

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1675 of 2005

J U D G M E N T:

This appeal is filed by the appellant/respondent No.4 under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 24.03.2005 passed by the IV Additional Chief Judge-cum-Chairman, Motor Vehicle Claims Tribunal, City Civil Court, Hyderabad, in O.P.No.52 of 2003, awarding compensation of Rs.6,88,556/-.

2. The respondent Nos.1 to 4/claimants herein are the widow wife, children and father of one S.Kumar (hereinafter referred to as 'the deceased'). They filed the above O.P under Section 166 of the Act claiming compensation of Rs.11,00,000/- on account of the death of the deceased in a motor vehicle accident that occurred on 04.11.2002 at Shaikpet Nala. The fourth respondent/fourth claimant died during the pendency of the case.

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 04.11.2002 at about 8:00 a.m, while one Sai Kumar was driving a Hero Honda Splendor motorcycle bearing Registration No.AP.28AA.9845 along with the deceased, who was his distant relative, towards Gudimalkapur Market via., Shaikpet, and when they reached near Shaikpet Nala, a private bus bearing No.AP.9W.4992 hired to Andhra Pradesh State Road Transport Corporation, Hyderabad, came in an opposite direction at high speed in a rash and negligent manner and dashed the motorcycle, due to which he fell down and sustained fracture of right leg and grievous injuries to right toe and multiple injuries all over the body,

whereas the deceased received fracture of right leg and grievous head injuries. Both of them were immediately shifted to Apollo Hospitals in an Ambulance. The motorcycle was completely damaged. The deceased was aged 38 years and was employed in Bharath Sanachar Nigam Limited, earning Rs.8,090/- per month. He was operated on 04.11.2002, a steel rod was inserted and kept in emergency ward and while undergoing treatment, he succumbed to injuries on 06.11.2002. The claimants claimed that on account of the death of the deceased they are subjected to untold shock and misery. The first claimant lost conjugal happiness, whereas all of them lost love and affection. The deceased used to contribute his entire earnings for the maintenance of his family. The first respondent is the Andhra Pradesh State Road Transport Corporation through the Vice chairman, second respondent is the Depot Manager, Andhra Pradesh State Road Transport Corporation, Hyderabad, and third respondent is M/s. Sri Venkateswara Travels, owner of the bus, whereas fourth respondent is the insurer of the bus and therefore, they are all jointly and severally liable to pay compensation to the claimants.

5. Before the Tribunal, the third respondent remained *ex parte*. The second respondent filed a memo adopting the counter filed by the first respondent.

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

The first respondent put the claimants to prove the manner of accident, age and income of the deceased and specifically stated that the bus bearing No.AP.9W.4992 was hired by the third respondent in its favour under agreement dated 19.03.2001 for a period of three years and as per clause 7(1) of the said

agreement, owner of the bus i.e., third respondent shall provide the driver having valid subsisting driving license of not less than five years to drive the vehicle and P.S badge for the said bus for the entire agreed period and it was also agreed vide clause-5(iv) that all claims that may arise due to statutory violations out of operations, like claims due to accidents, payable under the provisions of the Act, the Andhra Pradesh State Road Transport Corporation shall under no circumstances be made liable or responsible to pay compensation that was awarded by the Tribunal and further, the bus was insured by the third respondent with fourth respondent and finally stated that insured and insurer of the bus alone are responsible to pay the compensation in view of the agreement entered into, and therefore, prayed the Court to dismiss the petition.

7. The brief averments made in the counter filed by the first respondent are as follows:

The fourth respondent put the claimants to prove the manner of accident, age and income of the deceased and also sought to prove the rash and negligent driving attributed to the driver of the private bus hired to the Andhra Pradesh State Road Transport Corporation. The fourth respondent also put the claimants to prove that the driver was having valid subsisting driving license at the time of accident. It is also stated that the Insurance Company cannot be fastened with any liability for the reason that the said bus was hired by the Andhra Pradesh State Road Transport Corporation and that the compensation claimed by the claimants is high and excessive and finally prayed the Court to dismiss the petition.

8. Basing on the above pleadings, the Tribunal framed three

issues and to substantiate the claim, the claimants got examined PWs.1 to 4 and got marked Exs.A1 to A5 on their behalf. On behalf of the respondents RW.1 was got examined and Exs.B1 & B2 got marked.

9. The Tribunal having considered the oral and documentary evidence on record held that on account of the rash and negligent driving of the driver of the offending vehicle, the accident has taken place and awarded compensation of Rs.6,88,556/- along with interest at 9% p.a in favour of the claimants and against all the respondents. Aggrieved by the order passed by the Tribunal, the fourth respondent/Insurance Company preferred the present appeal.

10. Learned counsel appearing for the appellant/fourth respondent argued that the Tribunal without considering the judgments of the Hon'ble Apex Court granted interest at 9% p.a and therefore the rate of interest granted by the Tribunal has to be reduced.

11. On the other hand, the learned counsel appearing for respondent Nos.1 to 4/claimant Nos.1 to 4 reported that as per the judgments of the Hon'ble Apex Court, this Court may decide the rate of interest.

12. Having regard to the submissions made by the learned counsel for both parties, the only point which is to be decided in this appeal is whether the appellant/fourth respondent had made out any case to reduce the rate of interest granted to the claimants in the award passed by the Tribunal as prayed for?

13. **P O I N T:** A perusal of the evidence available on record shows that the Tribunal after considering the oral and documentary

evidence awarded Rs.6,88,556/- along with interest at 9% p.a in favour of the claimants and all the respondents have to pay it jointly and severally. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1], the Hon'ble Apex Court awarded interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], 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.

14. 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 petition till the date of realisation. No order as to costs.

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

ANIS, J

Date: 30.06.2015
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^[1] 2013 ACJ 2733

^[2] 2012 ACJ 2328