

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4506 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 order and decree dated 04.05.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, West Godavari at Eluru, in O.P.No.44 of 2002, awarding compensation of Rs.3,82,500/-.

2. The respondent Nos.1 to 4/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.6,00,000/- on account of the death of one Katari Suryanarayana Raju (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 10.09.2001.

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 10.09.2001 at about 9:00 p.m while the deceased and one N.Narasimharao were returning from Kaligotla village to Pedaamiram on a motor cycle bearing No.AP.37.N.9575, the deceased was driving the vehicle slowly and cautiously. Whiles, suddenly, a she-buffalo crossed the road and immediately, the deceased turned the vehicle to the left side of the road, as a result the vehicle went on waste heaps and turned turtle. The deceased fell down from the motorcycle and received injuries all over his body. Further, the pillion rider also received injuries. Immediately, the deceased was shifted to Bhimavaram Hospitals Limited and from there, he was referred to Nagarjuna Hospital, Vijayawada for better treatment and while undergoing treatment, he died. Petitioners are the wife, children and mother of the deceased stated that the deceased was aged about 28 years and earning Rs.4,300/- p.m and he was working as plant in-charge in Sri Vijaya Lakshmi Ice & Cold Storage in Pedaamiram. Petitioners also stated that the deceased spent Rs.15,000/- towards medical expenses. First respondent is the owner and second respondent is the insurer of the vehicle. Therefore, both the respondents are jointly liable to pay compensation to the petitioners.

5. Before the Tribunal, respondent No.5/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, injuries received by the deceased causing his death and medical expenses incurred by him. The second respondent also stated that the amount claimed by the petitioners is excessive and exorbitant 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.6 on their behalf. On behalf of the contesting respondent, RW.1 was examined and Ex.B1 got marked.

8. After considering the oral and documentary evidence available on record, the Tribunal held that it is an accidental mishap and awarded Rs.3,82,500/- along with interest at 9% 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 argued that the Tribunal without considering the evidence on record awarded an excess amount of compensation to the petitioners and specifically contended that the rate of interest of 9% p.a awarded by the Tribunal is high and excessive and prayed the Court to reduce the interest to 7.5% p.a.

11. On the other hand, the learned counsel for the respondent Nos.1 to 4 opposed the appeal and argued that the Tribunal after considering all the aspects, awarded just and reasonable compensation and the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

12. None appeared, to argue on behalf of respondent No.5 herein.

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 4/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 reduce 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 incident occurred on 10.09.2001 is an accidental mishap, in which the deceased died. Further, the perusal of the evidence available on record clearly established that in the accident, the deceased sustained grievous injuries and died while undergoing treatment. Petitioners are the wife, children and mother of the deceased and they filed the present petition claiming compensation for the death of the deceased. After considering the evidence of PWs.1 to 3, the Tribunal assessed the income of the deceased as Rs.2,500/- p.m and awarded Rs.3,40,000/- towards future loss of income, Rs.20,000/- towards loss of consortium, Rs.20,000/- towards mental agony and Rs.2,500/- towards funeral expenses totalling to Rs.3,82,500/-. To disprove the evidence of PW.1, nothing has been produced by the contesting respondent in relation to the income of the deceased. Therefore, the finding of the Tribunal regarding the quantum of compensation needs no interference.

15. Coming to the rate of interest awarded by the Tribunal is concerned, 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 appeal till the date of realisation.

16. In the result, 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 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: 13.11.2015

sr