

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A No.2586 OF 2004

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JUDGMENT:

Appellant—Insurance Company is the 2nd respondent among two respondents including driver of the bus in O.P No.65 of 2000, which was filed by sole injured claimant under Section 166 of M.V Act (for short ‘the Act’) on the file of Motor Accidents Claims Tribunal – cum – III Additional District Judge, Karimnagar (for short ‘the Tribunal’) for compensation of Rs.70,000/- for the injuries sustained in the accident due to alleged rash and negligent driving of the driver of the RTC bus on 02.09.1998, from contest, the Tribunal having held that the accident was the result of rash and negligent driving of the RTC bus driver, awarded compensation of Rs.70,000/- as prayed for with interest at 9% per annum vide award dated 28.08.2001. Impugning the same, the appellant—insurance company filed this appeal, mainly contending that the accident was the result of self negligence of the injured claimant—scooterist, for no fault of the driver of the RTC bus and the compensation awarded by the Tribunal is unsustainable and thereby, sought for setting aside the award by dismissing the claim and to allow the appeal.

2) Though earlier the appeal against 1st respondent/ claimant was ended in dismissal for non-appearance to participate in the subsequent proceedings even from reading of Order VIII Rule 10 C.P.C vide the Apex Court’s expression in ***Balraj Taneja vs Sunil Manan***^[1], as seen from the order in C.M.P. No.5243 of 2002 dated 02.08.2004 the name of Ms.Jyothi Kiran, was appearing as the counsel for the 1st respondent/ claimant and it is her

contention that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere on the quantum or findings.

3) Heard and perused the material

4) The evidence on record before the Tribunal covered by PWs.1 and 2 including the eye witness to the accident and RW.1 driver of the bus with reference to Exs.A1 to 11 show, apart from the evidence of injured and PW.2—eye witness, that the accident was the result of rash and negligent driving of 1st respondent—driver of the bus of the 2nd respondent for nothing from the cross examination that can be elicited even in cross examination of RW.1—driver, who deposed that while coming from Jagtial and to enter into Karimnagar workshop of the bus, he has to take right turn and it is not possible to take right turn from the very opposite of the gate of the workshop and thereby, came there from the left side to enter into the workshop. The averments of the claim and the evidence of eye witness apart from Ex.A1—FIR registered against the bus driver and even the scene observation report under Ex.A2 clarifies the same and while taking the curve by the bus driver, the accident occurred for no fault of the injured. Once that was arrived by the conclusion of this Court while sitting in appeal against that conclusion there is nothing to interfere, so also on the quantum awarded of Rs.70,000/- from the nature of injuries sustained, period of treatment undergone including medical expenses, attendant charges, transport charges, extra nourishment though the alleged disability not proved. Thus, there is nothing to interfere with the appeal but for to reduce the rate of interest from 9% per annum to 7.5% per annum vide three judge bench expression of the Apex Court in **Rajesh vs Rajbir Singh**^[2]

and ***T.N Transport vs Raja Priya*** ^[3].

5) Accordingly and in the result, the appeal is partly allowed while confirming the quantum of compensation reducing the rate of interest from 9% per annum to 7.5% per annum. In other respects the award of the Tribunal holds good. No order as to costs.

6) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.07.2016
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Date:01.07.2016

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[\[1\]](#) AIR 1999 SC 3380

[\[2\]](#) 2013 ACJ 1403

[\[3\]](#) 2005 (6) SCC 236