

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4303 of 2004

J U D G M E N T:

This appeal is filed by the appellant/third respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 16.04.1998, passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Vijayawada, in M.V.O.P.No.307 of 1992, awarding compensation of Rs.60,000/-.

2. The respondent No.1/petitioner filed the above M.V.O.P under Section 166 of the Act claiming compensation of Rs.60,000/- on account of the death of his brother by name Nallamothu Poul (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 17.09.1991.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the M.V.O.P.

4. The brief averments made in the petition are that on 17.09.1991 at about 07:00 p.m, while the deceased was proceeding on foot on the left side of the road, near Vijayalakshmi Convent at bye-pass road, a scooter bearing No.AP.16A.3536 belonging to respondent No.1 came in a rash and negligent manner without caring and following traffic rules and dashed the deceased, as a result, he fell on the road and became unconscious. Immediately, after the accident,

the deceased was shifted to Government Hospital, Vijayawada, and while undergoing treatment, he died in the hospital on 27.09.1991. Police registered a case in Cr.No.241 of 1991 against respondent No.1. Therefore, the petitioner prayed the Court to grant compensation.

5. Before the Tribunal, respondent Nos.2 & 3 herein/respondent Nos.1 & 2 remained *ex parte*.

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

The third respondent put the petitioner to prove the manner of accident, age and income of the petitioner, and contended that the respondent Nos.1 & 2 are only liable to pay compensation, but not the third respondent and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed four issues and to substantiate the claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.3 on his behalf. On behalf of the contesting respondent, RW.1 was examined and Exs.B1 to B5 got marked.

8. After considering the oral and documentary evidence available on record, the Tribunal held that the first respondent drove the vehicle in a rash and negligent manner and caused the accident in which the deceased died. Further, The Tribunal after considering the evidence of PWs.1 & 2 and

RW.1, granted an amount of Rs.60,000/- as compensation with interest at 12% p.a payable by all the respondents.

9. Being aggrieved by the award passed by the Tribunal, the third respondent preferred the present appeal.

10. The learned counsel appearing for the appellant/third respondent argued that the Tribunal awarded compensation without going through the record and specifically contended that the rate of interest of 12% 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 appearing for the first respondent argued that the Tribunal rightly passed the award by granting just and reasonable compensation and conceded to reduce the rate of interest.

12. 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/third respondent is liable to pay compensation to respondent No.1/ petitioner or not?
2. Whether the appellant/third respondent is entitled to reduce the award passed by the Tribunal or not?
3. Whether the appellant/third respondent is entitled to reduce the rate of interest awarded by the Tribunal or not?

13. **P O I N T S:** A perusal of the evidence on record clearly shows that there is no dispute of the fact that the accident occurred due to rash and negligent driving of the rider of the scooter bearing No.AP.16A.3536, due to which the brother of the petitioner died. The Tribunal after considering the evidence rightly awarded compensation of Rs.60,000/- and the said finding of the Tribunal needs no interference as the Tribunal awarded just and reasonable compensation.

14. The main grievance of the learned counsel for the appellant/third respondent is that the rate of interest awarded by the Tribunal at the rate of 12% p.a is high and excessive and it has to be reduced. It is nodoubt, in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***¹, 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***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 12% to 7.5% p.a from the date of appeal till the date of realisation.

¹ 2013 ACJ 2733

² 2012 ACJ 2328

15. 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 12% to 7.5% p.a from the date of appeal till the date of realisation. No order as to costs.

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

Date: 19.09.2016
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ANIS, J

