

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

M.A.C.M.A. No.1399 OF 2009

JUDGMENT:

This appeal is filed by the claimants challenging the judgment and award dated 29.8.2006 passed in O.P. No.492 of 2001 (*old O.P.No.411 of 2000 on the file of District Judge, Karimnagar*) on the file of the XI Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The petitioners filed the petition under Section 140 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.50,000/- under no fault liability for the death of their son in a motor vehicle accident that occurred on 25.9.1998. The case of the petitioners is that on 25.9.1998, the second petitioner along with her one month old son- P.Rupeen (hereafter referred to as, the deceased), and other family members was proceeding from Hyderabad to Pedapalli in Maruti Car bearing No.AP 15G 5000. When the car reached near Lakudaram village, the driver of Ambulance van bearing No.AP 9B 4281 had driven the same in a rash and negligent manner and dashed against the Maruti Car in opposite direction. Due to the accident, Rupeen sustained grievous injuries and died on the way to Nizam's Institute of Medical Sciences, Hyderabad. The Station House Officer, Siddipet Rural Police Station registered a case in Crime No.145 of 1998 under Section 337 IPC, and after completion of investigation charge sheet was filed against the first respondent-driver of the Ambulance under Sections 304-A and 338 IPC. The second respondent is owner of the Ambulance and the third respondent is insurer of the Maruti Car. Hence, the petition.

4. The first respondent–driver of the Ambulance remained ex parte.

The second respondent-owner of the Ambulance filed counter denying the averments in the petition and, *inter alia*, contended that the driver of the Maruti Car came in wrong route and dashed against the Ambulance resulting in death of son of the petitioners. There was no rashness or negligence on the part of the driver of the Ambulance.

5. The third respondent filed counter denying all the averments made in the petition, *inter alia*, contended that the accident was occurred due to rash and negligent driving of the driver of the Ambulance. Maruti Car in question was not insured with the third respondent as on the date of accident. The third respondent also filed additional counter contending that as per the recitals of F.I.R., the negligence was on the part of the driver of Ambulance and, therefore, the third respondent is not liable to pay any compensation to the petitioners. Hence the petition filed against the third respondent may be dismissed.

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

- 1) Whether the deceased died in the accident on account of the rash and negligent driving of Ambulance Van bearing No.AP 9B 4281 by its driver?
- 2) Whether the petitioners are entitled to any compensation and if so, to what amount and from whom?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.W.1 was examined and Exs.P1 to P4 were marked. On behalf of the second respondent, R.Ws.1 and 2 were examined and Exs.B1 was marked. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of driver of the Ambulance and allowed the petition awarding an amount of Rs.50,000/- towards compensation to the petitioners with costs and interest at 7.5% per annum from the date of the award till the date of payment, directing the respondent Nos.1 and 2 (driver and owner of the Ambulance) to pay the compensation

jointly and severally. The petition against the third respondent-insurer of the Maruti Car is dismissed. Being not satisfied with the date of effect of rate of interest, the claimants preferred the present appeal.

7. The second respondent remained ex parte having received notice in this appeal.

8. The contention of learned counsel for the appellants-petitioners is that the Tribunal ought to have granted interest from the date of petition instead of date of award.

9. Now the point that would arise for consideration is whether the petitioners are entitled to interest from the date of the petition?

10. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the Ambulance. For one reason or the other, the second respondent did not choose to file appeal challenging the said finding. Hence, the finding of the Tribunal on Issue No.1 with regard to manner of accident and the factum of death of deceased due to the injuries received in the accident became final. A perusal of the record reveals that the Tribunal awarded compensation of Rs.50,000/- under no fault liability as claimed by the petitioners and there is no dispute between the parties on that aspect.

11. A perusal of the record reveals that the Tribunal awarded interest at 7.5% per annum from the date of award till the date of payment. It appears that the Tribunal has not considered the scope of Section 171 of M.V. Act while awarding interest. It is a settled principle of law that the Tribunal has to award interest from the date of petition till the date of realization. The finding of the Tribunal that the petitioners are entitled for interest at 7.5% per annum from the date of award is not sustainable in view of Section 171 of M.V. Act. Therefore, I am of the considered view that the petitioners are entitled to interest at 7.5% per annum from the date of petition (instead of date of award) till realization.

12. In the result, the appeal is allowed with costs through out and interest at 7.5% per annum from the date of petition i.e., 05.8.2000 (instead of date of award i.e., 29.8.2006) till the date of realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 29.1.2015

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