40,000/-.

The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.5,00,000/- for the loss sustained by them on account of the death of Pawar Ramesh in a motor vehicle accident that occurred on 15-06-2002.

The brief facts of the petition are that on 15-06-2002, Pawar Ramesh was travelling in a Jeep bearing No.AP-1-T-5461 from Echoda to Boath villa and that when the jeep reached near Pochherla village X roads, another Jeep bearing No.AP-1-T-5681 came in rash and negligent manner being driven by its driver and dashed against the jeep in which Pawar Ramesh was travelling. In that accident Pawar Ramesh received grievous injuries and he was shifted to the hospital at Nirmal and from there to Government Hospital, Nizamabad where he succumbed to injuries while undergoing treatment on 15-06-2002. Police, Boath P.S. registered case in Crime No.69 of 2002 against the driver of offending jeep-bearing No.AP-1-T-5681. The 1st claimant is wife, 2nd claimant is minor daughter and 3rd claimant is mother of the deceased and they were all depending on the deceased. The deceased was aged

25 years and was a stone cutter and earning Rs.10,000/- per month. Due to untimely death of the deceased, the petitioners lost their livelihood and were subjected to untold misery. The accident occurred due to rash and negligent driving of the offending jeep bearing No.AP-1-T-5681 by its driver. Hence, the claimants are entitled to compensation of Rs.5,00,000/- against respondent Nos.1 and 2 who are owner and insurer of the offending jeep respectively.

The 1st respondent remained *ex parte*.

The brief averments made in the written statement filed by the 2nd respondent are as under:

Age, avocation and income of the deceased are incorrect and the accident was not occurred due to rash and negligent driving of the driver of the jeep bearing No.AP-1-T-5681 and the claimants have to prove the same. The claimants also have to prove that the driver was holding valid and sufficient driving licence and finally stated that the compensation claimed by the claimants are highly exorbitant and excessive.

Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs.1 and 2 were examined and got marked Exs.A.1 to A.5. On behalf of the 2nd respondent, RW1 was examined and got marked Exs.B1 to B3.

After considering the oral and documentary evidence on record, the Tribunal held that the accident was occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP-1-T-5681, in which the husband of the 1st claimant died and awarded compensation of Rs.2,40,000/- along with interest at 9%

p.a.

Aggrieved by the judgment of the Tribunal with regard to quantum of compensation and with regard to interest granted on the awarded amount the present appeal is filed by the petitioner/claimant.

Having regard to the submissions made by the learned counsel for the appellant, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant is entitled for enhancement of compensation?
3. Whether the appellant is entitled for enhancement of interest granted by the Tribunal?

There is no dispute of the manner of the accident by the appellants. Therefore, the finding of the Tribunal regarding the manner of the accident needs no interference.

Learned counsel for the Insurance Company argued that they are not disputing about the compensation awarded by the Tribunal but rate of interest is high. A perusal of the record shows that after considering the evidence on record, the Tribunal has rightly granted Rs.2,40,000/- as compensation to the claimants.

Learned counsel for the respondents/claimants argued that the claimants are entitled for 9% per annum interest and relied upon a decision reported in ***H.S. AHAMMED HUSSAIN AND ANOTHER V. IRFAN AHAMMED AND OTHERS***[1], wherein it is held in paragraph No.7 as follows:

> *"Learned counsel thereafter submitted that the High Court was not justified in upholding award of interest at the rate of 6% per annum and the same should have been awarded at the rate of 9% per annum. Reliance in this connection was placed upon a decision of this Court in the case of Kaushnuma Begum (Smt.) and others v. New India Assurance Co. Ltd. and others (2001) 2 SCC 9 wherein this Court noticed that "earlier, 12% was found to be the reasonable rate of simple interest. With a change in the economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% per annum from the date of the claim." Therefore, it was directed in that case that the claimant was entitled to interest at the rate of 9% per annum. In our view, the submission is well founded and must be accepted. Accordingly, we hold that the claimants shall be entitled to interest on the aforesaid amount at the rate of 9% per annum from the date of filing of the petitions till realisation."*

Considering the decided law the Tribunal rightly awarded 9% per annum interest. Therefore, finding with regard to awarding 9% per annum interest also needs no interference by this Court.

Learned counsel for the Insurance Company/R2 further argued that the driver of the offending vehicle was not having valid driving licence as on the date of the accident under Ex.B2 and that the offending vehicle was a transport vehicle. Therefore, by allowing the driver to drive the vehicle without having valid driving licence the 1st respondent violated the terms and conditions of the policy, as such, the Insurance Company is liable to recover the said amount from the owner of the offending vehicle.

On the other hand, the 2nd respondent – appellant herein has examined RW1 who is working as Assistant and she filed Exs.B1 to B3 documents. As per Ex.B3, it is clear that the driver of the offending vehicle was not holding valid driving licence as on the date of the accident. Further the 1st respondent remained *ex parte* in the lower Court. Thus, the 1st respondent allowed the driver to drove the vehicle without valid driving licence and violated the terms and conditions of the policy. Therefore, the Insurance Company is entitled to recover the amount from the owner of the offending vehicle in view of the ratio laid down in ***National Insurance Co. Ltd., v. Baljit Kaur and Ors.,***[2] as he committed breach of the terms of the policy.

Therefore, in view of the above discussion and in view of the ratio laid down in ***Baljit Kaur's case***, (second cited supra) this Court direct the appellant-Insurance Company to first satisfy the awarded amount and recover from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit.

With the above said observation, the appeal is partly allowed and the Insurance Company is entitled to recover the compensation amount from the owner of the vehicle. There shall be no order as to costs.

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

(ANIS, J)

15th July, 2015

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[1] 2002 (4) ALD 103 (SC)

[2] 2004 (1) SCALE 124