

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2853 OF 2009

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), challenging the award of Rs.50,000/- with interest at 9% per annum as against the claim of Rs.1,50,000/- laid under Sections 166 and 140 (c) of the Act by the petitioner for the injuries he sustained, by the order and decree, dated 16-09-2005, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - XII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'the Tribunal'), in O.P. No.2232 of 2002, on the main ground that the auto-rickshaw in which respondent No.1 herein who is petitioner in the aforesaid OP was travelling, was overloaded at the relevant time and the same amounts to violation of terms and conditions of insurance policy, which the Tribunal overlooked and, therefore, sought to set aside the award and decree.

2. Heard Sri C.V. Rajeeva Reddy, learned standing counsel for the appellant - respondent No.2. No representation for respondent No.1 - petitioner. Though, notice was effected on respondent No.2 herein sent to the very same address mentioned in the cause title of the claim petition, none appears, and of course, his presence is not necessary in view of the fact that the petitioner cannot be deprived of the compensation to which he is entitled, even if it is construed that

there has been violation of the terms and conditions of the policy or the permit issued by the Road Transport Authority.

3. The learned counsel for the appellant - respondent No.2 would mainly raise the ground that though, said aspect was agitated in the counter still, the Tribunal did not advert to it and, therefore, sought to treat it as violation of terms and conditions of the policy and to exonerate the liability of insurer to pay compensation awarded by the Tribunal.

4. The fact-situation is not disputed by the learned standing counsel for the appellant. The insurer has not adduced any evidence except examining RW.1 and marking Ex.B-1 to show whether any others were injured and claim petitions were laid and claims were acceded to, exceeding the permitted capacity. In that view of the matter, the Tribunal ordering compensation cannot be faulted.

5. Turning to the quantum of compensation of Rs.50,000/- awarded by the Tribunal, as could be seen from the order, the amounts granted against each of the heads shown at page No.7 of the order, in fact, appears to be on lower side. Therefore, even it cannot be said that the compensation awarded by the Tribunal is excessive. However, so far as the rate of interest is concerned, the Tribunal has granted 9% per annum, the same requires reduction. Therefore, it is reduced to Rs.7.5% per annum from 9% per annum granted by the

Tribunal in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

6. The appeal is accordingly allowed in part to the extent of reducing the rate of interest, as indicated in the above. However, in all other respects, the order and decree are maintained. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

November 15, 2016.

Mgr

A. SHANKAR NARAYANA, J



¹. 2013 ACJ 1403