

C.M.A.No.1195 OF 2004

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including owner of the auto bearing No.AP31 V 8530, of O.P.No.628 of 2000 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-District Judge, Vizianagaram (*for short, 'Tribunal'*), filed under Section 166 of (but amended to Sections 163-A and 167 of the Act as per orders in I.A.No.2456 of 2002, dated 08.11.2002) the Motor Vehicle Act,1988 (*for short, 'the Act'*), by the petitioner(Auto driver) for the claim of Rs.2,00,000/- (Rupees two lakhs only), preferred this appeal impugning the award of the tribunal dated 08.12.2003, with the contentions that the tribunal gravely erred in awarding compensation fixing joint liability including the Insurer for no basis, apart from that the quantum as well as rate of interest is highly excessive and unsustainable, hence to set aside the award otherwise to reduce compensation as well as rate of interest by allowing the appeal. The learned counsel for the appellant reiterated the same contentions during course of hearing.

2. Whereas, it is the contention of the learned counsel for the claimant that but for no cross-objections to enhance. Hence to dismiss the appeal as the Injured, the driver of the auto, sustained injuries from the auto turned turtle while in the course of employment but negligence of the injured-driver is not a criteria to award compensation.

3. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

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

1. *Whether the claimant-injured is entitled to compensation against the owner and Insurer of the Auto (Respondents 1 and 2 of the claim petition), if so, the compensation awarded is excessive so also rate of interest to reduce, if so, with what just compensation and with what observations?*

2. To what result?

Point No.1:

5. The evidence on record establishes that the injured was driver of the auto of the 1st respondent and said auto admittedly insured with the 2nd respondent. Though the policy is not exhibited to say whether it is Act policy or comprehensive policy, once, the injuries in the accident sustained by him in the course of employment even the Act policy under Section 147 sub -section (1)(i) of the Act covers the risk, with reference to Section 167 of the Act option is with the claimant to proceed either with M.V.Act or the Workmen's Compensation Act as per the settled law. Thus, the claimant is entitled to compensation from the respondents.

6. Now coming to the quantum of compensation, the disability certificate issued by the P.W.2 doctor covered by Ex.A.7 shows though 40% disability from the mal-union of the left talus, tribunal taken 25% by appreciation of the evidence and arrived the quantum of compensation at 55,000/-. Thus so far as said quantum is concerned, there is nothing to interfere for this Court while sitting in appeal but for to reduce rate of interest from 9% to 7.5% p.a. as per settled expressions in **TN Transport Corporation v. Raja Priya**, and **Rajesh v. Ranabir Singh**, as held that the steep fall in the bank interest rate for the past several years which is to be kept in mind while awarding interest and awarded therefrom at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in **DDA Vs. Joginder S. Monga**. Accordingly, point No.1 is answered.

POINT No.2:

7. In the result, the appeal is partly allowed while confirming the compensation but reducing the rate of interest from 9% to 7.5% p.a. from the date of petition (MVOP) till realization/deposit with notice. Rest of the award holds good. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02.04.2015

VVR

